

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING
December 19, 2016

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, Jason Croteau, Joseph Passamonte, Tim Doherty, Alternate Paddy Culbert, Alternate Mike Sherman, Planning Director Jeff Gowan

ABSENT: Selectmen Representative William McDevitt, Alternate Robert Molloy, Alternate Richard Olsen

NEW BUSINESS

PB Case #PL2016-00026

Map 36 Lot 11-91

MAJOR REALTY TRUST - 101 Dutton Road - Proposed 2-Lot Subdivision

Mr. McNamara announced that the Board would not hear the matter. The case was in front of the Zoning Board for a variance, which was approved. Subsequently, there was a request for rehearing which was allowed. The Zoning Board will rehear the matter January 9, 2017.

The case was rescheduled to the January 23, 2017 Planning Board meeting.

PB Case #PL2016-00027

Map 14 Lot 3-90

MERRIMACK CONSTRUCTION GROUP, INC. - Mayflower Lane - Proposed 6-Lot Subdivision

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.

Representing the applicant was Mr. Peter Zohdi of Herbert Associates who came forward to discuss the proposed subdivision. The parcel contains 9.496 acres and would be subdivided into six lots. There is a 50ft wide gas line easement delineated on the plan. He reviewed the plan set provided to the Board and gave a brief summary of each page. Gove Environmental mapped the soils. Mr. Zohdi described the proposed drainage. He then spoke to the road width. Mayflower Lane has 24ft. of pavement and he requested that the proposed road continue to be 24ft. He hadn't yet received the Zoning Officer's opinion.

MOTION: (Montbleau/Dadak) To accept the plan for consideration.

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

Mr. Gowan told the Board that he would ask Keach Nordstrom to prepare an estimate for engineering review. He will also bring the plan to the Highway Safety Committee for opinion regarding the road width. He commented it was unfortunate that when Megan Circle was built that the developer wasn't required to leave a

50ft. right of way at the end of the cul-de-sac. He felt it was bad planning to have two cul-de-sacs bumping up against each other. He asked that the Board watch for similar situations so it could be avoided.

Mr. McNamara questioned if Mr. Zohdi had a date to meet with the Conservation Commission. Mr. Zohdi understood that the first step was to go in front of the Planning Board; it was after the Board takes jurisdiction that he would apply.

Mr. Montbleau wanted to know what would prevent the connectivity of the roads. Mr. Gowan replied the property owner couldn't force the abutting owner to provide a right-of-way. Mr. Montbleau questioned if anyone had spoken with the abutter. Mr. Gowan replied he hadn't spoken with them; however, the applicant could do so. Mr. McNamara informed that the owner of the abutting parcel testified (during the Zoning Board meeting) that they wouldn't allow for any kind of an arrangement, or cut through.

PUBLIC INPUT

Mr. McNamara informed that this was the initial hearing, the plan would need to be reviewed by the Conservation Commission, Highway Safety Committee and the Board's engineer.

Mr. John Bilsky, owner Lot 3-91-12 told the Board that the owner of Lot 3-91-11 was unable to attend the meeting. He stated the owner of 3-91-11 did not want a pass through (between the cul-de-sacs). Mr. Bilsky spoke of the concern for having two back-to-back cul-de-sacs, which he felt was an odd approach to planning. He said the parcel directly behind his lot was virtually on the property line. One of the reasons he purchased his home was because of being told there wouldn't be any infringements within the gas line easement. It was disheartening for him to hear a house would be built virtually on top of them. Mr. Bilsky discussed the concerns he raised during the Zoning Hearing. Mr. McNamara explained the review process, which would include engineering review by the Board's engineering review firm. He reiterated the meeting was only the first step in the process. Mr. Bilsky questioned if a site walk had been conducted. Mr. McNamara answered no. Mr. Bilsky told the Board that his concern was specifically the two lots that abut his and his neighbor's property and the fact that the cul-de-sacs were back-to-back. Mr. McNamara stated that the Board couldn't do anything about the two cul-de-sacs; however, the Board could ensure that the applicant provided sufficient buffering so as to minimize disturbance.

Ms. Beth Tshudy, 57 Priscilla told the Board that she voiced her concerns to the Zoning Board and wanted the Planning Board to understand her concerns about drainage with her property being down grade from the proposed development. There was currently poor drainage along the roadways and felt additional hot top create less areas for runoff. Ms. Tshudy noted that the test pits were done 6-8 months ago, prior to the draught. She questioned if they would be retested. Mr. Zohdi explained that soil testing was done by Gove Environmental; a majority of the site had Canton soils. He noted that the test beds have nothing to do with (water) draw or wet seasons; the reason for test beds is to determine the seasonal water high table, which is shown in the soil profile. In reference to drainage, Mr. Zohdi told the Board that the plan was submitted to Mr. Gowan and Keach Nordstrom. Ms. Tshudy acknowledged the fact the original plan was a larger subdivision and the current smaller scale plan was more agreeable.

Mr. Zohdi told the Board he had done the plans for Priscilla Way and Megan Circle. He wanted the record to reflect that he had tried to leave a right-a-way but at the time no one was in favor of doing so.

Mr. Dave Neal, 51 Priscilla Way stated there was already a large of homes in the area and was concerned about the aquifer with additional development. He told the Board his well was affected from blasting when his neighbor's homes were put in. He wanted to know what assurances he would have for his water quality and quantity with additional blasting. Mr. McNamara replied the Board recently had an expert hydrogeologist address the Board, specifically about the effects on wells from drilling. He understood the conclusion of being able to detect how a water supply would be affected was a very difficult process. Mr. McNamara told Mr. Neal

that a number of years ago the Fire Department developed a stringent Blasting Ordinance that involved notification of neighbors, on-site inspections, etc. He suggested the best thing for him to do was to catalog is current system by taking photographs of his foundation and document the draw on the well.

Mr. Gowan stated the Planning Board couldn't provide anyone with a guarantee but noted that the Blasting Ordinance was far more stringent than when Mr. Neal's neighborhood was built. He summarized the process. He noted as the plan went forward, the Board's engineering review firm would look at all aspects, including drainage and provide a report for review. Mr. Neal was also interested in having the Board conduct a site walk.

Mr. Montbleau recalled there were pre-blast surveys conducted to area homes prior to blasting for a development near his home. Mr. Gowan discussed the process. Mr. Montbleau asked if there was a lot of ledge in the area of the proposed development. Mr. Zohdi reviewed the plan (page 9 of 14) and pointed out there wasn't any ledge; the parcel was mainly Canton soils.

Ms. Cindy Bilsky, 9 Megan Circle wanted to know if the Tennessee Pipeline would monitor the development and blasting. Mr. Zohdi replied they contacted the Tennessee Gas Line who would need to approve the plan. He reviewed the plan and showed that the road profile was raised approximately 5ft. above the average depth of the gas line. Ms. Bilsky wanted to know if there was any potential for danger if blasting was needed near the gas line. She was concerned with the gas line fracturing. Mr. Zohdi explained blasting occurred everyday near the gas line; they use rubber tires to ensure the line isn't damaged. Mr. Gowan noted the gas line traversed all of Pelham and wasn't aware of any damage caused by blasting. He stated Tennessee Gas would be very much concerned and be sure nothing effected their line during any blasting.

Mr. Bilsky came forward again and explained the reason for his concern was additional runoff coming to his property with the proposed development area being raised. Mr. McNamara reiterated the Board would have their engineer review the plans to ensure there won't be runoff from the proposed development onto abutting properties. Mr. Zohdi used a plan to show the direction of drainage flow for both the existing and the proposed conditions. He believed the abutters would experience less flow after the development was completed. He said they would be treating the road drainage. Mr. Montbleau stated that the Board's engineer would review the plans and all the questions.

Mr. Zohdi told the Board that they would be requesting some waiver requests for well radius, which the Board's engineer would review. He noted he had a good initial meeting with Mr. Gowan and Mr. Keach.

Mr. McNamara stated the plan would be date specified to a later meeting. He recommended abutters contact the Planning Department on the day of the hearing to ensure the case would be heard.

The plan was date specified to February 6, 2017.

ADMINISTRATIVE

Discussion of Proposed Zoning and Public Hearing Dates

Mr. McNamara explained the Board would review and have a general discussion of the proposed Zoning. He will allow public input. The Zoning will come back to the Board for a substantive discussion January 5, 2017.

- 1) Article XI – Signs. Mr. McNamara explained that the amendment was necessitated because of a recent court case. Signs cannot be treated differently because of content (freedom of speech). Mr. Gowan told the Board that the Sign Ordinance had always been difficult to use. Since they had to address the Supreme Court decision, they made the document easier to understand by including tables/charts.

Mr. McNamara opened the discussion to public input. No one came forward. He stated the Board's first public hearing would be January 5, 2017.

- 2) Article XII – Special Exceptions. Mr. McNamara explained that the changes were necessitated by a new State law that would go into effect shortly after March, 2017. The new law will allow accessory dwelling units/in-law apartments for lots containing one acre or more. Mr. Gowan noted it would technically include conservation subdivisions, if they met the required setbacks. Mr. McNamara summarized the amendments.

PUBLIC INPUT

Mr. Jim Bergeron, 27 Plower Road believed that the original Bill heard in front of the Legislature was Senate Bill 146. Mr. Gowan replied it was now known as RSA 71-73. Mr. Bergeron explained the Bill warned towns not to prohibit the size of the accessory unit and not limit the units to blood relatives. Mr. Gowan replied the 'blood relative' stipulation was being removed; however, when rented out a unit would be limited to a maximum of three non-related tenants. Mr. Bergeron commented that the State was suggesting that the units occur and exist because of the change in demographics and aging population. He felt it was important for the Board to understand the spirit and intent of Senate Bill 146. He noticed the amendment prohibits detached units; however, the State has asked towns to be more facilitating. He said the State wanted to see detached units provided the Town's requirements are met. Mr. McNamara replied that the subcommittee discussed the ordinance and felt that allowing detached units would look cluttered. Mr. Bergeron understood and pointed out that each request should be determined as individual cases and keep in mind what was trending in the State and across the nation. Mr. McNamara understood the point; the committee wanted to keep residential neighborhoods as the same look as much as possible.

Mr. Doherty state he had no problem with an accessory unit being on the opposite side of a garage from a house. Mr. McNamara replied accessory units need to have a common wall; a garage doesn't constitute a common wall. Mr. Doherty questioned if the law allowed detached units. Mr. McNamara replied having a common wall was one of the criteria for a Special Exception. Mr. Bergeron suggested the Board review Senate Bill 146, which may make it easier for the Board to understand the situation.

Mr. Doherty saw that the draft Ordinance indicated that business activity of any kind, including home occupations, was prohibited within the primary dwelling or accessory unit. Mr. Gowan replied the Statute gives towns the ability to have reasonable restrictions. Mr. Doherty questioned if the law prohibited it. Mr. Gowan answered no; it had been part of the current Zoning for many years. Mr. Doherty felt since the law allowed detached units the Town should also do so. He told the Board when a self-employed person files their tax returns using their home address, they are considered to be running a business out of their home, even if they don't. Mr. Gowan replied some would be compliant as a minor home occupation. He said the Board could consider allowing them. Mr. Doherty noted the proposed language states 'business of any kind', which eliminates minor home occupations.

Mr. Dave Hennessey, 71 Dutton Road asked that the verbiage under Criteria for Accessory Dwelling Units: L be clarified and easily read.

- 3) Article IX – Elderly Housing. Mr. Gowan stated there had been a lot of feedback through the Planning Department, Zoning committee etc. He said the proposed amendment attempts to consider eliminating senior housing (over 55) and preserve elderly housing (assisted living). He said it also considers dealing with density and boundaries around the lots and club houses among other things.

Mr. Doherty stated he just received the draft at the meeting. Under definitions he read that housing specifically designed for active adults aged 55+ was eliminated because there was a severe lack of

housing designed for elderly citizens (age 62+). He questioned why the 55+ citizens were going to be eliminated if there was a severe lack of housing. Mr. McNamara explained present law had two separate categories: senior (55+) and elderly (62+). Mr. Gowan noted there were currently 265 senior units currently built and hundreds in the 'pipeline'. Mr. McNamara stated that the 62+ provisions were more stringent and what the committee was trying to do was encourage those types with the exclusion of the 55+, which have been (in his opinion) over built. He explained that the amendment was to encourage elderly housing and assisted living units. Mr. Doherty assumed the 55+ units could be used by the elderly (62+) and questioned why the Town would eliminate them since a lot of people 62+ were active. Mr. Dadak agreed that the definition of 'seniors' was confusing and also suggested that the 'Purpose and Intent' be clarified. Mr. McNamara stated the definition of seniors could be removed without harming the ordinance.

Mr. David Hennessey, 71 Dutton Road questioned if Town Counsel (John Ratigan) had reviewed the proposed ordinance. Mr. Gowan answered yes. Mr. Hennessey felt Attorney Ratigan was wrong on the case. He stated they were dealing with two exceptions to the fair housing laws (federal requirements). He believed the confusion was coming from the draft document pulling from two separate statutes. He stated that the federal regulations were cited and with that the 62+ housing would be exclusively for age 62, and not include care givers or younger spouses. He suggested contacting the New Hampshire Municipal Association. Mr. Hennessey told the Board he didn't think there should be any density bonuses for 55+ or 62+ housing. He said real estate was in a situation that housing had recovered and felt the reason they continued to be built was because of the density bonuses being given to builders. Based on the census, he informed that New Hampshire would be oldest state in the union. He felt the Town should be encouraging younger people to move in and get rid of the age restrictions. He pointed out that the Master Plan calls for a mix of ages coming into Town.

Mr. Gowan questioned if Mr. Hennessey was suggesting eliminating both the 55+ and 62+ housing and only leave assisted living. Mr. Hennessey answered yes. He believed the proposed ordinance was written against Federal law. Mr. Doherty asked if 'affordability' had any bearing on zoning. Mr. Hennessey felt the Town should encourage diversity of population and serve the entire population.

Ms. Charlene Takesian, member of the zoning subcommittee that helped develop the changes to zoning, agreed with Mr. Hennessey. She felt the Town was catering to bringing elderly people into the Town. She said it wasn't affordable as the houses were upwards of \$350,000. The situation was brought to her attention when she became aware of a ten acre parcel with 40 units. She agreed with preserving the Town through conservation subdivisions. Ms. Takesian pointed out that Pelham had an elderly exemption for those who met the criteria, which was in the process of possibly being 'loosened' up. She stated people contacted the Town to 'exemption shop' by comparing communities. She was concerned with allowing more elderly housing and a larger exemption, which would cause the remainder of the Town to pick up the taxes not being paid. She was unsure about the legality of limiting housing but would like to see more diverse housing.

Mr. Dadak spoke heard people talk about how allowing more density (in elderly developments) would have less effects on the school system, which may be an advantage. He questioned the impact on Emergency response with an aged population. Mr. Gowan had hoped the Fire Chief would be able to attend the meeting and would ask him to write an opinion for the public hearing.

Mr. Doherty spoke to 'exemption shopping' and understood New Hampshire was a place to live for seniors based on the exemptions. He read aloud information found on the internet that indicated New Hampshire had some of the lowest retirement taxes of any state in the country. He spoke about the assessed values and tax rates of the elderly developments. He felt the subcommittee should gather data and properly analyze and compare it to the model; they had to have proper economics. He said in order to bring younger people in Town, the Town needed to allow affordable housing. Mr. Doherty felt the

proposed ordinance was done incorrectly and felt it may be better to separate it into two ordinances. He said the document had already been sent to Attorney Ratigan, and the Board had just received a copy to review.

Mr. Dadak felt there should be a compromise in housing and there should also be affordable (work force) housing considered. He was concerned with adding fixed income housing, which would force taxes to increase.

Mr. Gowan stated there was time prior to the January 5th public hearing to seek legal opinion.

Mr. Passamonte left the meeting.

Mr. McNamara stated he would like input from Mr. Passamonte and Mr. McDevitt before any substantive changes were made. Mr. Montbleau questioned if Board members were doubting Attorney Ratigan's opinion. Mr. McNamara replied they could go back to Attorney Ratigan and have him review the document/language once again.

The next discussion and public hearing regarding Zoning and petition warrant articles will occur January 5, 2017.

Bond Reduction Request(s)

Mr. Culbert was appointed to vote in Mr. Passamonte's absence.

Mr. Gowan informed the Board that the final inspection of Mulberry Road and Cobblestone Lane(Stone Post Village – Phase II) had been completed.

MOTION: (Montbleau/Croteau) To release in full the remaining bond of \$148,000 with respect to Stone Post Village, Phase II, subject to the Board of Selectmen accepting the road.

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

Mr. Gowan spoke about the Woodlands Subdivision – Frontier Drive & Brandy Lane (station 0+00 to station 5+00 +/-). He told the Board that the work had been completed and final inspection was done.

MOTION: (Montbleau/Dadak) To release in full, the remaining bond of \$234,074.75 with respect to Woodlands Subdivision – Frontier Drive & Brandy Lane (station 0+00 to station 5+00 +/-), subject to the Board of Selectmen accepting the road.

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

Mr. Gowan spoke about Pine Ridge Estates – Wellesley Drive (From Ballard Road to station 11+37). He told the Board that Keach Nordstrom's recommendation was to release \$68,534.40 and retain \$11,691.68 to support the completion of the project.

MOTION: (Montbleau/Dadak) To reduce \$68,534.40 of the current bond being held for Pine Ridge Estates – Wellesley Drive (From Ballard Road to station 11+37), and retain \$11,691.68 for the completion of the project.

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

Mr. Gowan ended by speaking to Harmony Lane. He told the Board it was Keach Nordstrom's recommendation to release \$82,146.90 of the bond being held and retain \$9,165.75 to support completion of the project.

MOTION: (Montbleau/Dadak) To reduce \$82,146.90 of the current bond for Harmony Lane, and retain \$9,165.75 for the completion of the project.

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

DATE SPECIFIED PLAN(S)

January 23, 2017:

PB Case #PL2016-00026 - Map 36 Lot 11-91 - MAJOR REALTY TRUST - 101 Dutton Road

February 6, 2017:

PB Case #PL2016-00027 - Map 14 Lot 3-90 - MERRIMACK CONSTRUCTION GROUP, INC. - Mayflower Lane

MINUTES REVIEW

December 5, 2016

MOTION: (Culbert/Doherty) To approve the December 5, 2016 meeting minutes as written.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:51pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary