

APPROVED

**TOWN OF PELHAM
PLANNING BOARD MEETING
October 5, 2009**

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

The Secretary, Paul Dadak called roll:

PRESENT: Peter McNamara, Paddy Culbert, Paul Dadak, Tim Doherty, Roger Montbleau, Jason Croteau, Selectmen Representative Robert Haverty, Alternate Joseph Passamonte, Alternate James McManus, Planning Director Jeff Gowan

ABSENT: None.

Mr. McNamara informed the Board that Alternate Member Mr. Edward McGlynn had submitted a letter of resignation to Mr. Gowan due to family matters. The letter was accepted with reluctance. The Board discussed if they would seek additional alternate members. There was a consensus to advertise the alternate position; Mr. Gowan is to contact PTV.

OLD BUSINESS

Map 22 Lot7-273 ESTATE OF ROBERT Y. PRESTON / DEXTER, Michael – 88 Main Street – Change of Use to allow the sale of automobiles – Reconsideration of September 10, 2009 Planning Board Decision due to the withdrawal of the Administrative Decision dated August 27, 2009.

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

Mr. McNamara read aloud a letter dated September 24, 2009 that had been sent to the Board of Selectmen from Planning Director Jeff Gowan. The indicated that Mr. Gowan reviewed, with Town Counsel (Attorney John Ratigan), the underlying facts on which the Administrative Decision was predicated on. The re-examination of the Ordinance against the current Zoning Map had revealed that the subject parcel was outside of that portion of the Business District that allowed the establishment of automobile dealers irrespective of the distance restriction described in Section 307-19,D of Pelham's Zoning Ordinance. Mr. Gowan had mistaken Districts 1,2,3 & 4 as allowing auto sales, but in fact the 1998 amendment to the Ordinance reduced that portion of the combined Business Districts where auto sales had previously been an allowed use. The 88 Main Street property is not within the prescribed district (of 307-19,D). Attorney Ratigan advised that Mr. Gowan immediately notify the Planning Board and all interested parties that he was withdrawing his August 27, 2009 Administrative Decision as the decision was founded upon the mistaken assumption that 88 Main Street fell within the area of the Business District that permits auto dealership use per the terms of the Zoning Ordinance (Section 307-19,D).

Mr. McNamara noted that Attorney Ratigan advised that while the Planning Board approved the Site Plan relating to the proposed auto dealership use on September 10, 2009, it was authorized to reconsider any decision it makes within thirty days following the decision. A Public Hearing of the Planning Board was scheduled (for October 5, 2009), it was legally noticed, posted and all legally required abutters and all interested parties have been notified of such via Certified Mail (dated September 24, 2009).

Mr. McNamara commented that three Board members were not present at the time the Board approved the change-of-use. He assumed that all the members that were not present had read the minutes and familiarized themselves with the nature of the case and particularly with Mr. Gowan's recent letter. There were no comments by the Board; all regular members would vote.

Mr. McNamara said he wanted to give the applicant the opportunity to speak. Mr. Doherty stated he would like to make a motion to reconsider the case so the Board could have a discussion. Mr. McNamara believed the Board could discuss the case. He invited the applicant forward to speak.

Mr. Michael Dexter, the applicant, came forward. He thought it was sad that the case had gone as far as it had because he had been placing cars on the lot longer than 1998. He felt that he should be grandfathered in some way. He didn't feel that it (putting cars on the lot) would hurt anyone else. Mr. McNamara stated assuming the Board reconsidered its motion and rescinded its prior decision; Mr. Dexter would have certain rights such as appealing the Board's decision and to seek a use variance. He did not offer any legal advice, and suggested that Mr. Dexter retain counsel to discuss options. Mr. McNamara stated that the Board had no authority to approve a use that had been determined to be non-conforming.

There were no other persons from the public wanting to speak.

MOTION: (Doherty/Dadak) To reconsider the case.

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

The Board discussed what action they could take. An option was if the applicant wanted to withdraw the case without prejudice. Mr. McNamara asked Mr. Dexter to come forward.

Mr. Dexter stated at this point he did not wish to withdraw the case.

Mr. Gowan noted that Attorney Ratigan suggested options to the Board: 1) rescind the approval, or 2) hold it in abeyance for a period of time. He believed the legal quandary would be satisfied as long as one of those options was exercised.

The Board continued their discussion of how to proceed.

MOTION: (Doherty/Haverty) To vacate the Board's earlier decision (dated September 10, 2009) made on the case (when the Change-of-Use was approved).

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

The Planning Board's prior decision (on September 10, 2009) has been vacated. It was then discussed how long to hold the case in abeyance before proceeding further.

Mr. Culbert commented that he had resided in Town for twenty-five years and had seen one or two cars on the lot for the past eight (or so) years. Mr. Dexter stated that he had as many as five to eight cars sitting on the lot at a time. Mr. McNamara interjected; the Board had previously discussed the number of cars and at this point it didn't matter because the Board had vacated its decision and had been told that the area could not be allowed to sell cars absent a variance.

The Board discussed the length of time they would hold the case in abeyance. Mr. Culbert made a motion to continue the case for ninety days, at which time if the applicant had not come back to the Board either with a variance or a successful appeal of the administrative decision the matter would be automatically denied. Mr. Croteau seconded the motion. Mr. Gowan suggested leaving time enough for the zoning board process in the event they wanted to conduct a site walk and enough time for the applicant to apply back to the Planning Board.

MOTION: (Culbert/Croteau) To hold the matter for ninety days, at which time if there has been no relief given by the Zoning Board of Adjustment, the matter before the Planning Board would be automatically denied.

VOTE: (4-3-0) The motion carried. Mr. McNamara, Mr. Doherty and Mr. Haverty voted no.

Mr. Gowan confirmed the Board's motion as being that the application will be revisited in ninety days at which time it will be automatically denied unless the applicant has received appropriate zoning relief. Mr. McNamara said the summary was correct.

The matter was continued for ninety days.

MINUTES REVIEW

September 21, 2009

MOTION: (Montbleau/Haverty) To approve the Planning Board meeting minutes of September 21, 2009 as amended.

VOTE: (5-0-2) The motion carried. Mr. Dadak and Mr. Croteau abstained.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 7:35 pm.

Respectfully submitted,
Charity A. Landry Willis
Recording Secretary