

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
June 28, 2010 Approved 7/26/10

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

ALTERNATES PRESENT: Mick Pinard, Mark Simard, Paul Paradis

EXCUSED:

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

Chairman Bonney called the meeting to order at 7:05 p.m.

PUBLIC HEARING

Case #10-11-Z

Applicant: Michael Lamper
749 Robinson Road
Pembroke NH 03275

Property Owner(s): Michael Lamper and Kelly Olivier
749 Robinson Road
Pembroke NH 03275

Property Address: 749 Robinson Road
Pembroke, NH 03275
Tax Map 256 Lot 3-1 located in the R3 Rural/Agricultural-Residential
Zoning District

Special Exception under *Article XIV Zoning Board of Adjustment, Variances and Special Exceptions 143-113 Special Exceptions*- The applicant, Michael Lamper, is requesting permission to operate a **Major Home Business**. A Special Exception is required for any Major Home Business per Table of Use Regulations 143-19. The property is located at 749 Robinson Road, Map 256, Lot 3-1 in the R3 Rural /Agricultural - Residential Zoning District.

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 7:05 p.m.

There were 5 regular members and 3 alternate members; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Copies of assessment cards, a sketch of the site, a photograph of the property dated 6/8/10, letters dated June 18, 2001 from Peter Rowell, Pembroke Code Enforcement Officer; March 3, 2010 and March 25, 2010 from Everett Hodge, Pembroke Code Enforcement Officer; and a letter dated June 8, 2010 from Chris Culberson, Pembroke Water Works Superintendent were included in the application packet. Mr. Culberson notes that 749 Robinson Road is not in the well head protection area, and is on the outskirts of the Aquifer Conservation District. Mr. Culberson suggests that removal of any fluids or storage of any fluids above and beyond the average household quantities not occur on this property as part of the Major Home Business/Recycling on this property.

Michael Lamper stated he is requesting permission to operate a Major Home Business with outside storage of 3-5 ground containers. The storage containers have been on his property for 4 years. Michael Lamper

stated that he does not plan to run his business any different than he is now. He has three routes, one per day three days a week. He uses a one ton rack body truck to pick up all the parts necessary for the route on a given day. He then brings the metal to his Pembroke property to begin sorting the salvageable metal into the correct hopper. The metal is mostly car parts - alternators, starters, etc. He uses three containers, each is 14 yards with a swinging back door. He keeps two extra containers for backup. He plans to store the metal in hoppers equipped with industrial waterproof covers. He plans to keep a maximum of five hoppers on his property, each of which would not store metals for any longer than 5-8 days at a time. Mr. Lamper stated he has been running his business in Pembroke since 2001, but came to the ZBA tonight because he wanted to have outside storage and needs a variance to keep the containers on his property.

In response to Board questions, Mr. Lamper stated that he picks up recyclable metal from dealerships and has contracts to do so with several. Light iron, and # 1 iron (second lightest) is brought to Portsmouth Docks to sell or to Cohen's Metal in Concord NH. The filled containers are on the property 2-5 days. Before he had containers, Michael Lamper sorted the metal on the ground. The containers are 50 yards from his house in a straight row. Parts stay on the property no more than one week. Michael's hours are 6:00 a.m. to noon Tuesday, Wednesday and Thursday. If he misses a day, he will work a Monday or Friday. After 4-6 hours gone from the property, he returns and separates metal for one hour per day. He has a swamp loader 14 feet long and 8 ½' wide that holds 15 yards. Once in a while, maybe 10 per year, he will pick up a washer or dryer. The one ton truck holds #1 metal and is brought straight to be sold as junk. Mr. Lamper sells rotors to a melting company. When the height of the metal goes above the container, Mr. Lamper presses it down with a backhoe. With regard to fluids, most of the dealerships take out the pans and fluid right in front of Mr. Lamper. In response to Board questions, Mr. Lamper stated that no permit is needed to recycle metal and he does not store any fluids. He uses his one ton truck with a dumpster on it for the Tuesday route because there is more to pick up.

The Board discussed that one of the criteria for a Major Home Business is that the use is contained within a building. This use occurs outdoors. Dana Carlucci asked if it would be more appropriate to hear the appeal as an "accessory use variance". Mr. Lamper stated that no one comes to his house, he has no sign, and he brings the metal off the property. Mr. Lamper assured his abutters that the business would be the same as it has been the past nine years. Ricky Preve, 748 Robinson Road, stated that Mr. Lamper makes his property look presentable and if the business does not get any bigger, he supports the appeal.

Bruce Kudrick read the State definition of junk yard aloud. Chairman Bonney asked Everett Hodge if this use is considered a junk yard, because in 143-19, #28 Retail and Services, junk yards are not permitted. Michael Lamper stated I do not pick up junk cars, or sell car parts. My metal recycling business is far from a junk yard. No cars or engines are kept on the property. Mr. Lamper has a letter from a former Pembroke Code Enforcement Officer dated June 18, 2001 allowing the business as a minor home occupation.

Michael Lamper addressed the 9 points necessary for a Special Exception as they applied:

- 1) Please describe how the requested use is essential or desirable to the public convenience or the general welfare. *The business is a source of income to my family.*
- 2) Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare. *All material will be in covered bins. The storage area will be fenced to screen the view from Robinson Road.*
- 3) Please describe how the specific site is an appropriate location for the proposed use and the character of adjoining uses will not be affected adversely. *The business is located in a rural area.*
- 4) Please show that no factual evidence is found that property values in the district will be adversely affected by such use. *The area will be fenced.*
- 5) Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *The number of trips generated by the business will be two trips per day.*
- 6) Please explain how adequate and appropriate facilities will be provided for the proper operation and

- maintenance of the proposed use. *The property has a private well and septic.*
- 7) Please show that there are no valid objections from abutting property owners based on demonstrable fact. *Abutters have been noticed and there have been no complaints registered.*
 - 8) Please show that the proposed use has an adequate water supply and sewerage system and meets the applicable requirements of the State. *The property has a private well and septic.*
 - 9) If the proposed use is for multi-family dwellings, will it be served by the town water system and by the town sewerage system. *N/A*

Chairman Bonney summarized the case. The applicant Michael Lamper is requesting a Special Exception for a Major Home Business in the R3 zoning district. He would like to have three containers with covers to store metal on the property for about 3-4 days, and 2 more containers as backup. He has a swamp wader truck to haul the metal to sell as scrap. He sells rotors to a melting company in Nashua NH. He is not selling anything from the house and has no sign. Mr. Lamper will make sure the current use is not expanded and will put up a fence to screen the containers. He states his use is not a junk yard and he has no junk cars or engines. He recycles metal parts only. In 2001 his business was allowed as a minor home business with no outside storage. In response to Board questions as to whether he could operate his business without outside storage, Mr. Lamper stated he would have a very difficult time separating metals without the containers. In several years, he may be able to move the operation to Allenstown. He has a couple more years of payments on a piece of property in Allenstown before he owns it. He plans to set up an impound yard for the town on the Allenstown property. Mr. Lamper would like to have outside storage for three covered containers on the Pembroke property

There being no further input, Chairman Bonney closed the public hearing at 7:35 p.m.

A Special Exception for this use is not on the list. By State RSA, a place of keeping and storing automotive parts is a recycling yard. Mr. Lamper picks up used car parts, iron and metal, and stores them on his property. Dana Carlucci stated that this case makes him recall the "boarding house" case, where there was nothing in the Pembroke Zoning Ordinance that specifically addressed the circumstances of the case. Society tells us that recycling is a green activity that helps to save natural resources. With the appropriate control on this property, it may fit the definition of "junk yard" but was allowed as a minor home business in 2001. Mr. Lamper needs outside storage to operate the business so he is seeking a Special Exception for a Major Home Business. Dana Carlucci stated he would rather see plantings and greenery to screen the storage area than a fence. Is this case more appropriate as a Variance for accessory use, as it doesn't fit the criteria of Major Home Occupation. Everett Hodge confirmed that there are Best Practices published by the State for operation of green yard programs. There are no inspections or licenses set up in Pembroke for a green yard because the State RSA contains junk yard licensing process. Everett Hodge was told that this use is a "machinery junk yard". Still under local jurisdiction, junk yards are not permitted in Pembroke. It was asked, if anybody had a large quantity of wood or metal in their yard, is it then a junk yard? If the area is fenced in and "not in the public view", does that change the situation? It was discussed that a minor home occupation and major home occupation allow only one commercial vehicle and Mr. Lamper has two commercial vehicles. Under 143-18 a Major Home Occupation cannot exceed 40% of the lot. Unless he has a huge building, the ordinance does not prohibit business as an accessory use. However, the intent of the zoning is that junk yards are not permitted. There is no mention of a recycling yard as something different from a junk yard as defined by the State. Mr. Lamper has permission to run a minor home business and can continue to do so as long as he meets the requirements of a minor home business. He can load the metal onto the truck and haul it to the scrap yard the next day. Mr. Lamper brought the containers in to make the business more efficient. He can still keep one container on the truck, not on the ground.

Dana Carlucci stated that the State has an antiquated definition of recycling and does not specify any difference between "recycling" and "junk yard" in the statute. A traditional junk yard has whole crushed cars stacked up, not temporary storage of recycled auto parts. Mr. Lamper's recycling use is not a

permanent junk yard. The Board discussed options. Mr. Lamper could buy a piece of property in the commercial zone, but the use is still not permitted in Pembroke if it is a “junk yard”. The definition of junk yard does not address how long an item remains on property at a “junk yard”. It could be one hour, one day, one week. The State of NH should define the difference between recycling and junk yard, and the Planning Board should request that the State do so.

Dana Carlucci asked, what if the applicant operated strictly within a building, the business were run by a permanent resident and no more than one employee, no display of goods or wares, no dust, noise or fire hazard results, no sign or advertisement is present, and since a change March 11, 2008 no more than **two** commercial vehicles are allowed on the property. This would meet the criteria of Major Home Business. Does 236-123 Fencing apply? Tom LoPizzo stated that based on the discussion, the ZBA can’t grant a Special Exception for the requested use. Maybe the Town erred on the category (Special Exception) and the applicant could come back and apply for a Variance Accessory Use. However, it was stated that junk yard use is not in the Spirit of the Ordinance, as junk yard use is not allowed in Pembroke. Mark Simard asked, what if the applicant set up a pole barn or metal building to house the containers and sort the metal?

Chairman Bonney led a review of the Special Exception criteria. 1) The use is NOT essential or desirable to the public because the use is not listed in the Table of Uses Regulation 149-19. 2) agree . 3) Meets all requirements 4) agree 5) agree 6) agree. 7) No one attended the meeting stating they were opposed. 8) N/A 9) N/A

Motion: Bruce Kudrick moved to DENY a Special Exception to allow Applicant to operate a Major Home Business recycling metal at 749 Robinson Road, Map 256, Lot 3-1 for the following reasons:

1. The requested use is not listed as a Special Exception in Table of Uses Regulation 149-19.
2. For a Major Home Business, the use must be primarily carried on within a building.
3. For a Major Home Business, only one commercial vehicle is allowed on the property and the applicant has two commercial vehicles.

Tom LoPizzo seconded.

Discussion: The Local Government Center called the use a “machinery junk yard”. A junk yard is over 500 square feet ‘displayed to the public’. What if the area is shielded from public view? The neighbors across the street are present and are okay with the business if it stays the way it is. The applicant is willing to put up fencing or greenery to conceal view of the containers. Since a change approved March 11, 2008 no more than **two** commercial vehicles are allowed on the property so item #3 should be eliminated from the motion. Bruce Kudrick removed item three, Tom LoPizzo seconded the motion as amended.

Motion as amended:

Motion: Bruce Kudrick moved to DENY a Special Exception to allow Applicant to operate a Major Home Business recycling metal at 749 Robinson Road, Map 256, Lot 3-1 for the following reasons:

1. The requested use is not listed as a Special Exception in Table of Uses Regulation 149-19.
2. For a Major Home Business, the use must be primarily carried on within a building.

Tom LoPizzo seconded.

VOTE: TOM L - Y DANA - NO BRUCE- Y
TOM H NO BILL - Y

MOTION TO DENY A SPECIAL EXCEPTION TO OPERATE A MAJOR HOME BUSINESS AT 749 ROBINSON ROAD, MAP 256, LOT 3-1, PASSED ON A 3-2 VOTE

Chairman Bonney stated that the applicant can apply for a Variance, continue to operate as a Minor Home Business as allowed in the letter of June 18, 2001. Bruce Kudrick noted that Mr. Lamper is doing a good job and could continue to put everything in the container on the one commercial truck allowed for a Minor Home Business, but he can’t have storage containers on the ground.

It was suggested that the ZBA approach the Planning Board and ask for a definition of “recycling” in the local ordinance. However, Board consensus was that it would be more appropriate for the Planning Board to go to the State representatives and ask them to look at the RSA regarding junk yards. Collecting metal parts to separate and recycle should be defined separate from junk yard. The RSA does not say how long material can stay on property before it is a “junk yard”. Enabling legislation from the State of NH is needed to have more than one category of junk yard.

PUBLIC HEARING

Case #10-12-Z

Applicant: Lauren and Timothy Wright
207 Dearborn Road
Pembroke, NH 03275

Property Owner(s): Lauren and Timothy Wright
207 Dearborn Road
Pembroke, NH 03275

Property Address: 207 Dearborn Road
Pembroke, NH 03275
Tax Map 266 Lot 89 located in the R1 Medium Density Residential and the AD Architectural Design Zoning Districts

Variance from *Article V Section 143-21 (Table of Dimensional and Density Regulations)* of the Zoning Ordinance to build a 24 foot by 20 foot 2-story addition with a five foot, six inch by 19 foot deck onto their existing home. A Variance is needed because the addition and deck will not meet the required 30 foot front setback from Dearborn Road.

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 8:20 p.m.

There were 5 regular members and 3 alternate members; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Copies of assessment card, preliminary drawings for 207 Dearborn Road prepared by Jeffrey Land Survey, LLC Litchfield NH showing first and second floor as built, current and proposed foundation plan, elevation level, etc were included in the application packet.

Timothy Wright stated that he and Lauren have lived on Dearborn Road for fifteen years, and they have two young boys. They have an addition off the back of the house already, so it would be easiest and simplest to add to the forward part of the house and leave the living space intact. They are proposing to build a 20’ x 24’ 2-story addition onto the front of their structure. The addition will consist of a revised entry way, mudroom and office on the first floor and a Master bed and bath on the second floor. Although they meet the frontage requirement of 120 feet, they need a variance of 15’ 8” on the front setback from Dearborn Road. The six foot jut out in front already puts the house in non-conformance.

John Nicholson, CAD Designer, stated that the design he created for the Wrights looks as though it has always been there. First, the 6 foot jut out will be removed. A 24’ wide, 20’ long Dearborn Road addition is proposed. They need a 15’8” variance, as 14’2” will be left as the front setback to Dearborn Road. There

are decks on the left side of the house. The lot is 1 and ¾ acres and is an irregular shape. No encroachment would occur on the side properties. The building is already 2-3 feet into the front setback and the addition expands a non-conforming use. The property meets the 120' frontage requirement.

Timothy Wright addressed the criteria necessary for a Variance as they applied:

- 1) Granting the variance would not be contrary to the public interest because *the addition will not encroach on our neighbor's interests. It does not present a danger, disrupt town services, block site lines or utility accesses. We are preserving the original architectural style and when completed, the addition will not differ from or change the nature of the surrounding properties. The addition will be added to the existing structure in a seamless manner and will look as though it was always there once completed.*
- 2) The spirit of the ordinance is observed: *This addition will not utilize over 30% of our irregularly shaped lot.*
- 3) Granting the variance would do substantial justice: *The house is already a non-conforming structure. This variance would allow for more useful living space. This addition will allow us to better utilize the property we have, stay where we are, and add to the tax base of the town without infringing on neighbor's setbacks, or changing the structural integrity of the house. It would prevent unreasonably high construction costs and disruption of our home and activities during construction.*
- 4) The values of the surrounding properties will not be diminished: *With this addition, we will be able to improve the look of the house by putting in an attractive and functional new main entrance to our dwelling. The structure will not be an eyesore or unusually large when compared to other dwellings in the immediate area.*
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - (A) Owing to special conditions of the property that distinguishes it from other properties in the area:
 - i. No Fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property: and
 - ii. The proposed use is a reasonable one.
The large size but irregular shape of our lot presents substantial challenges when it comes to using it for expansion purposes. Due to the fact our house is already a non-conforming structure, our hardship lies in the fact that any alteration to the front portion of the house would require a variance. Expanding to the sides or back of the house would probably require a substantial variance and possibly encroach on abutter's property lines. In addition, expanding to the side or back of the house would substantially alter the style of the house and disrupt the eating and dining areas. We lack a proper main entrance to our house. The entrance we use regularly from the driveway side of the house is basically the back door. It leads directly into the kitchen, which is in the center of our house, and is extremely inconvenient. The house was originally built facing Route 3 and the original front entrance is on the opposite side so it is rarely used.
 - (B) If the criteria in subparagraph (A) are not established, then, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to make a reasonable use of it.

Bruce Kudrick asked for clarification, if you built an addition on the right side or the back of the existing house, what would be the difficulty? Tim Wright stated that there is a big dip in the side lawn. The area would need to be filled. There is no driveway there, so a new driveway and curb cut would be needed. It would be impossible to connect to the house at the right side without breaking down walls. The bedrooms

would be separated by two sets of stairs. John Nicholson stated the design proposed is the lowest impact addition to achieve enough space for the Wrights. Mr. Wright stated that we really like living in Pembroke. We have talked to our neighbors about our plans for the addition and they are not opposed. Our home was built in 1908 and has had no Variances or Special Exceptions previously.

Chairman Bonney summarized the case. The case is #10-12-Z regarding 207 Dearborn Road. Due to a large but irregularly shaped lot, the applicants propose an addition of a 24 foot by 20 foot 2-story addition with a five foot, six inch by 19 foot deck onto the front of their existing home. The addition will consist of a revised entry way, mudroom and office on the first floor and a Master bed and bath on the second floor. Although they meet the frontage requirement of 120 feet, they need a variance of 15' 8" on the front setback from Dearborn Road. The addition will not impinge on side setbacks, and will utilize less than 30% of the lot with the addition. The driveway is on Dearborn Road and the original front entrance is on Route 3. The applicants talked about alternate plans considered. They like living in Pembroke, and no neighbors have come forward against this appeal.

Dana Carlucci stated that he is concerned that in the section of Dearborn Road opposite the telephone poles, an addition that encroaches on the front setback is not acceptable on a narrow road. Dearborn Road could be widened in the future and adequate setbacks would be needed. Dana noted that the lot is 1 ¾ acres, it is 80 feet wide in the back and flares out to 130 feet wide. Dana does not see this design as the only possible addition to the existing house. Dana Carlucci stated that a creative addition could be placed elsewhere on the property. Dana stated that slopes can accommodate a walk out. Bruce Kudrick noted that Dearborn Road is built to town standard, has curbs and sidewalks and he has just four feet in front of his house. Bruce Kudrick sees Dearborn Road as nearly all built out. Dana has seen a lot of changes in Pembroke since 1959 and there are still the Range Roads. Anything could happen in the future. Lauren Wright stated that the telephone poles are on their side of the street and sidewalks are across the street.

There being no further input, Chairman Bonney closed the public hearing at 8:47 p.m.

Deliberations: Chairman Bonney noted that the application included a very nice set of plans and the responses were neatly typed on the forms. He commended the applicants for the legible application. As a side note, Chairman Bonney asked Everett Hodge to request that the Town Administrator post all the ZBA applications as Adobe PDF files that can be typed in and printed off to get professional looking documents. Bruce Kudrick noted that he specifically asked the applicant about the difficulty expanding to the back or side instead of the front. The lot is a long lot. The original owner owned both lot 266-88 and 266-89. A small section was subdivided to build a raised ranch in the back. The applicant stated they could not live in the house while construction was going on if the addition were elsewhere. Also, the side yard has a 6 foot drop on the right and the driveway is on the other side of the house.

Dana Carlucci stated that it is more convenient to have this design. Expanding in the front makes a non-conforming structure more non-conforming. There is a lot of land in the back and on the side. Construction is always disruptive. The proposed addition would make a structure that is now 4' in the setback increase to 15'8" in the front setback.

The ZBA reviewed each of the five variance criteria. 1) Not contrary to public interest, Dana Carlucci disagrees. The 30 foot front setback is in the ordinance for a reason - to prevent overcrowding, hazards, traffic impact, and allow room if the road were widened in that section. 2) meets the spirit of the ordinance, the existing house plus the addition would not utilize greater than 30% of an irregular lot. There is a natural stone wall in the front that would limit widening of a town road. 3) agreed 4) Yes and 5) yes.

Dana Carlucci stated again there is room on the land to build elsewhere. An addition on the back or right side of the house would not require a Variance. A walk out foundation works well with slopes, and the

driveway can be moved to the other side of the house. Paul Paradis stated the land is not flat in back the way it is in the front. The applicant stated they would have to demolish the existing structure to attach to the house on the right side. The proposed design keeps the same roof line. Dana Carlucci stated that an opposing pitch roof with a walkway is another possibility.

Motion : Bruce Kudrick moved to grant a Variance to the front setback to build a 24' x 20' 2-story addition to the front of the existing structure at 207 Dearborn Road, Map 266, Lot 89 in the R1 Zoning District with the following conditions

1. Applicant must follow all town and State regulations.
2. Applicant must follow the plans regarding setbacks as presented in the application.

Tom Hebert seconded.

VOTE: TOM L- Y DANA - NO BRUCE- Y
TOM H Y BILL - Y

MOTION TO APPROVE A VARIANCE TO THE FRONT SETBACK TO BUILD A 24' X 20 FOOT ADDITION TO THE FRONT OF THE EXISTING HOUSE AT 207 DEARBORN ROAD, MAP 266, LOT 89 IN THE R1 ZONING DISTRICT APPROVED WITH CONDITIONS ON A 4-1 VOTE

PUBLIC HEARING

Case #10-13-Z

Applicant: David Newton
422 Deerpath Lane
Pembroke, NH 03275

Property Owner(s): David and Mary Newton
422 Deerpath Lane
Pembroke, NH 03275

Property Address: 422 Deerpath Lane
Pembroke, NH 03275
Tax Map 565 Lot 153 located in the R1 C Medium Density Residential
Zoning District

Variance from *Article V Section 143-21 (Table of Dimensional and Density Regulations)* of the Zoning Ordinance to install a 21 foot round pool approximately 5 feet from the rear of an existing garage. A variance is needed because the pool will not meet the required 40 foot rear setback from the rear property line.

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 9:10 p.m.

There were 5 regular members and 3 alternate members; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Copies of assessment card, and copy of Denial Notice dated 6/3/10 from Everett Hodge, Pembroke Code Enforcement Officer, were included in the application packet.

David Newton provided a more detailed drawing to all ZBA members showing the distance from the deck is 9' an 23' from the garage. In the original request he stated that he would like to install an 18-21 foot diameter above-ground pool in his back yard, but after research with Lavoie Pools he would like a 24'

diameter pool. The proposed location of the pool would not meet the required 40 foot setback from the rear property line. The 15' side setbacks are met. No location in the yard would allow compliance with the rear setback. There is stone wall and woods in the rear. The Newton's were investigating other homes that either had a pool or could accommodate a pool because the back yard used to be very shaded. After selective clearing and storm damage, sunlight came into the back yard and a pool became a possibility. There is a boulder 8 foot long, 4 feet wide and 4 feet high in the back yard. The slope of the land causes natural runoff in the area. Mr. Newton chose the flattest area and still must level down 26 inches for the rear of the pool. Another option considered would be a soft pool. It is only available in a 17' x 32' oval shape which would be even closer to the rear property line. The only soft pool dealership is Stove Barn in Concord NH. A durable soft pool left out in winter would experience ice damage. Ice damage makes the warranty void. Not to mention the time, effort and waste of 12,000 gallons of water per year to take it down. The closest house would be 34 feet from the pool. No Special Exceptions or Variances have been requested on the property in the past.

David Newton addressed the criteria necessary for a Variance as they applied:

- 1) Granting the variance would not be contrary to the public interest because *the pool would leave plenty of space to my neighbors on either side of the pool. The rear setback is from a property that does not contain a residence. The impact to neighbors is minimal. David Newton talked to abutters and they are in favor. David's wife is a school nurse so she is home with the kids all summer.*
- 2) The spirit of the ordinance is observed: *Plenty of space exists between residential dwelling boundaries. We are not trying to inconvenience anyone.*
- 3) Granting the variance would do substantial justice: *We have spent considerable time reviewing this proposal with Mr. Hodge. We are trying to do the right thing and what is best long-term for the house.*
- 4) The values of the surrounding properties will not be diminished: *We maintain our property very well, and would do the same with this pool.*
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - (A) Owing to special conditions of the property that distinguishes it from other properties in the area:
 - i. No Fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: and
 - ii The proposed use is a reasonable one.

We simply would like to have the benefit of a pool in our own yard, as opposed to paying for a non-resident pass and using City of Concord pools. Many homes in this town do not meet the current standards for setbacks. We hope that with the approval of the board and our neighbors, that we will be allowed to have a nice, new above-ground pool installed. Many lots in the district cannot meet the setback requirements.

- (B) If the criteria in subparagraph (A) are not established, then, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to make a reasonable use of it.

The only option we have is a temporary soft pool based on the setback requirements. To set the soft pool up each year incurs quite an expense and is a waste of water as well. Long term, we feel the best solution is to install a standard above ground pool, and would like permission to have one.

David Newton stated the property has town sewer and a well. Paulette Malo, Water Commissioner, stated that Deerpath Lane was not considered a "cluster development" because the town did not have that in the ordinance when it was developed in 1986. Each lot is about a half acre. The lot size was larger than needed to meet zoning at that time. The setbacks in place now are for larger lots.

Chairman Bonney summarized the case. The case is #10-13-Z regarding 422 Deerpath Lane. The applicant is seeking a variance to install a 24' diameter round above ground pool. The location of the pool provides 15 feet rear setback where 40' is required. The abutting property to the rear does not have a dwelling on it. The standard model 24' round pool is available in stock at Lavoie Pools. Clearing provided sunlight to the back yard. A large boulder prevent putting the pool behind the house. A soft pool is too big at 17' x 32' and would waste 16,000 gallons of water per year being emptied and that would not be good stewardship of our water. The lot is .42 acres, has town sewer and well water.

There being no further input, Chairman Bonney closed the public hearing at 9:30 p.m.

Deliberations: Bruce Kudrick noted that the huge boulder and the slope of the land limit where the pool can be located. The applicant still has to dig 26' to level the rear of the pool

The ZBA reviewed each of the five variance criteria. 1) No one has spoken against the proposal. 2) Yes, the pool would not cause overcrowding 3) yes, because the town changed the use and did not notify the property owner, agreed 4) Yes , ledge and boulder exist and 5) agree.

Motion : Bruce Kudrick moved to grant a Variance to the rear setback to install a 24 foot diameter above-ground pool within the 40 foot rear setback at 422 Deerpath Lane, Map 565, Lot 153 in the R1 Zoning District with the following conditions

1. Applicant must meet all state and local regulations.
2. Applicant must follow the plans submitted and obtain an electrical permit.

Dana Carlucci seconded.

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

MOTION TO GRANT A VARIANCE TO THE REAR SETBACK TO INSTALL A 24' DIAMETER ABOVE GROUND POOL IN THE REAR SETBACK AT 422 DEERPATH LANE, MAP 565, LOT 153 IN THE R1 ZONING DISTRICT APPROVED WITH CONDITIONS ON A 5-0 VOTE

MINUTES OF PREVIOUS MEETINGS

Motion: Bruce Kudrick moved to approve the minutes of May 24, 2010 as amended. Tom Hebert seconded.

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

MINUTES OF MAY 24, 2010 APPROVED AS AMENDED ON 5-0 VOTE.

ELECTION OF OFFICERS

Motion: Dana Carlucci moved to nominate Bill Bonney as ZBA Chairman for the coming year. Tom Hebert seconded.

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

BILL BONNEY ELECTED CHAIRMAN ON 5-0 VOTE.

Motion: Tom Hebert moved to nominate Bruce Kudrick as ZBA Vice Chairman for the coming year. Tom LoPizzo seconded.

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

BRUCE KUDRICK ELECTED VICE CHAIRMAN ON 5-0 VOTE.

Approved 7/26/10

OTHER

Request for clarification - Paulette Malo, Water Commissioner, asked the ZBA to research and clarify the facts concerning a ZBA decision on a 2-family residence regarding payment of arrears by the previous owner and payment of a new connection fee by current owner. Chairman Bonney will research and respond.

Date of next ZBA meeting – A ZBA work session will be held on July 14, 2010. The July 2010 meeting will be on Monday, July 26, 2010.

ADJOURN Motion: Tom Hebert moved to adjourn. Bruce Kudrick seconded. Vote was unanimous in favor of motion. Meeting adjourned at 9:45 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary