

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING MINUTES
May 7, 2018

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

The acting Secretary Derek Steele called the roll:

PRESENT: Peter McNamara, Paul Dadak, Tim Doherty, Jim Bergeron, Blake Clark,
Selectmen Representative Hal Lynde, Alternate Paddy Culbert, Alternate Samuel
Thomas, Alternate Bruce Bilapka, Alternate Derek Steele, Planning Director Jeff
Gowan

ABSENT: Roger Montbleau, Alternate Richard Olsen

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

PLEDGE OF ALLEGIANCE

MINUTES REVIEW

April 16, 2018

MOTION: (Lynde/Culbert) To approve the April 16, 2018 meeting minutes as amended.

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

NEW BUSINESS

PB Case #PL2018-00013

Map 29 Lots 7-87 & 7-88

KLINE, Robert & CASSIDY, Peter & Sandra Ann - 13 & 15 Stevens Road - 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. Gowan informed he was an abutter. He stepped away from the Board to sit in the audience with the public.

Mr. Kurt Meisner of Meisner Brem Corporation came forward with Mr. Robert Kline to discuss the proposed lot line adjustment. Mr. Meisner explained there where two existing single-family house lots, and during a survey it was discovered that the driveway (Lot 7-87) is over the original lot line. The proposal is to move the lot line slightly to the north to solve the encroachment issues for the two parcels. He noted the plan showed the existing dwellings, driveways, wells and septs. There are two sheds located on the plan; one was exempt from the setbacks because of its size and the other meets the Zoning requirements.

Mr. McNamara asked if the all the Zoning requirements, setbacks, etc. would continue to be met after the proposed lot line adjustment. Mr. Meisner replied the requirements would continue to be met.

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

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

Mr. Doherty saw (on the plan) that the owner's note listed four people (Robert & Virginia Kline and Peter & Sandra Cassidy); however, under the block for 'Owner's Acknowledgement' he wasn't seeing the same thing (signature of Virginia Kline was missing). He wanted to be sure that all parties were knowledgeable about the possibility of a lot line adjustment. Mr. Meisner explained that there was a section for 'Owner's Acknowledgement' on the recordable mylar that would have to be signed before the Town Planner signed the plan, and prior to the plan being recorded at the Registry of Deeds. It was noted that Mr. Kline was present. Mr. Kline told the Board that Mr. Cassidy had planned to attend the meeting but was unable to due to an injury. He commented that both parties had previously signed a number of documents. Mr. Meisner noted that the Cassidy parcel would be transferring the land to the Kline parcel; their signature is on the plan submitted to the Town. He reiterated that the signatures of all parties were required to be on the recordable mylars.

Mr. Lynde wanted to know why one of the sheds wasn't required to meet the setback requirement. Mr. Gowan stepped forward and explained that a 100SF (10ftx10ft) structure was exempt from setbacks.

Mr. McNamara opened the discussion to public input. No one came forward.

MOTION: (Culbert/Clark) To approve the lot line adjustment.

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

Mr. Gowan returned to the Board.

PB Case #PL2018-00014

Map 30 Lot 11-111

HANLON, Richard A. - 124 Westshore Drive - Proposed 2-Lot Subdivision

Mr. Dadak read the list of abutters aloud. Mr. Mark Schedeler of 67 Hidden Hollow Drive told the Board he didn't receive notification. Mr. Dadak didn't see his name/address/lot number on the list of notified abutters. Mr. McNamara asked if he was within 200ft. of the proposed property. Mr. Schedeler believed he was. Mr. McNamara asked Mr. Schedeler if he had heard about the proposal, given that he was present for the hearing. Mr. Schedeler answered yes. After review of the plan, Mr. Gowan said it appeared Mr. Schedeler's property was outside the 200ft. notification requirement.

Mr. Shayne Gendron of Herbert Associates came forward with the applicant Mr. Richard Hanlon to discuss the proposed subdivision. Mr. Gendron explained that the existing parcel contained 3.77acres that has an existing house and frontage onto Little Island Pond and road frontage on two private roads, Hidden Hollow Drive and West Shore Drive. He stated after doing some survey work and flagging the soils/wetlands, they realized there was enough area to subdivide. There was also enough frontage to subdivide, but there was no frontage on a Town road. Mr. Gendron stated they went in front of the Zoning Board and were granted a Variance (Case #ZO2018-00001) from a group of sections in Zoning that all dealt with frontage on a Town road.

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

VOTE: (6-1-0) The motion carried. Mr. Doherty voted in opposition.

Mr. Lynde saw that a road was bisecting the property and questioned if people would drive through. Mr. Gendron stated because they were private roads, the property owner owned the property on which the road was located (as it crossed through the property). He pointed out that the proposed lot contained over 300ft. of frontage on Hidden Hollow Drive (private road).

Mr. Bergeron asked if the applicant got relief from the section of Zoning that speaks to ‘contiguous areas of land’ that are separated by roads can’t be used for the calculation of a single lot. Mr. Gendron replied it didn’t matter because they exceeded the size; one lot is 1.279 acres (1.2 acres of usable upland) and the other lot contains 2.499 acres that includes a wetland (1.5 acres of usable upland).

Mr. Doherty reviewed the plan and surrounding properties that had frontage along Hidden Hollow Drive that didn’t own the road. He said the proposed lot was separated by the road (two lots-one on each side of the road), and believed the applicant was probably using the road for calculations for lot sizing and load sizing of the septic. He’s never seen a proposal with a lot being subdivided by a road (through the center). Mr. Culbert couldn’t recall ever seeing a similar proposal. Mr. Gendron pointed out that the roads were private and didn’t bisect anything; they were simply access for people to get to their properties. He noted they received a Variance to subdivide and use the road as their access. He said none of the lots on Hidden Hollow Drive or West Shore Drive had any frontage on a Town approve road. Regarding the lot configuration, he said it met the Regulations and the lots had more than enough area and were reviewed by the Town’s Health Inspector to review the perk tests. The existing lot was currently a water front property and would remain as such. He said the new lot will meet all the lot sizing. Mr. Gendron reiterated that the roads didn’t bisect anything, it was all the owner’s property and private roads. Mr. Doherty asked if anyone drove on the roads besides the owner. Mr. Gendron answered yes; everybody had a right to pass and re-pass on the road. He added that it was maintained year-round.

Mr. Dadak was familiar with the area because he lived there a number of years ago. He remembered being shocked that the Town didn’t take care of the road but understood the Town didn’t because it was considered an access way. He said it was an accepted right-of-way to get to established camps. He didn’t think it was considered a ‘private’ road and believed it was considered an ‘access’ road.

Mr. Gowan commented that roads basically broke down into three categories; 1) 50ft. rights-of-way owned by the Town with a 22ft-26ft travel way, 2) prescriptive easements – Town owns the pavement, but not the land underneath, and 3) private roads. He said usually with private roads, whoever owns the property on either side would own to the center line; therefore, if a person owned the property on both sides, they would own the land in between. Mr. Gowan stated it was complicated down near the ponds. Mr. Doherty commented that he lived on a private road and didn’t own any part of the road, even though he had a houses on both sides of it. Mr. Gowan noted that the applicant had received a Variance for frontage and pointed out that the lot contained significantly more land than most of the lots in the area. Mr. Doherty stated he wasn’t prepared to ‘open a can of worms’ by allowing people, who have property with a dirt path of travel through it to subdivide a piece and count both sides of the road. Mr. Dadak said allowing people to cross property didn’t give them ownership to it.

Mr. Clark understood that a person could put a ‘private’ road in a conservation subdivision and include lots with frontage on that ‘private’ road. He questioned what in the regulations distinguished a ‘private’ road (in that scenario), versus a ‘right-of-way’. Mr. Doherty said along Little Island Pond there were homeowner’s associations that maintained the roads and allowed usage of the beach. Mr. Dadak used the snowmobile trails as an example for when people could cross a property but not own the land. Mr. Clark wanted to know what the Zoning Board approved. Based on the applicant’s description, Mr. McNamara believed the Zoning Board approved a Variance for lack of frontage. Mr. Gendron said that was correct. He noted prior to granting the Variance, they had also conducted a site walk. He showed the Board a recorded plan that showed how the road worked. Mr. Gowan noted in conservation subdivisions there would be a 50ft. right-of-way (dedicated to either the Town or homeowner’s association), which was different from the proposal in front of the Board.

PUBLIC INPUT

Mr. Mark Schedeler, 67 Hidden Hollow Drive told the Board it was the first time he had a chance to look at the layout. He was concerned with the fact that it was a private road that had no homeowner's association and no legal mechanism to have people help them maintain the road. He wanted to know how to get a new owner to participate in the active maintenance and cost of keeping the road up. Mr. Schedeler was also concerned with the deeded (14ft) access right-of-way that went to the pond. He said there would be more traffic on a small right-of-way leading to the pond. After looking at the proposed site plan, he was curious about restrictions, or lack of restrictions, with setbacks on both sides of the road (access through the property). He saw nothing in the zoning laws that would prohibit garages or additional structures on the other side of the road. Mr. Schedeler told the Board that the right-of-way was deeded; whoever owned the property on either side did not own the road. He had documentation of a (20ft wide) deeded right-of-way from Dutton Road to the pond (to Robert Thornton in the 1950s). He noted he provided a copy of the deed to the Town a few years ago when he sold a piece of property. He explained that the deed was drawn up to so all people who had property on the road would have access to their property.

Mr. Gendron agreed that everyone who lived on the roads had deeded access to their property over the roads. Based on the recorded plan of record, title search and boundary survey, he said where the road is located through the property, it's on Mr. Hanlon's property; where it goes off his property, the ownership goes to the abutter. He hasn't seen a deed for a 20ft. road and believed if there was one, the recorded plan should refer to it. Mr. Gendron reiterated his agreement that everyone had the right to pass and re-pass and believed everyone's deeds would reference their right to access their property. Regarding maintenance, he noted that Mr. Hanlon had always paid (with others) for plowing and prior to his ownership, his aunt and uncle had paid into the maintenance (the property has been in the family for 60+ years). He said there was no issue with continuing to pay into the maintenance of the road and if there was a condition placed on the new lot, the owner would have to pay into the maintenance cost.

Mr. Gendron addressed the question of development on both sides of the access road. He outlined the wetland and Wetland Conservation District ('WCD') line and noted there wasn't any place to locate anything on the other side of Hidden Hollow Drive. He noted Hidden Hollow Drive was a very established road, even though it was dirt and didn't have meets/bounds. He said everything would be located in the general vicinity of where they were showing it on the plan. Because of the wetlands on the property, they added a drip edge around the house and driveway to control some of the storm water runoff. He believed the Zoning Board was satisfied with what they proposed. Mr. McNamara noted the Zoning Board conditioned the Variance on the second lot (created lot) would be limited to a single-family home only.

Mr. Bergeron understood that the proposed house would be located on the northeast side of Hidden Hollow Drive and confirmed that there was enough area to support everything that would naturally be for any other house lot (i.e. soils, area setback). Mr. Gendron answered yes. Mr. Bergeron understood there were physical impediments on the southwesterly side of Hidden Hollow Drive that would rule out any construction. He told the concerned abutter that nothing could be built that didn't meet Zoning codes (without a waiver). Mr. Gendron summarized the sections in Zoning that were granted a Variance. Mr. Bergeron understood everything in front of the Zoning Board related to the road condition. Mr. Gendron stated that was correct.

Mr. Gowan suggested if the Board was going to grant an approval, they add a condition to echo the Zoning Board's condition for a single-family home and to specify that 'all structures' are to be located on the eastern side of Hidden Hollow Drive to ensure there are no buildings squeezed against the WCD. He told the Board he would be adding a condition that the property owner install WCD signs every 50ft.

Mr. Dadak recalled a statement being made during the site walk regarding the limitation of cutting and installing a treatment swale along the driveway. Mr. Gendron replied originally the house was located in the broad section of the lot near the well. He said they had now pushed the house and shortened the driveway into the narrow area shown on the plan.

Mr. Doherty said when he was researching deeds for the private road he lived on, he found there were many versions of the deeds. He said the deeds at the Registry and Town Hall didn't remotely resemble the original deeds from when the lots were first put in. He questioned if there was anything in the other deeds that would restrict what was being proposed. He had several questions regarding the 'road' (through the lot). Mr. Dadak heard the abutter say it was a deeded right-of-way, which was different from other accesses to a pond. Mr. Gowan commented that the Board had never taken a position on a subdivision based on verifying or scrutinizing deeds, nor for covenants, which were private documents. He said road frontage was irrelevant once a Variance is granted for such. He said if someone brought something up it would be a civil matter.

Mr. Culbert requested that the house location and driveway be site specific. Mr. Hanlon wanted to know if 'site specific' would limit the square footage of the house. Mr. Gendron pointed out they were showing a 30ft.x50ft. box and asked for leeway of those exact dimensions in the event someone wanted a different house shape. He had no objection to working in the area where the house was being shown. Mr. Gowan pointed out that the lot contained more than 1.5 acres of uplands. There was further discussion regarding house size and placement. Mr. Bergeron asked Mr. Culbert if he would be okay if the house didn't move closer to the road. Mr. Culbert answered yes, as long as the Board required site specific. Mr. Bergeron suggested that the proposed condition be the setback to the road. Mr. Gowan felt the Board should specify 'all structures' have a specific setback, not just the house. Mr. Lynde felt the normal Town setbacks should be followed. Mr. Doherty asked Mr. Lynde if he was familiar with any Town policy regarding accepting the roads around the pond (Spring Street area). Mr. Lynde replied if a road didn't meet Town standards it wasn't accepted. Mr. Doherty said there had been some roads around the pond that had been taken by the Town and widened and paved after a certain percentage of residents being 'on board' with it. Mr. Lynde said the Town had borrowed the money (for the betterment) and each year the resident's tax bill paid a percentage toward the full cost of the note. In that situation, the residents had requested their road turn into a Town road and the Town required certain standards to be met. Mr. Gowan said the Spring Street area was a unique situation involving access to a certain population for emergency response. He noted even if the Board approved the subdivision, the Selectmen would need to approve a building permit being issued on a non-town/state road.

The Board then addressed the waiver requests.

MOTION: (Clark/Dadak) To accept for consideration the waiver to Section 11.04,b,6 of the Subdivision Regulations – to allow the new lot to not have frontage on a Town road.

VOTE: (5-2-0) The motion carried. Mr. Doherty and Mr. Culbert voted in opposition.

MOTION: (Bergeron/Dadak) To approve the waiver to Section 11.04,b,6 of the Subdivision Regulations – to allow the new lot to not have frontage on a Town road.

VOTE: (5-2-0) The motion carried. Mr. Doherty and Mr. Culbert voted in opposition.

MOTION: (Bergeron/Dadak) To accept for consideration the waiver to Section 11.04,c of the Subdivision Regulations – to allow a 15K area on Lot 11-111 to not have the required 100ft.x150ft. dimension.

VOTE: (6-1-0) The motion carried. Mr. Doherty voted in opposition.

MOTION: (Bergeron/Dadak) To approve the waiver to Section 11.04,c of the Subdivision Regulations – to allow a 15K area on Lot 11-111 to not have the required 100ft.x150ft. dimension.

VOTE: (6-1-0) The motion carried. Mr. Doherty voted in opposition.

Mr. Lynde inquired what impact the Shore Land buffer had on the 4K area. Mr. Doherty replied the Shore Land Protection didn't affect any septic. Mr. Gendron commented that nothing was happening with the lot for the existing home. He said if they did anything in the future with the lot it would have to be permitted through Shore Land Protection (State). Mr. Lynde wanted to know if an approval would prohibit the owner from having an alternate septic location in the future. Mr. Gendron said the owner had an existing State approved septic; they provided a 4K area to replace the system if there was ever a need to do so, although he assumed if it needed replacement they would replace in the same area.

Mr. McNamara asked Mr. Bergeron if he calculated a setback distance. Mr. Bergeron asked if the applicant would be amenable to a condition that the house not be located closer than 40ft. from the centerline of the 'road' (Hidden Hollow Drive). Mr. Gendron had no objection and noted he would need that separation for the leach field.

Mr. McNamara reviewed the proposed conditions:

- 1) All structures are to be located no closer than 40ft. from the centerline of Hidden Hollow Drive;
- 2) Building (dwelling) is restricted to a single-family home;
- 3) All structures built will be on the easterly side of 11-111-1

Mr. Doherty spoke about the location of the well head restricting development. Mr. Gendron stated he could pull the well head closer to the road.

Mr. Gowan suggested modifying condition #2 to read 'Dwelling restricted to a single-family house. And combine condition #1 & #2 to read: All structures to be located on the eastern side of Hidden Hollow Drive, no closer than 40ft. to the centerline of the road (Hidden Hollow Drive). There was no objection.

Mr. Bergeron asked if the well location would be site specific. Mr. Doherty felt the proposed location ruined the plan. Mr. Culbert was okay with not having it site specific. Mr. Lynde believed when the owner applied for a building permit they would need to show a plan to the Building Inspector that all setback requirements will be satisfied. Mr. Gendron replied they would also have to certify the foundation once it was in the ground.

MOTION: (Clark/Dadak) To approve the subdivision with the stated conditions.

VOTE: (6-1-0) The motion carried. Mr. Doherty voted in opposition.

PB Case #PL2018-00015

Maps 7 & 8 Lots 9-94 & 9-135-4

MENDES, David - Hayden Road - Proposed 4-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.

Mr. Shayne Gendron of Herbert Associates and Mr. David Mendes (applicant) came forward to discuss the proposed 4-Lot subdivision. Mr. Gendron explained that the application was straight forward and already received State approval. He stated there were two lots of record, one being 14.7 acres and the other being 7 acres, both had frontage along Hayden Road. Some of the land is farm/field land. There is a power easement across a portion of the land, and the remaining area (lots 3 and 4) is wooded. There is an existing farmhouse that would remain and a proposal for four new homes. Mr. Gendron stated that all the lots met the requirements and were sized at one acre. There are no wetlands or Wetland Conservation District impacts on any of the

proposed building sites. No waivers are being requested. There is a 10ft. easement along Hayden Road for future improvements and maintenance of the road.

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

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

Mr. Gowan commented that the Board rarely saw land of this quality come before the Board. He said it was reasonably flat, dry and perfect sight distance. He said there wasn't much similar land remaining in Town.

Mr. Bergeron wanted to know if there was a future road consideration being reserved (on the most northerly lot). Mr. Gendron answered yes; there was a lot set up for a future right-of-way. Mr. Bergeron wanted to know if the proposed radius for the existing road went along with the spirit and purpose of the Subdivision Regulations. Mr. Gowan said he wouldn't argue against it, as long as they had the full 200ft. of frontage (not including the radius). Mr. Gendron said they had did.

Mr. Gowan questioned if the fire cistern was currently existing in the ground. Mr. Gendron answered yes. Mr. Gowan asked Mr. Gendron to be sure that the Fire Department signed off on it.

Mr. Lynde recalled when the Board was reviewing a subdivision on Simpson Road several months ago he asked for a conceptual of what would happen on this side and wanted to know if the proposed plan was consistent with that conceptual. Mr. Mendes stated that the plan in front of the Board was for a four-lot subdivision on a Town road that met all the requirements, setbacks, etc. He stated that he didn't know what he would do with the other land (outside of the current proposal). Mr. Dadak reviewed the plan and was curious why test pits were done on the southwesterly portion of the larger lot. Mr. Gendron replied they did additional test pits when they had the machine on site. Mr. Bergeron felt it was good planning to leave an access for a future road and to conduct additional test pits.

Mr. Gowan noted there were 17-18 acres preserved in the 'parent' lot, which was enough land for a number of options. He understood Mr. Lynde's point and believed it would all come together if a plan came forward in the future.

There was no one present to offer public input.

MOTION: (Doherty/Culbert) To approve the subdivision subject to the Fire Department's approval of the cistern.

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

ADMINISTRATIVE

Mr. Doherty stepped away.

Mr. McNamara suggested that the Board begin to review the new Subdivision Regulations. He then noted that the Board had received an application from Mr. Bill Scanzani seeking appointment to the Zoning Subcommittee.

MOTION: (Culbert/Clark) To appoint Bill Scanzani to the Zoning Subcommittee.

VOTE: (6-0-0) The motion carried. (Mr. Doherty had stepped away)

Mr. Doherty returned to the Board. Mr. Dadak left the meeting.

There were Board members who did not have their draft regulation with them. Mr. Gowan briefly reviewed his initial proposed changes and commented that the Board should have Steve Keach of Keach Nordstrom (Board's engineering review firm) present to review the Design and Construction Standards, which was where all the work would be. The Board discussed how to proceed and agreed that Mr. Keach should be present for their discussion. They will schedule review sessions.

NON-PUBLIC SESSION

Not requested.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:40pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary