

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING
January 5, 2017

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

The Secretary Paul Dadak called roll:

PRESENT: Peter McNamara, Roger Montbleau, Paul Dadak, Jason Croteau, Joseph Passamonte, Tim Doherty, Selectmen Representative William McDevitt, Alternate Paddy Culbert, Alternate Mike Sherman, Alternate Richard Olsen, Planner/Zoning Administrator Jennifer Hovey

ABSENT: Alternate Robert Molloy

Mr. McNamara opened the Public Hearing on the proposed Zoning amendments. He then suspended the hearing for purposes of hearing two regular business cases.

NEW BUSINESS

PB Case#PL2016-00028

Map 39 Lots 1-54-2, 1-54-3, 1-54-4, 1-54-5 & 1-55

R.J. MCCARTHY DEVELOPMENT, LLC. – Sherburne Road – Applicant Proposes to Combine Lots 1-54-2 thru 1-54-5 & 1-55 and Re-subdivide as a 21 Lot Conservation Subdivision with 2 Open Space Lots (Special Permit for Yield Plan Approved on October 17, 2016)

Mr. McNamara announced that the applicant had requested a continuance to January 23, 2017.

The plan was date specified to January 23, 2017.

PB Case #PL2016-00029

Map 20 Lot 3-133

COLEMAN, William & SCIRE, Connie. –Bearhill & Mammoth Road – Proposed Lot Line Adjustment between lots 20/3-133, 3-133-1 & 3-133-2.

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.

Representing the applicants was Mr. Peter Zohdi of Herbert Associates. He told the Board in the past he came forward for a variance to subdivide the parcel into three lots; recently, his client changed their mind and would like to instead subdivide the parcel into two lots keeping the existing driveways (one coming off Mammoth Road, and the other off Bearhill Road). Mr. Zohdi submitted a waiver request for the slope being over 20% in the 4KSF area.

Mr. McNamara read aloud the waiver request, dated December 7, 2016 pertaining to Section 11.04,C, 5 & 6 to allow a portion of the building envelope with slopes in excess of 20% and to allow more than 50% of the building envelope to have 15% slope.

MOTION: (Croteau/Montbleau) To accept the waiver request to Section 11.04,C 5 & 6 for consideration.

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

Mr. Zohdi provided further explanation for the waiver request. He said the area they were subdividing the buildable area had a slope in excess of 20%.

Mr. McNamara opened the discussion to public input. No one came forward.

MOTION: (Croteau/Montbleau) To approve the waiver request to Section 11.04,C 5 & 6.

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

MOTION: (Croteau/Passamonte) To approve the waiver request to Section 11.04,C 5 & 6.

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

Mr. Doherty asked for the length of the driveway off Mammoth Road. Mr. Zohdi replied the existing driveway off Mammoth Road was currently 800ft in length; however, it would be cut in half to approximately 350ft as it wouldn't be used to access the existing house. Mr. Doherty questioned if they would need to have a turnaround for emergency vehicles. Mr. Zohdi stated they would comply with the Fire Department requirements.

MOTION: (Doherty/Dadak) To approve the lot line adjustment.

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

PUBLIC HEARING ON PROPOSED ZONING AMENDMENTS

Mr. McNamara reopened the public hearing.

A summary of the proposed amendments are described as follows:

The full text of all proposed amendments are available from the Planning Department at (the Municipal Center) Town Hall, 6 Village Green during normal business hours and from the Town of Pelham website at www.pelhamweb.com on the Planning Department page.

1. **DRAFT Changes to the Pelham Zoning Ordinance, Article XI Signs** which is a complete re-write to comply with a June 18, 2015 Federal Supreme Court decision (Reed v Town of Gilbert, AZ). The re-write eliminates references to sign messages to preserve free speech rights and instead restricts signs based entirely on the zone in which they are to be used and to size, physical sign type, etc.” In ***309-71-1 Signs within the Business and Industrial Districts Table of Requirements*** this revision also allows full color electronic messaging displays provided:
 - a. there is only one per property;
 - b. they cannot exceed 3 x 5 sq. ft.;
 - c. the LEDs must display static messages with a minimum of 3 second intervals between images with no flashing or animation;
 - d. the signs must also be dimmed at dusk to protect driver safety and visual character as described in *307-66-1 Purpose*.

Mr. McNamara opened discussion to public input. No one came forward. Mr. McNamara offered two minor changes under Section 307-69-1, B, 3 & 5. There was no objection to the amendment to #3. The amendment to #5 spoke to vehicles/trailers being located for the purpose of advertising a business. Mr. Doherty questioned if a person wouldn't be allowed to park a business vehicle at their business, such as someone who has the name of their business on their vehicle. Mr. McNamara replied they wouldn't be able to have a vehicle permanently parked and used as a secondary sign. Mr. Doherty felt #5 should be stricken as it would mean business vehicles in the Town would need to be repainted. Mr. McDevitt spoke of a situation where there was an unregistered/uninspected vehicle parked on Rt. 38 being used to advertise a business. The vehicle didn't move day or night. He believed the ordinance stopped people from cleverly 'getting around' the Sign Ordinance. He didn't feel the language was intended to stop people from having business vehicles, the question was what language could be included to stop people from permanently parking a vehicle. Mr. Croteau agreed that the sentence was bold and offered no description. He suggested adding a stipulation that a vehicle has to be registered. There was a brief discussion and agreement to make the following amendments:

In #3 strike the word 'in'. "*Signs that ~~in~~ could be mistaken for traffic control signs or lights*".

In #5 delete 'a' and add 'an unregistered'; delete 'to advertise' and add 'of advertising'.

#5 to read: "*Signs on ~~a~~ an unregistered vehicle or trailer located for the purpose ~~to advertise~~ of advertising the business on-site*"

Mr. Culbert questioned if the ordinance would be read into the record. Mr. McNamara explained the purpose for the amendments and read aloud the purpose as contained in Section 307-66-1.

MOTION: (Passamonte/Croteau) To approve the Sign Ordinance, as amended.

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

2. DRAFT Changes to the Pelham Zoning Ordinance, Article XII Special Exceptions Section 307-74 Accessory Dwelling Units (ADUs). This revision complies with RSA 674:71-73 by making the following changes to the requirements for ADUs::

- a. ADUs must be attached to the primary dwelling with a common wall between;
- b. may contain two bedrooms where currently restricted to one;
- c. no longer can be limited to relatives or caregivers of the property owner;
- d. may be up to 800 sq. feet where now restricted to 750 sq. ft.;
- e. the primary dwelling and ADU must be under the same ownership;
- f. not allowed on lots that are less than one acre in size except approved Conservation Subdivision lots or lots within the MUZD;
- g. No home occupations may be operated form the primary dwelling or the ADU.

Mr. McNamara explained that Legislature had passed a law that allows, by right, ADU's in New Hampshire that would go into effect in March, 2017. As a result, Legislature had given towns some leeway in how they could regulate the ADU's. As a result, the Special Exception language in Zoning has been amended for discussion.

Mr. McNamara opened the discussion to public input.

Mr. Jim Bergeron, 27 Plower Road came forward to voice his concerns. He confirmed that the Board had a copy of the complete statute in front of them. He believed the Legislative intent was to have towns loosen up on their accessory dwelling units and recognize demographically what is going on in the State. He spoke about detached dwelling units and found the language discriminatory. He said the Town's proposed language would not permit detached ADU's; although the State, in Section 674:73, clearly addressed detached ADU's, separate from Section 674:72, and noted if a municipality allowed such, it may require an increased lot size. He understood the Town, by variance, had allowed detached ADU's. Mr. Bergeron questioned why the Planning

Board wasn't recognizing their existence at this time and making simple changes in Zoning to allow them with restrictions, given that the Zoning Board was already allowing detached ADU's by variance. He felt it was logical to go along with the intention of the State. He stated there was a need for affordable housing and dwellings for extended family and caregivers.

Mr. McNamara replied if a detached ADU was allowed by variance it was few and far between. He pointed out that the conditions for Special Exception could not be varied. Mr. Bergeron felt the Zoning Board had violated the Special Exception category because it couldn't be varied. Mr. McNamara believed if detached units were allowed it was during a time the Zoning Board received conflicting legal advice as to the legality of such units. Mr. Bergeron indicated he was a member of the subcommittee that originally drafted the Accessory Dwelling Unit statute. At the time they recognized there were ADU's in Town and people were living in unsafe conditions. The Town progressively started allowing ADU's. The State has now, through legislative intent, asked towns to loosen requirements and not set up impediments. Mr. Bergeron wanted the Board to discuss the aspect of detached units and noted the State's statute didn't become effective until June, 2017.

Since the previous meeting, Mr. Doherty had done some research and found information on the University of New Hampshire website, specifically through Institute on Disability and Institute for Health Policy and Practice. The document focuses on the collaboration to create elder friendly communities in New Hampshire and speaks to detached units and has an emphasis on aging in place. Mr. Doherty spoke to the different types of units, not simply side-by-side, but rather multiple levels. He noted the proposed ordinance wouldn't allow such because of the requirement for a common wall. He felt with the language being rewritten, the Board should make it all inclusive. He believed the proposed language would limit bringing people into Town and there were multiple ordinances that needed to be worked together (i.e. conservation subdivision, senior housing) because they were tied together.

Mr. Sherman felt the proposed 800SF was too small and suggested it be increased to 1,000SF. Mr. Dadak pointed out that the Planning Director's memo suggested the Board consider increasing to 1,000SF and also consider if businesses should be allowed in the units.

Mr. Culbert suggested rewriting the ordinance and bringing it back next year. Mr. McNamara explained if the Town did nothing and left the ADU statute as-is, come June, 2017 when the State's law is implemented, the Town could no longer implement their own statute, as it would be over-ridden by the State statute. The Town would not be able to put conditions on an ADU. Mr. Culbert felt they should take time and get the ordinance right. Mr. McNamara believed they had done the ordinance correctly. Mr. McDevitt commented that the Town was 'painted into a corner' by the State, and although the ordinance wasn't perfect, it was good. Once they had the ordinance, there was no law saying they couldn't make changes to it, but if they didn't have it, Mr. McDevitt felt the Town would be really sorry. Mr. Culbert wanted the ordinance to be studied more and believed the Board was making mistakes in a rush to judgement.

Mr. Passamonte spoke about detached garages becoming accessory dwellings and wanted to know if that referred only to existing structures or if someone would be able to build an 800SF building on their lot. Mr. McNamara said someone could construct a detached structure, which would in essence gut the Town's one acre zoning and dramatically change the landscape of the Town. Mr. McDevitt displayed a plan showing what the density of a development would look like if separate units were allowed. He noted the biggest issue the Town has had since he moved to Town in 1971 was Pelham's continued growth. People like the open space and felt if they allowed detached ADU's, housing values and people's desire to move to Pelham would drop. He said he was somewhat sympathetic to existing garages. Mr. McNamara noted that a Special Exception couldn't be varied; however, a person could apply for a variance to allow an ADU in a detached structure. He noted they allowed apartments in basements if they met the criteria. Mr. McDevitt spoke about allowing detached ADU's, which in a neighborhood of thirty two homes would convert it to a neighborhood of sixty four dwellings. He pointed out that type of scenario would considerably change traffic flow, emergency response, fire protection etc. He believed the Board should be very careful.

Mr. McDevitt agreed with increasing the ADU's to 1,000SF. Mr. McNamara asked the Board's opinion about increasing the size to 1,000SF. There was a general consensus to increase the size to a maximum of 1,000SF, with a limit of two bedrooms.

The Board then discussed whether or not to allow minor and/or general home occupations. Mr. McDevitt didn't know why they wouldn't be allowed because the owner would have to reside on the premises. Mr. Passamonte asked if a hairdresser and/or office within a house was considered a minor home occupation. Ms. Hovey stated an office-type job was considered a minor home occupation and a hair salon was a general home occupation. Mr. McDevitt noted a minor home occupation shouldn't be noticed. Mr. McNamara stated the language would be changed to allow general and/or minor home occupations in both the ADU and main dwelling.

Ms. Charlene Takesian, a member of the committee who wrote the proposed ordinance, understood that an ADU could be within or attached to the living units. She said agreed with Mr. Doherty that an ADU within a dwelling might not have a common wall and suggested the language be clarified to indicate such. She spoke to the allowed size of the ADU and agreed with the increase to 1,000SF or to be a certain percentage of the existing dwelling. Mr. McNamara stated that the language indicates an ADU shall be clearly secondary to the primary dwelling. Ms. Takesian discussed detached ADU's and didn't feel senior citizens would want the responsibility of becoming landlords. She said if people needed help with living expenses, she didn't feel they would construct a detached unit and have a stranger reside with them. She believed they would have someone familiar with them who could share the primary dwelling, either attached or within the structure. She reiterated her belief that senior wouldn't want the hassle of collecting rent and didn't see the need for detached structures.

Mr. Jim Bergeron addressed Mr. McDevitt's point of density within neighborhoods. He stated every house were entitled by right to have an accessory dwelling unit. He pointed out that legislature went out of their way to create a separate statute that applied to detached ADU's. He said for detached units the Town could limit the lot size for such. He believed the State had good intentions and the Town should apply logic to the Zoning Ordinance. He didn't expect the Town to put wording in the ordinance to allow detached units on one acre lots, given that the State indicates the lot size requirement can be limited. Mr. Bergeron asked the Board to fall in line with the spirit and intent of Senate Bill 146 and give credence to people who own property and have detached garages (or other structures). He pointed out if the ordinance didn't include language limiting ADU's to existing detached structures, language could be included to require that those detached structures meet lot size and soil types and other regulations. He stated the original Bill was drafted to try to help people, which is how he wanted the Board to proceed.

Mr. Hal Lynde, Jeremy Hill Road told the Board he watched the legislature evolve. In his view it was an overreach by legislature, bypassing town planning boards declaring they basically allow duplexes on one acre lots. He understood the needs and pointed out Pelham had remedies. If a person had enough acreage they could have a duplex or subdivide. He said when people make an investment and purchase homes, they expect the Town to protect them. He saw the legislation working against the Town. He stated that the legislature would effectively convert from a single family to a duplex without meeting the Town's zoning. Mr. Lynde reiterated his feeling that the legislature was an overreach and didn't feel the Town should reach beyond it.

Mr. Croteau suggested including a minimum acreage requirement for detached units. In reading information from the NH Municipal Association ('NHMA') Mr. McDevitt saw if a town's ordinance allowed ADU's (subject to conditions), the town would need to determine whether the conditions complied with the new law and plan to amend the ordinance if they do not. He noted there was no consequence listed. If a town's ordinance is silent on ADU's, they will automatically be deemed permitted without limitation. Mr. McDevitt stated the Town's Ordinance wasn't silent and understood that they needed to amend such to be in compliance. He questioned what would happen if they didn't. Mr. McNamara understood that the State ordinance would apply. Mr. McDevitt questioned the process of amending the Town's ordinance. Mr. McNamara replied any changes to

the ordinance would need to be made at the present meeting. He said during the second public hearing they could not change the substance, they could only change typographical errors and syntax.

Mr. Doherty reviewed his suggested amendments:

- 1) Eliminate the definition of 'common wall'. This wouldn't make sense for detached ADU's. In the Criteria for Accessory Dwelling Units he offered the following:
- 2) In section B. Increase living area from 850SF to 1,000SF;
- 3) In section D. Replace the word 'facing' with the word 'on' in the sentence reading- *"No new entrance or exit to an accessory dwelling shall be constructed ~~facing~~ on the front of the single family residence."*
- 4) In section E. Amend sentence reading *"An accessory dwelling shall be constructed either within or attached to a single family residence"* to read *"An accessory dwelling shall be constructed either within a single family residence or within an existing detached garage on a two acre parcel or larger."*
- 5) Eliminate entire section F reading *"The common wall between the accessory unit and primary dwelling must have an area that is at least 75% common with both units."*
- 6) Eliminate entire section G reading *"At least one interior door shall be provided in the common wall between the primary dwelling and the accessory dwelling. There is no requirement for this interior door to remain unlocked."*

In order to have a detached structure, Mr. Doherty explained that the definition of a 'common wall' would need to be eliminated. Mr. McNamara replied it was a necessary definition for an attached dwelling unit or unit within. Mr. Culbert questioned if a garage was considered a common wall. Mr. McNamara answered no; it would have to be living space to living space.

There were no objections to amending the word 'facing' to read 'on' in the sentence referenced by Mr. Doherty.

Mr. Croteau questioned if the floor in a split level home was considered a common wall. Mr. Doherty answered no. Mr. Passamonte explained in the construction field a common wall was used to separate space shared by two people; a demising wall separated units (living space to living space).

Mr. McNamara disagreed with eliminating section F and G, as attached ADU's needed to have a common wall and an interior door. Mr. Doherty stated that a detached dwelling wouldn't have an interior door. Mr. McNamara said by eliminating those sections it would gut the essential statute. He stated if the Board wanted to allow detached units, it could be done separate to those sections. Mr. McDevitt suggested adding the words 'for attached ADU's' at the beginning of section F. Mr. Doherty replied that assumed attached units would be next to each other and not one above the other. Ms. Hovey noted an ADU located above or below the primary dwelling was considered 'within' an existing structure. To address Mr. Doherty's concern, she agreed with Mr. McDevitt's suggestion of adding 'for attached ADU's' at the beginning of section F. Mr. Dadak questioned if someone had to get approval from the Town if they wanted to make their walk-out basement an ADU. Ms. Hovey answered yes; they would need to request a Special Exception. Mr. Doherty felt Ms. Hovey was interpreting Zoning and making it a living document. Ms. Hovey replied she was explaining the current process and believed adding the verbiage to the beginning of section F would address his concern.

Mr. McDevitt suggested adding the words 'or floor' to the definition of Common Wall so it would read: *"The wall or floor that separates the living space of the primary dwelling unit from the living space of the accessory dwelling."* Mr. Doherty stated the International Building Code ('IBC') had specific definitions, which made him concerned about how things are worded. Mr. McDevitt replied zoning was written for the boards and the average citizen; they didn't always use the technically correct terms. Mr. Doherty disagreed; during the previous year the Zoning subcommittee brought in the Building Officials and Code Administrators ('BOCA') and IBC definitions. Mr. McDevitt felt the words 'wall or floor' made sense. Mr. McNamara pointed out that the verbiage being discussed was existing language that had not been amended. Mr. Passamonte suggested the sentence read: *"The common wall or demising wall..."*, which would eliminate different interpretations.

At a minimum, Mr. Doherty believed section F should be eliminated. Mr. McNamara disagreed. He said it wasn't new language and people had complied with the section for years. Mr. Doherty felt the ordinance should be put off for another year. Mr. McNamara disagreed with putting it off for another year, which would result in the State taking over. Mr. McDevitt commented the Board was far better by hashing the language out now than giving the State control over how the community looks and feels. He was personally willing to meet people half way. Mr. Montbleau agreed. He said they couldn't let the State dictate what the Town would do. He understood the concerns and at this time leaned toward not allowing detached units at this time given the uncertainty of unintended consequences. Mr. McNamara agreed and noted the Board could amend the language in a year if they found there were problems. Mr. Dadak agreed and suggested having conversations with other towns to see what their experiences were.

Mr. Passamonte questioned if they could limit the detached ADU's for existing garages only and not for new construction. Mr. Doherty replied that was one of his suggestions. Mr. McNamara answered no; a variance would be needed for a detached unit. Mr. Doherty reviewed the law and didn't see a stipulation for a 75% common wall and wasn't sure if there was a significant reason for it being included. He reiterated his suggestion of eliminating the 75% common wall language so there was no question as to whether an ADU could be located either above or below a main living area. He didn't feel the interpretation of the word 'within' was appropriate in the way the zoning was worded.

Mr. Sherman inquired if the Board could legally state that an ADU could only be within an existing detached garage. Mr. McNamara didn't believe the Board could limit it to existing.

Mr. McNamara agreed with the opinions of Mr. McDevitt and Mr. Montbleau that the Board should vote on the ordinance 'as is', except for the amendments: 1) increase size from 850SF to 1,000SF, 2) verbiage in Section D – from 'facing' to read 'on', 3) common wall definition to add 'or floor'. *The Board previously had a consensus to strike Section P, restrictions on minor or general home occupations.* He was content to move forward with those changes. Mr. Montbleau made a motion to approve the ordinance. Mr. McDevitt seconded for discussion. He stated a lot of good points had been brought up. He agreed that the ordinance needed further work, but would support the proposal because he didn't want the State making all the decisions for the Town.

MOTION: (Montbleau/McDevitt) To approve the Special Exceptions Ordinance, as amended.

VOTE: (5-2-0) The motion carried. Mr. Montbleau, Mr. McDevitt, Mr. Dadak and Mr. Passamonte voted in the affirmative. Mr. Croteau and Mr. Doherty voted in opposition.

Mr. Montbleau asked that the Board address Mr. Bergeron's concerns in the near future. Mr. McNamara agreed and noted Pelham could also draw information from other communities who may have similar concerns.

3. DRAFT changes to the Pelham Zoning Ordinance, *Article IX Senior and Elderly Housing*:

- a. Eliminates provisions allowing 55+ housing but preserves 62+ Elderly housing, Assisted Living and Congregate Care developments;
- b. increases required land area from 10,000 to 15,000 sq. ft. of usable land per unit;
- c. increases buffers to abutting properties from 50 to 100 feet with discretion given to the Planning Board to require additional buffering;
- d. requires all units to be fully ADA compliant;
- e. requires a club house for stand-alone and duplex Elderly Housing developments.

Mr. McNamara stated there had been an extended discussion regarding the article at the Board's last meeting. He understood through the Planning Director's notes that the Board could decide to: 1) Abolish the Statute altogether, 2) Allow only 62+, or 3) Leave the language as-is.

Mr. McNamara opened the hearing to public input.

Appearing on behalf of MAKO Development was Attorney Daniel Muller of Cronin, Bisson & Zalinsky, who came forward to request that the Board essentially keep the ordinance as-is. He addressed the proposed amendments and offered the following comments.

- 1) With regard to eliminating Senior Housing, Attorney Muller read that the given rationale was essentially that there was a significant number of units and severe lack of other types of housing units for elderly citizens and assisted living. He stated zoning ordinances had to promote public health, safety and welfare; the stated rationale assumes if one is eliminated it will incentivize the development of the other two, which he didn't feel was the case. He pointed out that the Master Plan (of 2002) listed the greatest percentage of population as being in the age 34-54 category. From such he believed part of the reason for the demand of 55+ development was due to a large portion of population heading in that direction. It was unclear to him if eliminating those units was in the public interest. Attorney Muller heard discussion relative to the last proposed amendment about unintended consequences. He stated if they eliminated senior housing, it may effectively eliminate all housing of that nature.
- 2) In response to the proposal of increasing the required land area from 10,000SF to 15,000SF and increasing buffers from 50ft to 100ft giving the Planning Board discretion, Attorney Muller said his client didn't feel it was necessary.
- 3) To the requirement for units to be fully ADA compliant, Attorney Muller had no comment.
- 4) With respect to the requirement of having a club house, Attorney Muller stated in isolation it may seem fine; however, there is a cost to maintaining that type of structure which would be borne to the people within the development. The cost may be higher in a very small development and may render a development not particularly feasible for people to live there because of the extra cost. He understood that Federal Law required programs and facilities, but felt the programs and facilities should be based on both the size and nature of a development. Attorney Muller stated a 'one size fits all', such as what was being proposed, wasn't a good approach.

Mr. Dadak stated that density was a recurring topic in discussions. To him the ordinance didn't meet the rural character of the Town and allowed developments to be too dense. He would like to see a larger square footage requirement and additional buffers. Attorney Muller noted that the current ordinance required 30% open space, which would equate to a fair amount of green space within a development.

Mr. Doherty spoke about increasing the land area and buffers. He said a 10 acre parcel of land would allow for approximately 7 acres of development; however, if the buffer was moved as proposed, it would bring development down to approximately 4.25-4.5 acres, which would be extremely dense. He pointed out that the Ordinance currently allowed the Board to increase buffers. Mr. Dadak believed the intent of increasing the buffers would reduce the number of units and allow for additional open space.

Hobbs Community Center Director Sara Landry was in attendance as a resource and came forward to answer questions. Mr. McNamara asked for the current population of seniors versus that of fifteen years ago. Ms. Landry replied the senior population was growing and New Hampshire is one of the highest states in the nation. Currently Pelham has approximately 4,500 residents in the over fifty age category; in the year 2000, there were 1,830 in that category. Mr. Dadak wanted to know the definition of 'elderly'. Ms. Landry replied AARP and Pelham's senior center is 50+. There are some Federal programs that classify elderly at age 62. Mr. Culbert asked if the senior center population had dramatically increased in the last ten years. Ms. Landry replied she had been the director for the last five years and saw an increase in program participation. Mr. Culbert attributed the increase to Ms. Landry's leadership skills and bringing new programs to the center. Ms. Landry noted there were over 600 members/participants that used the senior center.

Mr. McDevitt spoke about concerns regarding hidden costs to the municipality and felt Ms. Landry was under increasing pressure regarding transportation. The center has one bus that covers over 100 miles of roads. He wanted to know what would happen with the senior's bus as the number grows. Ms. Landry stated they were already maxing out their bus hours. She explained they couldn't currently meet the needs of the Town. If more seniors (over age 55) came into Town, it would cause added expense as they required more services. She utilized Greater Salem Caregivers and hoped they had volunteers. She said that Service Link was the center's life line given that transportation was a huge issue.

Mr. Sherman spoke about the addition to the senior center and wanted to know at what point they would be 'max out' the size of the center. Ms. Landry replied the size of the current center was good and their floor space was adequate for the programming they had. Mr. Sherman asked Ms. Hovey how many 55+ units were 'in the pipeline'. Ms. Hovey believed there were approximately 200 currently being constructed. She didn't have the figures for how many were expected to come in front of the Board. Mr. Dadak asked how many had already been built. Mr. McNamara believed there were over 265 already built.

Mr. McNamara commented that the subcommittee spoke about whether they should abolish the 55+ and 62+. One reason they felt would be good in retaining the 62+ was to give people in the Town facilities for assisted living and in their best interest to encourage such. Ms. Landry agreed that residents couldn't age in the community when it came to needs for dementia care or physical needs. Mr. McNamara noted the Town had allowed elderly units; however, development has all been 55+. Mr. Dadak questioned if anyone had asked the advice of the Nashua Regional Planning Commission. Mr. McNamara couldn't answer. Mr. Dadak felt development would depend on economic viability.

Mr. Robert Peterson came forward to speak about developments he had done in Town. He told the Board over half the units he sold (at the Nashua Road project) were age 70-80 and others were in their high 50's. Although this was the case, he didn't feel the ordinance should be changed. With regard to the clubhouse, he found it wasn't important to the people buying units as they were interested in keeping condominium fees down. He noted most were cash buyers that split time in Florida.

Mr. Hal Lynde, Jeremy Hill Road was in favor of the proposed changes. He stated the Town valued open space and spoke of his dislike for a development on Nashua Road containing 10 acres and forty living units, which he didn't see as being in the best interest of the Town. Given the State had a major problem with keeping young people, he felt the Town was targeting the wrong group of people. He felt Pelham should be encouraging and working on having young people in the area as the State's economy relied upon them. Mr. Lynde pointed out that the people moving into the 55+ developments could afford to buy a house and didn't need 'cluster' zoning. The 55+ units cost approximately \$350,000. He believed the developments were hurting the Town and felt they should be stopped. He noted that the Board had the right to demand preservation of open space. He felt abutting properties would be affected over time and assessed values would drop. Mr. Lynde urged the Board to support the proposed ordinance to keep the rural character of the Town. Mr. Doherty stated if there was a development in violation of the open space requirement, the Town needed to know about it. Mr. McNamara pointed out that 'open space' calculations included many things and might not appear as open area. Mr. Lynde was referring to open space that people could enjoy and that provided a buffer to residents.

Ms. Charlene Takesian came forward and displayed the tax map for the area near Muldoon Park. The map outlined a neighborhood of forty homes located beside a 10-acre parcel containing forty homes to show the comparison of density. She stated the area was already very dense and to allow forty additional houses was a big mistake. She pointed out similar situations were happening in other areas of Town, and people weren't happy about it. Ms. Takesian inquired if the current 55+ developments had a requirement for open space. She was concerned with there being approximately 260 existing units and a possible 700 units that could come in for development. Ms. Hovey believed there were existing requirements. Mr. McNamara noted the requirements were different than those included in the conservation subdivision ordinance. He believed when the statute was

passed the aim wasn't conservation, the aim was to provide over 55 and over 62 housing. Ms. Takesian wanted to know the point of differentiating between age 55 and age 62. Mr. McNamara replied a condominium for someone age 55 didn't have to be ADA compliant or have any special precautions for a resident needing special assistance; age 62 housing required more scrutiny and certain requirements attached. To date the Town hadn't had a 62+ development come forward. Ms. Takesian questioned how the resident's ages are policed. Mr. McNamara replied age restrictions are written into condominium association documents. Mr. McDevitt stated the Town had an obligation to check with residents to ensure they conform; however, at present the Town didn't check. Mr. Dadak felt the question of enforcement was good, as there had been discussion regarding existing water problems in the Sherburne Road area and who would enforce water usage (for community wells). He recalled the Board being told that the homeowner's association would enforce water usage. Ms. Takesian didn't understand why Pelham allowed 55+ units to begin with, except to allow seniors to have affordable units. She reviewed units on-line and found the cost to be upward of \$350,000. Some houses had upstairs lofts with two rooms. For long-term planning she felt the Town should cut back on the 55+ units. She believed the 62+ units were a good idea because they required things that would help seniors, such as sprinkles, sidewalks and ADA compliant units. Ms. Takesian didn't understand why the Pelham was trying to make the town more attractive to seniors and felt they should be making it more attractive to younger people. She liked open space and believed with the Town purchasing conservation land the purpose of such was defeated by allowing 40 units on ten acres.

Mr. Lynde spoke about the Town having water problems in certain areas and the fact that there were subdivisions that weren't allowed to have sprinklers and some neighborhoods that didn't have water. He felt that issue should be taken into account and there weren't sufficient regulations on the books to guarantee 40 units on ten acres would have adequate water. He believed the Selectmen had to handle the situation.

Mr. Peter Zohdi of Herbert Associates came forward to point out that the reason the 40 units was allowed on the ten acre parcel was because they had Pennichuck Water. He commented that the Town's requirements went along with the Department of Environmental Services regulations. In reference to the age requirements, he stated Town Counsel reviewed the legal documents and in the end were recorded with the plan. Mr. Peterson spoke about a project he developed and confirmed what Mr. Zohdi stated about Town Counsel reviewing all the documents. He didn't feel development would slow by requiring units to be for 62+. In regard to buffers he suggested splitting the difference and having a 60ft. buffer. Mr. Sherman asked the average cost for the units Mr. Peterson was building. Mr. Peterson replied it varied; a 1200SF ranch ranged \$300,000 up to \$375,000 for units having a sun room. Mr. Passamonte asked if he would build a 62+ development with all the requirements. Mr. Peterson replied he would if he had perfect soils and Pennichuck water.

Attorney Muller spoke about the enforcement of the resident's ages. He told the Board they would have the same issue whether they had a 55+ or 62+ development which both rise initially under Federal Law in terms of the Fair Housing Act, and there are exceptions to the otherwise prohibition of age discrimination. He noted there was also a requirement that the association essentially police themselves. Further in a 62+ development, both people in a unit would have to be age 62+. In terms of other enforcement, Attorney Muller indicated there were also requirements under HUD. He reiterated the enforcement issue would be present no matter how the Board proceeded.

Mr. Montbleau called attention to the number of units developed and 'in the pipeline' and stated the Town wasn't just satisfying the seniors in Pelham; they were being drawn from other regions/states. He noted the Town had a more than adequate amount of units.

Mr. Culbert expressed his opinion that the ordinance should be further reviewed and brought back next year. Mr. Doherty agreed with Mr. Culbert. He had no suggestions for amending the language, especially after seeing the information put together by the University of New Hampshire ('UNH'). He found that their analysis didn't support doing away with something that the Town already had and saw they were in support of creating senior housing for towns that didn't have it. Mr. Doherty didn't feel the ordinance should be looked at next year unless the Town was willing to review the UNH data.

Mr. Montbleau agreed with Mr. Lynde's point that the Town wasn't attracting young people who would raise families and pay taxes. He stated the Town was drawing elderly people from other regions and wouldn't be accommodating the citizens of the Town by allowing development to continue to 'mushroom'.

Mr. McDevitt understood there was a demand; however, with questions being raised about the impact on schools if senior/elderly developments were halted he conducted his own research. He provided the Board with a chart, found on the School website, showing actual enrollments from 1997-2017 and projected enrollments of 2018-2022. He focused on the fact that the school population was way down. With the assumption of 1.3 children per household (as assumed on the school's website), he believed the Town could probably build approximately 480 single-family homes before they would be back to the school population in 2009. He noted that the cost of education wasn't a fixed amount and depended upon enrollments. Mr. McDevitt spoke about information found on the New Hampshire Municipal Association's website regarding age restrictive housing in New England. It read *'By contrast, age restrictive housing in New England has become one of the legal tools that can be employed to limit or exclude all together the number of affordable units attractive to young families with children.'* He pointed out that the Town didn't address attracting younger people, and felt with more senior housing Pelham would have less of an opportunity to do so. Mr. McDevitt spoke about the concerns for having a change in age demographic and the demand for senior housing ceasing. He believed the Board needed to consider that day and act as a Planning Board. He stated he would like the ordinance to go through as presented.

Mr. Dadak stated he would like to see a change and suggested Board consider the type of population they would like to attract to the Town and consider the density. With the number of possible units that could be built, he said they also needed to consider an increase in emergency response.

Mr. McDevitt believed the club house requirement should be taken out of the ordinance. There was no objection to eliminating the requirement.

Mr. Doherty asked that everyone review the information on the UNH website. From what he understood, the population of older people in the next ten years was going to double by 2025 and be 25% of the State. By 2030 it would be one third of the State's population and at the same time the overall growth of the State would slow tremendously. Taking those factors into consideration, Mr. Doherty believed the Town should be planning for an aging population. He didn't feel the ordinance would attract younger people into Town.

Mr. Sherman commented that there was a big population of people over age 55 that couldn't afford to purchase the properties. He'd like to see the ordinance passed as-is but include an amendment in development standards (307-53-2,C,3,a) for the distance between single units be increased to 40ft, distance between duplex doubled to 60ft and distance between 3-6 unit structure doubled to 80ft. Mr. Culbert questioned if the proposed amendment was personal preference. Mr. Sherman answered no. He indicated that the Board had decreased the dimensions a couple years ago and now that they've seen what the density looks like and didn't like it. Mr. Culbert couldn't recall there ever being an 80ft. buffer. Mr. McNamara agreed in principal; however, the criteria had already been increased from 10KSF to 15KSF. He believed there had to be some incentive for a builder to build a 62+ development.

Mr. Doherty made a motion to table the ordinance until next year. Mr. Passamonte seconded.

MOTION: (Doherty/Passamonte) To table the ordinance (Article IX Elderly Housing) until next year.

VOTE: (3-4-0) The motion failed. Mr. Croteau, Mr. Passamonte and Mr. Doherty voted in support of tabling the ordinance. Mr. McNamara, Mr. Montbleau, Mr. Dadak and Mr. McDevitt voted to support the proposed amendment.

Mr. McNamara felt the Board should pass the ordinance, and further amend if needed the following year. He accepted a motion to approve the article as written, with the exception to remove the requirement for a club house. Mr. Montbleau made the motion. Mr. McDevitt seconded.

MOTION: (Montbleau/McDevitt) To approve Article IX Elderly Housing, as amended.

VOTE: (4-3-0-0) The motion carried. Mr. McNamara, Mr. Montbleau, Mr. Dadak and Mr. McDevitt voted in the affirmative. Mr. Croteau, Mr. Passamonte and Mr. Doherty voted in opposition.

4. Changes to the Pelham Zoning Ordinance by Petition, Article IV Establishment of Districts, Section 307-18 Table of Uses to allow Warehousing and Storage as uses within Pelham Business District #5. The Planning Board will vote to “Recommend” or to “Not Recommend”.

Mr. McNamara read the citizen petition article aloud. Mr. Pat Gendron, 579 Bridge Street came forward to speak to the article. He told the Board he submitted the article because years ago when he tried to increase the original business zone, a B5 zone was put in place. He explained the B5 zone had a lot of stipulations and he would like to amend it to allow storage units and warehouses. He noted the definition of a warehouse is a central location to store goods so they can be distributed to other locations. He told the Board it had nothing to do with any industrial aspects.

Mr. Culbert asked if the ‘warehouse’ definition was spelled out in the article. Mr. Gendron answered no; it was defined in the dictionary. Noted his original petition article included stipulations and the Town told him to re-write it because it was too confusing. He sat with the Town Administrator and presented a new article. Mr. McDevitt understood with a petition article in particular, the court applies a different standard in the writing. He stated he might offer an amendment at Deliberative Session given there are no ‘commercial taxes’ that would be paid because everyone pays the same rate.

PUBLIC INPUT

Mr. Jim Bergeron told the Board he was in favor of the article and signed the petition. He believed the use would be minor and had the potential to create jobs in Town. He pointed out the specified area on Route 38 was not suitable for residential development and hoped the Board would pass the article to the public with a favorable vote.

Mr. Doug Shawver, 65 Heather Lee Lane, resided fairly close to the zoning area being discussed. He noted Yarde Metals was similar to what was being considered by the article and believed it to be a great use of the area. He asked that the Board support the recommended change.

MOTION: (McDevitt/Croteau) To recommend the petition warrant article.

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

DATE SPECIFIED PLAN(S) – January 23, 2017

PB Case#PL2016-00028 - Map 39 Lots 1-54-2, 1-54-3, 1-54-4, 1-54-5 & 1-55 - R.J. MCCARTHY DEVELOPMENT, LLC. – Sherburne Road

MINUTES REVIEW

December 19, 2016

MOTION: (Montbleau/Passamonte) To approve the December 19, 2016 meeting minutes as written.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 10:02pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary