

APPROVED

**TOWN OF PELHAM
PLANNING BOARD MEETING
February 19, 2015**

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

The Secretary Paul Dadak called roll:

PRESENT: Peter McNamara, Roger Montbleau, Paul Dadak, Paddy Culbert, Tim Doherty, Alternate Mike Sherman, Planning Director Jeff Gowan

ABSENT: Jason Croteau, Selectmen Representative Robert Haverty, Alternate Joseph Passamonte

Mr. Sherman was appointed to vote.

OLD BUSINESS

PB Case#PL2014-00032

Map 28 Lot 2-12-3

MAMMOTH FIRE ALARMS REALTY TRUST - 112 Marsh Road - Applicant is seeking to make a change to a plan that was approved July 21, 1997 (Recorded Plan #28882). The plan shows the Wetland Conservation District buffer increased from 50ft. to 75ft. The applicant requests that the setback be changed back to 50ft. to enable the owners to construct an addition on an existing garage.

Mr. Peter Zohdi and Mr. Shayne Gendron of Herbert Associates came forward to discuss the proposal. Mr. Gendron summarized the proposal. When doing a certified plan they found that the original recorded plan showed a 75ft. Wetland Conservation District ('WCD') buffer. The applicant was seeking to locate a garage within the 75ft. buffer, but would maintain a 50ft. buffer to the edge of wetland. Also, as part of the application, a Special Permit was submitted. Mr. Gendron stated during one of the previous meetings it was brought up that a propane tank was located within 50ft. of the edge of wet. He believed utilities were an allowed use within the WCD. Being a propane tank (liquid gas), they believed there was no chance of contamination to the wetland or ground water. They felt moving the tank would cause more disturbance than leaving it in place, given it was located in a well-established area. Mr. Gendron understood a complaint had been filed with the Town regarding activity in the WCD area. The applicant has addressed the issues. The Board was provided with a copy of a letter from the Town Code Enforcement Officer stating the applicant had done due diligence to take care of any issues.

In regard to the propane tank, Mr. Doherty reviewed the Town's Zoning and researched the toxicity factors of propane to determine if it would be a permitted use. He learned from information on the Environmental Protection Agency's ('EPA') website that propane was not toxic. The EPA controls propane for fire protection, so Fire Departments will know it's at a particular site. He looked into these things to understand if removing the tank and line would do more disturbances. He reiterated it wasn't a toxic substance. He provided the information for the record. He also provided a list of substances the EPA classifies as toxic. He noted the Town's Ordinance states toxic substances aren't allowed in the WCD.

Mr. McNamara read aloud a letter (dated November 17, 2015) submitted by the Conservation Commission. The letter indicated the Conservation Commission voted (4-0) to recommend the Planning Board deny the

proposed plan to reduce the WCD from 75ft to 50ft. and construct a garage at least until the applicant has corrected the multiple WCD violations.

Mr. Doherty commented recreation was a permitted use in the WCD. He noted if the recreational use was emitting toxic substance than it wouldn't be consistent; however, the items listed in the violation are commonly done throughout the ponds and streams in the Town (i.e. boating, snowmobiling, motorcycling). He didn't feel the applicant should be singled out and not allowed to do something (such as boating) when everyone else could. Mr. McNamara believed the question raised during the site walk was if the boat could be left in the WCD. Mr. Doherty didn't find a reference in the ordinance to leaving a boat in a WCD.

Mr. Gowan added his opinion as Zoning Administrator that a boat could not be stored in a WCD. It was also his opinion that propane tanks were not covered by the language was what is covered by a Special Permit. He will put that opinion in writing should the applicant or abutters wish to challenge that interpretation. Mr. Gowan stated that the Board saw Special Permits for utilities in the context of subdivisions/projects and things of that nature; typically associated with road drainage. He didn't believe the Board had the authority to issue a Special Permit for the propane tank.

Mr. Gendron called attention to a new plan given to the Board that correlated with the Conservation Commission comments. They were proposing a new buffer that would take up a lot of the area that had been disturbed. The existing gravel area would go away and be grassed/seeded; there would no longer be storage in that location. A mixture of natural plantings (not within the beaver's diet) will be done to re-establish a WCD.

Mr. Zohdi asked that the Town Code Enforcement Officer's letter of January 29, 2015 could be read into the record. Mr. McNamara read the officer's letter aloud, which thanked the applicant for coming into compliance in regard to the WCD violations that were observed January 15, 2015. Mr. Gowan added that the applicants were very responsive to the Code Officer's inquiries about WCD issues brought forward by a neighbor. He wanted the Board to know that WCD compliance was his decision and although the applicant was cooperating, if the Board were to consider approving the request to reduce the setback, conditions could be included such as removal of the propane tank, boat and inclusion of plantings that would prevent snow plowing or impervious surfaces. Alternatively, the Board could take no action, which would make the situation a Zoning Board item.

Mr. McNamara questioned if the applicant intended to leave the boat in its present location. Mr. Zohdi answered no; during the site walk, the applicant indicated he would move the boat and clean the area. He added if the Board approved the proposal, a condition of approval could be moving the boat. He noted any code violations were separate from the present discussion. The applicant was requesting a 50ft. WCD setback. Mr. Gowan told the Board that the applicant had addressed some of the items that could be done given the amount of snow fall during recent storms.

Mr. Dadak recalled a question about the access for the proposed 30ft.x30ft. addition. He wanted to know where the access would be located. Mr. Zohdi stated access would be southeast, where the existing garage doors were.

Mr. McNamara stated the matters in front of the Board for resolution were: 1) if the WCD buffer would be reduced from 75ft. to 50ft. , and 2) propane tank issue.

Mr. Montbleau addressed the propane tank. He stated it was not a contaminant and felt it should be left in its current location. He believed disturbing the tank would create issues by trying to remove it from the WCD area. He felt the WCD should be left alone except for the remediation as described. He questioned if the docked boat was a power boat. Mr. Gowan replied it was not the type of boat that should be in the wetland. Mr. Montbleau believed the applicant was quick to respond to concerns and shown good faith. It was his understanding that the voluntary setback was discussed during a time when there was review to determine if

the wetland was a 'prime' wetland; no finding had been made. He felt it was restrictive to hold the applicant to one standard and hold the rest of the community to another standard.

Mr. Doherty asked Mr. Montbleau if he agreed with keeping the propane tank in place. Both Mr. Doherty and Mr. Montbleau felt the propane tank should not be disturbed.

Mr. Sherman requested clarification for where the proposed garage doors would be located. He wanted to know if vehicles would need to drive through the 50ft. WCD setback to access the doors. Mr. Zohdi said they would need to access a little of the area. Mr. Sherman questioned if the applicant needed permission to access the 50ft WCD as a driveway. Mr. Gowan replied if the door remained as shown on garage, the applicant would need to go in front of the Zoning Board for resolution, given it would be further encroachment into the 50ft. WCD, even if the Board granted a setback reduction from 75ft. to 50ft. Mr. Zohdi commented the applicant could discuss that aspect directly with Mr. Gowan. Mr. Gendron explained when facing the garage from the street, there was an existing driveway that ran down the left side of the building with access through a double-wide door. Mr. Gowan confirmed that the access was on the left side of the building, not near the wetlands. Mr. Gendron stated that was correct. Access would not be in the area toward the wetlands.

Mr. Gowan clarified the discussion regarding the voluntary setback. He believed the wetland was a candidate for a prime wetland at the time it came to the Board. For a wetland to become 'prime' the Town would have to conduct a study and approach the State. He believed this was contemplated at the time, but it didn't occur. He noted even if the area was a prime wetland, the State did away with requiring 100ft. setbacks. Mr. Gowan stated the Board had the ability to wrap the case up if they made the proper conditions and were inclined to support the application with some restrictions.

Mr. McNamara asked Mr. Gendron to display the plan and point out where the entrance to the garage would be located. Mr. Gendron highlighted the area of the garage entrance. He also showed the edge of wet, the existing buffer and the 50ft. buffer line.

PUBLIC INPUT

Attorney Robert Shepard representing Robert and Rhoda Cavanaugh (next door neighbors) who objected to the proposal to reduce the buffer from 75ft. to 50ft. He outlined the reasons for their objection. He believed when an applicant came forward with a property with many zoning code violations, the Board should question why they should consider any application. One violation was the propane tank location being closer than 20ft. to the pond. He understood the comment of not wanting to create disturbance by removing the tank; however, he noted propane tanks weren't permanent and at some point would need to be removed. Attorney Shepard pointed out the violation of the paved area (crushed asphalt) being within the 75ft. setback. This situation has not been corrected and still existed. He stated there were two boats stored in the WCD area; a paddle boat and a ski boat used for the applicant's property on Lake Winnepesaukee. He added that the applicant had put a dock up into the pond, which was also a violation. He told the Board that the applicant built a retaining wall in 2004, that was partially in the WCD, but obtained a permit for which approximately one week ago. If the retaining wall wasn't built, the driveway wouldn't have been able to be done. Attorney Shepard stated the applicant was asking for forgiveness after a deed had been done versus asking for permission before a deed was done. He provided the Board with photographs for the record of the applicant's lot showing parked business vehicles, and snow storage within the WCD area. He also provided photographs of the propane tank, retaining wall and two boats. Some of the photographs were taken during the last week, others prior to snow fall.

Attorney Shepard stated the Planning Board approved the plan (July 21, 1997) with a 75ft. buffer. He provided the Board with a copy of the meeting minutes when the Board originally approved the subdivision. The minutes indicate that the (applicant at the time) agreed to provide a 75ft. buffer around the conservation easement for the wetland. Attorney Shepard pointed out that the applicant offered the buffer and it was

accepted by the Planning Board. He also highlighted that the minutes indicate the Conservation Vice Chair (at the time) stated that the designated wetlands on this parcel met the minimum requirements of the Prime Wetlands Study; the Planning Board Chair stated that the applicant had agreed to increase the buffer around the wetlands from 50ft. to 75ft. Attorney Shepard reiterated that the applicant offered the buffer and the Planning Board accepted the offer. His clients purchased their home in December, 2003. At that time, the applicant's property contained the existing 100ft.x50ft. garage owned by the Trust; however, the retaining wall, driveway and swimming pool had not yet been installed. Originally, the access to the garage was in the location of the swimming pool. Attorney Shepard pointed out that his client's deed and the applicant's deed contained deed restrictions that indicated the lots were subject to the Wetland Conservation District building setbacks and notes as shown on said plan; according to said plan, lot 2-12-3 contains 1.49 acres. He stated the deed restriction was contained in all the deeds. When his clients purchased their property, they relied upon the 75ft. buffer that the Planning Board approved. They saw the existing 100ft. x50ft. garage and knew there could be no expansion because it was located up to the 75ft. buffer. Now the applicant was proposing to change the buffer. Attorney Shepard questioned what authority the Planning Board had to change a deed restriction. The 75ft. buffer was contained in his client's deed, the applicant's deed and the lot beside them. He commented the Planning Board at the time of approval felt having a 75ft. buffer was important. There was discussion at the time of original approval about a conservation easement. He believed the Board at the time compromised so as to have a 75ft. buffer versus having a conservation easement (which was more restrictive). Attorney Shepard felt it would be a bad and dangerous precedent for the Board to take out the buffer since nothing (in the area) had changed.

Attorney Shepard pointed out that the area was a residential district. His client believed that a business was being operated out of the garage. The property is owned by Mammoth Fire Alarms Realty Trust and Mammoth Fire Alarm trucks were parked at, and accessing the property all the time, within the WCD. The garage was supposed to be a one-story building; however, it clearly had a balcony. He stated an expansion would overcrowd the lot and would not be appropriate in a residential zone. He noted that the applicant didn't have a hardship, he had a car collection that could be moved elsewhere. In conclusion, Attorney Shepard stated his client was opposed to the proposal and opposed to shrinking the 75ft. buffer to 50ft.

Mr. McNamara wasn't aware of a deed restriction. Mr. Montbleau stated he too was not aware of a deed restriction. Attorney Shepard submitted copies of the deed for the record. Mr. Zohdi had no response at this time. Mr. McNamara asked Mr. Gowan to seek legal opinion regarding the deed restriction. Mr. Gowan stated he would do so.

The hearing was continued to the March 16, 2015 meeting.

PB Case #PL2014-00026

Map 35 Lot 10-193 & Map 36 Lot 10-191-1

GREEN, Richard; GREEN & COMPANY – 1-5 Garland Lane – Proposed 46-Lot Conservation Subdivision (Special Permit for Yield Plan and 20% Density Offset of 7 lots was granted on July 7, 2014)

Mr. McNamara announced that the applicant requested a continuance. The case was date specified to the March 16, 2015 meeting.

PB Case #PL2015-0001

Map 7 Lot 4-180-17

TWO M CONSTRUCTION, LLC - Benoit Avenue - Proposed 2-Lot Subdivision

Mr. Gowan told the Board that the abutters were read into the record at the last hearing.

Mr. Shayne Gendron and Mr. Peter Zohdi of Herbert Associates, representing the applicant came forward to discuss the proposed subdivision. He told the Board the property consisted of approximately 10 acres and was located on Benoit Avenue. They were seeking to subdivide two 5-acre lots; both of which would be single family homes each with 200ft. of frontage on Benoit Avenue.

Mr. Dadak stepped out of the room.

Mr. Gendron described the proposal and house location. He noted there was an existing dredge and fill had been granted by the State and bridge on lot 22. Photographs of the site were provided for the record and the Board's review.

It was Mr. Gowan's opinion that the proposal was ready to be accepted for consideration by the Board. -

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

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

Mr. Dadak returned to the Board.

Mr. Gendron reviewed the waiver requests. The Board then took the following action regarding such:

MOTION: (Culbert/Montbleau) To accept, for consideration, the waiver to Section 10.03,F.
- to show all structures, wells and septic systems within 75ft. of the site.

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

MOTION: (Culbert/Montbleau) To accept, for consideration, the waiver to Section 11.11,B,2
- To allow the well radius on Lot 4-180-17 to be within the 15ft. building setback.

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

MOTION: (Culbert/Montbleau) To accept, for consideration, the waiver request to Section 11.04,C,7 – To allow the building envelope to be accessible to a road by crossing the Wetland Conservation District.

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

MOTION: (Culbert/Montbleau) To accept, for consideration, the waiver request to Section 10.04,C,1 – to allow the 15,000SF areas on lot 4-180-22 to not be in the 100ft.x150ft. shape .

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

Mr. McNamara commented that the plan/waivers should be provided to Keach Nordstrom (Board's engineering review firm) for review/comment. Mr. Gowan asked if there was a Special Permit request for the driveway crossing the Wetland Conservation District ('WCD'). Mr. Zohdi replied there was an existing 'roughed in' driveway. He noted they weren't involved with the plan during the time of the dredge and fill. He said Mr. Gendron reviewed the Conservation Commission file, but found there wasn't a lot of information.

Mr. Gowan replied he knew there was a different engineer handling the plan when it previously went in front of the Zoning Board. He noted it had a long complicated history.

PUBLIC INPUT

Mr. Tim Lepine, 20 Benoit Avenue (adjacent to the property) told the Board they purchased their home believing it was a 7-lot subdivision and now there was a request for a 2-Lot subdivision. He said this wasn't a case of a homeowner trying to do something, it was a builder trying to construct two houses instead of one. He felt the engineering was being creative to manipulate the frontage to achieve two lots. He didn't agree with the proposal.

Mr. Dave Janeczek, 17 Benoit Avenue reiterated Mr. Lepine's comments that when purchasing his property it was clearly laid out in terms of the number of houses that would be put at the extension of Benoit Avenue. With that in mind, spent a lot of time thinking about the investment in the area with the intent of having just the finite lots to be built out. He would support an additional home, but would not support two additional homes.

Mr. Gowan noted there had been a plan in front of the Zoning Board for frontage that was denied; however, the plan currently in front of the Planning Board had adequate frontage. The previous plan in front of the Zoning Board (for frontage) was irrelevant. With the current proposal being compliant with Zoning, the matter in front of the Planning Board didn't involve the Zoning Board.

Mr. Lepine questioned if the frontage changed since the time it was in front of the Zoning Board. Mr. Gowan replied the plan in front of the Planning Board showed frontage that complied with Zoning. He noted there was a different engineer team representing the applicant in the past. Mr. Lepine asked if the present engineer was who had done the subdivision development. Mr. Gowan didn't have the information in front of him. Mr. Lepine wanted to know why 4ft. of his driveway was on his neighbor's property. He stated there were a lot of property lines in the area that were in question and further questioned the frontage along the entire street. Mr. Gowan said what was described was certainly a problem. Mr. Zohdi explained the building procedure and creating as-built plans for submission to the Town. He discussed his knowledge of the subdivision. Mr. Gowan told Mr. Lepine he would be happy to speak to him and suggested he contact the Planning Department.

Mr. McNamara wanted to seek Keach Nordstrom's comment regarding the waivers and general lay out of the plan. The Board agreed.

The plan was date specified to the April 6, 2015 meeting.

ADMINISTRATIVE

Map 16 Lot 13-85 - PETERSEN BUILT HOMES - Paradise Estates - Proposed bond reduction (from \$85,250 to \$14,244)

Mr. Gowan reviewed the proposed bond reduction. The current bond is \$85,250. Keach Nordstrom recommends reduction of \$71,006; retaining \$14,244.

Mr. Culbert asked when the project completed. Mr. Gowan replied it was completed in 2014. Mr. Culbert questioned if the road had over-wintered. Mr. Gowan answered it was a private road; the Highway Department wasn't involved in the process. He stated the road had 'wintered over'.

MOTION: (Culbert/Montbleau) To reduce the bond by \$71,006, thereby retaining \$14,244.

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

Map 21 Lots 3-102 & 102-1 - PETERSEN BUILT HOMES - Goldfinch Drive - Proposed bond reduction (from \$54,477.40 to \$25,250.40)

Mr. Gowan reviewed the proposed bond reduction. The current bond is \$54,477.40. Keach Nordstrom recommends reduction of \$29,227; retaining \$25,250.40. He noted the road had 'wintered over' and would eventually become a Town road.

MOTION: (Montbleau/Culbert) To reduce the bond by \$29,227, thereby retaining \$25,250.40.

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

DATE SPECIFIED PLAN(S)

March 16, 2015:

- 1) PB Case#PL2014-00032 - Map 28 Lot 2-12-3 MAMMOTH FIRE ALARMS REALTY TRUST - 112 Marsh Road
- 2) PB Case #PL2014-00026 - Map 35 Lot 10-193 & Map 36 Lot 10-191-1 - GREEN, Richard; GREEN & COMPANY – 1-5 Garland Lane

April 6, 2015:

PB Case #PL2015-0001 - Map 7 Lot 4-180-17 - TWO M CONSTRUCTION, LLC - Benoit Avenue

MINUTES REVIEW

January 22, 2015:

MOTION: (Culbert/Montbleau) To approve the meeting minutes of January 22, 2015 as written.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:12pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary