

APPROVED

TOWN OF PELHAM
PLANNING BOARD MEETING MINUTES
September 16, 2019

Chairman Roger Montbleau called the meeting to order at approximately 7:00pm.

PLEDGE OF ALLEGIANCE

Secretary Cindy Kirkpatrick called the roll:

PRESENT: Roger Montbleau, Blake Clark, Cindy Kirkpatrick, Tim Doherty, Jim Bergeron, Alternate Paddy Culbert, Alternate Bruce Bilapka, Planning Director Jeff Gowan

ABSENT: Paul Dadak, Selectmen Representative Hal Lynde, Alternate Derek Steele, Alternate Samuel Thomas, Alternate Richard Olsen

Mr. Montbleau appointed Mr. Culbert to vote.

MEETING MINUTES

August 5, 2019

MOTION: (Culbert/Clark) To approve the August 5, 2019 meeting minutes as written.

VOTE: (6-0-0) The motion carried.

September 5, 2019

MOTION: (Culbert/Doherty) To approve the September 5, 2019 meeting minutes as written.

VOTE: (5-0-1) The motion carried. Mr. Bergeron abstained.

DISCUSSION

Mr. Montbleau informed the Board received a response from Town Counsel regarding a question raised at the previous meeting. During the previous meeting Mr. Doherty wanted to know if there was a way to ask voters if they would be willing to appropriate money to buy smaller homes that occasionally came up for sale; the Town could change the deed and resell them with a deed restriction of workforce housing. In summary, Town Counsel did not the idea of the Town purchasing homes at certain price points and reserving them for workforce-type housing. Mr. Clark pointed out Town Counsel found the idea interesting and had merit but not through the public sector. He also felt it was an interesting idea. Mr. Montbleau suggested fact-finding to see if anyone was using the approach. He asked Mr. Doherty if he would like to do anything else. Mr. Doherty replied not at this point in time. He felt Town Counsel's response to be a typical lawyer answer where they don't say it 'can't' be done and suggested it might be better if it was privately funded. In his opinion counsel didn't definitively give an answer.

Zoning Discussion

Mr. Gowan provided the Board and members of the public with draft amendments to the following:

- 1) Article XV – Residential Conservation Subdivision by Special Permit (workforce housing)
- 2) Article XII – Special Exceptions (pertaining to detached accessory dwelling units)

Mr. Clark noted during the Board's previous meeting Ms. Kirkpatrick asked for information regarding the current number of units within Pelham that would meet the affordability requirements. He called attention to the response submitted by the Assessor's office dated Monday, September 16, 2019. Ms. Kirkpatrick stated she was curious to see where the Town was in relation to the State's requirements to make sure they complied with workforce housing. Mr. Montbleau noted he asked for the number of accessory dwelling units ('ADU') that were available, and homes assessed less than or equal to \$350,000.

Using the Computer Assisted Mass Appraisal ('CAMA') system the Assessing Assistant Susan Snide informed there were 219 accessory dwelling units; approximately 277 potential rental units, and 136 apartments at market rate. There are 2,122 single-family and in-law units currently assessed at less than, or equal to \$350,000. Pelham has a total of approximately 4,600 homes.

Mr. Montbleau asked what number of units Pelham was required to have. Mr. Gowan replied in general the workforce housing law requires for workforce housing to be allowed in a majority of the zoning districts; he said Pelham did under Conservation Subdivisions. He noted the information provided by the Assessor reflected units that had already been built and were not part of 'available stock'. He said it depended upon what the Board wanted to do; either wait until regulations became tougher and the Town was sued by someone, or they could embrace the things they had discussed and put some incentives in the regulations to see workforce housing units get built. He hoped it was something that would happen and be on the ballot in March. Mr. Montbleau reiterated his question pertaining to what the State requires. Mr. Gowan replied he asked the Nashua Regional Planning Commission ('NR'C') to gather information. When the law changed in 2010 the NRPC conducted studies to see where their communities were in the process; the study was updated in 2014. He offered to send the Board a web link to the study. He said information from the Workforce Housing Coalition showed the maximum affordable purchase price for a workforce housing unit \$336,500 and the maximum affordable rent \$1,390/month. To get the conversation going he referenced the draft amendments to zoning provided earlier.

Mr. Doherty wanted to know what percentage of the housing in Pelham needed to be workforce housing by State standards. He didn't feel that information was discussed during the housing charrette. He believed they would find Pelham was presently well covered. Moving forward in the future he understood they needed to prevent successful lawsuits from developers occurring in the Town. Mr. Doherty pointed out he suggested last year to eliminate all density offsets within conservation subdivisions except in relation to workforce housing. He felt there were too many 'extra' houses being built within conservation subdivisions and one way to test if developers wanted to build workforce housing was to eliminate the other offsets. He stated he wasn't looking to see any kind of workforce housing development built in Pelham but understood they needed to cover the law and have some sort of provision for such in zoning. He explained if they didn't have a provision in zoning to allow for workforce housing to be built a developer would be able to successfully sue a town and build a workforce housing development. He said that development would then have a society stigma of (the residents) not making money (like other people). He said if workforce housing was spread out, as it currently was, people wouldn't be stigmatized by such. Mr. Doherty reiterated his suggestion to eliminate all density offsets except for building workforce housing.

Mr. Gowan informed the workforce housing law wasn't about what the Town currently had, it pertained to what they allowed moving forward. He said the Assessor's statistic wasn't irrelevant; however, affordable units don't ever come up for sale. He believed at some point there would be a legal test about the Town allowing workforce housing that shows it can't be built because of the way it's allowed. He said the Board could consider possibly not having entire developments as workforce housing but instead having mixed developments. He said the Board could do it anyway they wanted, or not at all; however, they had reached consensus early in the year they would work on a workforce housing ordinance. He suggested exploring some of the language to see if it made sense on some level. Mr. Montbleau replied he had spoken to some developers who indicated they would need to make a profit but with the high cost of land in order to make it happen there would need to be high density. He pointed out people move to Pelham for its rural ambiance and not to live next door to a tight cluster of development. He understood from attending the charrette how difficult it would be to get builders to want to

build at the specified price point even if allowances were given. Mr. Gowan felt there were ways to provide incentives within the regulation. He told the Board that the NRPC was in the process of doing an update assessment of community housing needs. He will share it with the Board when available.

Mr. Montbleau stated workforce housing was the number one item in the Board's list of priorities. He said the people had become quiet about the subject and there wasn't a lot of activity with people wanting to move forward with high density issues. He recalled Mr. Bergeron speak about detached ADUs and felt the Board may want to consider making provisions for affordable ADUs as workforce housing. He understood ADUs could be rented out. Mr. Montbleau asked if the Board wanted to start with language for detached ADUs and continue gathering facts for other situations that may work in Pelham for workforce housing.

Mr. Gowan noted ADUs where in Article XII-Special Exceptions. He told the Board he reviewed the ADU language and made proposed amendments based on previous comments by Board members. He read aloud the amendments (as provided to Board members and the public). Mr. Montbleau stated the amendments were simply a discussion opener and an example of what language could be included in Zoning.

Mr. Bergeron commented it was the first time he saw the language and felt the changes were good in a lot of respects. He felt the amendment made to Section I (ownership) should remain. He spoke in general terms about the proposed language and noted there were other sections of the regulations that would need to also be reviewed/amended if the Board was to accept the proposed amendments. Mr. Doherty pointed out if Section I was removed a person could incrementally build ADUs and sell them off. Mr. Bergeron stated the Board needed to understand the unintended consequences of the language in the regulations/ordinances. He pointed out the language would need to be approved by the voters. He saw that the ADU language remained, they were looking at language to allow detached units. He asked if the Board of Adjustment was currently allowing detached ADUs. Mr. Gowan only knew of one detached unit that was from years ago. Mr. Bergeron knew of several.

Mr. Gowan asked the Board how they thought about Section J; having the property owner occupy either the principal or ADU. Mr. Bergeron spoke about people who owned property in Pelham (or other areas of New Hampshire) while establishing legal residence in another state. He didn't want to restrict those owners from not being able to have detached ADUs. Mr. Gowan pointed out Section L required owners to send the Town a form attesting that the property owner resided in either the primary or accessory unit.

Mr. Doherty commented regarding Section G – interior doors. He said if houses were going to turn into apartment buildings by having ADUs the residents won't want a doorway between the primary unit and the rental unit; especially if the owner didn't reside in either unit. Mr. Gowan noted the language in Section G was a vestige of the old ADU language; they previously required an unlocked door between units. When the Statute changed the language was amended.

Mr. Clark recalled the State did away with the owner-occupy requirement in the latest RSA. Mr. Bergeron replied the section pertaining to this was RSA 674:71-73. Mr. Clark believed the 'owner occupancy' language was completely unenforceable; there was no recourse for the Town. Mr. Gowan believed if anyone was found in violation of Zoning the owner would be notified. The enforcement fell under the Selectmen's purview. Mr. Doherty referenced RSA 674:73 indicated 'a municipality is not required to but may permit detached accessory dwelling units' the language went on to say, 'these units shall comply with the requirements of RSA 674:72'. Because of the RSA requirement for an 'interior door' he felt they should ask legal's opinion about the language if they decide to allow detached ADUs. Mr. Bergeron noted RSA 674:73 was a separate statute. Mr. Doherty saw that it referred back to RSA 674:72. Mr. Gowan said it may be a defect; however, if municipalities are allowed to have detached units, they obviously couldn't have a common door. Mr. Bergeron pointed out since the ordinance was passed 2017 it had been amended possibly three times. He believed the 'ownership' language was removed to force any family members to reside in the units.

Mr. Gowan noted there was always some potential relief to any Town ordinance through the Zoning Board.

Mr. Montbleau stated he asked Mr. Gowan to put together language to initiate robust discussion. He's learned through the charette and other discussions that workforce housing is a very complex issue for every town. He said they had to take it in 'small bites'. He wanted to know if the Board wanted to start with ADUs; if so, there were small sections of the zoning that needed to be amendments. He said they weren't going to solve workforce housing as a zoning issue in its totality prior to Town Meeting. Being the number one issue, the Board wanted to work on, he was enthused to hear their thought process for how they could bring something forward. Mr. Gowan suggested the Board review the amended language in Article XV – Conservation Subdivisions. Mr. Montbleau felt the Board should think about the language that was discussed and forward their concerns to Mr. Gowan to be itemized for further discussion at their next workshop.

Mr. Doherty referenced and read aloud a section under the State's ADU law (#10 - page 464) that also referenced a town's obligation being met for workforce housing contained in RSA 674:58-4 and 674:59. He believed they should strike the language for 'owner-occupied' so the smaller section (ADU) could be rented. Mr. Clark questioned this would also allow an argument for condominium ownership to be allowed. Mr. Doherty replied an ADU couldn't be a condominium; and ADU had to be a single form of ownership. Mr. Gowan referenced #6 under the State's ADU law. He suggested the Board keep New Hampshire Housing involved as they were the arbiter to assess how language works regarding eligibility, price points, etc.

Mr. Bergeron questioned Mr. Clark if he wanted the condominium ownership to be retained or eliminated. Mr. Clark replied he wanted to know if it could be allowed under the RSA. He said if they eliminated Section I the ADUs would qualify as 'affordable' under the ownership model as opposed to the 'rental' model. Mr. Gowan referenced 674:72 (#1) and read a portion aloud as it pertained to condominium conveyance. Mr. Bergeron didn't feel the people in Town would be in favor of having ADUs with condominium-forms of ownership because it would destroy the character of the Town. Mr. Clark felt it would be a path to circumvent the rental price if it qualified under the ownership model.

Mr. Montbleau invited Steve Keach of Keach Nordstrom (Board's engineering review firm) to come forward to comment.

Mr. Keach felt the Board was having a robust discussion which was in the spirit of what they were trying to achieve. He encouraged them to continue their discussions because in their endeavor to create greater housing opportunities he felt ADUs had to be part of it if they were going to be successful. He discussed the concept of workforce housing and noted there was never a 'quota' for such. He explained the Statute required municipalities' land use ordinances and regulations create reasonable and realistic opportunities for the development of workforce housing, including rental housing. He said the challenge 'affordability' and how something could be built in today's environment that a private entity could make available at a price of \$356,000 or \$1,300/month (rental) and be induced to do it in hopes of making a profit. He noted the cost of vertical construction had increased by at least a third in the past nine years. Mr. Keach noted he serves as the Town Engineer and Planner for Sandown and discussed language he created for that community for affordable housing. A copy of the Sandown Zoning Ordinance (Article II, Part D – Open Space Development) was provided to the Board for review. He spoke about how it broadened the opportunity for other forms of housing to include two-family and multi-family in a format of either fee-simple or a zero-lot line arrangement. He pointed out the State Workforce Housing Statute requires reasonable and realistic opportunities; however, it doesn't require a municipality to cause a single unit to be built. He discussed the type of units built within Sandown. Mr. Keach believed Sandown's ordinance would fit nicely into the framework of Pelham's conservation subdivision ordinance to provide another opportunity. Mr. Doherty pointed out that Sandown was vastly undeveloped, unlike Pelham, which was almost entirely developed. Mr. Keach noted Windham had inclusionary zoning ordinance and described the location of that type of development.

Mr. Keach felt the ADU piece being discussed by the Board could be done under the zoning ordinance and may erase one of the immediate challenges because it worked within existing building footprints and volumes. He

thought the Board would get things right; if they didn't, he reminded them they could change it next year just as the legislature had done.

Mr. Bergeron wanted to know what Pelham had for stock so he could understand the potential and compare it to Sandown geographically. He noted Pelham was over the mean income and believed ADUs were a good place to start for housing. The Board was provided with a copy of Sandown's open space development ordinance to review. Mr. Keach noted he deliberately didn't use the term 'workforce housing' because he didn't want to stigmatize the ordinance. He said they were able to deliver it without naming it.

Mr. Doherty referenced RSA 674:59 regarding workforce housing that references taking existing housing stock in consideration when determining its compliance with 674:59. He read aloud a portion and felt it may help answer the question of if Pelham was in compliance. From what he read he believed Pelham was currently in compliance. As a starting point to the discussions, Ms. Kirkpatrick wanted to find out where the Town currently stood to help with any plans to move forward. Based off the numbers received from Assessing, Mr. Doherty believed Pelham had plenty of workforce housing stock. He didn't feel they needed to go out of their way at this juncture in time. He said the Board could do nothing and the Town would meet the law. Mr. Clark suggested getting Town Counsel's opinion.

Mr. Keach felt Mr. Doherty's statement was reasonable; however, noted the Statute really required reasonable and realistic opportunities for the development of workforce housing. He said this included multi-family (as defined in Statute as 5 units or more). Based on Pelham's Zoning, he asked the Board where someone could build a 5-unit building other than in the Mixed-Use Zoning District ('MUZD'). Mr. Keach believed that was the Town's only non-compliance. He suggested that may be what the Board makes a priority moving forward. Mr. Keach believed the ADUs (for rental) was a workable part for a long-term solution. Knowing the character of the Town, he wouldn't envision a lot of momentum or success if they were to advance an ordinance for a high-density residential district. He did however feel they would be able to do a little inclusionary zoning and incrementally add pieces, the Board might find success.

Mr. Montbleau thanked Mr. Keach for speaking to the Board. He stated he hadn't spoken to him prior to the meeting and believed he gave the Board a lot to think about and encouragement for being on the right track. With the information they learned through the charette and gathering/discussing information, he felt the Board had circled around the complex issues. He believed discussing ADUs was a good starting point and asked if there was a consensus to do so; members agreed, there were no objections. Mr. Montbleau felt it was important for members to think about what they heard. He asked them to forward any comments to Mr. Gowan so at their next workshop they could start organizing the bullet points to move forward.

Mr. Montbleau stated the workshop was strictly for the Planning Board; however, he wanted to spend 10-15 minutes hearing public comments if there were things, they wanted the Board to hear.

Ms. Jennifer Correa came forward. She told the Board she had lived in Pelham for approximately twenty years and had an accessory dwelling unit. She didn't feel the Town would be opposed to having detached ADUs. She believed there was concern that people would take a single-family home and change them into multi-unit buildings. She didn't feel there would be adequate septic and water to do so. She believed having that type of development would dramatically change the character of the Town and ability for surrounding homes to get the resources they needed.

Mr. Greg Smith, Mountain View Road told the Board he was a resident since 2006. He hadn't made any decisions about workforce housing and was still trying to understand what it would mean for the Town. He believed the changes being discussed could have a huge impact to the character of the Town, as many had moved to Pelham for its rural characteristics. He feared the process would be rushed in a way that made the voters feel they weren't being heard. He hoped the voters would take the time to hear all sides of the arguments. He thanked the Board for what they were doing.

Hershel Nunez, Webster Avenue told the Board he was a State Representative for Pelham and was encouraged by the conversation he heard. He said when workforce housing was first discussed a lot of people had things to say and social media went wild. He was glad to hear the Board looked at the current housing market, which could be included and complementary of the requirements for workforce housing. He felt the Board was on a good starting point and echoed Mr. Smith that voters needed to be very aware of discussions regarding changing the character of the Town. He wanted to make sure residents had knowledge of those conversations and the Board's workshops were advertised in the right way so people would have the opportunity to bring their thoughts forward. Mr. Montbleau stated the Board had no intention of changing the character of the Town. Mr. Gowan added the current meeting was the Board's first full workshop on zoning and anticipated at least a couple more. He added there was a specific schedule for when public hearings had to be set for zoning prior to Town Meeting. Mr. Nunez commented when the workforce housing law was put in place New Hampshire was working in a different economy than the present. The State has recovered from bad economic times; people have been able to settle into homes and places within the Town. Mr. Nunez stated a lot of people wanted to make sure Pelham didn't turn into Dracut, MA. with dense population which would make Pelham lose its rural feel and charming qualities.

Mr. Montbleau reiterated his request for Board members to send comments to Mr. Gowan regarding ADUs. He said the Board would schedule another workshop and craft something to move forward.

DISCUSSION

Kevin Cote (Selectman) came forward. He explained the Board of Selectmen received an Intent to Cut on an eleven-acre parcel on Valley Hill Road. The entity that came forward was looking to cut ten acres of such; on the back corner of the property was a ten-acre body of water. He stated there was no specification if the land would be clear-cut or what would be left behind. He spoke to the Conservation Commission and learned the entity had come forward with a proposed duplex. He thought it was odd the entity had met with the commission and not the Planning Board. Mr. Cote commented there were people in Town that were upset with how builders clear land and disregard its resources. He informed the Town had a new task regarding stormwater management (called MS-4) (Federal unfunded mandate). With this he had an idea for people to go through an application process and declare their intent (prior to cutting) if they wanted to clear more than one acre.

Mr. Cote located RSA 674:21 (Innovative Land Use Controls), section J that speaks to environmental characteristic zoning. He provided the Board with a document (and emailed a hyperlink) that outlined different ways zoning could be created. In talking to Mr. Gowan, the document also related to the MS-4 as it referenced erosion control, ridgeline development etc. He pointed out the State was interested in protecting vegetation and using it to filter water and control runoff. Mr. Cote told the Board that the State had decided that the ten-acre body of water (on Valley Hill) was no longer important enough to have a 250ft. setback, therefore the setback was 50ft. He believed the Conservation Commission was working to get the body of water recognized as a primary body of water. He suggested the Town consider increasing the setbacks to certain bodies of water.

Mr. Gowan said when Mr. Cote originally posed the question it reminded him of a non-public session on the topic of cutting. He didn't know how the Board was expected to approve a good project if it already had most of the trees cut; that takes away the Board's ability to be sure a project looks great and functions properly. He told the Board that Town Counsel had informed Mr. Cote's proposal could be achieved by dovetailing it into development regulations. He believed the document provided by Mr. Cote was 'on point' and noted there were items contained within that the Town had to do within the MS-4 requirements. He summarized the components he felt were relevant. He welcomed the opportunity to work with Selectman Cote and Town Counsel and draft a variation of the document for review. Mr. Montbleau was in favor of Mr. Gowan moving forward and wanted to know if the Board was also in favor. There was a consensus of the Board to move forward.

Mr. Clark inquired why the Board of Selectmen was involved with the clear-cutting. Mr. Cote explained anyone clearing a certain amount of timber were required to follow certain rules and file an Intent to Cut that gets signed by the Selectmen. Mr. Gowan noted the Selectmen have two weeks to process the document. He reiterated Town Counsel suggested the Town could include certain language in their regulations and modify the Intent to Cut to ask a person's intentions with their land. Mr. Cote wanted to get the process in front of the Planning Board so builders could be guided in the right direction to save resources. He said it had been pointed out that Pelham was close to buildout. Mr. Gowan differed with that opinion. He stated the Town was no where near buildout based on a study by Nashua Regional Planning Commission using current Zoning.

Mr. Montbleau suggested the Board consider the information they were provided and move to schedule their next workshop meeting. Mr. Gowan reviewed a proposed calendar for workshops, meetings and zoning amendment hearing dates.

Mr. Doherty questioned the discussion with Selectmen Cote and wanted to know what (rule) it fell under. Mr. Gowan explained Selectman Cote reached out to the Chairman knowing the Board's previous involvement with a tree cutting situation. He believed Mr. Cote was acting as an individual and not representing the Board of Selectmen. Mr. Doherty commented Mr. Cote wasn't representing the Selectmen and the discussion wasn't opened to the public. He said he would like to see him stay involved but inquired how the Board could allow it to happen. Mr. Gowan offered to work with Mr. Cote to see how language could fit in (with regulations) and bring it back to the Board and later to Town Counsel for opinion. He said during a Board meeting the Chair could open discussion to the public. Mr. Doherty questioned if it would be possible to have one or two Board members work with Mr. Cote, so they didn't have to wait to hear what was going on. Mr. Montbleau answered yes. Mr. Gowan said they could set time around people's schedule. Mr. Clark asked if it was as simple as forming "The Environmental Characteristics Zoning Subcommittee". Mr. Montbleau was open to doing so and asked who was interested in working with Mr. Cote and Mr. Gowan. Mr. Bergeron volunteered and spoke about an easy way to proceed with language.

Mr. Clark believed Mr. Doherty wanted clarification for how the Board authorized the conversation with Mr. Cote to happen. Mr. Bergeron said he intended to work with Mr. Gowan to draft language using the laws they had in place. Mr. Gowan suggested he also work with Mr. Bergeron on ADU language. Mr. Bergeron was in favor of doing so; given the existing language, he saw it as a simple process.

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

Not requested.

ADJOURNMENT

MOTION: (Culbert/Bergeron) To adjourn the meeting.

VOTE: (6-0-0) The motion carried.

The meeting was adjourned at 9:30pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary