

**APPROVED**

**TOWN OF PELHAM  
PLANNING BOARD MEETING  
October 5, 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, Joseph Passamonte, Alternate Tim Doherty, Selectmen Representative William McDevitt, Planning Director Jeff Gowan

**ABSENT:** Jason Croteau, Alternate Robert Molloy, Alternate Mike Sherman

Mr. Doherty was appointed to vote in Mr. Croteau's absence, or until he arrived.

Mr. McNamara informed he presented the Capital Improvement Plan to the Budget Committee. He noted the roster committee member list would be amended to include those who served.

Mr. McNamara congratulated Mr. Passamonte for being appointed as a full-time member.

**OLD BUSINESS**

**PB Case #2015-00016**

**Map 22 Lot 8-130**

**52 WINDHAM ROAD, LLC - 52 Windham Road - Special Use Permit and Site Plan Review for proposed mixed use development consisting of a 1500SF retail building and 15 townhouse condominium units in the Mixed Use Overlay District**

Mr. McNamara read aloud the notes taken by Mr. Doherty during the recent site walk September 26, 2015.

Mr. David Jordan of MHF Design Consultants and Mr. Brian McGowan the project proponent came forward to discuss the proposal. Mr. Jordan provided a status update with regard to permits. The State has issued a driveway permit. They've received the Alteration of Terrain Permit and Shore Land Permit from the Department of Environmental Services. A State Subdivision Permit has been submitted. Also he submitted to the Town the seven individual septic system designs shown on the plan set. Mr. Jordan provided the Board with a plan set and indicated they were finalizing minor revisions that were in response to Keach Nordstrom's (Board's engineering review firm) review comments. To clarify, he reviewed the changes that would be made to the plans; those revised plans will be submitted to the Planning Department later in the week. During the last meeting questions were raised regarding the condominium documents. Mr. Jordan commented that the documents were in the process of being prepared and would be submitted to the Town for review once complete.

Mr. Jordan stated questions were raised and discussed at the last meeting and during the site walk about screening and buffering the project from some of the residential properties. He handed out and displayed an updated landscape plan highlighting the fact that additional buffering had been added to soften the view of the proposed development. Mr. Culbert questioned if the proposed stockade fence (abutting the American Legion) could extend to Windham Road. Mr. Jordan answered yes, they could extend the length of the fence to Windham Road. He noted the fence was proposed in response to residential abutter concerns. They hadn't proposed extending the fence beyond the residential abutters because they didn't feel an abutting commercial use (American Legion) needed buffering from the proposed commercial use. Mr. Culbert pointed out that the

American Legion was a fraternal organization and they would like the fence to be extended to Windham Road. Mr. Jordan replied they would make the change.

Steve Keach of Keach Nordstrom came forward. He told the Board they had a good set of plans from a technical standpoint. He said as requested, Mr. Jordan had reported on a few minor revisions and the status of permits. He spoke about what was seen and discussed during the site walk. He believed significant consideration was given to the abutting properties through the proposed additional buffering and fencing. With regard to the challenge in terms of grading, to the north of the first residential building, Mr. Keach said there was discussion about softening the grades to better fit the terrain. Using a displayed plan, he pointed out the locations reviewed during the site walk. He identified the area where grading would be softened. Much of the discussion occurred on the side of the property abutting the American Legion, Kirkpatrick family and Fagundes family and how it would be screened from the development. He stated the other discussion was in regard to how the development would be done, such as grading, snow removal, storm water etc. He said Mr. Jordan had done a good job describing the nature of the soil and how the septic systems would work.

Mr. Doherty reviewed the landscape design for units 1-3. He spoke about the proposed Canadian Hemlocks and questioned if they might be suited along the property line; its hearty nature would be good screening.

Landscape Architect Randy Knowles of Knowles Design discussed the landscape proposal and how the plantings would best utilize the soils and location of the sun. He said if the Board requested, they could change the plantings. Mr. McNamara wanted to know if Mr. Keach had enough confidence in the proposal, or if his landscape architect should review the plan. Mr. Keach replied he'd known Mr. Knowles for twenty-five years and wasn't in a position to challenge his opinion. He was fine with the submission.

Mr. Montbleau questioned how the back area of the units would be delineated, specifically he wanted to know if there would be privacy fencing, or a back deck/patio. He wanted to know what would be facing the neighbors. Mr. Jordan showed on the plan that the back of all the units had a 5ft. wide deck or patio depending on the construction of the house. Mr. Montbleau asked if those areas would be at ground level. Mr. Jordan showed that the units facing the south would be at ground level (slab on grade) and have a deck leading to the back yard. Mr. Montbleau wanted to know if there was a break in between the units so the back yards weren't overlooking each other. Mr. Jordan replied they weren't currently showing anything on the plan; however, the developer may add a section of privacy fence behind the units. He noted condominium documents typically specified exclusive use areas, such as the area directly behind the units. Any fencing would be part of the construction phase and not 'add on' by the owners. Mr. Montbleau wanted to know if there were any common areas for residents to gather. Mr. Jordan replied the plan did not include a common area.

Mr. Passamonte wanted to know if the ordinance included a requirement for open space. Mr. Keach replied there was no requirement. Mr. Doherty believed that type of requirement would fall under the subdivision regulations or site plan review. Mr. Keach said in the conservation subdivision ordinance there was a provision that dealt with both the qualitative and quantitative open space. As currently written the MUZD Ordinance did not have a similar requirement. Under the site plan regulations, he said there were requirements for landscape and green space. Mr. Keach said if the developer was contemplating the separation of the deck areas he encouraged them to use a shadow box fence. Under the current ordinance, he was unable to point to a flaw in the application.

Mr. Doherty found it hard to determine whether the plan fell under the Subdivision Regulations or Site Plan review, or both since it was a mixture of business and residence. Mr. Keach replied they would start with the MUZD Ordinance (under Zoning), which was in essence the local enabling legislation. Although technically, he said it was a site plan because it was a multi-family residential plan, at the same time it was also technically a subdivision based on State Law for the purposes of title. He continued to say locally, in terms of land use regulations, the section having precedence/applicability was the non-residential and multi-family site plan

regulations. Mr. Doherty asked what the open space requirements were in the site plan regulations. Mr. Keach replied presently there were none; it was related to the multi-family and reviewed as a site.

Mr. Dadak referenced the letter submitted during the previous hearing from the Kirkpatrick family. He believed a lot of their questions were being answered and wanted to know if the question regarding sidewalks had been resolved. Mr. Jordan answered they were providing a sidewalk on the south side of the interior roadway from unit 9&10 to Windham Road. Mr. Gowan felt the project should have a sidewalk along Windham Road in addition to what they've planned within the development. He said all mixed use projects should, even if they didn't connect to anything yet.

Mr. Gowan referenced the MUZD Ordinance (regarding savings – open space) that states if there is a discrepancy between the underlying residential district and the MUZD overlay district, the MUZD language shall apply. Mr. Doherty questioned if sidewalks were required in the MUZD. Mr. Gowan reviewed the ordinance. He said when they worked on the language they were concerned with access ways and providing for public/private sidewalks. Mr. Doherty believed the intent of the ordinance was to have sidewalks installed as the MUZD would be a 'walking' district. He said the applicant should show a sidewalk in front of the development.

Mr. McDevitt stated the density of the plan was bothering him. He said the proposal was very dense. He said if they were to assume that each two-bedroom unit had three people, there would be thirty-three people and if each three-bedroom unit had four people there would be another sixteen; there would be a total of forty-nine people. He noted it would be a lot of people in a small space that included a small business (of approximately 1,500sf). He also noted the steep slope topography would provide for virtually no recreation space. In reading the MUZD language, he didn't know how the proposal met the 'traditional mix' of residential/business. He said there was a small business and residences within a difficult site for fifty people. Mr. McNamara believed the solution would be to revisit the MUZD. When it was written he didn't feel they thought the proposed density was possible. Mr. Gowan reviewed the Site Plan Regulations and saw a requirement under Section 303-3 landscape and buffering he felt applied to the MUZD that talked about a minimum of 30% being preserved as green space. He asked Mr. Keach if he felt the plan met the 30% requirement. Mr. Keach believed it exceeded the requirement, but felt the point raised by the Board was while it met it quantitatively, but may be lacking qualitatively in terms of usefulness to the residents. Mr. Montbleau supported Mr. McDevitt's comments. He spoke of other developments, conservation subdivisions and the typical layout of the Town, which worked to set aside areas for residents. Having the possibility of fifty people residing in the proposed condensed development in addition to a retail business to him was similar to military barracks. He didn't feel the proposed development 'fit'. Mr. Montbleau felt the project engineering was good but was troubled by the proposed density. He questioned if any decision had been made about allowing pets. Mr. McGowan replied they had put together a team of people to study the zoning and work with the Town as best as possible. They welcomed any concerns and had the goal of doing a good project for everyone. He said they would include language regarding pets in the condominium documents. Mr. Montbleau stated by allowing pets there could be 1-2 pets per household. Potentially there could be fifty people and fifteen pets. He said they could restrict pets and questioned if doing so would be negative from a sales standpoint. Mr. McGowan replied a weight restriction may be better suited. Mr. Montbleau was concerned the subject of pets would open the door to much civil unrest.

Mr. Doherty questioned if the Subdivision Regulations applied to the development. Mr. Keach replied the Site Plan Regulations applied. The development had nothing to do with Subdivision Regulations. Mr. Gowan added that the only multi-family in the Subdivision Regulations was the over fifty-five. He recalled at the time the MUZD was being drafted they struggled with the density and ultimately determined it would be too restrictive. He said they didn't factor in having Pennichuck Water, which probably created more density than originally contemplated. Mr. Doherty noted they had also contemplated traditional use of the land and having the buildings look like they belonged, as opposed to the plan in front of the Board that had condominiums tucked behind a business. He didn't feel the proposal reflected what the MUZD was all about.

Mr. Culbert asked if he plan met all the Regulations. Mr. McNamara replied the Board heard testimony from Mr. Keach that the plan was in compliance. Mr. Gowan told the Board that the subcommittee working on the MUZD struggled with a lot of the language but eventually came up with an ordinance that provided the Board with leeway to approve or disapprove a plan. He said now that an example of a project with water (Pennichuck) came forward, they may consider fine tuning the Ordinance.

Mr. McDevitt spoke about the role of the Board, which was to apply judgement within the Regulations. To that point, during the site walk an abutter questioned where children would play. He understood the plan met the Regulations, but putting approximately 50 people in a very small space with no room for recreation. He felt the project created other issues that were not addressed in the Regulations and further felt the Board should apply judgement to such. He believed the project was too dense but was unsure about a solution.

Mr. Passamonte wanted to know if the condominiums would be for sale. Mr. Jordan answered yes. Mr. Passamonte wanted to know if they would meet the Regulations if the units were rentals. Mr. Keach answered yes. He stated the density was determined under the ordinance by sewage loading. One reason the density could be as it was proposed was based on the soils and availability of public water. If it didn't have water service the site would contain a protective well radius that would come out of the density and couldn't have structures built within it. Whether rental or for sale, Mr. Keach noted the number of gallons per day would remain at 150 per day/per bedroom.

#### PUBLIC INPUT

Mr. Frank Kirkpatrick of 7 Mossey Lane (abutter on the south side of proposed development) came forward and told the Board they felt conflicted; they were in favor of progress, but at the same time against the proposal. They appreciated the information shared during the site walk. One of their main concerns was density and privacy; however the biggest concern was their well water. Mr. Kirkpatrick explained they had an artesian well that went to a depth of approximately 300ft. He asked that nitrate testing be done prior to any blasting on site. There was also concerns with compacting and sediment problems. Although there had been explanation of the drainage baffle system, he remained concerned about water leaching toward/into Beaver Brook. Mr. Kirkpatrick reiterated his concern regarding Beaver Brook, his well, privacy and the overall proposed density. He noted that the medical building project and roundabout project had negatively affected his neighbor's water quality. He didn't want the same thing to happen on his property. Mr. Kirkpatrick spoke about snow removal within the development and was concerned with sand and salt being pushed down the slope and ending up in the Brook, which he believed was included in a conservation protection area. He understood the proposal was the first MUZD submission and with that asked the Board to provide careful scrutiny. He spoke about the Master Plan which references the desire for conservative growth, single-family homes and the creation of neighborhoods.

Mr. Doherty noted there wouldn't be any blasting in the proposed site based on the soils and test pit data.

Mr. Vinny Fici of 58 Windham Road felt it would be better if the development started small. He believed the proposal had too many buildings.

Ms. Brenda Hobbs of Windham Road told the Board she resided in Town for over fifty years and had always believed that portion of Windham Road was considered residential but read in the abutter notice the area was considered a mixed use overlay district. She asked when the classification had changed and exactly what that use meant. Mr. McDevitt replied it was on the ballot March 11, 2014. Mr. Gowan added it had passed with a significant margin. He said the MUZD language was online, but if Ms. Hobbs wanted to stop by the Planning Office he would provide a copy and describe the genesis of the language. Ms. Hobbs questioned if any residential district could be changed to an MUZD. Mr. Gowan answered yes; through Zoning changes approved by the Planning, which are then included on the Town ballot for voter approval.

Mr. Mike Sherman of Old Bridge Street (a member of the MUZD Committee) explained when the MUZD was put together the committee reviewed all the properties because they wanted projects to ‘fit’ and look like the surrounding buildings. He stated none of the proposed condominium units look like the residential homes in the area. He questioned where the recreational living space was for the residents. He would like to see the units reduced and have an area set aside toward the rear of the property. He felt the project should be set up site specific to what it should look like. He understood how the density language was set up, but no one ever envisioned this type of proposal or density. Mr. Sherman understood the Board needed to follow the Regulations, and at the same time they should review what changes could be made to make the project ‘fit’. He suggested possibly enlarging the retail space and reduce the condominium units. He said the retail space seems to be a ‘throw in’ so the applicant could get the number of condominium units they wanted, which would use up all the space and not leave any area for recreation or anything else.

Mr. Dadak stated there had been a lot of discussion about density and having no common area. He asked the applicant if they would consider reducing the number of condominium units (by a couple) and leaving some open space. In his opinion having outside area would make it more attractive to potential owners, rather than only having row housing. He was looking for the balance of having living area and keeping the project economically viable for the owner. Mr. McGowan replied if he knew what the selling price would be it would be helpful; however, he couldn’t look into the future. He stated they could look at the site to see if they could get some common area; however, with regard to density it was a matter for economics.

Mr. McNamara wanted to know the size of the retail building. Mr. Jordan replied the correct number is 1,500SF. As they indicated at the previous meeting, they wanted flexibility to enlarge the space in the event a user came forward seeking a larger retail unit. If this was the case, the retail unit would enlarge and the two condominium units behind the building would be eliminated to expand parking. He said the development would be driven by the market.

Mr. McNamara suggested the applicant take time to consider the discussion, concerns and comments and to see what they could do in response. He said density seemed to be the overriding concern.

Mr. Montbleau believed the dilemma regarding the density was derived from the unique aspects of the property’s soil type and having access to Pennichuck Water. These two things have allowed a density to fit inside an envelope of regulatory scrutiny. He discussed what he could support, which was 10-12 units with a recreation area that would support a pet area (for sanitation purposes), recreation area for residents, children and snow storage. As submitted, he couldn’t support the density because it wasn’t practical, which was a responsibility of the Planning Board.

Mr. Gowan saw the commercial space was being described as ‘retail’. He questioned if it was truly retail, or if it would be office space. He suggested defining the building broadly to suit the applicant’s purposes, and at the same time providing enough clarity for the Board to understand. He stated he was uneasy about snow removal being located close to the Wetland Conservation District as shown on the plan. He suggested it be moved more toward the southern edge. He also saw there didn’t seem to be any area for snow storage along the road, and suggested the applicant take another look at how it could be accomplished. Mr. Gowan ended by asking for the road name to be updated on the plan to reflect the approved name by the Highway Safety Committee.

Mr. Doherty understood that the development didn’t qualify to be a 55+ development by the zoning, but noted the density (and recreation use) would decrease if that was an added stipulated in the condominium documents. Mr. McNamara replied that point would be something for the applicant to think about.

There was a brief discussion regarding when the applicant would like to return in front of the Board.

The plan was date specified to November 2, 2015

**NEW BUSINESS**

**PB Case #2015-00019**

**Map 6 Lot 4-137-28**

**DREME BUILDERS - 37 Longview Circle - Seeking a Special Use Permit to convert an existing duplex into a condominium form of ownership (Note: Due to an error with the application & notice, this item will not be heard at this meeting)**

Abutters will receive notification for when the plan will come in front of the Board.

**PB Case #2015-00020**

**Map 30 Lot 11-335 & Map 23 Lot 11-352**

**CONSTANT, Daniel & Debra - Springdale Lane - Proposed Lot Line Adjustment**

Mr. Dadak read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Doherty told the Board he lived in the area and the abutter's list contained all of his neighbors and friends. He said he knew a lot about the property and the entire neighborhood and said he would step down from the Board if anyone felt he should do so. Mr. McNamara asked Mr. Doherty if he could render a fair and impartial judgement on the lot line adjustment. Mr. Doherty answered yes. There were no objections to Mr. Doherty remaining on the Board for the case.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the proposed lot line adjustment. He discussed the previous lot line adjustment that had come in front of the Board last year. Subsequently they went in front of the Zoning Board to request building on a private road (Springdale Lane) and they were granted relief for that purpose providing the lot was a minimum of one acre in size. Mr. Maynard stated the lot line that was previously proposed between the two properties was being altered. The cottage lot will be one acre in size and the remaining (vacant) parcel will be 2.02 acres.

Mr. Doherty questioned if there were any waivers being requested. Mr. Maynard answered no.

Mr. Gowan described the adjustments that had been made. He noted the applicant was making the adjustment to get one acre, which they were previously slightly under.

Mr. Doherty asked if there were any issues with the power poles that ran through the property. Mr. Maynard replied his client hadn't spoken yet about building the house portion. He encouraged his client to have the adjustments made so property corners could be set and mylars recorded. He believed they had enough buildable area to meet a standard building lot.

**PUBLIC INPUT**

Mr. Charles Hegarty, a direct abutter came forward. He told the Board the applicant was previously in front of the Board, and was turned down to build a 60ft. cape-style home within ten feet from his property line. He questioned if the applicant was now moving their house back. Mr. McNamara replied the lot line adjustment would correct the lot to a proper one acre size. He said if they could meet the requirements within the Regulations they could build a house. They would need to meet the standard setbacks. Mr. Hegarty asked if the applicant had pushed the house location back. Mr. McNamara replied the Board was simply clarifying the lot. Mr. Maynard didn't know of any other plans.

**MOTION:** (Montbleau/Dadak) To approve the lot line adjustment.

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

**DATE SPECIFIED PLAN – November 2, 2015**

PB Case #2015-00016 - Map 22 Lot 8-130 - 52 WINDHAM ROAD, LLC - 52 Windham Road

**MINUTES REVIEW**

**September 21, 2015**

**MOTION:** (Dadak/Montbleau) To approve the meeting minutes for September 21, 2015 as amended.

**VOTE:** (6-0-1) The motion carried. Mr. Passamonte abstained.

**September 26, 2015**

**MOTION:** (Dadak/Montbleau) To approve the site walk minutes for September 26, 2015 as written.

**VOTE:** (5-0-2) The motion carried.

**ADJOURNMENT**

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

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

The meeting was adjourned at approximately 8:45pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary