

**APPROVED**  
**TOWN OF PELHAM**  
**JOINT MEETING**  
**PLANNING BOARD and ZONING BOARD OF ADJUSTMENT**  
**July 20, 2015**  
**Approved – Zoning Board: August 10, 2015**  
**Approved – Planning Board: August 17, 2015**

The Planning Board Chairman Peter McNamara called the meeting to order at approximately 7:00pm.

The Planning Board Secretary Paul Dadak called roll:

PRESENT            Peter McNamara, Roger Montbleau, Paul Dadak, Paddy Culbert, Jason Croteau,  
:                      Selectmen Representative William McDevitt, Alternate Tim Doherty, Alternate  
                         Joseph Passamonte, Planning Director Jeff Gowan

ABSENT:            Mike Sherman

Mr. Passamonte was appointed to vote.

**JOINT HEARINGS**

**PB Case #PL2015-00012**

**ZBA Case #ZO2015-00011 and #ZO2015-00012**

**Map 7 Lot 4-182**

**YELLOW WOOD LAND HOLDING, LLC c/o Blake Clark, Manager - Yellow Wood Drive -**

Mr. McNamara stated that the meeting minutes of the Planning Board and Zoning Board would be incorporated together.

Mr. Dadak 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. *(It was understood that the abutter list for the Zoning Board and Planning Board cases were identical and would not be re-read.)*

Mr. Montbleau informed the Board that the applicant's counsel, J. Bradford Westgate of Winer & Bennett, has represented him in the past on personal issues. He felt he could be completely impartial concerning the cases in front of the Board. He offered to step down from the Board if anyone felt he should. Mr. Gowan pointed out that Attorney Westgate was present primarily for the Zoning aspects of the case. There was no objection to Mr. Montbleau remaining seated.

Mr. McNamara explained the joint hearing/meeting process to the public. He then asked the applicant to provide a general overview of their plan and indicate any waivers or relief being requested. The public will have the opportunity to come forward and speak.

Blake Clark, Property Owner and Manager of Yellow Wood Land Holding told the Board the proposed sustainable neighborhood had been in planning for over two years. He explained that the model of development showed careful attention not only to land use, but also energy, materials, landscape, water, community and economy. He spoke of the aspects from the initial plan and how they had been modified during the past two years.

Ms. Karen Fitzgerald, Landscape Architect told the Board she had worked with Mr. Clark since the concept plan to look for sustainable/resilient solutions to the landscape and site layout. She explained her expertise was in landscape architecture and land planning. During the process they reviewed the basic site layout through the roadways, pedestrian ways and future landscape ideas that included neighborhood farming, orchards and multi-purpose landscape uses for the neighborhood.

Mr. Kevin Anderson of Meridian Land Services told the Board he was the Civil Engineer on the project responsible for preparing the yield plan being presented and had an integral role in the design of the conservation subdivision.

Mr. Clark introduced his building partner Shane Carter of Ridgeview Construction, who was seated in the audience and his counsel J. Bradford Westgate of Winer & Bennett, LLC.

Mr. McNamara explained for the public that the first step when proposing a conservation subdivision is for an applicant to present a proposed yield plan that would determine the number of lots that could be placed in the subdivision. From the materials presented, he understood that the yield plan had six conventional lots and the applicant was seeking a density bonus of two additional lots.

Mr. Doherty questioned if the applicant had previously come in front of the Board with a conceptual plan. Mr. Clark replied he had not submitted a concept to the Board. He had been working with Jeff Gowan, Planning Director and Steve Keach of Keach Nordstrom (the Board's engineering review firm) to refine his goals within the context of Town Regulations. He noted that the presentation was the culmination of the work done with Mr. Gowan and Mr. Keach.

Mr. McDevitt referenced the Regulations for conservation subdivisions and went on to read aloud a portion. He commented that he saw a great deal of creativity in terms of reducing the carbon footprint with the dwellings and people would reside there. In the conservation subdivisions he'd seen, there was usually enough open space to understand the request. He believed it was difficult with ten acres and didn't see compelling open space. He looked forward to discussing the proposal because when reviewing the information he felt the sustainable homes should be within a conventional subdivision. Mr. McDevitt spoke of the ongoing preservation of gardens, orchards and farming areas and wanted to know how they would be maintained in the future if the residents decided it wasn't something they wanted to do anymore. If those areas were to become lawn areas he didn't see the difference between the proposal and a conventional subdivision, other than having more houses and a smaller carbon footprint. Mr. McNamara said the Board could discuss the plan further once the Zoning Board had the opportunity to review the information.

Mr. McNamara understood the parcel contained 8.2 acres. He questioned how much open space would be preserved and what percent of the property contained 20% slopes. Mr. Anderson replied they intended to put 5.5 acres into open space conservation and described where the open areas would be located. In estimation, looking at the shading patterns, he believed 20% of the property had 20% slopes. Mr. Doherty questioned how the percent would increase with the inclusion of the private roads. Mr. Anderson felt it would only bump it up a minimal amount since they wouldn't be doing a standard 50ft. right-of-way for the private road. He noted the road would be a 22ft. wide paved surface with an extension of gravel shoulders.

Mr. Culbert questioned in what way the applicant was justifying eight lots instead of seven lots. Mr. Anderson believed the details of the proposal would be brought forward during testimony given to the Zoning Board.

Mr. Doherty commented if the applicant had come in for a conceptual discussion the Board would have discussed the private roads. He was confused why the Zoning Board would be getting into the topics of private roads since they were allowed in a conservation subdivision. Mr. McNamara understood that Mr. Gowan had made an Administrative Decision after receiving legal opinion.

Attorney Westgate explained that Mr. Gowan had asked Attorney Steve Buckley of the New Hampshire Municipal Association ('NHMA') as to whether or not a private road was permitted within a conservation subdivision for purposes of determining lot frontage requirements. The analysis provided by Attorney Buckley indicated because the Zoning Ordinance provision that defines lot frontage is tied to frontage on a public right-of-way, he came to the conclusion that there wasn't an express provision in the Zoning Ordinance that excepted out conservation subdivisions to allow for frontage on a private road. Having received this advice, Mr. Gowan made an Administrative Decision to the effect that a variance was needed to a private road to allow for frontage on a private road in a conservation subdivision scenario. Mr. Doherty questioned if the opinion was on a State or Pelham basis. Mr. Gowan stated after further consultation with Attorney Westgate on the project, the question was raised regarding the wording for frontage within a conservation subdivision to be allowed on a private road. After consultation with Attorney Buckley, he learned there was no express provision to allowing such. He felt the issue should be reviewed by the Zoning subcommittee, but at present he had no alternative but to suggest the applicant seek a variance to allow a private road. Mr. Doherty asked that a copy of Attorney Buckley's opinion be available and suggested Zoning should possibly be amended.

Mr. McNamara asked Steve Keach of Keach Nordstrom (Board's engineering review firm) to come forward and explain his position. He understood through Mr. Keach's memos that he basically agreed that the yield plan of six lots was valid and legitimate. Mr. Keach answered yes. He told the Board he issued two memos, one dated July 15<sup>th</sup> in response to drawings received from Mr. Anderson's office. It was then realized that the July 2<sup>nd</sup> drawings hadn't been forwarded to Mr. Keach; they were quickly forwarded and a second memo dated July 18<sup>th</sup> was issued. Relative to density, Mr. Keach noted there were inclusions of areas in excess of 20% slope within the building envelopes on all six lots. When reviewing the intent of the Regulations and the intention of the 100ftx150ft. rectangle, he felt it was obvious that the authors wanted to ensure that a lot met the minimum lot area and frontage requirements to ensure it was buildable. He believed these areas were in consequential to the buildability of the lots and understood a waiver was requested for the Board's consideration. He believed if the Board was to grant the waiver it would validate the yield plan for six lots.

*Planning Board Recessed their meeting at approximately 7:30pm to allow for the Board of Adjustment to convene.*

### **Zoning Board of Adjustment**

Chairman David Hennessey called the Zoning Board meeting to order at approximately 7:31pm.  
The Secretary Bill Kearney called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara,  
Chris LaFrance, Alternate Pauline Guay, Alternate Darlene Culbert,  
Planning Director/Zoning Administrator Jeff Gowan

ABSENT: Alternate Lance Ouellette, Alternate Kevin O'Sullivan

*(It was understood that the abutter list for the Zoning Board and Planning Board cases were identical and would not be re-read.)*

Mr. Hennessey explained to the public the difference of roles between the Zoning Board and the Planning Board.

### **Seeking from Zoning Board:**

**1) Case #ZO2015-00011 - Variance – Concerning Article II Section 307-6(10) & Article XV, Section 307-106(B)(1) of the Zoning Ordinance to permit lots in a conservation subdivision to have frontage on a private road (the interior road of the proposed conservation subdivision).**

Attorney J. Bradford Westgate of Winer & Bennett, representing the applicant, explained they were seeking two variances: 1) Lot frontage and 2) to allow the Planning Board to consider a greater density than the yield plan plus 20%.. He knew there would be a bit of a surprise as to the necessity of the variance for the private road frontage. He noted he tried to make the argument that no variance was needed when interacting with Mr. Gowan, but at the same time felt they should confront the issue and obtain a definitive answer. Since then, Mr. Gowan sought legal opinion through NHMA and made an Administrative Decision. Attorney Westgate provided the Board with details regarding the applicant's property and surrounding area. They were seeking a total of eight lots (6 lots plus 2 density offsets). The property would be serviced by Pennichuck Water. Both Mr. Gowan and Mr. Keach worked with Mr. Clark and have reviewed the subdivision design; through their discussions the private road approach was discussed. The yield plan was favorably viewed by Mr. Keach, who indicated waivers primarily for the 20% slope requirement would be reasonable to grant. Attorney Westgate summarized the proposal by saying because the conservation subdivision regulations (both in Zoning Ordinance and Subdivision Regulation) are geared towards giving the Planning Board a flexible and broad scope of analyzing and working with an applicant to determine the best possible layout and design, they were seeking the variances to enable the Planning Board to exercise that idea. It would also give the Planning Board the flexibility to consider the private road and having additional lots. He noted they weren't looking for the variance to mandate eight lots; rather they wanted the variance to free up the 20% density offset and give flexibility to add one lot. The applicant understood they had to demonstrate that an eight lot subdivision made sense and fulfilled the purpose of a conservation subdivision.

Mr. Hennessey stated that the Zoning Board would consider the variances separately with the understanding that the variance criteria were intertwined for both. The Board will first discuss the private road.

Attorney Westgate spoke of the rational and purposes as set forth in the Conservation Subdivision Regulation (Section 307-93) for Planning Board consideration, which includes providing for design flexibility and efficiency in the establishment of services and infrastructure including the opportunity to reduce road lengths, utility runs and the amount of paving required for residential development. Corollary to this are sections with the Subdivision Regulations that gave them the Planning Board's perception of what the ordinance meant. These sections encourage flexible and innovative road design including reductions in road width. Also in the context of a conservation subdivision they note that public roads are to adhere to specific conservation subdivision roadway design, but other design waivers are permitted and private roads are to be constructed under design criteria for conservation subdivision. Through these, Attorney Westgate believed the Subdivision Regulations definitely contemplated the private road concept. Understanding each case was different, he didn't feel it was a departure from the Zoning Ordinance provisions to support the idea that a variance could allow private roads in the conservation subdivision setting.

With regard to the density offset request, Attorney Westgate commented it had been approximately twenty months since the applicant came in front of the Zoning Board and received a Variance (Case #ZO2013-00027) from the 10 acre requirement. Since then the applicant has added a number of details, characteristics and criteria that contemplate effective land use. Pennichuck Water was determined to be available.

Mr. Hennessey spoke about the requirement of an applicant to meet the five Variance criteria. He noted in these cases, the applicant would refer to both applications, however the Board would consider each separate when voting.

Attorney Westgate addressed the five variance criteria (*full text contained in case file*).(*A relates to the variance request for frontage on a private road; B relates to density variance*)

**Public Interest:**

**1A)** - It will allow lots in a conservation subdivision to have frontages on a private road and provide the Planning Board with flexibility with considering, reviewing and approving the conservation subdivision consistent with its purposes and goals. Life and safety requirements are not compromised by use of a private

road. The Town would not be required to maintain the road, such maintenance would be the responsibility of the Homeowner's Association. There is an existing private driveway providing access to three homes. The private road would keep in that same spirit and not be designed to connect with other roadways and will only serve the conservation development.

**1B)** - To grant the Planning Board discretion to grant a density offset in excess of 20% by allowing one (1) additional lot from what the Ordinance already permits. The goals of a conservation subdivision would be enhanced when the density can be added by one because it gives a greater possibility to provide amenities that would be commensurate with larger developments.

Spirit of the Ordinance:

**2A & B)** - Variance requests run parallel with the spirit of the Ordinance contained in Section 307-93 because it would give the Planning Board maximum flexibility. For the private roadway there would be a reduction in pavement, roadway length, affected land area etc.. For density, there's no distinction in the roadway between a seven lot and eight lot subdivision in this context. It will allow the Planning Board to determine if the eighth lot is sensible.

Substantial Justice:

**3A)** - The proposed road will not connect with any adjacent residential neighborhoods. The proposed neighborhood will be consistent with abutting and nearby residential properties. It will allow the Planning Board's design and review flexibility while still requiring the applicant to justify its design and functionality. Given that the surrounding areas are generally developed around it and the isolated nature of the property, it can be developed as its own sustainable small neighborhood. They will honor design safety criteria for emergency vehicle access.

**3B)** - Justice would be done with one additional lot because it adds the incentive to maximize conservation elements of the project. The eighth lot gives the development a greater chance of succeeding by having an additional homeowner involved to help carry the cost burdens and to allow implementation of conservation subdivision purposes. The request is for one lot. The Planning Board should have the flexibility to consider /allow the case to be proven. Without the variance the Planning Board doesn't have the option of reviewing information for additional lot.

Values of surrounding properties aren't diminished:

**4A & B)** - Variances run parallel given the request is to permit residential lots with frontage on a private road. This is justified by the nature of the property and proposal being an eight lot isolated neighborhood without through roadways. The private road would be maintained by the Homeowner's Association. The applicant is not seeking approval of the eighth lot automatically, but instead the variance would allow the Planning Board discretion to provide for a density offset of one (1) lot in excess of the permitted 20% density offset. Creation of an open space subdivision would be done in a considered manner to minimize visual and external impacts on surrounding properties. This would be the case whether the project was serviced by a public or private road, or whether it contained seven or eight lots. The nature of the roadway and number of lots have no bearing on whether the project would adversely affect the values of surrounding properties.

Hardship:

Special conditions: Southerly facing slope allows for solar access. The shape of property permits the road design. Small wetland in center of property can be combined to create a central pond that could be used for fire protection, aesthetic amenity and could be a component of geothermal heating. Wooded knolls could be maintained for aesthetics or kid friendly activity area. The property has two frontages on Mammoth Road; one could provide access to the development, the other could be used with the open space lot and buffer the development from Mammoth Road. The property has an unusual triangular shape that doesn't lend itself to a grid (conventional) subdivision. Soils of property are sandy loam capable of handling the proposed density. Pennichuck Water will be brought to the site to provide water source. Property is surrounded by developed properties but remains underdeveloped since the Town adopted the conservation development idea. An eighth lot itself can easily be accommodated within the drainage plan.

**5A)** The public road purposes won't be lost by having a private road ; but in turn, if the variance is not granted, a public road would impose more pavement, longer road length and create an imposition on the idea of having open space and maintaining conservation subdivision goals. The purpose of conservation subdivision would be defeated.

**5B)** The density shouldn't frustrate purposes of the conservation subdivision. It is apparent that no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. The proposed use is reasonable; single family developments in the setting are not unusual. It makes sense to implement the goal of a conservation subdivision through an infill development with public water capability and a private road approach.

Mr. Clark spoke to the reason for requesting the variances. He explained that the project started out as a conventional subdivision as he was not aware that he could seek a variance for a conservation development. During an informal review of the conventional plan with Mr. Gowan and Mr. Keach it came out that a better approach might be through a conservation development with a private road. Doing so allowed for the road to wrap around and preserve the pond in the center of the property. Mr. Clark explained that the notion of the eighth lot came about in part through contemplation of what a private road meant to buyers, future homeowners and to the Town. They also reviewed the sustainability goals of the development and came to the conclusion that the eighth lot made things easier for things to come together. He noted he could make the development work with seven lots but was lead in a direction that the development package being presented would work. He added that there were reasons and rationale for the plans looking the way they do and answer why they took the approach being presented.

Mr. Kearney wanted to know the road length from Mammoth Road to House F (as contained in the 8-lot concept plan) and if it crossed any wetlands. Mr. Anderson replied it was approximately 1,050ft and went around the wetland area. Mr. Kearney questioned how many bedrooms would be in the proposed homes. Mr. Clark stated they would have three bedrooms; however they were focusing on the footprint and space utilization. The footprint of the homes was 33ftx27ft. with each lot being roughly a quarter of an acre. It was noted that all lots could be increased to a half acre and still meet the open space criteria.

Mr. LaFrance questioned where the eighth lot would be located if approved. Mr. Clark replied it would be located closest to the pond and have its own outbuilding (freestanding garage).

Ms. Guay understood there were two frontage areas on Mammoth Road and questioned in what location the 200ft. portion accessed the property. Mr. Clark responded the 200ft. would be retained as a buffer; the location was pointed out on a plan displayed for the public.

#### **PUBLIC INPUT**

Mr. Tim Doherty, 29 Wood Road (also Planning Board member) understood allowing a variance for a private road because it could be used for a separate parcel to stay with the land. Given that variances run with the land, he questioned how allowing an additional lot (through variance) would be treated if the property were later subdivided for development. It was Mr. Hennessey's understanding that the applicant's applications to the Planning Board and Zoning Board were entwined. If variances are granted they are part of the total package in front of both boards; in other words a variance approval presupposes an approval on the subdivision. Mr. Hennessey stated the variances would expire if the subdivision wasn't approved.

Mr. Hennessey asked the Board to focus their discussion primarily on the private road.

Mr. LaFrance noted that the length of the roadway was actually a lot smaller than it appeared on the plan. He didn't feel the plan showed that point and believed it was well put together considering what they had to work with.

It was noted if the variance was approved, the road would be reviewed by the Highway Safety Committee.

Mr. McNamara stated he didn't have a problem granting a variance for the private road as he felt it complied with the Ordinance. He wanted to ensure acceptable sight distance could be achieved. Mr. LaFrance noted it was included on the plan.

Mr. Hennessey felt the variance criteria was met for the private road and it was in the Town's best interest.

<b>BALLOT VOTE</b>	Mr. Hennessey – Yes
<b>#ZO2015-00011</b>	Ms. Paliy – Yes
<b>(private road)</b>	Mr. Kearney – Yes
	Mr. LaFrance – Yes
	Mr. McNamara – Yes

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

## **VARIANCE GRANTED**

**2) Case #ZO2015-00012 – Variance – Concerning Article XV, Section 307-102 of the Zoning Ordinance to permit the Planning Board to allow a density offset of the one (1) lot in addition to the density offset of 20% (of lots demonstrated on the yield plan). In this case, the yield plan generates six (6) lots. The 20% density offset allowed by Ordinance by the Planning Board would increase this to 7.2 lots. This Variance request would authorize the Planning Board to permit a density offset of one (1) more lot in addition to the 20% density offset permitted by Ordinance, permitting up to eight (8) lots in the proposed conservation subdivision.**

Mr. Hennessey asked the applicant if they would like to add anything to their testimony and submitted application. Attorney Westgate respectfully asked that the Board consider the presentation made in the context of the request for case ZO2015-00012.

Mr. LaFrance was curious if the applicant had a cost for what the proposed homes would be marketed. Michael and Ryan Vista of Keller Williams Realty came forward. Mr. Vista told the Board it would make the most sense to market the homes at approximately \$450,000 based on what had recently sold recently and what was presently on the market. Ms. Vista added that the homes would be 'net zero'; so the cost of electric, heating and cooling wouldn't be relevant; the comps being reviewed have all of those associated costs. She commented that the demand for sustainable homes was larger than the inventory to meet it. She felt Pelham had the opportunity to set development standards. She also told the Board that supposedly by the year 2030, all new construction supposed to be like that being proposed.

## **PUBLIC INPUT**

Mr. Tim Doherty, 29 Wood Road (also Planning Board member) questioned if the variance would be contingent upon the houses being 'net zero' geothermal homes as presented. Mr. Hennessey didn't know of a way to make the approval contingent on the type of home. He noted the Planning Board may have that ability. Mr. McNamara commented that the house style was one of the reasons for the density offset request. Mr. Gowan told the Board he sought legal opinion regarding the Board's ability to condition variances. Town Counsel (Attorney John Ratigan) has indicated the Board has that ability. He spoke of the applicant's

testimony that they needed the additional density to make the conservation subdivision's Homeowner's Association capable of maintaining the private road in the context of the 'net zero' houses. He encouraged the Board to consider conditioning a variance upon the houses being built in the fashion being proposed and described to the Board. He said it would be easy to determine if they were building something different.

Mr. Hennessey asked to hear from Mr. Keach regarding how the Board could make a stipulation for a net zero subdivision; on what basis and who would determine such. Mr. Keach came forward and reminded the Board that the context of the case was not whether the applicant would be granted additional units of density, but rather it was a procedural question to enable the Planning Board to do that through their deliberations. The Ordinance caps the Planning Board's ability at 20%. Mr. Keach understood the variance to allow modification in the administration of the Ordinance for the Planning Board. He agreed with Mr. Gowan that it was customary and routine for boards to rely on the presentation of the applicant and their representatives. He didn't feel it unreasonable to condition a variance based on testimony received.

Mr. Hennessey asked the Board if they wanted to make a motion to condition a variance approved based on the presentation given to the Board. Mr. Kearney felt the Board did just that each time they grant a variance and was unsure what made this case any different. Mr. McNamara made the motion. Ms. Paliy seconded.

**MOTION:** (McNamara/Paliy) To condition any variance approval for density is predicated upon the applicant fulfilling the presentation given to the Board.

**VOTE:** (3-0-2) The motion carried. Mr. Kearney and Mr. LaFrance abstained.

Mr. McNamara appreciated the applicant's intent but had a problem with the fact that the applicant requested a variance to create a conservation subdivision on a parcel less than ten acres. He said it would have been nice to know at that time that the applicant would come back to request an additional density offset on a property that doesn't meet the stated minimum. He felt the applicant was almost indicating that the Ordinance was restrictive because their lot was too small; however the applicant requested the reduced size and were granted the variance. Mr. McNamara read aloud a portion of Section 307-102 (density offsets) reads in no instance shall the Planning Board grant density offsets totaling in excess of 20% beyond the density established in the yield plan. He didn't believe the definitive language was accidental. He understood an applicant could request a variance, but he felt they were complaining they were prejudiced because of the smallness of the lot. He pointed out that the applicant testified that the development could work with seven lots.

Mr. Hennessey found the argument of giving the Planning Board freedom to do what is necessary to make the subdivision great was an interesting argument; however, that wasn't contained in the five criteria. He didn't feel the applicant proved their case, particularly under hardship.

<b>BALLOT VOTE</b>	Mr. Hennessey – 1) Yes, 2) No, 3) No, 4) Yes, 5) No
<b>#ZO2015-00012</b>	Ms. Paliy – 1) No, 2) No, 3) No, 4) Yes, 5) No
<b>(density)</b>	Mr. Kearney – 1) No, 2) Yes, 3) Yes, 4) Yes, 5) No
	Mr. LaFrance – 1) No, 2) No, 3) No, 4) Yes, 5) No
	Mr. McNamara – 1) No, 2) No, 3) No, 4) Yes, 5) No

**VOTE:** (0-5-0 The motion failed.

## **VARIANCE DENIED**

The Zoning Board of Adjustment adjourned at approximately 8:45pm.

*Seeking from the Planning Board:*



**Case #PL2015-00012 - Special Permit – to approve the Yield Plan for a proposed Conservation Subdivision of the above referenced lots. Full application for conservation subdivision will follow once Special Permit and density is established.**

The Planning Board meeting resumed.

Mr. McNamara asked if the applicant would like to provide any additional information.

Attorney Westgate stated because the Planning Board component was somewhat integrally related to the eight lot approach versus alternatives and the because the variance was denied, he felt it would be better to table any further discussion on the Planning Board application at this time. There was a brief discussion regarding date specifying the case/hearing.

The plan was date specified to the September 21, 2015 meeting.

**PB Case #PL2015-00013**

**ZBA Case #ZO2015-00013**

**Maps 15 & 22 Lots 8-86, 88 & 89**

**BROOKWOOD REALTY GROUP, LLC - off Tina Avenue, 10 Tina Avenue and 15 Tina Avenue**

Mr. McNamara stated that the meeting minutes of the Planning Board and Zoning Board would be incorporated together.

Mr. Dadak read the list of abutters aloud. There were no persons present who asserted standing in the case. Mr. Patrick and Kim Gendron and Jas Moorjani didn't hear their names called. Mr. Dadak read a final abutter list page that contained their names. *(It was understood that the abutter list for the Zoning Board and Planning Board cases were identical and would not be re-read.)*

Mr. Peter Zohdi and Shayne Gendron of Herbert Associates, representing the applicant, came forward to discuss the request. Mr. Zohdi noted part of the Town's Zoning was unspecified, so he had been working with Mr. Gowan. His client owns approximately 45 acres; four parcels are zoned B5 multiple (residential, duplexes and commercial). They are currently working to prepare a master plan for the total parcel and purchase abutting properties. Mr. Zohdi explained they would like to use 2+/- acres to stock pile materials that would be used on site in the future. There is an existing area being used to stockpile materials, such as 'I' beams (and other materials from the State Highway Department) for which they would like to receive a permit for. They were seeking to clear an additional two acres of land, located approximately 500ft. from residential property to stockpile additional materials for future use on site. Mr. Zohdi told the Board the property had previously been in front of the Board 10+ years ago and received an approval for subdivision that wasn't done. He reiterated they were seeking a permit to keep the existing storage on the property and the ability to use approximately two additional acres to stockpile clean material for future use on site.

Mr. McNamara questioned if the two acres being referenced would be subdivided out of the parcel. Mr. Zohdi answered no. He highlighted the area on the plan being referenced for storage of material. He also showed the existing storage areas being used for 'I' beam and steel beams. He mentioned there were wetland areas and Wetland Conservation District ('WCD') areas on the plan, but the material storage was shown to be outside those areas. He told the Board they would comply with all Site Plan requirements in the specified area.

Mr. Doherty questioned what area was presently zoned commercial. Mr. Zohdi replied the whole parcel was zoned B5. He noted the parcel in front of his client's was also commercial. Mr. Doherty asked how the parcel was presently being taxed given there was an existing house on the parcel. Mr. Zohdi didn't have an answer. Mr. Gowan also didn't have an answer. He spoke to the zoning, which allowed multi-unit structures as described on page 9 of Zoning under Districts. He read a portion aloud to clarify the allowed uses.

Mr. McNamara wanted to know the time table for construction or how long he intended to use the area for storage. Mr. Zohdi replied they were currently meeting with investors; if they are successful with the Planning Board he believed the time frame would be approximately three years.

**MOTION:** (Culbert/Dadak) To accept the plan for consideration.

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

Mr. Passamonte asked the length of time the lot had already been used for storage. Mr. Zohdi replied since he was involved it had been approximately nine months. Mr. Gowan elaborated by telling the Board when the property was first zoned as District 5, the prior owner (applicant's parents) had trucking and other things on the property that were not allowed. When the applicant purchased the property began to liquidate those items and remove such from the site. During that same time they asked him if they could temporarily store steel, which he allowed. He noted that allowance crept beyond temporary storage of steel and informed they would need to go in front of the boards to follow the proper process. The situation has gone beyond nine months and occurring over a couple years. The applicant was seeking to make the areas legitimate. Mr. Passamonte wanted to know if the materials were personal or for sale. Mr. Gowan replied he witnessed steel associated with bridge building, coffered dam construction, some concrete barricades, loam/fill; all benign materials. Mr. Passamonte clarified his question wanting to know if the materials were for personal use or for sale. To the best of his knowledge Mr. Zohdi replied the materials would be used for future construction on site. The material is coming from the I93 project area between exits 2 and 3 and is required to be certified for moving.

*Planning Board Recessed their meeting at approximately 9:07pm to allow for the Board of Adjustment to convene.*

**Seeking from the Zoning Board :**

**Case #ZO2015-00013 – Variance - concerning Article IV & V, Sections 307-16 & 307-18 of the Zoning Ordinance to permit the temporary use of a property to store non-hazardous materials such as steel and other construction materials and to re-grade an area less than 2 acres. The closest of the stored materials is 500ft + from the end of Tina Avenue.**

Mr. Hennessey called the Zoning Board meeting to order at approximately 9:08pm.

*(It was understood that the abutter list for the Zoning Board and Planning Board cases were identical and would not be re-read.)*

Mr. Zohdi explained they were seeking permission to temporarily stockpile non-hazardous materials up to three years. Using a plan displayed for the public he showed the existing areas being used for materials and the location they would like to use. The materials will be used for future development of the site. Mr. Zohdi noted that there was a previously approved subdivision that was not done. His client understood if the time period for storage went beyond three years, they would need to come back in front of the Board.

Mr. Hennessey wanted to know from where the storage areas were accessed. Mr. Zohdi showed an existing driveway under the power lines that was used to access the areas. To his knowledge his client was trying not to use Tina Avenue.

Mr. Gendron read aloud the variance criteria as submitted with the application.

Mr. McNamara questioned if there would be any work done with the materials that would generate noise, fumes etc. of that nature. Mr. Zohdi answered no. Mr. McNamara understood there were already materials on site and wanted to know if they would be adding more materials. Mr. Zohdi answered yes; while they were able to get materials from I93 (State project). Mr. McNamara asked what type of traffic would be accessing the site. Mr. Zohdi replied they proposed the use of the existing driveway under the power lines. Mr. McNamara questioned what the storage would consist of and how it would be stored/covered. Mr. Zohdi believed it would be ground storage left in the air. They would comply with erosion control and site disturbance through oversight by Mr. Gowan and Keach Nordstrom (Board's engineering review firm). Mr. McNamara wanted to know if the property was shielded from neighbors. Mr. Zohdi replied to the best of his knowledge there was 500ft. to the closest developed property. He noted the power lines were also next to the property.

Mr. Hennessey spoke of the power lines. He's recently attended several hearings regarding the power line project. The public is being told that there is going to be an addition of another power line starting in 2016 and completion in 2017. He questioned if that project would interfere with the access to the site. Mr. Zohdi believed the power company only had an easement and didn't own property; therefore a land owner had the right to pass and repass on their own property. Mr. Hennessey questioned if they had spoken to the power company to learn if the owner would have complete access to the site. Mr. Zohdi replied they hadn't spoken to the power company.

Mr. Kearney asked what type of vehicle would bring the materials to the site. Mr. Zohdi replied the steel would be brought in by tractor trailer trucks. The fill material would be brought in with an 8 or 10 wheel truck. Mr. Kearney questioned when Zoning was changed and how the property was zoned prior to the change. Mr. Gowan stated the property was previously zoned residential; it was changed in the 2006 time frame. He added that the previously approved subdivision (called Pelham Estates) expired. Mr. Kearney asked if Tina Avenue had been used for access. Mr. Zohdi replied they were proposing to use the existing driveway under the power lines, not Tina Avenue. His client told him they hadn't used Tina Avenue for access. Mr. Gowan told the Board the lot access was through the existing driveway. Early on, a couple trucks used Tina Avenue, as they didn't know where they were going. He noted they had adhered to not using Tina Avenue since. Mr. Zohdi reiterated the materials would be clean fill and steel to be used for future construction of the site. The applicant will need to level the two acres to allow for a staging area.

#### **PUBLIC INPUT**

Ms. Beverly Grue, 46 Balcom Road was concerned with the storage of materials seeping into the aquifer underneath the area. She also spoke of the concern of filling the vernal ponds that were used for collection of natural water flow. Mr. Zohdi told the Board that their wetland scientist Jim Gove of Gove Environmental reviewed the parcel many years ago and provided identification of all areas; those notes were shown on the plan in front of the Board. To the best of his knowledge, no wetland or hydric soil had been filled. Mr. Zohdi stated no hazardous materials would be brought on site. Mr. Hennessey asked if the materials would be placed on the ground, or if an impermeable surface would be laid down first. Mr. Zohdi explained to his client they would have to review the site every six months and hydro seed materials for erosion control. He noted Mr. Gowan and Mr. Keach would inspect those areas.

Ms. Bonnie LaFerriere, Inwood Road was concerned about the well water and safety. She asked for a copy of the proposed plan. Mr. Zohdi provided a copy of the plan. He said they would mark the property with 'No

Trespassing' signs. He noted with the State being under construction there were materials being stockpiled. He hadn't heard complaints arising from stockpiled materials in relation to water quality. Mr. Hennessey noted he lived close to the power lines on the other end of Town and had seen dirt bikes and ATV's accessing the area and were trespassing.

Mr. McNamara questioned if the storage area would be delineated by fencing or signs. Mr. Zohdi replied signs would be installed.

Mr. Jas Moorjani of Balcom Road was concerned about the proposal because the area was a low land area. He spoke of recent problems with the shallow wells on Balcom Road and was concerned with iron leeching into the water. He also recently replaced his septic also because of the low land. Mr. Hennessey took note of the concerns. He explained if the variance was approved, the Planning Board would also have the opportunity to review the information and possibly the site.

Mr. William McDevitt, Lane Road didn't understand why the proposal, under definition given by State Statutes, wasn't a junkyard. Junkyards fall under a different set of rules; he read aloud a portion of Section 236:112 defining junkyards. He felt it would have been a disservice to bring up his question later. In his opinion the proposal was a junkyard and asked for the Board's consideration.

Mr. Hennessey understood that fill would be brought in from the I93 project. He also understood that the building materials were going to be stockpiled for use toward future development. Mr. Zohdi replied that was correct; the material bring brought to the site was for future development. Mr. Hennessey asked if it was salvage or new construction material. Mr. Zohdi showed the Board the site topography and noted they would need a lot of on-site fill. They were able to access inexpensive fill through the I93 project. They were also bringing in steel ('I' beams) and concrete for future construction. Mr. Hennessey asked if the steel and concrete were considered salvage or future construction. Mr. Zohdi replied it was considered for future construction not junkyard.

Mr. Kearney questioned if there was a mental or physical plan for the use of the materials. Mr. Zohdi replied they were working with investors and considering the types of buildings for the site.

Mr. McDevitt's understanding of the statute was that it doesn't contemplate the length of time things were stored.

Mr. McNamara suggested seeking legal opinion as to whether the proposal constituted a junkyard.

**MOTION:** (McNamara/LaFrance) To seek legal opinion as to whether the proposal constitutes a junkyard.

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

Mr. Gowan told the Board he would seek legal counsel. Mr. McNamara preferred opinion from Town Counsel John Ratigan.

The Board discussed conducting a site walk. A site walk was scheduled for July 25, 2015 beginning at 9am. Mr. Hennessey asked the applicant to contact the power company to discuss their project and site access.

**MOTION:** (Kearney/LaFrance) To adjourn the Zoning Board of Adjustment meeting.

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

*Seeking from the Planning Board:*

**Case #PL2015-00013 – Site Plan Review for Change of Use**

The plan was date specified to the August 17, 2015 meeting.

**SITE WALK – July 25, 2015 9AM**

ZBA Case #ZO2015-00013 - Maps 15 & 22 Lots 8-86, 88 & 89 - BROOKWOOD REALTY GROUP, LLC  
- off Tina Avenue, 10 Tina Avenue and 15 Tina Avenue

**DATE SPECIFIED PLAN**

**August 10, 2015**

ZBA Case #ZO2015-00013 - Maps 15 & 22 Lots 8-86, 88 & 89 - BROOKWOOD REALTY GROUP, LLC  
- off Tina Avenue, 10 Tina Avenue and 15 Tina Avenue

**August 17, 2015**

PB Case #PL2015-00013 - Maps 15 & 22 Lots 8-86, 88 & 89 - BROOKWOOD REALTY GROUP, LLC -  
off Tina Avenue, 10 Tina Avenue and 15 Tina Avenue

**September 21, 2015**

PB Case #PL2015-00012 - Map 7 Lot 4-182 - YELLOW WOOD LAND HOLDING, LLC c/o Blake Clark,  
Manager - Yellow Wood Drive

**JOINT HEARING ADJOURNED at approximately 9:47pm**

**PLANNING BOAR MEETING - Called to Order at approximately 9:50pm**

**Planning Director's Project Updates**

Mr. Gowan spoke of the R&B Superette and Garland Woods projects.

**ADMINISTRATIVE**

**Draco Homes (Lussier, Gerald L & DOOLEY, Douglas F) - Hawk Ridge Road Subdivision – Request for bond release.**

Mr. Gowan provided the Board with a recommendation to allow for a full release of the off-site bond. The off-site bond will be replaced with a surety. He noted there was also a restoration bond that would remain in place.

**MOTION:** (Montbleau/Dadak) To approve a full release of off-site bond in the amount of \$87,041.35

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

**MINUTES REVIEW**

**June 15, 2015**

**MOTION:** (McDevitt/Passamonte) To approve the meeting minutes of June 15, 2015 as amended.

**VOTE:** (5-0-2) The motion carried. Mr. Montbleau and Mr. Dadak abstained.

**ADJOURNMENT**

**MOTION:** (Culbert/McDevitt) To adjourn the meeting.

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

The meeting was adjourned at approximately 9:57 pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary