

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING
April 17, 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, Tim Doherty, Joseph Passamonte, Jim Bergeron, Selectmen Representative Hal Lynde, Alternate Paddy Culbert, Alternate Richard Olsen, Planning Director Jeff Gowan

ABSENT: Alternate Mike Sherman

HEARINGS

PB Case#2017-00004

Map 28 Lots 7-184 & 7-185

MORRISSETTE, Roland & COVER, Raymond - 4 & 6 Lisa Terrace – Proposed Lot Line Adjustment between lots 28/7-184 & 7-185

Mr. Matt Hamor of LandPlex Engineering & Surveying, representing the applicant, came forward to discuss the proposed lot line adjustment. He told the Board that the applicants had gone in front of the Zoning Board of Adjustment and received a variance (Case #ZO2017-00006) for the setback of the pool and associated deck. He explained there was a gas easement that traveled across the property and with that the pool and deck got pushed into the rear corner; they were installed prior to the Town's Zoning requiring those amenities to have a setback from the side lot line. Mr. Hamor told the Board they were proposing a slight lot line adjustment. Both lots would remain fully conforming with frontage and lot area.

Mr. Gowan noted when the pool deck was built, it unknowingly was constructed over the lot line into the neighboring property, which was another reason for the lot line adjustment. The applicant received a variance to allow parts of the amenities to remain within the 15ft. setback.

PUBLIC INPUT

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

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

Mr. Raymond Cover, 4 Lisa Terrace wanted to know if a pin could be put in so the lot line was exact. Mr. Hamor was agreeable to installing a lot line (boundary) pin. Mr. Gowan noted that the proposed change would not make Mr. Cover's lot non-conforming. He stated that a permanent demarcation of the new lot line would be needed. Mr. Hamor stated he would be happy to do so.

MOTION: (Montbleau/Passamonte) To approve the lot line adjustment, with the inclusion of a note on the plan that a lot line pin would be installed.

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

RESIGNATION

Mr. McNamara stated that the Board received a letter of resignation from Alternate Robert Molloy. He understood that Mr. Molloy's job duties were conflicting with meeting times and he didn't want to continually not appear and respectfully resigned.

MOTION: (Montbleau/Dadak) To regretfully accept the resignation of Alternate Robert Molloy.

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

Mr. McNamara thanked Mr. Molloy for his service.

DISCUSSION

Mr. McNamara noted that Mr. Lynde asked to speak to the Board about a conversation the Board of Selectmen had regarding Zoning.

Mr. Lynde provided a brief background. He said Warrant Article #4 was placed on the Town Ballot and would have eliminated a provision in Zoning for over fifty-five (55+) housing. The Article was overwhelmingly approved by the people who voted. However, shortly before the vote there was a suit registered against the Town saying that they had erred in the process. He said there was a new State Statute provision that says if a change is being made in Zoning, and a zoning district has less than one hundred property owners, they all have to be notified by mail. He said that did not occur. The Selectmen, recognizing this, reached a settlement with the plaintiffs agreeing the Town would not enforce it (Article #4). This went to a judge who ratified the agreement; there was now a court order saying the Town couldn't enforce the article. Given the overwhelming approval, Mr. Lynde said the Selectmen felt it would be remiss if they didn't pursue it further. In their authority, the Selectmen could call a Special Town Meeting, which is what they are proposing; however, it would take the Planning Board to agree to resubmit the warrant article. They would need to go through the public hearing process with proper notification and a vote. He stated the Selectmen haven't yet sent a formal letter to the Planning Board.

Mr. Doherty questioned why the Board was hearing about it now for the first time, regarding the ballot (article) being invalid because they violated the law (RSA) with the process. Mr. Lynde replied he couldn't speak to the Planning Board knowing or not, but believed the Planning Department was apprised. Mr. Gowan believed everyone on the Planning Board was aware. Mr. Lynde noted there were new provisions (in the Statute) that weren't followed, therefore the article couldn't be enforced; however, it could be revisited through a Special Town Meeting. Mr. Doherty stated he found himself constantly in a burdened position of telling the Board they were violating the law. He felt the Board needed to set up a subcommittee to investigate itself before they tried to 'fix' zoning. He was tired of bringing things up in meetings and felt they weren't following proper procedure (Robert's Rules). He wanted to work on the problems before working on zoning. Mr. Doherty told the Board he would continue to raise the issues until they were properly addressed.

Mr. McNamara stated at the moment the Board was addressing what Mr. Lynde brought up. He said it wasn't a violation in law, it was a defect in notice (technical violation) by the Planning Department, not the Planning Board. Mr. Lynde stated the Board of Selectmen had no intent of violating any State Statute. They always check with Town Counsel and had vetted the warrant article, but recognized they missed that step (of notification). Rather than taking the suit to court, the Selectmen agreed with the people who brought it forward that the article couldn't be enforced. Mr. Lynde added the Selectmen would comply 100% with the Statute. He told Mr. Doherty if he had an issue of a law being violated, he would be glad to understand what it was and see if it was truly the case. He said they should always operate in accordance with State Statute.

Mr. Passamonte questioned if the Board could revisit the zoning before it was sent to a special election because of the changes that weren't made. Mr. McNamara replied the Planning Board didn't have anything in writing from the Selectmen. He wanted the Selectmen to state their position in writing before the Planning Board did anything. He said the Board wouldn't take a vote at the present meeting. He understood from Mr. Lynde that the Planning Board would receive a letter from the Selectmen notifying that they would be willing to hold a special election (Special Town Meeting), were the Planning Board to put it (the article) forward. But it was the Planning Board who would then have to make that decision. Mr. Lynde commented that the intent was not to change a word in the warrant article, because that's what the voters voted on. Mr. McNamara believed Mr. Passamonte was referring to the substantive changes that the Board made to that (Article #4) and to other articles, they had to leave off from that which was presented to the voters. He said the Board could revisit those. Mr. Passamonte said if they were going to do a zoning subcommittee it may as well be fixed right. Mr. McNamara said the Board wouldn't take a vote tonight, but when they receive written advice from the Selectmen they could have a discussion.

Mr. Bergeron wanted to make absolutely sure that everything at the Planning Board would not be subject to future litigation. He was under the assumption that the Board was supposed to be meet Town Counsel (John Ratigan) at the present meeting. Mr. McNamara was told Town Counsel couldn't make it, and it would be rescheduled to another time in the near future. He believed the Selectmen had communication with counsel. Mr. Bergeron questioned why Attorney Ratigan wasn't present. Mr. McNamara replied he had other commitments and would reschedule, hopefully before the Board makes a decision on the matter being discussed. Mr. Gowan explained he contacted Attorney Ratigan some months ago about his annual visit, which was tentatively scheduled for the present meeting. When he reached out to confirm the meeting, Attorney Ratigan informed it wasn't a convenient night. He would come back when questions (regarding the matter being discussed) came in front of the Board, so the Board would have a chance to ask questions directly.

If there was a law suit caused by the Planning Board putting something on the ballot and violating RSA, Mr. Doherty stated he would like a copy of everything that went back and forth. He wanted the opportunity to review the information and understand the lawsuit. He felt the Board should know what went on before they could make an informed decision. Mr. McNamara noted that the Planning Board wasn't involved in the law suit and it would be the Selectmen's decision whether or not to release attorney-client communications. He said the complaint, the answer to such, and the court order would be in the public domain. Mr. Doherty wanted to know if Mr. McNamara was privy to the information. Mr. McNamara replied he wasn't privy to the information, the Board had discussed it at their last meeting.

Mr. Dadak referenced the meeting minutes of April 3rd, during which Mr. McNamara told the Board with regard to Article #4, there had been a court challenge and settlement, therefore they would be unable to enact the changes, despite the fact that they were overwhelmingly supported by voters, and that the subject would be revisited. He said the manner in which Mr. Doherty spoke made it sound like the Planning Board was always being taken to court. He questioned how often the Board was taken to court. Mr. Culbert stated the Board had been taken to court infrequently, and believed they had always won. In Mr. Gowan's personal knowledge, the Planning Board had not been taken to court in well over a decade, although the Town had been during that time. As far as he knew, no Planning Board decision had been challenged in court. He wasn't aware if the information pertaining to the lawsuit (re: Article #4) was protected by attorney-client privilege. He said if it's determined that the information could be released, it would make sense to have it happen before the Board met with Attorney Ratigan so the members could ask him questions. Mr. Lynde thought the suit was public information, as was the agreement and court's decision. He saw no problem providing a copy to the Board. He stated there was no back room talking, it had been attorney to attorney discussion. Rather than going to court, he reiterated they reached an agreement that was acceptable to those who brought the suit forward, that the Town would not enforce the article. The Superior Court ratified the agreement. Mr. Lynde said he would get the Board a copy of all those documents since they were all public documents.

Mr. Bergeron noted that the adoption of Zoning Ordinance was by way of Planning Board, not the Selectmen. He believed the Board of Selectmen were served the injunction and made an agreement to such; however, he reiterated that the Planning Board was the statutory authority and the source of the problem. He said the mistake was on the Board, which is why he would like to speak with the Board of Selectmen along with having Town Counsel present. The articles were approved by the Planning Board and placed on the warrant, and he understood there were some mistakes made. He said now it was time to go back and revisit the mistakes and do the process again. Mr. Bergeron wanted to know why there was a rush to do something, without making absolutely sure the Board was doing it properly, legally, and not leaving any loose ends. In his opinion, there may be other loose ends that should be addressed and discussed with the Selectmen, Legal Counsel and the office of State Planning. He noted a special Town meeting was costly. He pointed out the last Town Meeting was an anomaly with approximately 1450 coming out to vote (a percentage of one in ten eligible voters) and with approximately 70% of which voting in favor of the article (#4). He wanted to know why there was a rush and emergency for a special Town meeting. Mr. Lynde stated the people voted overwhelmingly because it's something they wanted. He said if they see another hundred units being built, they will be surprised. He pointed out that all proper procedures were followed, except for notification. He discussed a recent submission to the Zoning Board of Adjustment for a variance to build 55+ housing on under 10 acres. There was another potential development (with 70 units) off Mammoth Road. He noted the voters spoke and commented that Town meetings don't have 50% voter turnout, its much less. The Selectmen feel they should respond to the voters, given that the vote was overwhelming to pass the article.

Mr. Culbert stated the Board had a contentious vote of (4-3) (for the article #4) and wanted to know why the numbers weren't indicated (on the ballot). Mr. Gowan believed it was possibly per Town Counsel. Mr. Lynde replied they no longer do so and noted there was no requirement to. Mr. Culbert suggested they make it a requirement for the Planning Board. Mr. Gowan believed it would be a question for Town Counsel when he meets with the Board.

Mr. Doherty discussed the vote taken by the Board (prior to Town Meeting) relating to Article #4, which he felt was confusing because there was a discussion that occurred in the middle of that vote. He believed the Board should look at itself and voiced his concerns regarding such. Mr. McNamara disagreed with his statements, but felt Mr. Bergeron's earlier suggestion of having a discussion with Town Counsel regarding the matter of the article would be a good idea. Mr. Bergeron questioned if the Planning Board could have a joint meeting with the Selectmen and Town Counsel. He wanted to hear what from all of the Selectmen. Mr. McNamara replied the Planning Board was waiting for a letter from the Board of Selectmen. Mr. Lynde commented that the Selectmen had a discussion at their last meeting and voted to submit a letter to the Planning Board, after they had an opportunity to review it. He noted he represented the Board of Selectmen at the Planning Board meetings.

Mr. Bergeron inquired if the Selectmen had investigated the requirements for a special Town meeting. Mr. Lynde replied the Board of Selectmen have the authority to call a special Town meeting for non-money warrant articles. He recalled in the past the Town held special Town meetings in the fall for zoning. He believed Town Counsel would be able to explain the process. Mr. Bergeron recalled and spoke of a (50 year old) case that went to NH Supreme Court that dealt with the Board of Adjustment's decisions (writing and recording) in cases.

Mr. McNamara stated that the Planning would wait to hear from the Board of Selectmen, and soon thereafter would have a meeting with Town Counsel. Mr. Gowan recommended targeting May 15th for a meeting with Town Counsel. Mr. Lynde believed the Selectmen would be sending a letter to the Board after their next meeting.

Mr. Culbert asked what the vote count was by the Selectmen (regarding the special Town meeting). Mr. Lynde believed everyone was in agreement; however, they would bring the discussion up at their next meeting to have a formal vote. Mr. Culbert wanted to know if the Board could have the results of the vote written in the Selectmen's letter to the Planning Board. Mr. Lynde answered yes.

Mr. Doherty suggested reviewing the RSA's to see if a joint Planning Board and Selectmen meeting was allowed. He said if they do, it would be the ultimate thing to do; however, he didn't want to suggest it, until he had time to research the RSA. Mr. McNamara suggesting asking Attorney Ratigan. Mr. Gowan made note of the question.

There was no further discussion.

MINUTES REVIEW

Mr. Doherty recused himself, stating he did not want to participate in reviewing minutes at the end of Board meetings. Mr. McNamara appointed Mr. Olsen to vote.

April 3, 2017

MOTION: (Dadak/Montbleau) To approve the April 3, 2017 meeting minutes as amended.

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

Mr. Doherty returned to the Board.

Mr. Bergeron asked the Board if in the future the meeting minutes could be reviewed/approved after the roll call (at the beginning of the meeting). He had done some extensive research and could not find any board or commission that didn't review their minutes right after roll call. No one voiced an objection. Mr. Gowan noted minutes review was included in the By Laws.

Mr. Bergeron made a motion to review meeting minutes at the beginning of the meeting, after roll call. Mr. Lynde seconded. Mr. Gowan wanted the Board to be clear that he wouldn't change the By Laws, it was the responsibility of Board to do so. He said there may be other things the Board would like to consider changing as well. Mr. McNamara suggested that the motion be subject to changing the By Laws. There was no objection. He asked if everyone understood the motion. Mr. Culbert questioned if the Board would immediately start changing the By Laws. Mr. McNamara replied the Board would need to change the By Law that stated minutes review was done at the end the meeting.

MOTION: (Bergeron/Lynde) To review meeting minutes at the beginning of the meeting, after roll call (subject to changing the By Laws)

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

Mr. Gowan will list review of the By Laws on the May 15, 2017 agenda.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 7:45pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary