

APPROVED

**TOWN OF PELHAM PLANNING BOARD
MEETING MINUTES
September 28, 2020**

Chairman Tim Doherty called the meeting to order at approximately 7:00pm.

The following notice was read aloud “A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency” (*regarding access to the meeting*)

Secretary Cindy Kirkpatrick called roll:

PRESENT ROLL CALL: Tim Doherty – present
 Jim Bergeron – present
 Cindy Kirkpatrick - present
 Danielle Masse-Quinn – present
 Selectmen Representative Kevin Cote - Present
 Planning Director Jeff Gowan – present

Via Telecommunication:

Roger Montbleau – present via telephone
Paul Dadak – present via Zoom; no one in the room
Alternate Richard Olsen – present via telephone; no one in the room
Alternate Mike Sherman – present via telephone; no one in the room
Alternate Sam Thomas – present via Zoom; no one in the room
Alternate Selectmen Representative Hal Lynde – present via Zoom

ABSENT/

NOT PARTICIPATING: Alternate Paddy Culbert
 Alternate Bruce Bilapka

PLEDGE OF ALLEGIANCE

MEETING MINUTES

September 21, 2020 – deferred to the next meeting.

OLD BUSINESS

Case #PL2020-00017

Map 13 Lot 4-139-26

BILLINGS, Donovan T. - 9 Collins Way - Requesting a Conditional Use Permit for a detached Accessory Dwelling Unit

Representing the applicant was Attorney David Groff who came forward to discuss the submitted request. He told the Board the applicant previously received a Variance for required items for a detached accessory dwelling unit (‘ADU’). He reviewed the five requirements for the permit to be granted. The lot contains approximately 1.23 acres (Variance was granted for acreage). There are no hydric soils on the lot; the majority of the lot is within the CAC soils type. In the packet of documents submitted to the Board (in July) was the approval for construction of an individual sewage disposal system and the approved plan. Attorney Groff believed the lot

itself had steeper slopes (than 20%), although he didn't believe that was true for the location of the garage the applicant requested and was granted a variance to the requirement. All setback requirements have been met; the garage and main building have building permits and have been constructed. He said the previous owner didn't have a permit for the construction of an accessory dwelling unit in the garage. He displayed an overhead photograph of the lot itself and showed the location of the garage which contained the accessory dwelling unit. The design of the ADU shows the layout as containing 908SF.

Mr. Lynde asked if the ADU had already been built. Attorney Groff answered yes; it was in existence prior to the current owner purchasing the property. The previous owner installed the unit without a permit. He explained the present owner tried to sell the property and when someone reviewed the permits it was discovered the unit hadn't been permitted. The applicant has gone through the Zoning process and was now in front of the Planning Board.

Mr. Doherty questioned if the owner would also need to go through the inspection and permit process. Attorney Groff answered yes. He noted the owner had sent contractors to pull permits but was told they had to wait until the Planning Board process had been completed, although he believed the electrical has been inspected. Also there has been some taping in the garage, but he was unsure if the final inspection had been done. He understood there was also a need to have a plumbing inspection and general construction permit. Mr. Gowan noted they would also need a Certificate of Occupancy to be issued (after the fact), which can only be obtained once all the inspectors are satisfied.

Mr. Gowan stated the unit pre-existed the Town allowing detached units. Ms. Kirkpatrick asked if the unit had been built to the specifications required by the Town. Mr. Gowan discussed the requirements for detached ADUs and the reasons for such. He said the Board may want to 're-think' required placement of ADUS in the event a unit is placed on top of an existing structure. He said it was now an allowed use with a variance being granted.

Mr. Doherty didn't see any problems with the request.

Mr. Gowan said no one likes to deal with 'after-the-fact' but without an approval the Board would essentially be saying the unit would need to be torn out. He felt that would be a heavy-handed outcome given the circumstances, although he didn't want to advocate people do what they want and then come to the Town to figure things out.

Mr. Dadak reviewed the floor plan and saw the unit had a front entrance and an elevator. Attorney Groff referenced the plan and noted in the area where the driveway was located, there were stairs that lead to the entrance of the unit as well as an interior elevator. Mr. Dadak saw there was deck and asked if it was high up off the ground. Attorney Groff answered yes; it was to the rear of the structure. Mr. Cote questioned if the deck had stairs. Mr. Groff answered no. Mr. Cote wanted to know what counted as the egresses. Mr. Gowan noted there were two required egresses; in this case according to the Building Inspector they are the stairs and the elevator. Mr. Cote wanted to know if that counted toward fire code. Mr. Doherty replied a residential elevator would go down if it were already up during a power outage. Mr. Gowan added the Building Inspector inspects to the International Building Code and the Fire Department will do their own separate inspection in order for the Certificate of Occupancy to be issued. Because of the existence of the elevator, Mr. Gowan asked if the unit was a 'handicap' unit. Attorney Groff replied there were previously elderly people living in the unit but didn't know if it was a 'handicap' unit.

Mr. Bergeron noted this was the first detached ADU that had come in front of the Board. Aside from the relief granted by the Zoning Board, he looked at the fire/life/safety code aspect. He asked Mr. Gowan if there was a provision that entrances can't come through the lower section of a garage and had to be exterior entrances which would necessitate a separate set of stairs. Mr. Gowan didn't recall doing so. He reviewed the conditions under

Special Exceptions (page 57-58) in Zoning. Mr. Bergeron wanted to ensure it was considered by the proper people during inspections.

Mr. Doherty stated if it were just an apartment (2-unit building garden-style) it would have to meet certain building requirements; the ADU should be treated the same way by requiring a building permit and proper inspections. He was comfortable with the fact that the ADU would be inspected if the Board granted the Conditional Use Permit.

Mr. Dadak knew there were public requirements for elevators and wanted to know if there were private requirements as well. Mr. Gowan replied the Building Inspector and Fire Inspector would review these items as they are familiar with the appropriate codes. He suggested the Board didn't delve into what is and what is not required.

Mr. Lynde questioned if there was concern about having the elevator as a primary egress. Attorney Groff noted there was a stairway. Mr. Doherty said the primary entrance went down a set of stairs. He said the Board wasn't there to decide if an elevator was a good idea; that was up to the Building Inspector and the Fire Department.

Mr. Gowan believed there was an existing Department of Environmental Services ('DES') approval for a 4-bedroom septic. He wanted to know how many bedrooms there were between the house and the ADU. Attorney Groff understood the approval was for the construction of a system would support the entire existing structure with the existing bedrooms. Mr. Gowan then read the detail of the DES approval for construction and saw it approved a 4-bedroom residence and a 1-bedroom ADU (225 gallons per day).

Mr. Cote confirmed Collins Way had a municipal water supply. Attorney Groff answered yes; through Pennichuck Water.

Mr. Bergeron told the Board he stepped down from the Zoning Board's discussion/vote on the applicant's variance request so he would have the opportunity to remain seated during the Planning Board hearing. He stated the Zoning Board's vote (4-1-0 to approve) was weighed heavily on the consideration of the municipal water.

Mr. Cote understood the ADU was built sometime between 2006 and when the present owner purchased the property. Attorney Groff explained the prior owner got a permit to build a garage. Subsequently, without any permits, the owner built the ADU on the second floor of the garage. The garage itself is permitted; the ADU is not. He said the applicant purchased the property and their in-laws resided in the ADU until recently. Mr. Cote questioned if the existing septic/pipes would be inspected to ensure they were installed properly. Mr. Gowan stated they wouldn't make them dig up the septic. He said there was a State approval and noted after-the-fact inspections could get demanding. Mr. Cote wanted to know if they would make sure the pipes went into a leach field. Mr. Gowan replied it would go into the septic tank. Mr. Cote wanted to ensure the existing infrastructure was legal. Mr. Doherty spoke about the 'rubber ball test' and how it could determine proof.

Mr. Dadak believed before a septic system is covered/buried it would need to be inspected. Mr. Gowan noted the State issues an approval for construction and an approval for operation. He saw there was an approval for construction in the file. He said they would need to ensure there was approval for operation from the State. Mr. Dadak was surprised the issue of having an unapproved unit wasn't discovered at the time of purchase. Attorney Groff replied the owner was surprised when they went to sell the property. Mr. Gowan discussed the Town's actions once they learn of illegal apartments. He said the safety of the Town's citizens was paramount.

Mr. Bergeron said there seemed to be some confusion regarding septic systems. He told Mr. Dadak the inspection was done and approved at the time of the original construction, then chronologically a detached ADU with water waste was attached to the existing system. He said people could get tie-in permits to tie into existing systems, which were normally based on load computation. In this case he didn't know the type of system and

he couldn't see the topography of the land; however, since the DES has given approval in the event the existing system went into failure, he was comfortable with the request.

Mr. Doherty asked for a motion.

MOTION: (Cote/Kirkpatrick) To approve (grant) a Conditional Use Permit for a detached accessory dwelling unit.

ROLL CALL VOTE: Mr. Doherty – Yes
Mr. Bergeron – Yes
Ms. Kirkpatrick - Yes
Ms. Masse-Quinn – Yes
Mr. Montbleau – Yes
Mr. Dadak – Yes
Mr. Cote - Yes

(7-0-0) The motion carried.

With regard to private (home) elevators, Mr. Gowan was aware of a few existing situations in Town. He said installing a new (from the ground up) will be more challenging. Mr. Bergeron believed anything up above a garage had to maintain life, fire and safety codes and suggested they might consider specific language for two egresses. Mr. Gowan said people often build game rooms (and other areas) above a garage. The Fire Department and Building Inspector instructs people of the safety requirements and ensure appropriate codes are met, although he will ask if the language in Zoning should be 'beefed up'.

DISCUSSION

Mr. Bergeron wanted the Board to discuss some of the Zoning issues he had noticed so they could do things in time for Town Meeting because the items wouldn't be brought up in subcommittee as they were working on another matter entirely. He noticed there had been a couple applications within the MUZD and questioned if it was simply an overlay on the residential zone or if it was part of the Innovative Land Use giving the Board more discretion. He suggested including restrictive uses because he found the language to be subjective and confusing as to what it allowed and what it didn't allow. He pointed out the areas he felt were ambiguous.

Mr. Gowan discussed the ordinance which was written and conceived from the beginning as an Innovative Land Use Ordinance. He read aloud some of the language and noted everything went in front of the Planning Board for decision. He noted there had only been a handful of applications for the MUZD, with applicants meeting with the Planning Department first. He said it would be easy to make a list of what is allowed; anything not on the list would therefore be disallowed. He hoped once the Town has done a couple projects people will start embracing the ordinance and more applications will come forward. He believed there was a lot of potential in the MUZD remaining.

Mr. Doherty read the first sentence of the ordinance. He noted the MUZD was a district, unlike the Town's ordinances. He said an applicant could fall back on the underlying zoning and build a single-family home or duplex. Mr. Gowan said if someone had a conforming lot, they wouldn't need to come to the Board to build a single-family home. Mr. Doherty said applicants have been requesting duplexes and townhouses. He suggested the Board consider bringing back the prohibited use column and include 'townhouse-style' buildings so they stop having wasted time.

Mr. Cote confirmed it was an innovative use ordinance. Mr. Doherty answered yes. Mr. Cote felt the language should mention this fact. Mr. Doherty replied they could include mention in the first line. Mr. Cote asked if

there were Zoning Board requirements. Mr. Doherty replied there was an underlying district an applicant could request relief from; however, they could not request relief from Zoning for the overlay zoning. He added with an innovative land use ordinance the Planning Board is allowed to act as its own zoning board. There was further discussion regarding what was allowed and what needed to go in front of the Zoning Board. Mr. Gowan said when they worked on the ordinance, they realized they couldn't imagine every scenario and hoped to make the Town center more vibrant with more business. There was mention regarding the types of plans that had come in front of the Board.

Mr. Sherman said one of the outreaches they did as they sat to work on the ordinance was to request information from the Nashua Regional Planning Commission ('NRPC'). The NRPC's advice was to include a 'prohibitive use' column. He would like to see that column put back in so applicants can clearly determine what can and cannot be done. Under allowed uses, Mr. Doherty pointed out single, duplex, or multi-family residential, although there could not be more than one unit on a lot. He added there could be multiple commercial or mixed-use buildings. He said when they had the prohibitive use column it listed multiple buildings (residential) which went along with Zoning. He described the meaning behind the allowed uses verbiage.

Mr. Bergeron referenced Section 307-9 and felt now that the Town allowed detached dwelling units there should be an exception made in that section. In hearing the member's opinion, he agreed there should be some 'stand out' prohibitive uses given how applicants had come in front of the Board with the same misconceptions (of the ordinance). He believed the language should be specific about how far an applicant could go within the innovative land use. Mr. Doherty spoke about the sections in Zoning pertaining to the issue and noted the MUZD was an overlay district that applied to a specific section of Town. Mr. Gowan added ADUs (meeting criteria) couldn't be restricted because they are allowed anywhere.

Mr. Gowan will forward the Board a copy of an older version of Zoning so they can review the prohibitive uses table. There was a brief discussion regarding how and why condition use permits applied to ADUs.

Mr. Cote questioned if a prohibitive use column would need to go to Town vote every time it was amended. Mr. Doherty answered yes; it goes to vote every time Zoning is changed. Mr. Cote questioned if the chart was needed given it fell under Innovative Land Use. Mr. Doherty said if there is a prohibitive use column future Boards will be able to clearly see those items. Mr. Cote questioned if the Board could override itself and allow an item to be accepted even if there was a prohibitive use column since it was innovative land use. Mr. Doherty replied they could but would need a good reason to do so. Mr. Gowan felt the allowed uses should be included so the language describes what the Board was envisioning when they put the Zoning on the ballot.

Ms. Kirkpatrick stated she would like to familiarize herself with the prohibitive and allowed uses. Mr. Gowan stated he would forward an older version of the language to the Board. Ms. Masse-Quinn described her interpretation of the existing language and how a recent plan seemed in conflict with it. Mr. Gowan said part of the effort was to not 'preordain' what possible things could come along because there could be something great that none of them thought of.

Mr. Cote mentioned if they wanted to keep the Town center character as having an 'old/throwback feel' (like the old general store) there were allowed items that would destroy it. He summarized the items on the list. He said making it an innovative land use may have an adverse effect because a lot of power would be given to a board that constantly changes. Mr. Gowan replied the Planning Board always has that power. Mr. Cote said if the Zoning within the area was made restrictive an applicant would need to go to the Zoning Board. Mr. Doherty provided a summary history of how the overlay was discussed and brought forward. Mr. Gowan noted the Town center had always been mixed use. He said the idea was to embrace the history of the Town with businesses that seemed appropriate. He said Pelham was not rural, it was a suburban community and had been for many years. Mr. Bergeron spoke about the area and wanted to make sure residents were able to maintain their quality of life. He felt multi-family detached units would definitely be out of character.

Mr. Sherman said one of the things they tried to do when envisioning the district was to maybe make it into a walking district with small businesses. He said they had hoped to gain apartment space because there weren't a lot for people starting out in Town. He didn't know if building large structures containing businesses was in the spirit of what was envisioned in the center.

Mr. Gowan spoke about the Prudhomme building (across from the VFW building) that would be constructed within the existing footprint and of the same architecture as the previous building. He was excited to see the project moving forward.

NON-PUBLIC SESSION – If requested in accordance with RSA91-A:3

Not requested.

ADJOURN

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

ROLL CALL VOTE: Mr. Doherty – Yes
Mr. Bergeron – Yes
Ms. Kirkpatrick - Yes
Ms. Masse-Quinn – Yes
Mr. Montbleau – Not audible (connected via telephone)
Mr. Dadak – Yes
Mr. Cote - Yes

(6-0-1) The motion carried.

The meeting was adjourned at 8:57pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary