

APPROVED
TOWN OF PELHAM PLANNING BOARD
MEETING MINUTES
February 24, 2022

Chairman Tim Doherty called the meeting to order at approximately 7:07 PM.

Ms. Masse-Quinn called the roll:

PRESENT ROLL CALL:

Tim Doherty – present
Roger Montbleau – present
Danielle Masse-Quinn – present
John Spottiswood – present
Sam Thomas - present
Scott Sawtelle – present
Paddy Culbert - present
Kevin Cote – present
Hal Lynde - present
James Bergeron – present
Jennifer Beauregard – present
Jennifer Castles - present

**ABSENT/
NOT PARTICIPATING:**

Cindy Kirkpatrick
Samuel Thomas

PLEDGE OF ALLEGIANCE

Case #PL2022-00005 - Pelham NH Council on Aging – 8 Nashua Road – Site plan review pursuant to RSA 674:54 for a courtesy review and non-binding comments regarding the construction of 4 asphalt Pickleball courts to be constructed on the grounds of the Hobbs Community Center.

Yvonne La Garde, a chairperson of the Council on Aging introduced herself to present this case. She said she was presented with a request to add pickleball courts to the Hobbs Center. A survey went out to over 700 people and the response to add these courts was overwhelming. A committee was formed with 15 people. She said that this sport is one of the fastest growing sports in the US. It is a low impact sport and is very easy to learn and play. She said that four courts can be created in the same size as a tennis court. She also said it is for all age groups. Lynn Hildreth introduced herself as an avid pickleball player. She said they decided the best place to put a court would be at the Hobbs Community Center. This location already has parking, bathroom facilities, centrally located, shade and enough room for four courts. She said all age groups are welcome and would encourage many people to come and play. Al Steward introduced himself as being on the council on aging and discussed talking with the NRPC on improving activities for the aging community. He talked about previously adding the pavilion to the center and that the pickleball project is similar in size. In June 2022, they plan on presenting the new pavilion and the shed to house the required equipment. He showed a relative size of a court to the committee and said it is 20 feet wide by 44 feet long, so it would allow four courts in the same size area as a tennis court. They are proposing to put this court to the right beside of the parking lot extension. The court is 60 feet wide

by 120 feet long. It will look north to south so that the sun isn't an issue. The Hobbs center and the parks and recreation departments could schedule sessions for days and evenings, which they currently already schedule events. They are placing this in a spot that would be minimally invasive to any abutters. They are looking for the town's support and would do the engineering themselves. He mentioned there is plenty of support for this.

Mr. Culbert asked what they would have for lighting. Mr. Steward said they will work this out with engineering and have three prospective designers. They would not likely need lighting now, but would assess that later on. Mr. Culbert said to make sure it is downward lighting. Ms. La Garde said it wouldn't be used after 10:00 PM at night. Mr. Cote asked if their intent was to get lighting. Ms. La Garde said yes, eventually they would like to get lighting. Mr. Bergeron said they are going to clear about 150 by 150. Mr. Steward said yes, that was correct. Mr. Bergeron asked if this is played during all seasons. Ms. Hildreth said when it gets too cold, they would play indoors. Mr. Bergeron said the placement looks good. Mr. Steward said they took the septic into account as well. Mr. Bergeron asked about outside of the paved area and would it be non-pervious soil. Mr. Steward said that's correct and it may be lawn for bystanders. Mr. Montbleau asked if the \$80,000.00 to \$100,000.00 included the excavation and tree cutting. Mr. Steward said his best guess is that it does include it, but they are waiting for permission before they start getting quotes. He said last year the pavilion was \$70,000.00 and they got that done in one year. Ms. La Garde said they have one bid around \$98,000.00, which included excavation. Mr. Montbleau asked if that was someone local. Ms. La Garde said no, but they would prefer to find someone local. She said they will contract it themselves and there are only about three trees that need to be removed. Mr. Steward talked to Jay Hoffman, and he would get him some names of local contractors. Ms. La Garde said they would write a RFP and put it out to bid as a non-profit group, as that is a requirement.

Mr. Doherty opened it up to the public. Mr. David Hazelwood, of 23 Windham Road introduced himself. He is an abutter to the back of this proposed project. He said a lot has changed over the 19 years since he's lived there. He is not opposed to this, but wants the lighting to be addressed. He is concerned about when trees get removed and he was wondering about buffering that was promised when the center puts up the pavilion. He said that nothing has been put in yet for that. He brought up when the medical center went in, they took trees down and now the woods behind his house are becoming scarce. He is worried about the trees becoming weaker and doesn't want them to fall down on his yard. Mr. Bergeron asked if his concern was a tree falling on his property. Mr. Hazelwood said that since the removal of the larger trees that he has been seeing trees fall down. He said he has seen the aftermath of other projects. Mr. Bergeron said he can assure him that the council on aging will address that. Mr. Doherty asked Mr. Steward to make sure Mr. Hazelwood's concerns get addressed. Mr. Steward said he would do that. Terri (inaudible) introduced herself as a resident of Pelham and an avid pickleball player. She is excited for this project and is looking forward to it. Mr. Doherty closed it to the public.

Mr. Cote commented about the lighting being shut off at 10:00 PM only if the lights poles are on the shorter side and being faced downward. He thought maybe 9:00 PM could be an option as well. Mr. Doherty asked Ms. Beauregard for any recommendations for this. Ms. Beauregard said that they are looking for the board's recommendations, suggestions and feelings towards this and that it would be non-binding. Mr. Doherty mentioned that they need to address the tree situation and the lighting to be used.

MOTION: (Mr. Bergeron/Mr. Culbert) To approve the non-binding, favorable recommendation for the construction of four asphalt pickleball courts, with the consideration that the council on aging for the abutters to address the tree situation and use appropriate lighting (dark sky lighting)

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

MEETING MINUTES

Regarding the February 7, 2022, meeting minutes, Ms. Masse-Quinn had the following changes: Line 103, change ‘Rout’ to ‘Route’. Line 107, change ‘spirt’ to ‘spirit’. Line 227, change ‘sewerage’ to ‘sewage’. Line 256, to remove the word ‘they’. Mr. Lynde and Mr. Cote agreed with that change as well. Mr. Doherty said Mr. Spottiswood would be voting on this.

MOTION: (Mr. Montbleau/Mr. Cote) To approve the minutes from the February 7, 2022, meeting as amended.

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

OLD BUSINESS

Case #PL2021-00032 – Map (s) 10 & 11 Lot (s) 13-2-1 & 13-3 - MAGIERA, Donald F. / Petersen Built Homes, LLC – Bridge Street (Rt. 38) – To permit the merger of 2 lots for a total of 37.5 acres and then to subdivide into 19 buildable lots consisting of 2 duplexes and 17 single-family dwellings. Also, seeking a Special Permit to permit 18,000 sq. ft. WCD impact for drainage pipe outlet for a conventional subdivision.

Mr. Joseph Maynard introduced himself, with Benchmark, LLC. Mr. Montbleau recused himself from this case. Mr. Doherty appointed Mr. Bilapka to vote and Mr. Sawtelle to vote for Ms. Kirkpatrick on this case. Mr. Maynard is here on behalf of Mr. Magiera and Petersen Built Homes. This case has been before this board multiple times already. He received a variance from the zoning board for the two lots that have direct frontage on Rt. 38 to be accessed off of the proposed driveway. There will be three different locations to handle drainage. Two special permit requests were taken care of at the last planning board meeting. At the last meeting, the board was concerned about the number of waivers being requested. He revisited the shape of the lots in question and was able to modify lot lines and areas. Regarding the building box waivers, he has now made all of the building boxes meet all rules and regulations. The next request was for seven lots that needed well radius waivers and now he has modified that so there are only two lots that need this waiver. One lot is for a well radius going over the shared driveway for the duplex lots. The second lot (Lot 7) is for the well radius encroaching on the side setback. He said there would be another K & A review on this regarding not having two test pits on every 4K area and they will need additional test pits and he will need calculations for their flow inlet rates.

Mr. Doherty opened it up to the public and no one spoke.

Mr. Steve Keach joined Mr. Maynard at the speaker. Mr. Cote asked about the waiver for 203-1 B. 4 and asked if that needed to be accepted for consideration. Mr. Maynard thought that had been accepted, but not acted on. Mr. Keach said Mr. Maynard tabled that because it affected seven lots and he has now got that down to only two lots for that waiver. Ms. Masse-Quinn confirmed the board accepted that for consideration on 1/20/2022. Ms. Masse-Quinn said the only two waivers that were approved were: 203-5 B.3 and 203-1A. Mr. Keach said that Mr. Maynard marked up a plan for both himself and Ms. Beauregard. Mr. Keach said Mr. Maynard did a really good job at making this plan more acceptable by modifying at least 40-50% of the lot lines. Mr. Keach said this is a much more compliant plan now. Mr. Keach said he wrote a letter with conditions for approval and a notice of voluntary merger for the two parcels of land and a performance guarantee for a public street. He said there is a special permit application that hasn’t changed for land in the WCD. He spoke of the 30-foot no cut buffer behind two homes. There would be a deed restriction on lots 2, 3 and 19 to prohibit them from seeking their own individual driveway permits. There is a shared drive that will need covenants to be reviewed by town council for approval for subdivision approval. He said there were remarks also from a review of this plan for compliance. He said he would agree with the planning director’s recommendations as well. Ms. Beauregard said that she had all of Mr. Keach’s remarks as well as some standard conditions that they

typically add. Mr. Doherty noted this new plan is much cleaner. Mr. Bergeron asked about the 30-foot no cut zone and would there be an exception to that in one place. Mr. Maynard said yes, for the utility line to the two duplexes to come in from Rt. 38 instead of up the private, access road. It will be overhead power lines, with one new pole set and then it will go underground. Mr. Keach asked if it would be a drop pole and Mr. Maynard said yes. Mr. Bergeron asked if it was going overhead. If so, they would need a waiver, but if it's not then they wouldn't. Mr. Keach said the utility companies wait for approval and then they do their install.

Mr. Cote asked on sheet 16, was there a threshold for why he did that about the fish and game notes. Mr. Maynard said they had to do a wildlife study and apply to Fish and Game and as part of that, they see what type of endangered species are within a two-mile circle within that property. He said they found that type of turtle, so he had to put it on there. He said it is becoming more common now. Ms. Masse-Quinn said on sheet 1, he still has 17 single families with two duplexes proposed, but on page 1, he is showing the original two duplexes with four added. She said lots 12, 14, 15, 17 all show single family or duplex. She is asking how this would be worded. Mr. Keach said he captured that by remarking it by letter, if he were to go there. Mr. Keach said if the board approves it, before Ms. Beauregard presents the drawings to Tim to sign, they would make sure that it would be fixed to one or the other. He said they don't need to concern themselves with that. He said on page 3 of his letter from 2/22/2022, he has that remark on comment 4, note 10.

MOTION: (Mr. Cote/Mr. Culbert) To approve the waiver for Section 203-1 B.4 for on-site water supply requirements.

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

Ms. Beauregard read off the following conditions:

1. Receipt of all State Agency Permits including: (a) NHDES Subdivision Approval; (b) a NHDES Alternation of Terrain Permit; and (c) a NHDOT Driveway permit and approval numbers be depicted on the recordable plan.
2. Execution and submission of a Notice of Voluntary Lot Merger.
3. Applicant to provide a performance guarantee, in the amount and form acceptable to the Town of Pelham, to serve as a financial surety for full and final completion of public improvements specified on the final plan in accordance with Section 204-2 of the Land Use Regulations.
4. Applicant to provide escrow funds in an amount estimated by Town Engineer, for costs associated with construction monitoring and inspection services.
5. Receipt of correspondence from Town Engineer acknowledging all comments and recommendations, offered in correspondence dated February 1, 2022, have been satisfactorily addressed.
6. Addition of a note to the final project plans acknowledging waivers granted by the Planning Board.
7. Receipt of correspondence from the Pelham Fire Department acknowledging favorable review of final plans.
8. Favorable review of draft declaration of covenants, easements, and restrictions by Town Council as well as provisions for maintenance of common access and utility improvements.
9. Imposition of a deed restriction requiring preservation or installation of a 30-foot no-cut/landscaped buffer along the easterly lines of Young's Crossing and Bridge Street on Lots 1, 2, 3 and 19.
10. Imposition of a deed restriction foreclosing ability of any future owner of Lots 1, 2, 3, and 19 to construct driveway access to Young's Crossing and/or Bridge Street.
11. As per the recommendation of the Conservation Commission, a seed mix containing both flowers and grasses be used to seed the detention pond slopes.

12. Final plans be revised to specify future lot numbers as assigned by Assessing Department.
(Added based on Mr. Keach’s latest letter).

Mr. Lynde asked where the house would go on Lot 12, on sheet 8 of 22. Mr. Maynard said there is a building envelope shown on Lot 12 on sheet 5. Mr. Lynde asked if the 4K area straddles the other lot. Mr. Maynard said the 4K is 10-feet off the road and 10-feet off the lot line. Mr. Bilapka asked about the well radius on Lot 5, it shows the 4K area on Lot 5 and if that was a typo. Mr. Maynard said the well radius touches the 4K, but does not go in it on Lot 5.

MOTION: (Mr. Cote/Ms. Masse-Quinn) To accept the plan for conditional approval with the conditions stated.

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

MOTION: (Mr. Cote/Ms. Masse-Quinn) To approve the Special Permit.

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

Mr. Culbert gave kudos to Mr. Bergeron for pushing back on getting that plan changed. Mr. Doherty commended Mr. Maynard for all his work getting the plan changed to be more acceptable.

NEW BUSINESS

Case PL2022-00002 – Map 34 Lot (s) 1-10-1 & 1-10-15 - MARSH ROAD, LLC – 166 Marsh Road – Seeking approval to change a single-family lot to a duplex lot, which meets all the frontage, acreage, and dimensional requirements. Also, to then re-classify from duplex to condex.

Ms. Masse-Quinn read the list of abutters. Mr. Doherty noted Mr. Montbleau rejoined the board. Mr. Doherty said that Mr. Spottiswood would vote on this case and Mr. Bilapka and Mr. Sawtelle will not be voting.

Mr. Joseph Maynard introduced himself with Benchmark, LLC on behalf of Marsh Road LLC in this application. This case came to the board in October 2021. Currently, there is a 6-unit building on the Marsh Road side of the lot. This lot became 3 acres, and the remaining 2 acres went with the multi-family home. As part of the noticing that went out on that case, it mentioned a single-family home and now his client wants to build a duplex and then convert that into a condex. The lot has about 69,000 s/f of uplands outside the wetlands, which meets the town’s duplex requirements. The lot can also maintain a 100-foot well radius outside the side setbacks. He has a photo of the plan included in his application. He isn’t sure yet if the garages will be attached or under for each unit. It makes sense to him that the right side have a garage under and the right side would have an attached garage, based on the terrain.

Ms. Masse-Quinn asked if they should have a full plan. Mr. Maynard said he only has an outside plan at the moment. Mr. Lynde asked if the abutters were noticed again or if they need to be. Mr. Maynard said they were re-noticed for this application. He also noticed all the abutters to the entire parcel just to be safe. Mr. Bergeron asked about the two well radius on sheet 2. Mr. Maynard said there are two well radius on there and he noticed that his 4K fell within the 100-foot radius, but he said he has ample room to make the 4K slide outside the 100-foot radius. Mr. Bergeron asked if this would be a six-bedroom system. Mr. Maynard said yes it would and it meets site loading for that criteria and there is ample room for that. He said his client wanted to make sure he can condex it before he buys the materials. Mr. Bergeron said they would need legal information as far as the condex situation. Ms. Beauregard said she would add on that he would need to submit condominium documents as part of the approval to be reviewed by town council. Mr. Culbert asked who would approve those documents. Ms. Beauregard said Attorney Rattigan would approve the documents and the plan itself would be approved by the Planning Department. Mr. Culbert said he wanted to see the condominium agreement before approval. He said his own condo documentation is lacking. Ms. Beauregard said that this board would be signing the plans that

get recorded at the registry. Mr. Maynard said to condex, they have to apply at the state level for approvals of ownership, so not only Attorney Rattigan will review and approve the documents, but the State of NH also would. Mr. Maynard said typically when he designs these condex's, he puts in separate well pumps, one for each unit and have separate septic systems for each unit. Mr. Culbert said he wants to see them. He also mentioned that it is good if the owners of each side put money into an account if something is to happen. Mr. Maynard said the only problem with that is that today's money is very different for what is going to happen in the long run. Mr. Culbert said again that he wants to see the condo documents. Mr. Bergeron asked if the 4K areas would stay the same with the six-bedrooms. Mr. Maynard said yes. Mr. Doherty said he is not a septic designer, but 4,000 feet is quite a lot. Mr. Maynard confirmed he has to go through that with DES anyways. Mr. Culbert asked if it becomes a 8K. Mr. Maynard said the state doesn't look at it that way and they just have to have a 4K area for the lot itself. He said it doesn't matter how many bedrooms it has. He said there needs to be 4,000 s/f of naturally occurring soil on a lot, so that a septic can function properly. Mr. Culbert said he wants to make sure the homeowner is protected. Mr. Cote asked if a duplex requires two acres for this reason. Mr. Maynard said that the zoning has been two acres forever. Mr. Cote said that two acres would give them the area they need for two separate systems and that would benefit both owners in his opinion. Mr. Doherty asked how many bedrooms were in the existing building. Mr. Maynard said it was six units and he thought it was four one-bedrooms and the other two units are two-bedrooms. Mr. Cote mentioned that sometimes the number of bedrooms doesn't equate to the septic size or number of people in the house.

Mr. Doherty opened it up to the public. No one spoke.

Mr. Cote asked if we needed to accept this for consideration.

MOTION: (Mr. Cote/Ms. Masse-Quinn) To accept this plan for consideration.

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

Mr. Spottiswood asked where the driveway would be for the two-acre lot. Mr. Maynard said it has frontage on Wilshire and it will depend on where they put the house and their garages. He said any driveway he would do would meet site distance per the town's requirements. He will need a permit from the highway department for any driveway he puts out to that street. He said it is not decided yet, but it will probably be a single driveway that splits off. Mr. Maynard said once the building is constructed, he needs to produce and certify plans that go to the registry, such as a site plan and a floor plan. The site plan defines the unit, driveway and common areas. Each side of a condex gets divided and areas are identified as common areas. Mr. Doherty mentioned a waiver for soils that needed to be acted upon. Ms. Beauregard said that was already acted upon. Mr. Doherty confirmed that the new business is to make a duplex lot as opposed to a single-family lot and also to reclassify the duplex to a condex. Ms. Beauregard confirmed that was correct. Mr. Culbert said he would like to see the condo documents. Ms. Beauregard said the only condition would be for the applicant to submit condominium documents and plans to be reviewed by town council prior to recording. Mr. Culbert said he would like to see the condo documents before approving. Mr. Cote said he did not feel that was necessary. Mr. Doherty said this board does not do that, as it gets done through the planning department and before the chair and the secretary sign the plans. He said that Mr. Culbert can go into the planning department and review them if he chose to. Mr. Bergeron asked if Attorney Rattigan ever asks for revisions to these documents. Ms. Beauregard said yes, almost every time. She said he reviews it against the plan.

MOTION: (Mr. Cote/Mr. Montbleau) To approve the plan changing it from a single family to a duplex and then have it as a condominium form of ownership with the condition the applicant submits condominium documents and plans to be reviewed by town council prior to recording.

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

Case #PL2022-00003 – Map 13 Lots 3-15-27 & 3-158-14 – HANEGAN, RICHARD AND LING, RACHEL & SCAPPATICCI JR., ANTHONY – 7 Grand View Road & 66 Sky View Drive – Seeking Planning Board approval for a lot line adjustment between 7 Grand View Road, looking to add .54 acres for a total of 2.01 acres, and 66 Sky View Drive leaving a remainder of 2.21 acres.

Ms. Masse-Quinn read the list of abutters. Mr. Culbert left the meeting. Mr. Doherty appointed Mr. Bilapka and Mr. Sawtelle to vote on this case.

Mr. Joseph Maynard introduced himself with Benchmark, LLC representing the two property owners that wish to adjust this lot line. He said Mr. Hanegan, who lives on the Grand View lot would like to acquire land on the Sky View lot. The family on Sky View are in the process of getting their home ready for sale. There is a line of trees that exist on the parcel and Mr. Hanegan would like to ensure that buffer will remain, so he has offered to purchase that portion of their property and adjust the lot line. Mr. Hanegan's lot is currently 1.47 acres, and the 66 Sky View is currently 1.75 acres. With this adjustment, Mr. Hanegan's lot would become 2.01 acres and the other parcel would be reduced to 1.21 acres. Both properties are already developed with single family homes, wells and septic systems.

MOTION: (Mr. Cote/Mr. Montbleau) To accept this plan for consideration.

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

Mr. Cote asked if he needed a waiver because the current lot line is a nice, rectangular shape and the proposed lot line change will create to a zig zag lot line (lot shape requirements). Mr. Maynard said the lots are still pretty rectangular in size with square building envelope areas. He said his client is mainly trying to keep the trees there. He wouldn't have been able to make the line straight as there is the septic area on the Sky View lot there, so he couldn't go over that without an easement. Mr. Montbleau said the placement of the houses are not changing and he doesn't see a problem with that. Mr. Doherty said these neighbors know where the property line is, and they are agreeing to it and didn't think that was necessary. Mr. Bilapka mentioned that he is also choosing to keep the trees there for privacy. Mr. Cote said he was okay with that. Ms. Beauregard said she thought that was a good point and she looked at the land use regulations and they do separate lot line adjustments from new subdivisions, so she felt like that waiver would fall under a new subdivision, not existing lots. Mr. Bergeron asked if the 200 feet of frontage that if being left on Grand View, was that 200 feet past the radius of where the road becomes straight again or has it been decreased to 172. Mr. Maynard wasn't clear on that. Mr. Bergeron asked if the frontage on Grand View had changed. Mr. Maynard said no, because wherever a driveway has access is where the technical frontage is on the road. He maintains 200 feet at those locations. Mr. Bergeron asked from which point does the radius end where he drew the southeasterly line. Mr. Maynard said he extends it out and due to the angle of the roads, it gives the frontage on Grand View more frontage. Ms. Beauregard said it could go either way, being frontage for Sky View or for Grand View and it works out either way.

Mr. Doherty opened it up to the public. Ms. Karen Birmingham, of 50 Sky View Drive introduced herself and she is directly impacted by this lot line adjustment. She asked for clarification if they adjusted her lot line, as she is directly behind these lots. Mr. Maynard showed the existing lot lines on his map. Mr. Doherty said nothing is changing on her lot, they are only changing the boundary line between their two parcels. Ms. Birmingham asked if their intent was to put up a new structure or to keep the land as is. Mr. Doherty said the intent is to keep the trees between the two houses. Ms. Birmingham agreed with that. Mr. Doherty closed it to the public.

Mr. Doherty said this was the first time he had seen that someone retroactively wanting to buy land to save trees. Mr. Doherty said there were no waivers or conditions for approval.

MOTION: (Mr. Montbleau/Mr. Cote) To approve the plan.

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

Case #PL2022-00004 – SULLIVAN, Richard & Iris – 20 Windham Road – Conditional Use Permit / Site Plan Review for a mixed use of Business & Residential uses in the MUZD. Seeking to further develop a 1.71-acre property to include a 39x70 building which will be used for an ice cream stand with office space, and a 2-bedroom apartment above.

Ms. Masse-Quinn read the list of abutters. Mr. Doherty appointed Mr. Bilapka and Mr. Spottiswood to vote on this case. Mr. Joseph Maynard introduced himself with Benchmark, LLC representing the Sullivan's. This case was at the board for preliminary discussion at the end of 2021. He mentioned his client's family operates other businesses like this one, therefore his client has gotten good input from them on how to operate this business. This lot is 1.71 acres with an older home and a garage currently on the property. This property has 204 feet of frontage on Windham Road, is in the MUZD district and a conditional use permit was requested for this property. The soils are exceptionally sandy and well-draining on this lot and Pennichuck water is available on the street. His client is looking to develop the property with an ice cream stand where they will make the product there. It will have about 312 s/f of office space and about 850 s/f will be a residential living space on the second floor of the structure. He added the residential component due to pushback at the last meeting because he didn't initially have that. There will be parking for about 36 vehicles, 24 of which, are required with the proposed uses. There will be a small gravel area for future, seasonal overflow traffic. He will create an infiltration pond for drainage on the southerly side of the property. Regarding the septic, it would be a clean solution system to handle all of the wastewater and he would install properly sized grease tanks prior to filtering through the system. He is proposing four post lights for the lighting. All of this lighting meets the town ordinances. There are two signs being proposed and he showed the board. One sign would be free standing and the other would be a building-based sign. At the prior meeting some abutters spoke and due to that, they've incorporated arborvitaes to plant in rows in two spots to help buffer this building from their properties. There would be a waiver for site specific soil mapping and this property is considered urban land, which is disturbed. They've done test pits and they are conducive to the design criteria. The next waiver deals with the pedestrian walkway and from the last meeting he thought the state was planning to create a sidewalk in that area. The next two waivers deal with parking, and they are proposing two rows, one with 22 cars and the other for 14 cars. The ordinance says if there are more than 20 cars in a row there needs to be an island in the middle to break it up. In this plan, it is such a short length, so it wouldn't really serve a purpose. This could be adjusted with the gravel section that could handle some of those cars. Another waiver is for the paved parking requirement and the bulk of the parking is proposed to be paved with the exception of the small gravel area. That area may not be put in right away. The last waiver deals with landscape architecture. The site plan is small, and they worked with the owner on planting locations and neighbor buffering. He chose plantings that have been used in this district as part of this plan.

Mr. Montbleau asked if this was the same Sullivan's from Tyngsboro and Mr. Sullivan said yes. Ms. Masse-Quinn questioned the square footage of the building. Mr. Maynard said the square footage includes the stand, walk in freezer, office space and manufacturing space. Ms. Masse-Quinn said it is taking up 89.5% of the downstairs area. Mr. Maynard said yes, it is taking the bulk. She said the office is about 10.5%. Mr. Maynard said the office space is to do the bookkeeping. Ms. Masse-Quinn asked what the purpose of the large square footage of the building and asked if they are making their own ice cream there. Mr. Maynard said yes, they would be making their own product. Mr. Sullivan said it is a stand and the production process takes up a big area. He also said half of that is for the service of the ice cream and the other half is for the production. There are also large walk-in freezers for storing the ice cream. Ms. Masse-Quinn asked what the square footage of the apartment would be. Mr. Maynard said approximately 850 square feet. Ms. Masse-Quinn asked what is below the apartment. Mr. Maynard said that is part of the ice cream stand and this is a two-story building. Ms. Masse-Quinn asked if two parking spaces would be allocated for the apartment and two for the office. She asked why the ice cream stand needed almost 32 parking spots. Mr. Sullivan said from his experience that is what they require, as one of his family's stands have about 40 spots and the other about 15-20 and that overflows in the summer. He said there are

two other stands; one in Tyngsboro and one in Chelmsford. Ms. Masse-Quinn asked if there was a road going behind the building. Mr. Maynard said that is more like a driveway for deliveries to the back. Ms. Masse-Quinn asked if they would have loading trucks go there. Mr. Maynard said they are not 18-wheeler type trucks, they are more like box truck delivery trucks (similar to UPS or Fed EX).

Mr. Montbleau asked if there would be an indoor parlor and Mr. Sullivan said no. He said you order at the window and eat outside or go home with it. Mr. Montbleau asked about lighting. Mr. Maynard said that is shown on sheet 4. Mr. Montbleau asked about the existing house on the south side of the property, and he asked what kind of buffer would go there. Mr. Maynard said he put a row of arborvitaes on that whole side. Mr. Montbleau said their house is very close to that lot line and he said they really need a good buffer, at least a seven-foot minimum hedging planting there. He recommended they take that all the way back to the back property line and wrap it around the front to the road to create a definite barrier. He thought it was a great spot for this. Ms. Masse-Quinn said she loves ice cream, but thought it was too big of a project for that space especially being so close to the abutters. She said that it would create a lot of traffic there and would increase the trucks coming in and out of there and respectfully disagrees. She didn't think it was a safe spot and said that Mossey Lane was right there, and the Urgent Care is there as well. Mr. Maynard said this is a state road and the NHDOT has even stricter guidelines than the town, so they would ensure good sight lines and this spot has more than even DOT requires for visibility in both directions. DOT requires 440 feet minimum, and he is past that in both directions at this site. He said the road is more than ample to handle the traffic for this site.

Mr. Montbleau asked about the delivery trucks. Ms. Masse-Quinn said that when she first thought of this, she imagined it would be small and quaint and after looking at the plans, realized that the size being 2730 s/f for an ice cream stand was larger than she thought. Mr. Doherty said in the MUZD they don't allow drive throughs, and this is not that, but is close due to people coming in and out. Ms. Masse-Quinn asked if the ice cream that is made there would be shipped to their other locations. Mr. Sullivan clarified that he would own this stand completely separate and would not deliver or produce for other ice cream stands. Mr. Cote asked if they had a design of the outside of this building. Mr. Maynard said he had a picture of the building on sheet 9. The ice cream stand would be on the lower level and the apartment on the second floor. Mr. Cote mentioned that right up the road there is a general store going in, under the 16-unit apartment building on 52 Windham Road. Ms. Beauregard confirmed that. Mr. Cote said the board approved that and that is in and out traffic as well as this. Mr. Montbleau said in his opinion the MUZD was designed for this type of business and have townspeople be able to walk to this. He said other Sullivan ice cream stands are superior with the products they produce. He said that this type of business equates to hometown Main Street USA with children and people getting ice cream and it also accomplishes obtaining more housing units and he thinks it's a plus and not a problem. Mr. Cote said that just around the corner a building went up and there was talk in town that a bakery would go in. He said many of the townspeople were happy and talking about that. He said with this ice cream stand, that is also the case. Mr. Lynde said the seniors are looking forward to having a sidewalk between the senior center to the medical center and as a Selectmen he said that was a good idea and this could tie into the sidewalk portion of that.

Mr. Bergeron asked what the hours and days of operation are. Mr. Maynard said it would be open seven days a week and the hours would be 11:00 AM until 10:00 PM, but his client is open to discussion. Mr. Spottiswood asked if they would only serve ice cream and no food. Mr. Sullivan said he would have hot dogs or grilled cheese, but nothing more major. Mr. Montbleau asked if he could operate by closing at 9:30 PM. Mr. Sullivan said yes but thought the 10:00 PM close would only be during peak season. He said not a lot of people come between 9:30 and 10:00 PM, but he just wanted that option during the peak summer months. Mr. Montbleau said that by closing at 9:30 PM people will make an effort to be there early. Mr. Maynard pointed out that peak traffic travel hours are typically in the morning between 7:00-9:00 AM and this wouldn't be open then. The peak other times are between 4:00 -6:00 PM and some

traffic may be at that time, but the bulk of traffic in this business would be outside of the peak hours. Ms. Masse-Quinn said she still couldn't wrap her head around the size of the building. She mentioned Peach Tree Farm ice cream being small. Mr. Maynard said that was because they don't make their product there, it gets shipped there. This stand would make their product here, so they need that extra room.

MOTION: (Mr. Cote/Mr. Montbleau) To accept this plan for consideration.

VOTE: (6-1-0) The motion carried. Mr. Bergeron voted No.

Mr. Doherty opened it up to the public. Mr. David Hazelwood, of 23 Windham Road introduced himself. He said he loves ice cream, and his house is right across the street from this lot. He said his house has no insulation and he constantly hears talking and noise from the center. He said this stand will be built right in front of his house and is concerned about the eating area being right in the front. He is concerned about the traffic coming in and out and doesn't feel that it is fair to him, being an abutter. He is concerned about noise, lights, traffic and speed of vehicles. He mentioned that now the American Legion is open to the public and now serving breakfast on Sundays and wasn't aware restaurants were allowed in this zone. He said when he brought his house, there were only houses around him and now it is not the same. He thought mixed use meant to have an in-home office, not an actual 7 day a week business. He said he contacted Mr. Maynard for some type of buffer in the front of this business. He said he has to sleep with a white noise machine so that he can sleep at night. He is concerned about people walking on Windham Road with all of the traffic. He is looking for more privacy to the front of him, if this goes through. Mr. Doherty asked Mr. Maynard why the location of the building is so close to the road and Mossey Lane as opposed to more towards the back of the lot. Mr. Maynard said it is a ways back from the road and has an outside seating area. The septic system is between the seating area and the retaining wall at the street. He said it is back towards Mossey Lane because that is where the water pitches towards the detention pond, and it already flows in that direction. If he tries to reverse it, he won't be able to get the water to flow that way. He said this is roughly where the old house sits now. Mr. Hazelwood said if he could move the outside seating area to the area behind the covered porch area on the side so that the people would be looking toward that side and not his house. Mr. Maynard said the seating area really can't be moved due to where the detention pond is going and the parking space requirements. He said he could pull the building closer to the street and make the seating go behind the building. Mr. Maynard said he could add additional landscaping on the frontage of the street to help buffer it. Mr. Doherty said that would help with the noise. Mr. Maynard also mentioned this is a state road and there already is a lot of motor noise on this road to begin with. Mr. Montbleau asked if they would plant seven-foot arborvitaes across the front of this as well as on the side. Mr. Maynard said then it will not be visible. Mr. Montbleau said on sheet number four, between the first and second circle he could plant arborvitaes there and said that it would make it more tasteful and charming. Mr. Sullivan said that was his intent with the outdoor seating, to landscape it with some trees and shrubs.

Mr. Doherty said that an abutter sent in a letter. The abutter's letter, read by Ms. Masse-Quinn, was opposing this case, was from a Frank and Cindy Kirkpatrick, 7 Mossey Lane, dated February 22, 2022. This letter is contained within the file, as Attachment "A".

Mr. Chuck Rossi of 25 Brandy Lane introduced himself as an abutter at 15-17 Windham Road. He owns the Moon River Wellness Center and wanted to say that him and his wife have no concerns on this project and would like to see it move forward. Mr. Doherty closed it to the public.

Mr. Spottiswood asked how many parking spaces were proposed on the future gravel parking area. Mr. Maynard said there are ten proposed spots. Mr. Spottiswood asked what they would do to prevent people from parking in there now. Mr. Maynard said right now it is lawn, not gravel. He said he wanted to include it in his drainage calculations so he wouldn't have to go expand upon his future drainage measures. The waiver request is to leave it gravel because in the summer he may need that for overflow

parking. He said this lot has good development potential. He said there is a good amount of wooded area that would remain on this property. Mr. Doherty asked what the terrain is like between the gravel section and the church parking lot. Mr. Maynard said the lot is flat. Mr. Maynard said the church playground is fenced in and Mr. Lynde said it is no longer fenced in. Mr. Maynard said someone could theoretically walk through there.

Mr. Bergeron mentioned the letter from Ms. Kirkpatrick had to do with how the MUZD district came about. He said he thinks the planning board could do a better job of helping the people that live within the center of town. He said the former business on this property was an Attorney's office. The MUZD district was adopted as an innovative land use regulation and not a zoning regulation. This board has the total authority of that. The idea of this was to protect and preserve the historical architect and culture. This was not to create a new commercial, business district and overrun the residential homes with businesses. He feels that this does not represent the spirit and intent of the MUZD district. He feels that this will trigger a repeal of the MUZD district. He said this is a high impact business being seven days a week. He has concerns about it being so close to the rotary and can see issues with traffic at this place. He said the building appearance is not traditional New England style and feels that it is unacceptable. He said that lot 22-8-122 will have no quality of life with this project. He finds this to be contrary to the town's MUZD spirit and intent. Mr. Cote asked what the intent of the MUZD is then. Mr. Cote said an ice cream stand is about as New England as it gets. He said this is a small business with a residence in it and said the current house that is there most likely needs to be taken down anyways. He thought that the design of the outside has New England characteristics to it and the other Sullivan ice cream stands are designed in the same New England farm style. He said he feels that this completely fits into the intent of the MUZD district. Mr. Bergeron said this type of business belongs in the business district of town and there are other properties that could fit this business. He said the idea is to have low impact business in the MUZD and an example of a business allowed is a restaurant. Mr. Doherty said a Dunkin Donuts is a restaurant, but they wouldn't allow that. Mr. Bergeron mentioned they just approved a MUZD district, but that was abutted by a brook and a hair salon and an elderly housing community. That did not affect any abutters. He felt that was suitable in the MUZD district. He also said they often times turn these things down initially. He felt that the abutter across the street would be very negatively impacted. He said the residents in the MUZD deserve a better level of protection. He felt that this was too impacting on this location. Mr. Cote said the property that is two houses from this with a 16-apartment complex and a general store going in, then if that got approved, how is this not going to be approved. Mr. Bergeron said he became a member of this board due to the disasters that previously happened in town. Mr. Cote feels that this is less of an impact that the project going in up the street. Mr. Cote asked what would happen if they kept the building footprint the same. Mr. Maynard said this presented project is smaller than what is there now. Mr. Bergeron asked how many people come in and out of a lawyer's office all day. Mr. Maynard said this area has the Legion that is open all hours and the medical center also. Mr. Bergeron feels that this is a high impact, fast turnover business, seven days a week, 365 days a year.

Mr. Montbleau said as much as he would love to have this come into town, after listening to Mr. Bergeron he realized this is not the right spot. He said the business would do very well but would impact the neighbors too much. Mr. Doherty said this would be a high impact, high turnover business, which was not what the MUZD was all about. Mr. Montbleau said he agreed with Mr. Bergeron's points. Mr. Montbleau said the wellness center across the street is a softer type of neighborhood business, which he thought was a great addition.

Mr. Cote read the spirit and intent, purpose of the MUZD, from the zoning ordinance. 1) Allow the traditional mix of residential, business, governmental and institutional uses within the district 2) Accommodate retail service and other business uses on the ground floor and residential units above or adjacent to the non-residential space 3) Promote Pelham center as a vibrant, community gathering place 4) Implement sidewalks or pathways to provide pedestrian access, connectivity and safety 5) Provide

increased and more varied housing types and business opportunities. He said he feels that this fits into the purpose and intent.

Mr. Maynard asked to be continued so that he can get some traffic numbers to the board and come back and talk about the impact. When he first came to the board with this plan, the board wanted them to add a residential component to this building, which he did add that. Mr. Bergeron said his inference then was a low-key, owner-occupied business. Mr. Maynard mentioned that Wolfeboro has three ice cream stands within a 200-foot area. Mr. Bergeron said that doesn't compare to Pelham. Mr. Cote asked anyone for an example of an owner occupied governmental or institutional use. Mr. Bergeron said the MUZD district is beginning to destroy the center of the town. Mr. Cote said the ordinance does not say anything about being low key, owner occupied. Ms. Masse-Quinn said that the ice cream isn't the problem, it is the location. She said to take his ice cream place and move it down the street. Mr. Doherty stated that it's a prohibited use from the MUZD district. Mr. Sullivan said he doesn't own those properties down the street. Ms. Masse-Quinn said that area is a high traffic area coming off the rotary. Mr. Cote said it is a Class 4, state highway. Mr. Maynard asked if Main Street is further away from the rotary. Mr. Cote and Mr. Maynard said that's about the same distance. Ms. Masse-Quinn said Mossey Lane has three houses on it and a direct abutter across the street and feels the location is a problem. Mr. Bergeron said it is a good idea in a bad place. Mr. Maynard said the town does have the jurisdiction on a town road, but this road is a state highway and is governed by the State of NH. They review this to a different scrutiny, even more so than this board would. Mr. Sullivan said this would be a seasonal business and would be closed during winter. The other locations are closed from the middle of December until the end of February.

MOTION: (Mr. Bergeron/Ms. Masse-Quinn) To not approve this plan, because it is not an allowed use in the district.

VOTE: (6-1-0) The motion carried. (Mr. Cote voted No).

ADJOURN

MOTION: (Mr. Montbleau/Mr. Bilapka) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:38 PM.

Respectfully submitted,
Jennifer Castles
Recording Secretary

ATTACHMENT “A”

February 22, 2022

Chairman Doherty
c/o Interim Planning Director Jenn Beauregard
Town Hall
6 Main Street
Pelham NH 03076

RE: Case PL2022-00004, 20 Windham Road

Dear Chairman Doherty,

My name is Cindy Kirkpatrick, 7 Mossey Lane. I’m writing on behalf of myself and my husband Frank Kirkpatrick III since we are both unable to attend this week’s planning board meeting. We ask that this letter be shared with the entire Planning Board members and read into the minutes at the February 24, 2022 Planning Board Meeting.

We are opposed to this proposed project. While we love the idea of an ice cream stand in Pelham, we do not think 20 Windham Road is the location for a business of this size. Since the conceptual discussion back in September 2021, we’ve had time to think about the impact this proposal would have on our family and our surrounding neighborhood.





We’ve lived here since 2007, which was before the MUDZ was created. We love being close to the center of this charming town. We never saw a need to build up this area when Rt. 38 was nearby. A business such as this one that will draw high volumes of traffic would be better located in the business district along Bridge Street/Route 38. It does not belong in a neighborhood that has already seen its share of major changes in the last ten year. Our small lane continues to get squeezed. Below are some of the changes that have taken place on this small stretch of road just past the roundabout:

- In 2012, 33 Windham Road was sold, a single-family house was torn down, the lot was cleared, and the Pelham Medical Center was built. This project took place prior to the creation of the MUDZ. The home was built in 1800 and needed demo or major rehab. We would have preferred this home be replaced with another. The medical center is a nice addition to our town, but there was plenty of buildable land available along Route 38 for something this size. Had the ZBA not allowed a change in use perhaps we would have a family living there instead of a business bringing lots of traffic to the area. I believe this project was the driving factor in the Planning Board drafting the MUDZ ordinance.

33 Windham Road - Before	33 Windham Road - Now
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- In 2015, 52 Windham Road was sold to developers and the first MUDZ project went before the Planning Board. As direct abutters we were opposed to this development, but in the end the Planning Board approved a sixteen-unit residence and a separate commercial building. In November 2020, the small house with ADU was torn down, the wooded lot was cleared, and a huge apartment building consisting of 16 two-bedroom units has been built.

52 Windham Road - Before	52 Windham Road - Now
	
View from the back of our house - before	The view now
	



- A 3500 sq. ft. commercial building with approved apartment unit above is still yet to be built on this property.



- In 2019, 15-17 Windham Road was sold. Prior to the sale, an automotive shop was doing business in the garage. This project has been the least disruptive to our neighborhood. The house was kept and is now a rental property.



- The large garage in the back was converted into Moon River Wellness Center. In our opinion the conversion of the garage has improved the look of the existing building.

17 Windham Road - Before	17 Windham Road - Now
	

In addition to the above changes to our neighborhood, we also feel that traffic is already hazardous in this area. We come close to being rear-ended at least several times a week while slowing to turn onto Mossey Lane. Impatient drivers constantly honk or pass on the double yellow line because we're trying to safely turn onto our narrow lane. Adding a business that will have parking for 36 cars, plus plans to extend parking for even more cars is dangerous. This type of business will also see an increase in foot traffic with people (especially children) coming from the Village Green and Lyons Field area. Cars already fail to stop at the pedestrian crossings although there are road markings and signs reminding drivers that it's the law. Adding children crossing at the roundabouts with the speeding vehicles is just a recipe for

disaster. Also, sidewalks do not extend down from the roundabouts to this location so pedestrians will have to walk on the side of busy Windham Road/Rt. 111A.

Please see the attached images. We've labeled the locations addressed in this letter. There are already many driveways and parking lots with entering and exiting traffic on this stretch of Windham Road. Soon 52 Windham Road will be adding even more with their tenants and commercial property tenants and customers.

We'd like to recommend a site walk at this location. While you all may be familiar with driving by this area, a site walk would allow you to see for yourselves the following:

- The amount of traffic in this area and the speed in which vehicles travel on this stretch of road. We also recommend a traffic study be conducted here prior to any voting on this project.
- Locations of all the driveways and parking lots that already exist near this property.
- Lack of sidewalks for pedestrian traffic to safely travel to this location from Windham Road or the center of town.
- On Mossey Lane:
 - See the home improvements currently underway at 4 Mossey Lane. Note that their new farmer's porch on the front of their home will have them staring at the back of this proposed new building and parking lot. Such a disappointment after the time and money the Belangers have spent to build this addition to their home.
 - Check out the massive building behind our home that was formerly our back neighbor's wooded lot.
 - See that from our front windows or yard, we'll be looking at the back of this proposed ice cream shop.
 - Notice that we're already abutters to the America Legion and in the warm weather months we must listen to many of events held outside under the pavilion.
- Take a walk around the property and envision what this project would do to the residents at 12 Windham Road. This project would sandwich this home between the church parking lot and the parking lot of the ice cream stand. This will take away any sense of privacy or peace and quiet for these residents.
- Look across the street from this project and see that our neighbors at 23 Windham Road are already sandwiched between the wellness center and urgent care with the American Legion across the street. This project would have them completely surrounded by commercial businesses.

We don't believe it was the intent of the authors of the MUZD to have homes torn down and replaced with businesses or create non-stop construction to disrupt the lives of existing residents in this area. We are so tired of hearing the beeping of construction vehicles or feeling our house shake from all the recent construction. These projects not only tear down houses but are also taking away from our neighborhood and our feeling of community. In writing this letter it was sad to think about what this area used look and feel like. It was a lovely neighborhood near the center of town when we moved here 14 years ago. Now we feel like we live near a few homes sprinkled within a business district. We ask that the Planning Board kindly vote no on this project and preserve what is left of our neighborhood.

Thank you for your time and consideration.

Best regards,
Frank Kirkpatrick III and Cindy Kirkpatrick