

**APPROVED**

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT MEETING  
January 13, 2014**

The Chairman David Hennessey called the meeting to order at approximately 7:00 pm.

The Secretary Chris LaFrance called roll:

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

ABSENT: Mr. Peter McNamara, Mr. Bill Kearney, Alternate Lance Ouellette, Alternate Kevin O'Sullivan

Mr. Hennessey appointed Ms. Guay and Ms. Culbert as voting members for the evening's proceedings. He then took a moment for the Board members/Alternates to review the meeting minutes of December 9, 2013 during which the Board granted the rehearing for Case #ZO2013-00028.

Mr. Hennessey explained when the Board grants a rehearing prior testimony is not for consideration; the review process starts fresh. The Board will treat the proposal as a brand new hearing.

**REHEARING:**

**Case #ZO2013-00028**

**Map 14 Lot 3-81 - 61A NASHUA ROAD LANDHOLDINGS, LLC - 61A Nashua Road** – seeking a Variance concerning Article IX, Sections 307-53-2 C (3) & (8) to permit single unit buildings with a minimum of 20 feet separation, instead of a minimum of 30 feet separation.

Mr. Karl Dubay of Dubay Group, representing the applicant, came forward to discuss the proposal. Also present was Bob Peterson property owner of Map 14 Lot 3-81 located at 61A Nashua Road.

Mr. Hennessey confirmed that the applicant was not requesting relief from the density requirements of the Town's Ordinance. Mr. Dubay said that was correct. He said given the property with the Elderly Housing overlay, the calculation allowed forty-four units. They were requesting forty units. Mr. Hennessey said the density referred to the number of dwelling units within the parcel. Mr. Dubay answered yes. Mr. Gowan agreed with that definition. Mr. Dubay said part of the interpretation of density also included the amount of pavement, the amount of roof area and activity there would be on the site; also included were things related to buffers, perimeter buffers, dimensional and area criteria relating to the minimum amount of open space. He said they met the criteria for all of those aspects. He further noted they met all criteria for the overlay Ordinance.

Mr. Dubay told the Board that a full survey had been done along with test pits and soils review. He said they had met with Steve Keach of Keach Nordstrom (Planning Board's review engineer). The plan being presented was not in conceptual form. He explained that the reason for this was if they were going to plan for an invigorating elderly village, they wanted to know what the site could perform. The site was unique in its close proximity to the Town center and the size being approximately ten acres with excellent soil characteristics and topography. The site also benefitted by having Pennichuck Water. Mr. Dubay believed the lot was best suited for a village-style elderly development, as was being proposed.

Mr. Dubay reviewed the Exhibits submitted for review. Exhibit A – Site Plan. Exhibit B – 6-plex building plan. He said they had the ability to construct 6-plex buildings that would meet the density article as proposed for Town Meeting along with having a 40ft. building separation.

Mr. Hennessey explained to the public that a warrant article had been submitted through the Planning Board that (if approved by voters) would change some of the regulations in Zoning. He asked that the Board confine its review to what was presently in front of them. Town Meeting vote has not yet occurred. He asked that they restrict discussion to what was in front of them at this time as it applied to the current Zoning law. Mr. Dubay said currently there was a requirement for a minimum 30ft. separation for any type of unit; they were requesting a 20ft. separation. He noted that the proposed warrant moved forward for a single-family detached with a 20ft. building separation. He said the Planning Board, in putting forth the warrant, contemplated it might be a good idea to allow single family cottages. Mr. Hennessey reiterated the discussion should be in accordance to the current Zoning. Mr. Dubay said on the by-right/yield plan of 6-plex buildings worked with 1800SF unit plan coverage. The plan in front of the Board showed smaller, higher-end cottages of approximately 1300SF in plan area. This equated to 500SF less roof area or impervious surface for drainage per unit; in other words, less perceived density. The single-family cottage units would be 75% of the plan area of an equivalent 6-plex/multi-family that could be put on the site.

Mr. Dubay handed out Exhibit C which contained the Zoning Ordinance. He said article one indicates a plan needs to provide adequate light and air. He said that phrase meant something on the site being reviewed; the proposed building would provide a lot more light and air because they were a lot less massing than the alternative duplex/tri-plex/six-plex buildings. Exhibit C contained information pertaining to the Zoning Ordinance – Elderly criteria; Mr. Dubay read a portion aloud that referred to the placement of separate units and density. He said the ordinance spoke of options if a site had challenges. He said it also allowed them to exercise good planning options by placing separate units and clustering them.

Exhibit D referenced substantial justice and spirit and intent. Mr. Dubay said they understood that the Planning Board recognized there may be some options, which they were meeting. He also understood that the Zoning Board could only vote on what was in front of them. Mr. Gowan called the Board's attention to the fact that the applicant had used the proposed changes when drafting Exhibit D. Mr. Hennessey reiterated that the Board should not take into consideration a proposed ordinance that had not been approved by the voters. He said the Board was bound to review the current Zoning Ordinance.

Mr. Hennessey interrupted testimony to have the list of abutters read aloud, which he said should have been done prior to testimony being given.

Mr. LaFrance 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.

Mr. Dubay then reviewed Exhibit E that showed renderings of cottage styles shown at approximate scale with a 20ft. building separation. A typical six-plex building was shown behind the proposed cottages to provide a sense of scale. He said they preferred not to have substantially sized buildings with the associated shadowing, scale, massing, light and air. They wanted to do a smaller scale development. This would give a substantial change in perceived density.

Exhibit F addressed the question of if/where the proposed villages had been done. Mr. Dubay stated Plan NH, who were closely tied to the Department of Environmental Services, associated Regional Planning Commissions and the Office of Energy and Planning, all referred to vibrant villages and innovative land use techniques. He said the proposal was what they would refer to as a vibrant village. The innovative land use techniques book was used as a handbook for sustainable development and spoke about planning, zoning and villages. Mr. Dubay said the proposal was a sustainable elderly 2-bedroom detached village. The handbook referenced the separation between detached buildings and recommended 20ft.; it also recommended a perimeter setback of 30ft.. The proposal showed a 50ft. perimeter setback. Mr. Dubay wanted the Board to know there was a planning benchmark in New Hampshire. Awards were being given for this type of project.

Mr. Dubay discussed Exhibit G, which was based on questions relating to building codes. They reached out to Town Building Inspector Roland Soucy and asked him what the minimum building separation would be for a project like the one being proposed. In response, Mr. Soucy sent an e-mail referring to the International Residential Code that could be reduced to zero separation for attached units. Mr. Dubay said there was nothing like having separation between units so residents could say they had their own home.

Exhibit H was a copy of letter submitted by a licensed fire protection engineer (SFC Engineering Partnership, Inc) that reviewed the entire project pursuant to the National Fire Protection Act ('NFPA') criteria. The Town Fire Department indicated they would support the project if a licensed engineer reviewed the plan to meet NFPA criteria, if they sprinkled the buildings, if they had hydrants etc. SFC went through all the code and indicated that the proposal, with the 20ft. building separation met NFPA criteria.

Mr. Dubay commented that Exhibit J referenced a proposed mixed use district, therefore he withheld the first two pages of which. The third page showed the location of the proposed site in relation to 1.5 fire response radius to the new central fire station, which was a unique characteristic of the applicant's site. He withdrew the remaining pages of the exhibit.

Mr. Dubay formally submitted Exhibits K, L and M that were letters written by a licensed loan officer, a mortgage banker, and a broker associate with a local real estate company. Mr. Hennessey said the State requires applicant's to provide is evidence that there is no decline in property values. During the previous hearing there was a single letter submitted. It was questioned at that time whether the letter was sufficient to show there was no threat to adjoining property values. The applicant has now submitted three letters that each said there would be no decline in property values. He said he would address the three letters later in the hearing. He felt they were clear in their intent and what was said.

Mr. Dubay recalled during the previous hearing the question was raised if Pelham would be the first in this type of development. He showed the Board two depictions of projects in the area that his firm was involved with. One development was located in Methuen, MA and had a 20ft. building separation. Another development was located in Salem, NH, that also had a building separation of 20ft. He said they were very proud of both of the projects and received a lot of support. He said they were hearing that people didn't want to move into the larger unit buildings and preferred the single detached units. They would like to do the same type of project in Pelham.

Mr. Dubay read aloud the variance criteria as submitted with the variance application. They felt the requested 20ft. separation was reasonable. He said if the Board looked at the surrounding communities, the codes, the regulations, the State guidelines and the context of all the submitted evidence, it all was telling the Board that a 20ft. separation was reasonable. He noted that they had met all other criteria.

Mr. Peterson addressed the Board. He said he had been building in the Town since the mid 1980's. He'd done multiple projects and worked with Mr. Gowan. He appreciated the Board allowing a rehearing. He said it was a nice piece of property. The proposal was a better way to develop the property versus having larger units given the sensitive market. Mr. Peterson told the Board it was difficult to get financing on multiple unit buildings the guidelines were easier on the single units and would open a wider market place for those aged fifty-five and older. He said in the end it was a numbers game to come out of the project whole and meet the largest base that they could.

Mr. Hennessey said some of the points being made weren't germane to the case. He discussed the letters that were submitted. The submission from the lender was correct in the statement that in any development that had 55+ covenants the development had to be treated like a condominium complex. He believed there was some underlying confusion in the letters regarding single-family versus condominium. However, the crux of the three letters all agree that the absorption rates would be better with a single-family detached unit. As a professional in the business, Mr. Hennessey agreed. He said there was no question that the letters supported the idea that the surrounding areas would not be adversely affected by values; because the values on the project would be strong. He commented the proposed was not a single-family development; it was still a condominium development with detached single family housing on it.

Mr. Dubay referenced Exhibit J and said when the proposal was reviewed in relation to proximity to Town services, the site was unique. He said there were very few privately held locations over ten acres remaining that didn't have problems and were close to the center of Town. He reiterated that the lot was uniquely situated for the proposed project and noted it would have Pennichuck Water service. He felt the site was special and deserved to have the proposed development. Mr. Hennessey felt the applicant had successfully articulated that the property was unique; the physical property as opposed to some of the other sites.

Mr. Hennessey opened the hearing to public input.

PUBLIC INPUT

Mr. Chuck Toupin, 2 Mayflower Lane said a proposal had come before the Board and was denied. He understood the proposed was a high end project, and questioned why the applicant wouldn't eliminate 2-4 units and spread them further apart.

Mr. Hennessey explained the Board's role. He said the only thing they could do was either say yes or no. The Planning Board could discuss other issues. It was Mr. Toupin's opinion that granting an approval would only make the applicant/contractor more money. Mr. Hennessey said there was nothing in the law against that.

Mr. Steve Amero, 6 Independence Drive commented that the proposed houses were pretty; however, he had seen from other towns allowing a certain type of development would create a precedent. He knew this from a development that occurred in his mother's town. In regard to the housing evaluations, Mr. Amero felt Mr. Bisson may not be the proper person to get one from because of his closeness to the project and possible conflict of interest. He said the projects in Methuen and Salem probably both were on town water and sewer. The proposed would only have Town water; it would not have Town sewer, which he felt would be a negative hit for that section.

Ms. Barbara Amero, 6 Independence Drive commented about the 20ft. spacing and pointed out that the units would be able to hear everything next to them, such as a television or neighbors fighting. She said some development in which units were close together there were sound barriers that were used. She felt having the 20ft. air space would lose privacy.

Mr. Hennessey left the public hearing portion open, but brought the discussion back to the Board.

Mr. Dubay stated they would meet all New Hampshire Department of Environmental Services criteria for septic. He said it wouldn't be a problem because the soils were excellent. He said someone mentioned court. His response was they didn't intend to do so. He said they would like to do what was right for the Town. With regard to the privacy issue, Mr. Dubay said there was nothing like having separation. He reiterated that the evidence indicated 20ft. of separation was reasonable. To answer the question of the letters submitted; he said they provided three letters, one of which was from a local real estate company.

Mr. Peterson said the point is at the end of the day what would a person rather live in. Personally, he would prefer to have his own home with its own plot of land. He didn't want to share a party wall. He said in the present day, unlike in the 1980's, a developer had to think about the market place and make a viable project. He said he owned the property a long time and was waiting to bring the development to the right market place. He said it seemed to be the type of development people were asking for. He started the project over a year ago and had several conversations with the Planning Director. Mr. Peterson pointed out there was a lot of support for the project, such as the Fire Department, engineers and bankers etc. He said it was the perfect site and would be the only adult community in Town that had water.

Mr. Hennessey noted for the public that the term 'absorption rate' was the speed at which a property on the market got sold.

Mr. Hennessey reviewed the individual criteria with the Board. There were no questions/comments regarding the first criteria that the variance would not be contrary to the public interest. The second criteria referenced the spirit of the ordinance being observed. He

said the Board heard a great deal about the intent of the ordinance. He said the ordinance requires 30ft separation; the spirit related to why that was required. The applicant believed they should be granted an exception to the requirement because they would still meet the spirit. Ms. Guay understood the difference between the ordinance and the spirit. She said there was a certain thought that went into preparing the ordinance and input from all the people required a 30ft. separation. She said other than the applicant coming before them and speaking about their opinion regarding the spirit of the ordinance; the Board didn't have any other input, such as a letter from the Fire Department telling the Board that 20ft. would meet the spirit. Mr. Hennessey felt the applicant had shown the spirit of the ordinance because in the case the Board was looking at 4-plexes/6-plexes versus a 20ft. separation. The ordinance calls for a 30ft. separation between single family homes, but he said when the alternative is a 4-unit or 6-unit building, the lesser of two fell in the other direction.

There were no comments with regard to substantial justice. Mr. Hennessey spoke about diminution of surrounding property values, which he believed was a matter of opinion. He said Board received three letters of opinion. It was his feeling that abutting property values wouldn't be affected. He said the Board members had to decide if they felt the property values would be diminished because of the variance (to allow 20ft. versus 30ft. separation); not because of the project.

The Board discussed the fifth criteria relating to unnecessary hardship. Mr. Hennessey felt the applicant had shown that the ordinance for the particular property at the specific location there was not a connection between the general public portion of the ordinance and the more restrictive portion of the ordinance that would require 30ft. division between the properties. He believed they had shown there was an unnecessary hardship.

Mr. LaFrance felt the proposal was the best advantage for both the Town and the surrounding abutters. Through the nature of the project and the topography, he believed single family detached units would be better than having multi units.

Ms. Guay stated in looking at the project the designs of the homes were very attractive and the proposal had been well thought out. She noted that the Planning Board had proposed changes to the ordinance that would be going in front of the voters, which complicated the issue for her. She said she had a difficulty with placing her judgment ahead of the voters. She still had difficulty seeing how the property was so unique that the applicant couldn't meet the 30ft. separation requirement other than for financial reasons.

**BALLOT VOTE**  
**#ZO2013-00028:**

Mr. Hennessey – Yes to all criteria  
Ms. Paliy – Yes to all criteria  
Mr. LaFrance – Yes to all criteria  
Ms. Guay - 1) Yes; 2) No; 3) Yes; 4) Yes; 5b) No  
Ms. Culbert – Yes to all criteria

**VOTE:** (4-1-0) The motion carried.

**VARIANCE GRANTED**

**MINUTES REVIEW**

**December 9, 2013:**

**MOTION:** (LaFrance/Paliy) To approve the December 9, 2013 meeting minutes as written.

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

**ADJOURNMENT**

**MOTION:** (LaFrance/Paliy) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:27 pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary