

**MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT**

November 30, 2009 Approved 1-25-10

MEMBERS PRESENT: William Bonney, Chair; Bruce Kudrick, Vice Chair; Dana Carlucci (arrived late), Tom Hebert, Tom LoPizzo

ALTERNATES PRESENT: Mick Pinard, Paul Paradis

EXCUSED: Mark Simard

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary

Chairman Bonney called the meeting to order at 7:00 p.m. The applicant for Case #09-21-Z was not present, so the case was tabled to allow the applicant time to arrive, and the Board moved on to Case #09-22-Z. Paul Paradis was designated to vote for Dana Carlucci on Case #09-21-Z, and Mick Pinard was designated to vote for Dana Carlucci on Case #09-22-Z, the first hearing of the evening

PUBLIC HEARING

This hearing was addressed second on the agenda.

Case #09-21-Z

Applicant: Chris Cadorette dba 324 CGP
 193 Londonderry Turnpike, Unite #1
 Hooksett, NH 03106

Property Owner(s): Chris Cadorette
 324 Pembroke Street
 Pembroke, NH 03275

Property Address: 324 Pembroke Street
 Pembroke, NH 03275
 Tax Map 565 Lot 11 located in the R1 Medium Density-Residential Zoning
 District and the AD Architectural Design Zoning District

Equitable Waiver of Dimensional Requirements under 143-115.1 Equitable Waiver of Dimensional Requirements The applicant was issued a building permit for a duplex, but the Code Enforcement Officer mistakenly used the requirements for a single-family dwelling instead of a duplex. Under Table 143-21, Table of Dimensional and Density Regulations, the required frontage for a duplex is 150 feet while the existing lot has 138.23 feet. The required square footage is 40,000 square feet and the existing lot has 39,204 square feet.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters. Copies of the property assessment card and tax map were provided in the packet. Mr. Hodge noted this was the first duplex he has permitted in Pembroke, and he had some family health issues at the time. The mechanical inspection remains to be done.

Chairman Bonney opened the public hearing at 7:35 p.m. Dana Carlucci was present and voting.

There were 5 regular members and 2 alternate members present; therefore, there was a full five member board present for this hearing. Dana Carlucci was present and voting at this hearing. Chairman Bonney explained the rules of the hearing.

Chris Cadorette, 432 Deerpath Lane, Pembroke NH and dba 324 CGP, 193 Londonderry Turnpike, Unit #1,

Hooksett NH, owner of Map 565, Lot 11 stated that he consulted with Everett Hodge on what he could do with the property. He paid the fees and a building permit for a duplex was issued.

Chris Cadorette addressed the criteria for Equitable Waiver of Dimensional Requirements. The Code Enforcement Officer issued a building permit for a duplex, mistakenly using the requirements for a single family dwelling instead of a duplex.

Item 1) the municipal official did not discover the violation until after the structure was substantially completed or conveyed to a bona fide purchaser. *Yes*

2) Please state why this violation occurred. *The requirements for a single family house were used instead of the requirements for a duplex under Table 143-21 by the Code Enforcement Officer, and a building permit was issued. The required frontage for a duplex is 150 feet and the existing lot frontage is 138.23 feet, The required square footage is 40,000 and the existing lot is 39,204 square feet.*

3) Please state why this violation does not cause a nuisance, does not diminish surrounding property values, and does not interfere with or adversely affect any present or permissible uses of the property. *The new building replaced an abandoned farm house that was not livable. The new building will add to the tax base.*

4) Please state why the costs of correcting this violation outweigh the benefits of compliance with the dimensional requirements. *The duplex house is approximately 75% complete.*

5) Has this violation existed for ten (10) or more years? *No.*

Has there been any enforcement action taken against the violation during that time by the Town or any person directly affected? *No.*

Everett Hodge stated that a building permit was issued in July 2009. In September 2009, it was brought to his attention by a Selectman that a discrepancy existed, as he had used the wrong table. A duplex requires 150 feet of frontage, and there is 138.23 feet of frontage at 324 Pembroke Street, Map 565, Lot 11 in the R1 District. The area needed is 40, 000 square feet where 39,204 square feet exists. Mr. Hodge confirmed that the applicant would have needed a Variance for a duplex if the measurements and area had been known at the start.

The error in the table was discovered when the structure was substantially, about 75%, complete. This was a good faith error in the interpretation of the ordinance. It does not diminish the value of any property in the area. It was discussed that the cost of correction outweighs the benefit of compliance with the dimensional requirements. The house was built in a similar, but slightly larger, footprint 30 feet from the property line and further back than the original house. Mr. Cadorette consulted with Everett Hodge on what he could do with the property before he began the project.

Chairman Bonney summarized the case. A building permit was issued for a duplex where the property did not have the frontage or area required. A duplex in the R1 District requires 150 feet of frontage, and there is 138.23 feet of frontage at 324 Pembroke Street, Map 565, Lot 11. The area needed is 40, 000 square feet where 39,204 square feet exists. The lot is close to the square footage and frontage needed for a duplex. Fees were paid, and a building permit was issued in good faith in July 2009. In September 2009, a Pembroke Selectman brought the discrepancy to Everett Hodge's attention. The new building is located further back, and occupies a slightly larger footprint. The applicant was originally going to repair the existing house, but found it was not repairable.

There being no further input, Chairman Bonney closed the public hearing at 7:44 p.m.

Deliberations: Chairman Bonney noted that the Code Enforcement Officer mistakenly used the requirements for a single-family home instead of a duplex and issued a building permit to the applicant. Bruce Kudrick noted that this was not done on purpose, and was a good faith error.

MOTION: Bruce Kudrick moved to approve an **Equitable Waiver of Dimensional Requirements** at 324 Pembroke Street, Map 565, Lot 11, for a 75% substantially completed duplex, to allow 138.23 feet of frontage where 150 feet is required for a duplex, and to allow a lot area of 39,204 square feet where 40,000 square feet are required for a duplex because it meets all the requirements of RSA 674-43A-I a, b, c and d. Dana Carlucci seconded.

VOTE: BRUCE- Y DANA - Y TOM L -Y
TOM H - Y BILL - Y

MOTION TO GRANT AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS TO ALLOW FRONTAGE OF 138.23 FEET WHERE 150 FEET IS REQUIRED FOR A DUPLEX, AND TO ALLOW 39,204 SQUARE FEET WHERE 40,000 SQUARE FEET ARE REQUIRED FOR A DUPLEX IN THE R1 AND AD ZONING DISTRICTS AT 324 PEMBROKE ROAD, MAP 565, LOT 11 PASSED ON A 5-0 VOTE

PUBLIC HEARING

Case #09-22-Z

Applicant: Kelly Beauchesne
385 Pembroke Street
Pembroke, NH 03275

Property Owner(s): Patricia Crafts
383 Pembroke Street
Pembroke, NH 03275

Property Address: 385 Pembroke Road
Pembroke, NH 03275
Tax Map 565 Lot 230 located in the R1 Medium Density-Residential
Zoning District and the AD Architectural Design Zoning District

Area Variance under 143-114 . The applicant, Kelly Beauchesne, dba Beauchesne & Associate, LLC, is requesting permission to add a changeable copy sign below the existing approved sign. A Variance is needed because the changeable copy sign will increase the total square footage above the 12 square feet that is allowed by 143-62 Dimensional Table of Signs. This use is only permitted by a Variance in the R1 Zoning District per 143-62 Dimensional Table of Signs.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters. Per the 9/28/09 ZBA decision, the cost to reapply will be the responsibility of the Town.

Chairman Bonney opened the public hearing at 7:05 p.m. Mick Pinard was designated to vote for Dana Carlucci on Case #09-22-Z.

There were 4 regular members and 2 alternate members present; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Copies of property assessment cards for 383-385 Pembroke Street, a sketch of the proposed addition to the

approved sign, and a notarized letter dated 9/1/09 from Patricia Crafts allowing Kelly Beauchesne to file an application with the Pembroke Zoning Board of Adjustment to add a changeable copy sign to the pre-existing sign at 385 Pembroke Street were included in the packet,

Poppy Tong, mother-in-law of Kelly Beauchesne, was present for the hearing. Ms. Tong stated that Kelly Beauchesne would like to add a 3-line changeable copy section to her existing sign, similar to that of the Congregational Church and the Green Valley Montessori School. The existing sign is the standard 12 square feet allowed in the R1 zone. The size of the black letters is 4-inches high on a clear base a bit bigger. The proposed sign would be no wider than 4 feet and would be approximately 20 inches tall. The sign would not be lit up, does not pose any traffic hazard and would highlight business specials and community events. The owner of the property has no objection to Kelly adding a changeable section to her sign, as evidenced by her letter dated 9/1/09 authorizing Kelly to seek a variance. Chairman Bonney asked Ms. Tong to submit a letter from the applicant as soon as possible authorizing Poppy Tong to present on her behalf this evening.

Tom LoPizzo asked what community events would appear on the sign. Poppy Tong stated it would be holiday greetings, or specials at the business. There would not be any comments on news or politics. The sign may say 'remember to vote.'

Poppy Tong addressed the 5 points necessary for an Area Variance:

- 1) Granting the variance would not be contrary to the public interest because *our existing sign, as well as our proposed addition of changeable copy, suits the surrounding landscape; will be informative to the public; and will not cause any traffic hazards.*
- 2 A) Explain why the area variance is needed to enable your proposed use of the property given the special conditions of the property. *In order to promote my business and inform the public of current events, more space is needed.*
- 2B) Explain why the proposed use can not be achieved through some other reasonable method other than an area variance. *Since our existing sign is currently limited to 12 square feet, we would need an area variance in order to expand the sign.*
- 3) How would granting the variance be consistent with the Spirit of the Ordinance? *Our proposed changeable copy addition would be keeping with the appearance of other like signs; it will not be a lighted expansion; and it will also be similar to our neighbor's signs.*
- 4) How would granting the variance ensure that substantial justice is done? *Granting the variance for our changeable copy addition to our existing sign will greatly aid in the promotion and growth of our business, making us a more productive member of the community.*
- 5) Granting the variance will not diminish surrounding property values because: *Our neighboring businesses have the same type of changeable copy in addition to their signs. Our proposed addition would be attractive and informative.*

Tom LoPizzo asked, is it your intent to replace the same sign in the same location? Poppy Tong responded that Kelly Beauchesne is not moving the location of the sign, and is adding the changeable copy area below the existing sign. There will not be too much information on the sign, so passing drivers can read the message at a safe speed.

Chairman Bonney summarized the case. The applicant is proposing to add three lines of changeable copy section below the existing approved sign. The black letters would be 4" high on a 5" clear base. Abutters have been contacted and none of them objected to the sign.

There being no further input, Chairman Bonney closed the public hearing at 7:27 p.m.

Deliberations: Chairman Bonney led the ZBA through a review of the five area variance criteria. It was noted that traffic travels at 40 miles per hour in that area. Dana Carlucci noted that in the B1 zoning district

signs are allowed to be 80 square feet. The Board finds the changeable copy sign to be very clear and legible as described. 1) Agree. 2A) Agree. 2B) Agree. 3) The size of signs is limited to 12 square feet in the R1 zoning district. The sign is not lit, and is similar to others in the R1 District. 4) The sign would help promote the business. 5) The sign will not diminish property values.

Motion: Bruce Kudrick moved to grant an Area Variance under 143-114 to allow a 4 feet wide by 20 inch tall changeable copy, unlit sign to an existing 12 square foot sign in the R1 Medium Density- Residential and AD Zoning Districts at 385 Pembroke Street, Map 565, Lot 230 with the following conditions:

1. A letter from the business owner authorizing the person who presented at the hearing to do so must be submitted to the Code Enforcement Officer for the file.

Tom Hebert seconded.

Discussion: It was discussed that all approved signs follow Ordinance Section 143-58 and it is not necessary to add this as a condition.

VOTE: TOM L- Y BRUCE - Y MICK- Y
TOM H Y BILL - Y

MOTION TO GRANT AN AREA VARIANCE AT MAP 565 LOT 230 TO ADD A 4 FEET WIDE BY 20 INCH TALL CHANGEABLE COPY SIGN TO AN EXISTING 12 SQUARE FOOT SIGN AT 385 PEMBROKE STREET WITH CONDITIONS ON A 5-0 VOTE

PUBLIC HEARING

Case #09-23-Z

Applicant: Sarah Anne Perry
123 Mountain Road
Concord NH 03301

Property Owner(s): Sarah Anne Perry (closing 11/9/09)
Previously Deborah Hale
849 Borough Road
Pembroke, NH 03275

Property Address: 849 Borough Road
Pembroke, NH 03275
Tax Map 258 Lot 14-1 in the R3 Rural/Agricultural - Residential Zoning District

Area Variance under 143-114 . The applicant, Sarah Anne Perry, is requesting permission to build a duplex style building at 849-851 Borough Road. A Variance is needed because the existing lot has only 200 feet of frontage and 230 feet is required under Table 143-21 of Dimensional and Density Regulations.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters.

Chairman Bonney opened the public hearing at 7:50 p.m.

There were 5 regular members and 2 alternate members present; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Copies of property assessment cards for 849-851 Borough Road, a copy of the Purchase and Sales Agreement dated October 28, 2009, a sketch of the proposed duplex, and first and second floor plans were included in the packet. Everett Hodge stated that Sarah Anne Perry now owns the property.

Sarah Anne Perry stated that she and her sister would like to build a duplex at 849-851 Borough Road to spend their retirement years in. We need to be close, but recognize the need to have our own space; therefore, a duplex is ideal for us. Sarah stated that there was a previously approved State septic design for a five-bedroom house on the lot. The location of the house meets the setbacks from Robinson Road Extension. Sarah provided plans dated 11-13-09 prepared by A&B Lumber LLC for a reproduction barn style home. She stated that the irony is that they would choose to build the same style home as a single-family or a duplex. Each unit will have one bedroom and one guest room/office. The only difference would be separate kitchens. There will be a 12-foot fire wall and a door between the two kitchens so they can visit. As a family, the Perry's are rooted in the area. Sarah has a business on Route 106 (Perry Brothers Monuments) and their family home is in Chichester, NH.

Sarah Anne Perry addressed the 5 points necessary for an Area Variance:

- 1) Granting the variance would not be contrary to the public interest because *we are close to retirement age, have no school age children and live very quiet lives..*
- 2 A) How does the Zoning Ordinance interfere with your ability to reasonably use your property, considering your property's unique setting in the environment? *We are building this home together, but recognize the need for each of us to have her individual space.*
- 2B) Please state why you believe that there is no fair and substantial relationship between the general purpose of the ordinance and the specific restriction to your property: *The home we are building would look exactly as it would, even if it were not a duplex. Please see attached sketches and floor plans.*
- 2C) Please state how granting the variance will not hurt the public or private rights of others. *The home sits 350 feet from the public road and even though it is a duplex, it looks exactly as it would if we were building a single-family home. It affects the neighboring properties exactly the same way as a single-family home would.*
- 3) How would granting the variance be consistent with the Spirit of the Ordinance? *We meet all the requirements necessary except that we are short 30 feet of road frontage, having 200 feet of frontage where 230' is required to build a legal duplex.*
- 4) How would granting the variance ensure that substantial justice is done? *We are building the exact home from the outside as if it were a single-family home. We are good neighbors and citizens. We are very appreciative of your consideration of this request.*
- 5) Granting the variance will not diminish surrounding property values because: *All of the above. Again, the home is 350 feet from the road and is not visible to any neighbors. The home will be designed in very good taste.*

The note on the plan states that Robinson Road Extension was discontinued in 1953. Robinson Road is an old town road . It is currently a Class VI road subject to gates and bars. It would take a town meeting vote to give up the land to abutters. Except for the frontage, the applicant meets all other setbacks for a duplex in the R3 zoning district. She needs frontage on a Class V town street or better, which is Borough Road.

Carl Schoeller, 857 Borough Road, stated that he is very concerned that the duplex property would become a rental unit in the future. If so, that would lessen the value of abutting properties. It was noted that the dirt portion of Borough Road is paved to the town line of the next town over.

Seth Prescott, 736 Robinson Road, stated he owns Map 258, Lot 9; Map 258, Lot 5-1; and across Robinson Road, Map 256, Lot 1-7 which is a 40 acre parcel used as a wood lot. Seth Prescott is concerned about the value of abutting properties if a duplex is built on Map 258, Lot 14-1. The parcel has steep slopes and wetlands. Isn't a larger driveway needed for a duplex? Everett Hodge stated he has not seen the septic plans. A State approved septic plan is needed before an applicant can apply for a building permit.

A Board member asked Mr. Schoeller if a variance was required for a single-family home intended as a rental, would he have the same concerns. Mr. Schoeller would have the same concerns.

Bill Hickory, 860 Borough Road, asked if more duplexes could be built in the area, and would the decision in this case set a precedent? If the lot meets the requirements, a duplex is allowed in the R3 zone. Chairman Bonney stated that legally, any decision by the ZBA is considered on its own merits and does not set precedent. Tom LoPizzo agreed that any case the ZBA hears stands on its own facts. Two-family dwellings are permitted in the R3 zoning district. Six-family dwellings require a Special Exception.

It was discussed that the applicant does not have to go to the Planning Board for a wetlands crossing permit because there is an established driveway on the lot.

Lloyd Carter, general contractor for Sarah Perry, Alban Avenue, Allenstown NH stated that the septic design submitted to the State has been moved to the top of the flat land and the size will be 2,000 gallons. The leach field will be 200 feet from the location noted on the 5-bedroom home septic design. The existing driveway is 60 feet from Robinson Road. The applicant has requested a driveway permit from the Pembroke Public Works Department. The driveway will be 15 feet at the base rising to a 12 foot wide driveway. The dwelling will not be vinyl sided and will fit its environment designed as a reproduction wooden barn. Mr. Carter stated that Sarah Perry has managed Perry Brothers Monuments for years. Mr. Carter walked the property with another abutter and pointed out the proposed house and septic locations.

Sarah Perry stated she was considering the purchase of another property in the area with 290 feet of frontage but did not purchase it. The other parcel meets all the requirements for a duplex. Ms. Perry stated she has the same concerns about preservation of the neighborhood. The home designed by A&B Lumber is a reproduction barn located on five acres. She hopes to live in the home with her sister for the next 30 plus years.

Chairman Bonney summarized the case. The only difference between a single-family home and a duplex is two kitchens. The applicant is proposing to build a duplex at 849-851 Borough Road for herself and her sister. The plan meets all requirements except frontage. There is 200 feet of frontage where 230' is required and the house will be located 420 feet from Borough Road, not visible to any neighbors.

Neighbors expressed concerns that the property could turn into rental property in the future. Neighbors are concerned that a duplex will devalue abutting property. Abutters stated that there is a large outcropping of rock at the beginning of the lot. The proposal meets 60 foot rear and 30 feet side setbacks. The septic design for this proposal is for a 2,000 gallon septic system for two units, each with two bedrooms. The state (NH DES) will take into consideration both the ledge and the wetlands when they review the septic system design. The house will have wood ship lapped siding and would look like it belongs in its environment. There will be a pull off area on the driveway so multiple cars can pass. Again, a duplex is permitted in the R3 zoning district with proper land and frontage.

Seth Prescott asked for clarification on the Robinson Road Extension setbacks. Chairman Bonney stated that "Frontage" is defined as the number of feet from a town street Class V or better. Robinson Road Extension is not a "street". Robinson Road Extension is a Class VI road subject to gates and bars. Tom LoPizzo received confirmation from the Building Inspector that setbacks will be addressed at building permit issuance. Septic approval from the State is needed before the applicant can apply for a building permit.

There being no further input, Chairman Bonney closed the public hearing at 8:36 p.m.

Deliberations: Chairman Bonney led the ZBA through a review of the five area variance criteria. 1) The Board discussed that the applicant could request a Special Exception for an in-law apartment (in any zoning district) but it would be of a limited size to meet the ordinance. Any house in the neighborhood could request an in-law apartment that meets the ordinance. Thirty feet of frontage is lacking for a duplex on this

lot. Dana Carlucci noted that the proposal is not contrary to the overcrowding of land. Dana stated that the applicant has 30% more area than needed for a duplex - 160,000 square feet - and is only lacking 15% of the frontage needed. Realistically, duplexes are allowed in any zone with the proper area. 2) The applicant is missing 30 feet of frontage for a duplex. The lot is huge, with 217,000 square feet and the house will be set back so it is not seen by neighbors. 3) The purpose of the ordinance is to allow single-family homes and duplexes in the R3 zoning district. The applicant meets all other requirements for a duplex. 4) The house will be located 420 feet from the road and will look exactly like a single-family home. 5) The ordinance allows duplexes, and is intended to address overcrowding of the land. A variance will allow reasonable use of the property. The lack of frontage is offset by the size of the lot.

The proposal will not diminish property values as the house will be sited 420 feet from the road. In the future, the structure could be turned back to a single-family home. Zoning Board members have seen single-family homes go into disrepair. Dana Carlucci noted that his family has always lived in a multi-family dwelling as they needed the rent of the other units to pay the mortgage. The plan looks like an upscale dwelling.

Motion: Bruce Kudrick moved to grant an Area Variance under 143-114 to allow a duplex to be built at 849-851 Borough Road with 200 feet of frontage where 230 feet frontage is required at Map 258, Lot 14-1 in the R3 Zoning District with the following conditions:

1. Applicant must meet all state and local regulations.

Tom LoPizzo seconded.

VOTE: TOM L- Y DANA - Y BRUCE- Y
TOM H Y BILL - Y

MOTION TO APPROVE AN AREA VARIANCE AT MAP 565 LOT 230 TO ALLOW A DUPLEX AT 849-851 BOROUGH ROAD , MAP 258, LOT 14-1 WITH 200 FEET OF FRONTAGE WHERE 230 FEET IS REQUIRED WITH CONDITIONS ON A 5-0 VOTE

MINUTES OF PREVIOUS MEETINGS

Motion: Bruce Kudrick moved to approve the minutes of October 20, 2009 as amended. Tom LoPizzo seconded.

VOTE: BRUCE - Y DANA - Y TOM L- ABSTAIN
TOM H Y BILL - Y

MINUTES OF OCTOBER 20, 2009 APPROVED AS AMENDED ON A 4-0-1 ABSTAIN VOTE.

OTHER

Date of next ZBA meeting – The ZBA December 2009 meeting will be on Monday, December 28, 2009.

ADJOURN Motion: Bruce Kudrick moved to adjourn. Dana Carlucci seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:50 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary