

APPROVED by ZBA on 03/08/21
Planning Board Section is still pending approval.

TOWN OF PELHAM PLANNING BOARD
MEETING MINUTES
February 18, 2021

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

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
James Bergeron – present
Cindy Kirkpatrick – present
Danielle Masse-Quinn – present
Alternate Paddy Culbert – present
Alternate Bruce Bilapka – present
Selectmen Representative Kevin Cote – present
Planning Director Jeff Gowen – present

Via Telecommunication:

Paul Dadak – present via Zoom; no one in the room
Roger Montbleau – present via telephone; no one in the room
Alternate Mike Sherman – present via telephone; no one in the room
Alternate Samuel Thomas – present **It was not made clear how he attended the meeting or if anyone else was in the room**

ABSENT/

NOT PARTICIPATING: Alternate Richard Olson
Alternate Selectmen Representative Hal Lynde

PLEDGE OF ALLEGIANCE

MEETING MINUTES

February 1, 2021

MOTION: (Cote/Masse-Quinn) To approve the February 1, 2021 meeting minutes as amended.

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

JOINT MEETING

PELHAM PLANNING BOARD & ZONING BOARD OF ADJUSTMENT

PB Case #PL2020-00021

Map 22 Lot 8-85

GENDRON, Patrick & Kim – 579 Bridge Street – Applicant is requesting from the Planning Board a Preliminary non-binding discussion regarding a proposed 90+/- Workforce Housing Project.

ZB Case #ZO2021-00001

Map 22 Lot 8-85

GENDRON, Patrick & Kim – 579 Bridge Street – Applicant is seeking from the Board of Adjustment a Variance concerning Article III, Sections 307-7, 307-9, & 307-12 (B), (D), & Table 1, Article IV, Section 307-16 (B), and Article V Section 307-18 of the Zoning Ordinance to permit a Workforce Housing Development in the B-5 Zone.

Mr. Doherty explained the Board's role in the joint hearing.

Mr. Joseph Maynard and Attorney David Groff came forward to represent the applicants. Mr. Maynard informed that the lot was about 44 acres in size with a fair amount of frontage along Route 38 that resides in the B-5 Zone. He noted that some powerlines go through the property along the southwest side of the lot, as does a single-family home. He stated that as a part of this application, that home would be subdivided into approximately 14-acres, with the remaining land area being used for a 90-unit workforce housing project. He noted that they were looking to connect the development to Route 38 via a 1500-foot road that would end in a cul-de-sac. This road would bisect the wetlands that run through the property. He asserted that because Route 38 is a State road, they would need specific permits from DOT to join to it.

Mr. Doherty reminded the Board that this was a nonbinding discussion of a preliminary plan. He stated that the lot was 44.64 acres in size. He asked how many bedrooms would be allowed under their current zoning. Mr. Maynard replied that using current ordinances on multi-family dwellings, they could only do about 80 bedrooms on the piece of property they were looking to develop on. Mr. Doherty replied that he had calculated a higher number of bedrooms. Mr. Maynard answered that his number was around 88. Mr. Doherty stated that multi-family housing allows for a much higher density and that Pelham's zoning already allows for multi-family housing. He asked why the applicants were applying for zoning relief from that section of zoning, as multi-family housing was already allowed.

Attorney Groff replied that there was not an allowance for workforce housing in any of Pelham's ordinances as they are written. He stated that there were provisions that allowed for workforce housing until various votes discontinued it in 2018. He asserted that Pelham was currently in violation of the state statute that requires workforce housing. Mr. Doherty asked if Attorney Groff was suggesting that the word workforce housing itself is a use in the same way that multi-family, single-family, and duplex is a use. Attorney Groff replied that workforce housing is a mandated requirement that each town has to meet to satisfy its share of the regional housing needs. He stated that Pelham is not in compliance with the state statute and does not have any regulatory allowance for workforce housing which is why they were applying for zoning relief. Mr. Doherty reiterated his original question, asking if they were calling workforce housing the use. He stated that the Board does not look at the form of ownership as a use. They do not consider a duplex or townhouse the use; they consider single-family dwelling or two-family dwelling as the use. Attorney Groff reiterated that the State requires workforce housing and that the ordinances that permitted workforce housing were voted out, which is why they were applying for a variance. Mr. Doherty asked if Attorney Groff contended that workforce housing is the use. Attorney Groff replied that his opinion was that the State mandates workforce housing and that Pelham does not permit it in any of the ordinances, which is why they were applying for a variance.

Ms. Kirkpatrick affirmed that Pelham did have zoning previously that allowed for workforce housing that was removed by a citizen's petition, and they had gone this year without writing any new ordinances on it. She stated that the Board had researched to show that they did have ample workforce housing available in Town to keep them compliant with the State. She stated that there were 4,883 residential dwellings in Town and that the number of those homes that were assessed at the workforce housing price or less was 2,890. She informed that there were also 127 accessory dwelling units and 225 rental units in the Town. She noted that 16 new apartments were under construction on 52 Windham Road that would be inhabited within the year, which would eventually add to those numbers aforementioned. Ms. Kirkpatrick stated that according to the housing units assessment for the Nashua region, looking at the chart provided to the Board, Pelham's existing housing stock exceeds the required workforce housing number needed by 868 dwellings, not including ADUs and rental units. She noted that by using this table, 525 dwelling units actually fall within workforce housing that would cover the estimated needs through 2040. Ms. Kirkpatrick asserted that even though the Board had not written any new ordinances this year on workforce housing, they were still in compliance with the State with existing workforce housing.

Mr. Doherty stated that Attorney Groff could respond to those comments. He also stated that at the previous meeting for this case, the applicant's representatives indicated that it was up to the Town to prove whether or not they had enough workforce housing, which is what Ms. Kirkpatrick was addressing. Mr. Groff stated that he believed the numbers that Ms. Kirkpatrick was looking at were from 2019. Ms. Kirkpatrick replied that she got her numbers from the Assessor's Office and that the assessed amounts were from January 25, 2021. Attorney Groff informed that the assessment rate is not at 100% and that the seasonal cottages, land, accessory dwelling units, and elderly housing did not count toward workforce housing. He stated that Pelham falls 19% short of the required 44.2% workforce housing that is required for the Town. Ms. Kirkpatrick replied that the numbers she stated were only for single-family homes.

Mr. Cote read aloud RSA 674:59, II: *"A municipality's existing housing stock shall be taken into consideration in determining its compliance with this section. If a municipality's existing housing stock is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with this subdivision and RSA 672:1, III-e."* He asserted that they had plenty of information proving that Pelham is in compliance with what the State requires as housing stock for workforce housing. He stated that just because the words "workforce housing" are not explicitly stated in the zoning, does not mean they are not in compliance for workforce housing in-stock units. Attorney Groff responded that he was incorrect. He noted that housing stock is not units but the number of properties that are transferred in the past year that meet the requirements. He stated that he provided a list generated by O'Shaughnessy Reality Group that shows that Pelham fell short for housing stock that meets the criteria for workforce housing in accordance with page 85 of the 2019 Needs Assessment for the Pelham region.

Attorney Groff expressed that the properties that had been transferred in the past year have all consistently sold for much higher than the assessed values aforementioned. He asserted that Pelham's assessment values were not at 100% but were actually at 83% of the value. He stated that if they were to use 100% of the assessed values, then the numbers rise. He stated that most of the houses in Pelham sell for much higher than the assessed values, which is a reason why Pelham does not have sufficient housing stock to meet the requirements for the region. Mr. Cote replied that the assessed values for the Town were in the 90th percentile. Mr. Groff answered that the assessment value for 2019 was 83% and that Ms. Sue Snide, the Town Assessor, believed that the updated number would be around 89%.

Ms. Masse-Quinn stated that she had completed her own research using the assessed values of homes, as assessed values are more concrete to her than a fluctuating sales market. She informed that she had reached out to the Assessor's Office for a report of houses sold from October 2019 to the present. She informed that the report showed that the median assessed value of homes in the Town was \$394,450.00. She stated that

244 homes were sold, and of that number, 81 sold for \$394,000.00 or below. She noted that the workforce housing statute required a municipality to meet the requirements in two ways. This could be done by providing reasonable and realistic opportunities for affordable housing or demonstrating that the Town's existing housing is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for affordable housing. Ms. Masse-Quinn stated that she requested a list from the Assessor's Office that included all existing housing stock in the Town with their assessed values by location. She noted that the Town has a total of 4,791 current housing stock per the report, which includes the entirety of a parcel – meaning land and buildings. She informed that she converted the housing into each separate unit among multi-family dwellings to get a total of 3,373 housing stock units assessed at \$394,000.00 or below. She calculated that 70% of Pelham's existing housing stock is assessed at the workforce housing requirements or below.

Ms. Masse-Quinn informed that the Town needed to address its fair share for the region as well. She noted that the region has 13 member communities, including Pelham, Hudson, Nashua, Litchfield, Merrimack, Hollis, Amherst, Brookline, Milford, Mount Vernon, Mason, Wilton, and Lyndeborough. She disclosed that in December 2019, the Nashua Regional Planning Commission completed a Housing Assessments Needs Report that stated the Town of Pelham needed to have 2,022 units of affordable housing by 2017, 2,028 units by 2025, and 2,370 units by the year 2040 to provide a regional fair share of affordable housing by statute. She stated that the Town had a total of 3,373 units of affordable housing; therefore, it provides sufficient workforce housing to accommodate the current and reasonable foreseeable regional needs. Ms. Masse-Quinn also informed that she requested a report of all existing housing stock with an assessed value of \$394,000.00 or below from the Assessor's Office. She stated that per that report, there was 2,875 current housing stock assessed at that value. She noted that this showed that Pelham still exceeded the regional requirements for affordable housing.

Mr. Cote stated that the Town hired a consultant in 2019 because the Town's assessment value was below 90%. He informed that a Town needs to have an assessment value between 90-120%, and if they go below 90%, the State steps in force the Town to do something. He stated that after hiring the consultant, the assessment value went up to 97% in 2019. He informed that this information was from the Board of Selectmen's August 27, 2019, public meeting.

Mr. Bergeron noted that the conversation started off about discussing the definition of workforce housing and how it may or may not appear in the Town's current zoning. He asserted that workforce housing is a definition under RSA 674:58. He stated that Section II of the RSA asserted that multi-family housing for the purpose of workforce housing developments means a building containing five or more dwelling units. Mr. Bergeron read-aloud that Section III stated, *“Reasonable and realistic opportunities for the development of workforce housing” means opportunities to develop economically viable workforce housing within the framework of a municipality’s ordinances and regulations.* He believed that workforce housing is a multiple group of things that are part of the whole definition. He asserted that he did not want to get into the semantics but wanted the applicant to understand that the Town provides multiple opportunities for workforce housing in the form of multi-families in six different districts in Town, including the district that the applicants would like to develop without any zoning relief.

Mr. Bergeron then asked about a report, Memorandum in Support of Workforce Housing Application, submitted by the applicant. He stated that the report showed that the median price of home sales in Pelham was almost \$640,000.00 and that the average home sale price was \$571,000.00. He noted that later in that same report, it was mentioned that the average sale of homes was \$492,078.00. He asked which number was correct and how could the two numbers be that far off.

Attorney Groff replied that Mr. Bergeron read the first couple of definitions from the statute but did not read number four, which is the actual definition of workforce housing. He read: *workforce housing means*

housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development." He stated that workforce housing was housing that was intended for sale and that Pelham was nowhere near the regional need of 44.2%, according to the 2019 assessment data. Mr. Doherty replied that he found it disingenuous to say workforce housing is only housing intended for sale, as that is not the case. He then read aloud from the statute: *"workforce housing also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income."* Attorney Groff replied that workforce housing, according to the statute, does not include age-restricted housing or dwelling units that have fewer than two bedrooms, which would eliminate many of the Highland Apartments. He stated that workforce housing is housing that is intended for sale and meets specific income requirements.

Mr. Cote stated he was flabbergasted that that would be the intent of the RSA as if nothing is for sale, then they could not be in compliance with the law. Ms. Kirkpatrick replied that unless they continue on in the RSA, it discusses allowing existing housing stock to ensure they have their fair share. Mr. Cote stated that towns only have a finite number of parcels for sale.

Ms. Masse-Quinn informed the numbers of camps and bungalows in Town. She stated that there were 69 year-round camps and 65 bungalows that were also considered year-round dwellings and not just seasonal dwellings. She noted that the Town also had been allowing more ADUs. She expressed that she was impressed with the creativity of the Town in creating housing that could count towards workforce housing. Ms. Kirkpatrick informed that in the last year, 11 ADUs have been on the agenda for the Zoning Board. She agreed that the Town was very creative in finding ways to incorporate workforce housing.

Attorney Groff stated that Pelham used to have an ordinance that allowed for ADUs to be considered workforce housing, but it was abolished. He reiterated that Pelham does not count ADUs as workforce housing. Mr. Cote stated that it was up to the State to determine what is considered workforce housing. He asked how an ADU would not be considered a workforce housing unit.

Mr. Bergeron stated that in 2017 legislature passed that stated that everyone had a right to have an ADU on their property, and Pelham has never discriminated against that. He noted that another RSA then allowed detached ADUs ~~allowed~~ as well. He informed that the Planning Board approved the legislature and that this could also be considered as affordable housing units.

Attorney Groff stated that Article 12 Section 307-74 of the Town's Zoning Ordinances had a definition of an ADU that included workforce housing, but that was abolished in 2017. He stated that ADUs no longer counted towards workforce housing under the Town's definition of an ADU. Mr. Bergeron asserted that the presence of the word does not mean that the definition of affordable housing is gone. Attorney Groff stated that he wanted to point out that it was taken out of the Town's zoning by a Town Vote. Mr. Cote stated that ADUs were not taken out of the zoning and were still a part of it. Mr. Groff asked if the words "workforce housing" were under the definition of ADUs in Article 12 Section 307-74. Mr. Cote asked if by statute they needed to have the words "workforce housing" there to count as workforce housing. Mr. Cote then asked if an ADU is considered workforce housing because if it is, then Pelham does have workforce housing in the zoning as ADUs are a part of Pelham's zoning. Attorney Groff reiterated again that the Town does not allow for an ADU as workforce housing. Mr. Bergeron stated that even if the statute did not recognize attached ADUs, the Town passed the detached ADUs. He reiterated that the words "workforce housing" might not be there, but they still had workforce housing by definition. Attorney Groff reiterated, again, that Pelham eliminated workforce housing from the ordinances.

Mr. Doherty asked Mr. Maynard why he asked for a variance for multiple structures per lot instead of trying to work within the current zoning. Mr. Maynard replied that he could do about 30 units under the current

zoning, but it was not under the guidelines he was given for the design of the property. He stated that he thought the design also flowed better as townhouses instead of apartment-style or garden-style units. Mr. Doherty asked if Mr. Maynard was aware that three or four applicants had come to the Board in the past to try to build multiple detached dwellings on a single lot in the district next to this one, but Pelham has not allowed that since the 60s. He stated that he felt that this was a back sticking point for him, as the applicant asked for another variance instead of trying to comply with Pelham's zoning.

Mr. Doherty also noted that there was only one entrance to the development, even though Pelham requires two. Mr. Maynard replied that the main reason for this was that if he had to loop a road around to create another entrance, he would need to cross over significant wetlands to do so. He felt like it made more sense to leave a stub at the end of the road they would put in so that if the lot behind were to be developed, it could connect there. Mr. Doherty replied that Highway Safety has been very adamant about a certain threshold of units having multiple access points into a development. He stated that he tried to inform Mr. Maynard of this at the previous meeting and that this would most likely become an issue if the plan were to move forward as is. Mr. Doherty asked if Mr. Maynard had looked to see how they could develop the land with single-family units. Mr. Maynard replied he had not. Mr. Doherty replied that this would be a substantial increase in density that would typically not be permitted. He stated he also was not in favor of how sprawled out the plan was and would like to see someone condense it down.

Mr. Cote asked if the project could be completed without calling it a workforce housing project. Mr. Maynard replied that it could, but it would be significantly less dense. He stated that under current zoning, he could only have somewhere around 80 bedrooms for a multi-family development; if he limited it to two bedrooms per unit, he would only be working with 40 units. He informed that it would not work to be able to complete the project. Mr. Maynard explained that crossing over the wetlands would be a costly part of the project, as would connecting to Route 38. He stated that a 40-unit development would not be able to carry the project, no matter the style of housing.

Ms. Masse-Quinn asked why they were only allotted 20% of the houses to workforce housing. Mr. Maynard replied that it is different for each Town. He informed that he has worked in some towns that the split is 80%-20%, some are 50%-50%, and others are 75%-25%. He stated that no matter what the ratio is, there is always a safety valve for developers. If they are able to prove that the project would not be financially viable under the statutory split, then they could change the percentages to enable the project to become financially viable. Ms. Masse-Quinn stated she only asked because Attorney Groff keeps asserting that Pelham is extremely short on workforce housing but is only allocating 20% in this current project. Mr. Maynard replied that 20% was the State standard.

Mr. Sherman asked if they were using workforce housing to artificially create their own hardship so that they could get the number of units they wanted. Attorney Groff replied that they were not artificially creating anything, and that Pelham was not in compliance with the State statute.

Per request of the Board during the March 1, 2021 meeting minutes review the following section is verbatim:

Mr. Sherman: *Then why don't you make all 90 units workforce? If it is such a vital importance and as [Ms. Masse-Quinn] said it is so vital and according to you Mr. Groff, this Town is woefully short and doing such bad things here, make all 90 of them workforce.*

Attorney Groff: *Are you a socialist or a republican?*

Mr. Sherman: *I am a Planning Board Member, sir.*

Attorney Groff: *In that case, you understand that it is not our job to fix Pelham's problem. We're a developer trying to develop some property. It's not our obligation to solve Pelham's problems by ourselves. Especially when Pelham has taken every possible step to avoid its obligation to provide for workforce housing. They have abolished the statutes and ordinances that allowed for workforce housing despite what the State mandated. So, the question is why isn't Pelham doing something to support workforce housing rather than abolishing the opportunity for workforce housing.*

Mr. Cote asserted that current ordinances allow the property to be developed. Mr. Groff reiterated that current regulations do not allow for workforce housing. Mr. Cote replied that current ordinances do permit for workforce housing and that all of the units could be sold at the workforce housing price. Mr. Maynard replied that it would not be financially viable. Attorney Groff stated that the State statute requires that the Town allow for reasonable opportunity for development and not impede development. He stated that if it is not economically viable to do it under current ordinances, then the Town does not allow for workforce housing.

Mr. Bergeron stated that under the workforce housing definition that multi-family can be used for workforce housing. He informed that this specific district allows multi-family just as it is; the only caveat is that after every bedroom over the maximum number, the developer needs to add 10,000 square feet to make it comply. Mr. Bergeron asked how the Town was prohibiting workforce housing if it is able to be built in that district. Attorney Groff read aloud RSA 674:59, II: "*A municipality shall not fulfill the requirements of this section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable.*" He followed that if it is economically unviable under the Town's ordinances, then it is prohibiting workforce housing. Mr. Bergeron asked for Attorney Groff to explain whom the project needed to be economically viable for. Attorney Groff replied that it is for the developer, as there is no other way to look at it.

Mr. Doherty stated that under the current ordinances, they could get a total of 128 bedrooms on a 30-acre lot. He informed that if it were two bedrooms a unit, they could have a total of 60 units for that land. He believed that it would be economically viable to develop the land in that manner. Attorney Groff replied that no one had developed it that way, most likely because it is not economically feasible. Mr. Doherty replied that if the entire parcel is used, they could get a total of 95 two-bedroom units. He stated that the project could be economically viable as far as he was concerned.

Mr. Montbleau commended the Board members for all the research they had done on the affordable housing opportunities in Pelham. He stated that in his mind that Pelham meets the spirit and intent of workforce housing. He stated that just because they do not have the words "workforce housing" in an ordinance, the developer wanted to try to beat the Town up to get this plan through. He stated that this was just his opinion and that it did not sit well with him.

Mr. Sherman stated that he did not feel that a stub to the back property was sufficient enough as another egress for the development. He believed that it was premature planning.

Mr. Doherty opened the discussion ~~open~~ to the Public. No one in the room came forward, so it was opened to those on telecommunication.

Mr. Tim Stauble of 2 Linda Avenue came forward. He stated he was concerned about the traffic on Route 38. He stated that it is already hard enough to pull out onto Route 38, especially during rush hour. He expressed his other concern was that they do not need 90 new houses as that could bring at least 180 more cars onto the road.

Ms. Lisa Corbin of 655 Bridge Street came forward. She informed that she had submitted a letter to the Board that outlined her concerns. Mr. Gowan informed that though she did not read the letter aloud, it was still considered a part of the record as she submitted it to the Board. She stated that most of her concerns had been addressed throughout the meeting already. She felt like it was an aggressive plan, and she had concerns about accurate flood zone maps.

Ms. Susan Hayes of 15 Balcom Road stated she was concerned about there being another entrance into the property. She was worried that if this was approved that it could lead to more traffic on her road.

Ms. Cheryl Millette of 16 Hutchinson Bridge Road stated that she was concerned about the traffic on Route 38 as well, especially with Tuscan Village opening more stores in Salem. She believed that there will be an increase in traffic from Massachusetts along Route 38 and that this project would make it much worse. She asked how the traffic would be addressed. Mr. Doherty replied that it could not be addressed as it is still a preliminary plan.

Mr. Chris Waterworth of 77 South Shore Drive thanked the Board members for their excellent preparation and questions to the applicant. He appreciated the professional way they conducted themselves and that their attitudes were great.

Ms. Laurie Vertuccio of 12 Golden Brook Drive informed that she was against it. She stated that this would be an additional stressor on the Town's infrastructure that is already stressed. She stated that if 30 houses on 30 acres is not economically viable, then don't do it.

Mr. Bill Mazola of 3 Drummer Road stated that he did not see a hardship on the land; he only saw a hardship on the money required to carry out the project.

Ms. Christa Garcia of 3 Melody Lane stated she was concerned about the impact on the school system. She noted this project would bring a lot of students in, so many people already in Town would be forced to find private education for their children.

Mr. Doherty closed the discussion to the Public.

MOTION: (Cote/Masse-Quinn) To recess and then reconvene after the Zoning Board of Adjustment meets

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

(7-0-0) The motion carried.

The Planning Board stepped down. The Zoning Board of Adjustment came forward.

MEETING MINUTES
February 18, 2021

Chairman Bill Kearney called the meeting to order at approximately 8:53 pm.

Secretary Matt Hopkinson called roll:

PRESENT ROLL CALL: Bill Kearney
 Dave Hennessey
 Matthew Hopkinson
 Peter McNamara
 Jim Bergeron
 Alternate David Wing
 Alternate Jeff Caira
 Planning/Zoning Administrator Jennifer Beauregard

ABSENT/
NOT PARTICIPATING: Alternate Karen Plumley
 Alternate John Westwood

CONTINUED HEARING

ZB Case #ZO2021-00001

Map 22 Lot 8-85

GENDRON, Patrick & Kim – 579 Bridge Street – Applicant is seeking from the Board of Adjustment a Variance concerning Article III, Sections 307-7, 307-9, & 307-12 (B), (D), & Table 1, Article IV, Section 307-16 (B), and Article V Section 307-18 of the Zoning Ordinance to permit a Workforce Housing Development in the B-5 Zone.

Mr. Bergeron stepped down for this case. Mr. Kearney reminded everyone that this was a continuation of the case, so the abutters had already been read into the record. He also informed that there had been a Site Walk of the property.

Attorney David Groff came forward to represent the applicants with Mr. Joe Maynard. Attorney Groff informed that the applicant was seeking a variance to permit a workforce housing development in the B-5 Zone. He stated they were requesting a variance because workforce housing is not allowed in any zone in Pelham currently.

Mr. Kearney appointed Mr. Wing to vote on this case.

Mr. Wing asked if all of the units in the development would sell for \$394,000.00 or below, thereby meeting workforce housing requirements. Attorney Groff replied that only 20% of the units would sell at that price; the rest would be sold for more.

Mr. Hennessey read aloud “The Law’s Core Meaning” from “New Hampshire’s Workforce Housing Law RSA 674:58 through 61.” He informed that he sent this as an attachment to Ms. Beauregard and would have her forward it to the members.

- 1) *All municipalities must provide reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing.*

- 2) *The collective impact of all local land-use regulations adopted under RSA 674 shall be considered to determine if such opportunities exist (a facial test).*
- 3) *Workforce housing of some type must be allowed in a majority of land areas where residential uses are permitted (but not necessarily multi-family in a majority of such areas).*
- 4) *"Existing housing stock shall be accounted for to determine if a municipality is providing its "fair share" of the current and reasonably foreseeable regional need for workforce housing.*
- 5) *Reasonable restrictions may be imposed for environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.*

Mr. Hennessey explained that according to the second bullet point, workforce housing did not need to be restricted to those developments that are labeled as workforce housing. He stated that a development did not need to be labeled as workforce housing in order to be considered workforce housing, according to this bulletin. He noted that existing stock does count toward workforce housing, not just houses sold in that year.

Mr. Hennessey informed that the numbers put out by the increased average sales price were reasonably close to the numbers he came up with, which was a median sale price of \$499,000.00 for 2020. He explained that the numbers being used as a percentage and goal for how much workforce housing each town needs are messed up. He asserted that every town in the county had the same percentage requirement, meaning that Pelham would have the exact percentage requirements as Nashua and Hudson. He informed that the numbers were also incorrect because they are at a minimum of 10 years out of date. He stated that the numbers would be recalculated once the results of the census come out and that each town will be assigned a specific number of workforce housing units.

Mr. Hennessey reiterated that this bulletin stated that existing housing stock is taken into consideration when looking at if a Town meets the requirements for workforce housing. He stated that he is not sure that any of that information affects the Board's vote and decision. He informed that he could not find anything that allows the Zoning Board of Adjustment to ignore the five criteria of a variance request during his research. He mentioned that the case of *Sun Coast Properties, LLC v. The Town of Windham* from 2012 was very applicable to this current case. He highlighted that while the court decided to overturn the denial of the application, in that case, they upheld the Zoning Board's denial of the case. He stated that the court agreed with the Zoning Board's decision, as there was no hardship found in the case, which is what he was having trouble finding in this case.

Mr. Hennessey stated that the applicant had rezoned this property from residential to B-5. He affirmed that the B-5 District is the most expansive Zone in Town; people are able to put in office spaces, retail spaces, single-family houses, duplexes, and multi-family houses. He explained that for density projects, the Board would ask the applicant if they had made any attempt to purchase more land to conform to zoning laws. He stated that instead of trying to acquire more land, the applicant wanted to hold aside an additional 15 acres. Mr. Maynard replied that the applicant wished to retain that 15 acres for their home. He explained that only about 4 or 5 acres of that section are usable as a large portion is under powerlines and another large amount was wetlands.

Mr. Hennessey asked what the hardship was in trying to develop the land as a conventional project under the current zoning, including apartment buildings. He explained that rental units could be counted towards a town's workforce housing requirements. He informed that there is nothing that prevents the applicant from using subsidies and grants for workforce housing, as that would make the project financially viable. Mr. Maynard replied that those grants are only for rental units. Mr. Maynard stated that those grants would not necessarily make the project economically viable. He informed that in a similar project he was completing in another town, it cost them \$15,000.00 per workforce housing unit. Mr. Hennessey felt like the project could be financially viable.

Mr. Hennessey stated that he was looking for rationale for how they meet the hardship criteria. Mr. Maynard replied that he saw two kinds of hardships – those in the land and those in use. He informed that those used to be broken out into two separate sections in the zoning applications but are now lumped together into just one hardship category. He stated that he saw this case as a land-use hardship, as Pelham does not offer any workforce housing ordinances in the zoning, so that creates a hardship. Mr. Hennessey stated he disagreed with that statement. He asked if the applicants could provide a court citing against the Zoning Board that stated workforce housing not being in the zoning constitutes a hardship to the applicant. He informed that he had been taught through training for the last 20 years on the Board that the hardship runs with the land only. Attorney Groff replied that he could not provide a citation, only what he knew about the *Sun Coast Properties, LLC v. The Town of Windham* case. He informed that the applicant, in that case, took the position that they did not need a variance since the town did not have workforce housing in their ordinances. He explained that the court imposed a Builder's Remedy in that case, even though the Zoning Board voted not to grant a variance. Mr. Hennessey informed that in every case he found regarding similar circumstances, the applicants were in residential zones, not in a multi-family zone as this one is.

Mr. Hennessey asserted that the Town had not banned workforce housing, and as the statements from the members of the Planning Board showed, the Town is not against it and actively is embracing it. He reiterated that according to the New Hampshire Housing Finance Bulletin that he read aloud, existing housing stock can be used to determine whether a town meets the requirements of workforce housing. He conceded that the numbers mentioned during the Planning Board meeting were cloudy at best, as all of the data is out of date. He asserted that he believed Pelham has sufficient stock of workforce housing, especially in comparison to neighboring communities. Mr. Hennessey stated that all of that information is irrelevant to members of the Zoning Board, as he does not see a hardship in the land. He disagreed that not having the words "workforce housing" in the zoning meant that there was a hardship.

Mr. Kearney opened the discussion to the Public. No one came forward who was in the building to speak in favor or in opposition of the case, so it was opened to those on telecommunication.

Mr. Mark J. Fougere, AICP of Fougere Planning & Development Inc., came forward to speak in favor of the project. He informed that he was a consultant for the applicant. He explained that the workforce housing statute had been on the books for over ten years, giving Pelham ample time to review the statute and come up with regulations so that this type of application would not be necessary. He stated that there is a housing crisis within the State and that the purpose of having a workforce housing ordinance on the books is to help deal with the fluctuating housing market. He informed that the applicant's real estate agent found that only 23% of home sales in the last year met the threshold of workforce housing in the Town. He stated that while the assessment values of homes in the community may reflect that the Town has a fair percentage meeting the criteria, it does not meet the requirements based on the market today. Mr. Fougere stated that the court in the *Suncoast v. Town of Windham* ruled that the hardship was the ordinances that existed in the community. He affirmed that any type of high-density project is controversial as no one wants change, but this could have been avoided had the Town adopted a workforce housing ordinance to control the density. Mr. McNamara asked if it was Mr. Fougere's opinion that Pelham does not meet its obligations under New Hampshire statute. Mr. Fougere replied that was correct.

Mr. Lance Ouellette of 13 Gaston Road stated he was against the project. He informed that he was a former member of the Board and did not see a hardship in this case. He stated that in the definition of a hardship, it states that the hardship must relate to some characteristic of the property itself, not an economic difficulty to the owner. He noted that this project would give each house roughly 0.5 acres of land, which is unconstitutional under the Town's ordinances. He expressed that he did not feel this project was a workforce housing project. He thought that if this were a workforce housing project, then the applicant would have built 30 workforce housing homes. He understood that the developer wanted to put the other 70+/- units in

for financial gain and to cover the cost of the project but saw that as only a way for the developer to gain something.

Mr. Chris Waterworth of 77 South Shore Drive stated he was against the project. He thinks that this would not benefit the Town as a whole, especially the abutters. He felt that there needed to be a gain for the whole Town, not just the applicant. He did not think that \$400,000.00 was an affordable price for housing. He stated he does not appreciate what the applicant was trying to do.

Mr. Bill Mazola of 73 Drummer Road came forward to speak in opposition of the development. He stated that the attorney had found a loophole and wanted to exploit it by using workforce housing. He stated he was against the project.

Mr. Tim Stauble of 2 Linda Avenue stated he opposed the whole project for all of the reasons already stated.

Ms. Linda Corbin of 655 Bridge Street stated that she was in opposition and agreed with Mr. Waterworth. She informed that she went on the site walk. She noted that the engineer said that the only way this project could work to make money is to put all the units in, but she is against 90 units going in. She believes there are other ways to go about the project and was in opposition of it.

Ms. Cheryl Millette of 16 Hutchinson Bridge Road stated that this project would cause an increase in traffic on Route 38. She did not think this was an affordable housing project. She believed that the reason for the appearance of lack of affordable housing was due to the fact that people are living longer and not selling their houses as early. She stated she was opposed to the project.

Ms. Susan Hayes of 15 Balcom Road stated that she was in opposition for a lot of the same reasons already mentioned. Her biggest concern was the traffic and potential for development on the lot behind this one, as it could lead to an increase in traffic on Balcom Road. She stated that it is already difficult to get onto Route 38 and that the addition of cars this would bring in would only make it worse and cause a large issue for residents on that side of Town. She asserted that she did not see what the positive impact this project could have.

Mr. Mike Sherman of 103 Old Bridge Street stated that the hardship in this property was with the developer, not the land. He stated it was not the Town's responsibility to help developers make the maximum value off a project. He stated he thinks they could develop the land within the Town's zoning laws and still make money off of it. He stated that he did not believe that this project is what the Town and Officers of the Town are for.

Mr. Groff stated that the property was a unique one that is bisected by wetlands and sat along Route 38, which made it a perfect fit for this type of development. He stated that there was a fundamental misunderstanding of the purpose of workforce housing. He explained that it was designed to provide affordable housing so that people will want to remain to live in New Hampshire, which is why the statute was put in place. He informed that there is a burden that goes along with that, that each Town needs to share a portion of that burden. He stated that the share that Pelham has to come up with is 44% of its housing needs to meet workforce housing requirements.

Mr. Kearney closed the discussion to the Public.

Mr. McNamara stated that there was conflicting testimony over whether Pelham had met its obligation for workforce housing under statute. He informed that the reason behind the passage of the statute was illustrated by the response from the meeting tonight: that there is universal opposition to workforce housing. He explained that because of the opposition and the housing crisis, legislation imposed the statute and put

the Builder's Remedy on the type of project to stop conscious and unconscious blocking of workforce housing. He stated that he wanted to focus on the condition of the land when going through the criteria. He informed that the court ruled in the *Sun Coast Properties, LLC v. The Town of Windham* that the type of project being proposed, such as workforce housing, may influence specific criteria such as the public interest, spirit and intent of the ordinance, and substantial justice, but does not impact the statutory requirement to satisfy the unnecessary hardship requirement. He informed that unnecessary hardship per RSA 674:33 must be related to the special conditions of the land itself. He felt that the property was a unique parcel in the area as it has access to Pennichuck Water, it has sandy soil and is on a major highway, which all distinguish it from other properties in the area. He does not think the case is as cut and dry as some members. He stated that this was a use variance, as this is the only type of property not listed under residential housing allowed in the district.

Mr. Hennessey stated that the applicant was the one who rezoned the land to B-5 as opposed to residential but still has a problem with the use. He reiterated that the B-5 District was the most expansive district that allowed for single-family housing, two-family housing, multi-family housing, ADUs, agricultural use, truck trailers, automobile repair, home occupational, churches, hospitals, clinics, country clubs, general retail, wholesale, trade, as well as food and beverage service establishments. He stated that the applicant could put whatever they wanted on the land and that the price of a project should not determine a hardship. Mr. McNamara noted that the Town agreed to the rezone as well and that it seemed like this was the only thing the applicant could not put on the land. Mr. Hennessey stated he could put it in multi-family housing with a lesser density.

Mr. Kearney stated that he took all numbers at face value. He believes that there is a potential for additional workforce housing in every community, though this amount of density is challenging. He does not believe that anyone there is against workforce housing, but they are having trouble with the access, the number of units, and the total density of the project. Mr. McNamara agreed that he had concerns about the plan but reminded that the plan before the Board was only preliminary and would certainly change and evolve to become less invasive if it were granted a variance. He stated that his fear was that if the plan were to be rejected, the applicant could go to court and make the argument that the Town has not done enough to supply workforce housing. Mr. Hennessey replied that the court in the *Sun Coast Properties, LLC v. Town of Windham* case that members of that Zoning Board objected to the concept of workforce housing. He stated he had not heard that from either the Zoning Board or Planning Board. It was his opinion that the loss of the words “workforce housing” was not indicative of the Town trying to eradicate workforce housing from the Town.

Mr. Wing stated that the *Sun Coast Properties, LLC v. Town of Windham* case cited that Windham failed to show that they had an adequate supply of workforce housing. He felt like the Town had done a sufficient job of that here. He stated that this case was not the same as the Windham case.

Mr. Hopkinson informed that he was optimistic when he first heard of this plan, as he is generally in favor of more housing being built, as he felt that Southern New Hampshire was in need of more housing in general. He stated that he thought it was disheartening that it was almost three hours into the meeting, and the only hardship discussed was an economic hardship and not one on the land. He stated that they were not voting on whether or not the Town was in compliance with workforce housing regulations; they were voting on if there was a hardship to the property.

Criteria 1 – The variance will not be contrary to public interest.

Mr. Hennessey stated that he believed it would be in the public interest to have a workforce housing project in the proposed location. He is in favor of workforce housing and voted yes.

Mr. Hopkinson stated he was in favor of the project and thought it would benefit the public. He voted yes.

Mr. McNamara stated he did not believe it would remarkably change the nature of the immediate area and agrees with what has been already stated. He voted yes.

Mr. Wing stated he believed that housing of any type in that area would be beneficial to the Town of Pelham and voted yes.

Mr. Kearney voted yes, as he felt it was not contrary to the people of Pelham.

Criteria 2 – The spirit of the ordinance is observed.

Mr. Hennessey explained that the ordinance calls for housing for people of all economic levels. He believed that this project met the spirits of that ordinance and voted yes.

Mr. Hopkinson agreed with Mr. Hennessey and voted yes.

Mr. McNamara agreed with Mr. Hennessey and added that the building of workforce housing is a factor in the first three criteria and that the spirit of the ordinance would be observed if this moved forward. He voted yes.

Mr. Wing stated that he agreed that the spirit of the ordinance would be observed. He noted that the ordinance allows for just about any type of property in that district, so it is in the spirit. He voted yes.

Mr. Kearney voted yes as he thinks the spirit of the ordinance would be observed if this project moved forward.

Criteria 3 – Substantial justice is done.

Mr. Hennessey voted yes for the same reasons as criteria one and two.

Mr. Hopkinson voted yes.

Mr. McNamara voted yes for the same reasons as criteria one and two.

Mr. Wing voted yes for the same reasons as criteria one and two.

Mr. Kearney concurred with the other members and voted yes.

Criteria 4 – The values of surrounding properties are not diminished.

Mr. Hennessey stated that he had trouble with this criterion but thought this project would be less intrusive compared to other developments that could be put there. He believed that the impact on surrounding values would be minimal, considering what else could be built. He voted yes.

Mr. Hopkinson did not think the project would have any impact on the surrounding property values. He voted yes.

Mr. McNamara agreed. He stated that he saw there was ample ability for shielding while on the site walk. He informed that the property was so large that neighboring properties would most likely not even see a

development in the proposed location. He agreed that this development was less intrusive than other developments that could go in. He voted yes.

Mr. Wing agreed that he did not think the surrounding property values would be diminished. He cited a letter from Attorney Groff from Baseline Appraisal Services. He voted yes.

Mr. Kearney concurred with the Board members. He believed that the largest portion of this development would be hidden and have no impact on surrounding property values. He voted yes.

Criteria 5 – Owing 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) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:*
- (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. Hennessey stated that this lot was in the B-5 District, which the applicant requested to be put into. He reiterated that it was the most extensive of all of Pelham’s districts. He stated that the applicant could do the same project at a much lower density without requiring a variance. He did not think there was a hardship in the land. He voted no.

Mr. Hopkinson agreed with Mr. Hennessey. He saw the problem as the project not being economically feasible at a lower density, which is not a hardship on the land. He stated that he, unfortunately, had to vote no, though he was in favor of the project.

Mr. McNamara voted yes. He thought the property could be distinguished from other properties in the area based on what he previously testified, the information contained in the application, and what he saw on the site walk.

Mr. Wing voted no. He thought that the lot was sufficiently zoned to put just about anything on the property. He stated that this was not a question of whether or not the Town had sufficient workforce housing stock, which he thought it did. He did not see a hardship associated with the property, even economically.

Mr. Kearney stated that he had challenges with this aspect of the criteria. He believed that the potential for the hardship to be met might have been there, but the applicant failed to complete it. He voted no.

(1-4-0) The vote failed.

VARIANCE DENIED

Mr. Kearney noted there was a 30-day right to appeal.

ADJOURNMENT

MOTION: (McNamara/Wing) To adjourn the Zoning Board portion of the meeting.

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

The meeting was adjourned at approximately 10:03 pm.

PLANNING BOARD RECONVENED

Mr. Groff came forward. Mr. Doherty stated it would be up to the applicant to come back at a later date with a redesign. Attorney Groff noted that he would submit an application with abutter notification if that is what the applicant wants to do.

Ms. Masse-Quinn stated that she wanted her notes submitted into the record.

DISCUSSION(S)**Discussion regarding changes to Land Use Regulations.**

Mr. Gowan stated that the manager of Enterprise Bank asked if it was allowed for her to put a four-yard dumpster in one of the back parking spaces. She informed that there was still adequate parking, handicap parking was not being impacted, and it does not impede the drive-through. She also reported that it would not be seen from the road. Mr. Gowan asked if the Board wanted her to come in for a site-plan revision or if they were satisfied with it as proposed.

Mr. Montbleau stated that the revision was very minor. He did not believe they would do anything to subtract from their business. He stated he was okay with giving them the approval to let them put it there.

Mr. Dadak agreed with Mr. Montbleau. He stated that they never have a full parking lot, so taking up one parking spot would not make a significant difference.

Mr. Sherman agreed with what was stated. His concern was when the pickup of the trash would be, as the only access he was aware of would be on the ATM side of the property. He asked if the trash pickup would be during business hours and if it would impede the ATM line; other than that, he did not have a problem. Mr. Gowan replied that the Board could put a stipulation that the trash pickup for the dumpster would not be during business hours.

Mr. Bergeron stated that he did not have an issue with the proposal as long as the Planning Department and Code Enforcement were satisfied with it. He expressed his concern on whether they were able to act on it in compliance with RSA 91: A. Mr. Doherty replied that it was such a minor site plan review that he thought Mr. Gowan could have acted on it himself.

Mr. Cote asked if it was a temporary dumpster, as it could make a difference. Mr. Bergeron stated that caveat made a large difference in regards to voting on a site plan change. Mr. Gowan stated it could be there for some time, though it was not a feature change to the building. He stated that if the Board was more comfortable with having this on an agenda, they could hold off on making any decisions.

Mr. Dadak asked if Mr. Gowan was requesting the opinion of the Board on the level of decision he could make on a plan. Mr. Gowan agreed and asked if this was something that was considered a modification to a site plan or if this was something that the Board felt was an administrative decision that could be made by the Planning Department. He stated he did not want to be cavalier and assume that he had authority if he did not. Mr. Doherty noted that the Board has had Mr. Gowan make many administrative decisions in the past on minor site plan reviews. He felt like this could be handled the same.

MOTION: (Bergeron/Cote) To allow this decision to be made within the Planning Department.

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

(7-0-0) The motion carried.

REQUEST FOR NON-PUBLIC SESSION – if requested in accordance with RSA 91:A:3

Not requested.

ADJOURNMENT

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

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

(7-0-0) The motion carried.

The meeting was adjourned at approximately 10:32 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary