

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
August 30, 2010 Approved 10-25-10

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

ALTERNATES PRESENT: Mark Simard, Paul Paradis

EXCUSED: Mick Pinard

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 #10-15-Z

Applicant: Continental Paving
C/o Rick or Mark Charbonneau
1 Continental Drive
Londonderry NH 03053

Property Owner(s): Continental Paving
C/o Rick or Mark Charbonneau
1 Continental Drive
Londonderry NH 03053

Agent: Nobis Engineering
Attn: Brett Kay, E.I.T., Assistant Project Manager
18 Chennell Drive
Concord NH 03301

Property Address: 773-793 North Pembroke Road
Pembroke, NH 03275
Tax Map 559 Lot 6 located in the R3 Rural/Agricultural-Residential Zoning District, and AC Aquifer Conservation Zoning District

Special Exception under *Article IV Use Regulations, Section 143-19 Table of Use Regulations*. The applicant, Continental Paving, c/o Rick or Mark Charbonneau, is requesting permission to construct an asphalt plant at 773 to 793 North Pembroke Road. A **Special Exception** is required for this use in the R-3 Zoning District. The property is located at Map 559 Lot 6 in the R3 Rural /Agricultural -Residential Zoning District, and the AC Aquifer Conservation Zoning District.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters. Everett Hodge provided ZBA members with a copy of a prior Special Exception approved April 18, 1985 to Levi Ladd under Article 11.04 Section 11 with conditions:

1. Restrict gravel removal as submitted in site plan.
2. No fuel stored on site or any other hazardous materials.
3. Hours of operation will be between 5:00 a.m. an 8:00 p.m. Monday through Saturday.

4. The Board recommends that the land will be restored with topsoil and pine seedlings.
5. The Board suggests to the Pembroke Selectmen that CAUTION signs be erected on North Pembroke Road.
6. A paved apron (40 feet) access to Town roads be provided by applicant.
7. The area of excavation as submitted on the site plan be flagged or visibly marked.

Applicant proposes to remove sand and gravel on property located at North Pembroke Road in the R-3 Zone. Mr. Ladd stated on 4/17/1985 that a commercial pit would not be located in Pembroke. He has ten acres and wants to dig on 4 acres.

In a letter dated March 7, 1985 State of NH Water Supply and Pollution Control required corrective actions due to the proximity of the gravel operation to Concord wells.

1. Minimum 2-foot separation between the finished pit floor and the seasonal water table.
2. Benchmark elevation and location used for the topographic information shall be given.
3. A new test pit in the general location of test pit #1 shall be dug, and this division notified so a representative can be on site to observe the test pit reading.
4. An observation well shall be installed between the proposed gravel operation site and the Concord wells so that the water table can be monitored on a continual basis.

Chairman Bonney opened the public hearing on Case #10-15-Z as a Development of Regional Impact at 7:05 p.m.

There were 5 regular members and 2 alternate members; therefore, there was a full five-member board present for this hearing. Tom LoPizzo recused himself from Case #10-15-Z as he is an abutter. Chairman Bonney designated Paul Paradis to serve on Case #10-15-Z. Chairman Bonney explained the rules of the hearing. The Board makes its decision based on the facts presented by the applicant. If any of these facts are subsequently found to be different, the Board reserves the right to revisit its decision.

Copies of Conceptual Overview Plan dated July 2010 from Nobis Engineering, copy of a prior Notice of Decision #99-21-Z dated December 16, 1999 regarding a previous request to reestablish an asphalt plant on Ricker Road, Finding of Fact and Letter of Opinion in Support of Asphalt Plant from Nobis Engineering, both dated July 2, 2010 RE: FILE 82560.01 were included in the application packet.

Notarized letter dated July 27, 2010 of authorization from Rick Charbonneau (Owner/Applicant) for Nobis Engineering to act on behalf of Continental Paving, Inc. c/o Rick or Mark Charbonneau in the application for Special Exception to construct an asphalt plant and associated town, state and Federal permits was received August 2, 2010.

Brett Kay, Nobis Engineering, 18 Chennell Drive, Concord NH distributed copies of a property valuation study dated July 21, 2010 prepared by Robert Bramley, MAI, SRA, President, R.G. Bramley & Co., Inc, 373 West Hollis Street, Nashua NH 03060, Consulting #5063. Also present were Tom Lebowksi, Nobis Engineering; Rick Charbonneau and Mark Charbonneau of Continental Paving, Steve Pernaw, who prepared the traffic study for the excavation expansion. Brett Kay set up a 3D model of the proposed asphalt plant operation on the table in front of Chairman Bonney.

Brett Kay provided a brief background of the case. The lot is north of North Pembroke Road. Excavation began there over 20 years ago by Mr. Merrill. Mr. Kay stated that the proposed asphalt plant is a natural

expansion of the mineral extraction expansion approved in the spring of 2010. Map 258, Lot 13-3 is being reserved as a buffer lot. The documents provided last spring that apply to this application are 1) operating plan, 2) source control plan - Best Practices, 3) blasting plan and 4) groundwater monitoring wells. Main access to the proposed asphalt plant will be through the Concord parcel. Mineral extraction will continue eastward.

Continental Paving opened its first asphalt plant in Londonderry, NH in 1988, and then in Litchfield, NH. Brett Kay stated that Continental Paving has over 22 years experience handling petroleum products in a safe manner. The production of asphalt involves pulling raw aggregate, which is processed and dried, liquid asphalt is added and mixed and the product is stored in silos. The plant will be on six acres of previously disturbed land. Because aggregate is produced on site and does not need to be transported, the site is suitable for an asphalt plant. Also, no clearing of the land is required. The entire parcel is 70+ acres. The buffer lot Map 258, Lot 13-3 will remain intact. The processing operation will be shifted slightly east. The proposed asphalt plant site is 2,200 feet from No. Pembroke Road, 3,000 feet from Wellington Way and 1,500 feet from the Concord well.

Brett Kay explained that the gray hatching on the plan displayed on the easel represents paved roads. Paved roads mean less dust. Brett pointed out the following on the plans:

The general layout and configuration of the proposed asphalt plant is similar to those at the applicant's three other asphalt plants currently operating in NH. Based on their extensive experience in the production of asphalt mixtures, the applicant has identified the following key components of the proposed asphalt plant:

- Paved access area and haul roads
- Paved stockpile areas for aggregate
- Two 30,000 gallon liquid asphalt storage tanks with required secondary containment
- One 20,000 gallon fuel oil tank with required secondary containment
- One 20,000-gallon spec. oil tank with required secondary containment used in the process to heat oil
- Various pieces of processing/mixing equipment
- Three storage silos
- Stacking conveyers
- A 480 square foot control house building (12 feet by 40 feet)
- Maintenance garage inside the plant (80 feet by 120 feet)
- New 20 feet by 60 feet scale house across the Soucook River to replace Concord scale house
- A 1,200 square foot lab building
- A 324 square foot shed structure.
- One well and 2 septic systems for bathrooms for workers.

The Asphalt plant and its various component will be designed in accordance with applicable local, state and federal requirements. Brett Kay stated that exact details of layout and design may change during Pembroke Planning Board review and State of NH permitting process.

Mark Charbonneau stated that the average asphalt plant operates 175 days per year. To be competitive, some nighttime operation would be required (24 hour operation). More paving work is being done at night to limit the impact to traffic. The plant is typically closed from mid December to the first of April. Mark Charbonneau stated that Continental Paving has had very few complaints about its other two facilities relative to night operations or noise. Trucks drive in, fill up on the scale and drive out. Rick Charbonneau demonstrated the asphalt plant process, using the model set up in front of Chairman Bonney. A front-end loader is continuously working to fill the coal bins. The coal feed bins are moved to the drum. The

aggregate is dragged on the conveyor to the silo depending on size. Dust is collected in the bag house, made up of burlap bags, and then the dust is brought back to the bottom of the drum and kneaded in. Mineral extraction and processing hours are 6:00 a.m. to 6:00 p.m. and will continue as permitted. There are no plans to increase the amount of mineral extracted.

Brett Kay explained that Continental Paving met with the City of Concord staff and their concerns were:

- 1) protection of groundwater. Asphalt plant is an allowed use using Best Practices.
- 2) Noise
- 3) Odor
- 4) Traffic

Brett Kay addressed each of these concerns. Regarding protection of groundwater, Brett stated that stack emissions do not affect groundwater. Continental Paving has a complete spill prevention encounter plan prepared by a licensed engineer using federal guidelines. This plan lists the type and capacity of all materials, inspection, testing and reporting requirements, and details of secondary containment for 110% of the volume capacity of all tanks. Also, liquid asphalt above 240 degrees hardens when in contact with air. Liquid asphalt is successfully used for lining ponds, and inside of pipes for use with water. NH DES inspects the asphalt plants annually. Despite the proximity to Concord wells, it was noted that Continental Paving has the necessary equipment on site to address a spill of any size. Time would not elapse bringing equipment to a spill.

Brett Kay stated that new technologies had quieted down the noise of crushers, compared to the crushers currently operating on site for mineral extraction. Brett Kay stated that odor occurs when the product is overheated. More efficient, cleaner burning asphalt plant technology significantly lowers the odor. The Ricker Road, Pembroke NH asphalt plant used 1974 model controls and technology. Continental Paving plans to use the same driveway for access to the asphalt plant and has an easement to develop a driveway on the lot not owned by Continental Paving. If the new asphalt plant were approved, eventually, the Ricker Road asphalt plant would be brought offline. No aggregate would need to be hauled to Ricker Road from Concord Sand and Gravel. This adds two and half miles of trucking to the trip. Rick Charbonneau stated that Continental Paving is trying to be greener, to limit the impact of its asphalt plants. Continental Paving is aware of the City of Concord's determination regarding the use of the Route 106 intersection.

Continental Paving seeks to construct an asphalt plant on Map 559, Lot 6 at 773-793 North Pembroke Road, which is approximately 162 acres. The property is currently used for mineral extraction and processing, and has been since 1985/1986. The property is largely abutted by properties owned by the Applicant and used for mineral extraction and processing, as well as additional parcels not owned by the applicant permitted for similar industrial uses. The Applicant is proposing to use aggregate already produced on the property and abutting lots, by its existing operation, to produce various asphalt mixtures. These asphalt mixtures will be used to build, maintain and replace infrastructure throughout the Merrimack Valley and the State of NH. The asphalt plant will encompass approximately 6 acres in the mid-west portion of the property, and will consist of new state of the art equipment designed specifically for this use.

Brett Kay, Nobis Engineering, 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 proposed asphalt plant is important because the products produced at the plant will be used for a wide array of road, public infrastructure and building projects in the State of NH, and particularly in Merrimack Valley. Activities such as extracting and processing raw materials, including*

the production of various asphalt mixtures, provide a demonstrable public benefit and service to the residents of NH by using this State's natural resources to develop and enhance infrastructure. The applicant, as well as the property's previous owner, have proved this point by supplying raw minerals and processed materials to a number of developments in Pembroke and Concord. Overall, the proposed asphalt plant will contribute to the tax base without placing pressure on any municipal resources.

- 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. *The applicant proposes a use that will complement the existing processing operations on the property. We are unaware of any complaints or adverse impacts with respect to the Applicant's ownership or operation of its present extraction and processing activities. The area is zoned for Rural/Agricultural Residential and measures in excess of those required by law have been taken to ensure appropriate setbacks from all neighboring parcels not owned by the applicant. The proposed site is surrounded by 70 acres, providing significant distance to abutters. The plant will generate less noise and dust than the mineral extraction and processing operation currently permitted on the property. In an effort to further reduce the dust generated from operations on site, the applicant is proposing to pave the main haul roads, stockpile area, and asphalt plant area. The applicant will conduct its operations and reclaim all its properties in a manner that complies with all local and state laws, permits and approvals.*
- 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 property is comprised of land that largely abuts other parcels owned by the applicant, and other parcels permitted for similar uses. The property is currently, and has been historically, used for mineral extraction and processing. Aside from the production of asphalt mixtures, the Applicant does not plan to make any changes to its operational plans - using the same ingress and egress routes to the site from an access point on Route 106 in Concord NH. There is no anticipated increase in traffic volumes associated with the asphalt plant. The Applicant does not anticipate the rate at which it removes minerals will increase appreciably. The town and neighbors will experience little or no outward change in existing operations and activity.*
- 4) Please show that no factual evidence is found that property values in the district will be adversely affected by such use. *The construction of the Applicant's proposed asphalt plant should not adversely affect property values given that much of the surrounding land is already being, and has historically been, employed for mineral extraction and processing purposes. The area is zoned for such use. The Applicant will maintain generous buffers established by the previous owner, so the construction of the asphalt plant will have no impact on surrounding property values.*
- 5) Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *The applicant intends to continue using its access point in Concord, along Route 106, as its major ingress/egress route. The State has issued a driveway permit for that use. Applicant believes no amendment to that permit is required because the volume of traffic will not be meaningfully altered.*
- 6) Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. *The applicant will ensure that any facilities are in compliance with appropriate local and state laws, rules, ordinances, statutes and regulations. In addition to local permits and approvals, the Applicant will need to obtain state permits and approvals, including permits regarding air quality for emissions. Over the past 24 years, the Applicant has owned and operated three asphalt plants at existing facilities in the State of NH. Throughout this time, the applicant has been successful in providing a wide variety of asphalt mixtures for state, local and privately funded projects. The Applicant plans to employ the same equipment, facilities and operations and maintenance practices as their existing facilities.*
- 7) Please show that there are no valid objections from abutting property owners based on demonstrable fact.

Applicant is not aware of any concerns or objections at this time. Applicant has tried to meet with all abutters. Of those parties with whom the applicant has spoken, no concerns or objections have been brought to the applicant's attention.

- 8) Please show that the proposed use has an adequate water supply and sewerage system and meets the applicable requirements of the State. *There is no water supply or sewerage system on the property servicing the current operation. The applicant is proposing to install a potable water supply well, and two sanitary sewer septic systems on the property. The uses will be confined to four bathroom facilities, located within the proposed structures associated with the asphalt plant. The systems will be designed in accordance with applicable local and state regulations. The well and septic will be utilized for the disposal/discharge of human sanitary wastes only.*
- 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*

Additional comments by Brett Kay in addressing the requirements for a Special Exception include:

1. The use is listed under Pembroke 143-119 R3 zone, Wholesale and Industrial #2
2. The new site would eliminate trucking of aggregate to Ricker Road.
3. The site is remote from surrounding properties.
4. The asphalt plant is dependent on mineral extraction, and is a complementary use.
5. No new driveway access is proposed.
6. Spill control containment measures are in place.
7. The site is lower than residential abutters and the surrounding 70 acres remain the same.
8. E, No factual evidence exists that property values will be negatively impacted. The R G Bramley report is submitted to support this fact.
9. Steven Pernaw testified that his recent 7-21-10 traffic and trip study supports that traffic will not be impacted by the addition of the asphalt plant. The peak reading of 2.48 is more than adequate.
10. It is stated that noise and odor will not reach beyond the boundary of subject property.
11. G, the driveway will be paved for treatment of dust.
12. H, all abutters were contacted by certified mail, and Nobis Engineering representatives attempted to meet personally with each abutter.
13. The City of Concord in its 8/20/10 letter states that the proposed asphalt plant is detrimental to its wells, in an inappropriate location, will cause undue traffic, and permits would be needed but not issued by Concord for truck and haul traffic across the City of Concord land.
14. I, the asphalt plant use does not require water for its operation.

The Clerk was asked to read into the record the following letters:

1. Nobis Engineering Finding of Fact dated July 2, 2010 RE: FILE 82560.01
2. Nobis Engineering Finding of Opinion dated July 2, 2010 RE: FILE 82560.01
3. Concord Planning Board dated 8/20/10
4. Concord Deputy Director dated 8/20/10
5. Travis Horne, 845 Borough Road, dated 8/30/10 in opposition
6. Tom LoPizzo, 875 Wellington Way, dated 8/30/10 in opposition

On 8/2/10 CNHRPC received ZBA minutes of 7/26/10, Notice of DRI Public Hearing for 8/30/10, Special Exception application for Continental Paving Asphalt plant, dated 7/2/10, Letter from Nobis Engineering Findings of Fact dated 7/2/10, Letter from Nobis Engineering Letter of Opinion dated 7/2/10, plan set "Not

Issued for Construction” dated July 2010. A letter dated August 6, 2010 to the Pembroke Zoning Board of Adjustment from Stephanie Alexander, CNHRPC Principal Planner, and Matt Monahan, CNHRPC Regional Planner has the following comments.

A Special Exception is presumably based on Table of Uses for Wholesale, Transportation and Industrial #2, Processing, treating and storage of materials including operations in the R3 District. Does the asphalt plant fall in this category, or does it fall in another category with more restrictions? Is the asphalt plant the same use as mineral extraction, the existing use of the property? The ZBA should consider any concerns of abutters regarding noise, odor and nuisance. What is the decibel level of the noise generated? Will it be that loud during the entire hours of operation? Will there be potential health issues (fumes, particulates, runoff etc) to residential neighbors? There will be 3 100’ silos on site. What is their purpose? Will these be visible to neighbors? Will the use be contrary to the Concord commercial zone? The Pembroke and Concord tax assessors could be asked to provide current assessments of neighboring parcels and comment on potential impacts to assessments after the proposed plant is constructed and in operation. The applicant has stated that traffic volume will not meaningfully change. What is the current traffic flow? Will the weight/size of the trucks change from what is now transported? Will the bridge over the Soucook River need reinforcing? Will more dust and particulates settle onto the river when crossing than do now? Multiple reports were generated for the 2010 mineral extraction expansion project. These plan documents could be updated as needed to accommodate the asphalt processing plant. Will these reports be updated? Is a spill response plan necessary? The ZBA could ask the City of Concord Planning Board to express in writing what solutions they would like to see to the specific issues that were raised in their letter. Per the Code Enforcement Officer, a neighborhood association from Wellington Way has formed. Their concerns should be heard by the ZBA and addressed by the applicant. There is no current septic system or water supply for the existing mineral extraction, but a drinking water and two septic systems are proposed. State permits will be required.

The facility will be paved. Note the two 20,000 gallon fuel oil tanks and the two 30,000 liquid asphalt tanks, and the 9,600 square foot maintenance garage. How much impervious surface will there be? The applicant states there will be oversight of the aquifer impacts by the NH DES Alteration of Terrain Bureau through the permitting process. Is the ZBA comfortable with this? Will the existing hydrogeological report be updated? The ZBA should obtain written opinions from the Conservation Commission and Health Officer before deciding whether to issue a Special Exception. The aquifer underneath Lot 6 should be considered even if the new facility is not on top of the aquifer, Concord’s well field and the Soucook River. These resources are shared not only by Pembroke and Concord, but also Chichester and Loudon. The ZBA should consider securing the services of the same independent consultant who produced the 2010 hydro geological report to update the report with the addition of the asphalt plant.

Approvals from Concord may be required for traffic associated with asphalt deliveries. Compliance with RSA 674:53, Subparagraphs II and IV in particular, govern what is required when a site’s sole access is located in a separate municipality. The municipality receiving the application (Pembroke) should ask the municipality providing the access (Concord), in writing, if there are any facts or regulations, which would preclude the development, if any conditions exist from the standpoint of adequacy of street access and the proposal upon it.

Purpose of the plant must be stated, with type of materials used and produced.

Maximum square foot size of the plant building allowed.

Statement of days and hours of operation.

Statement of maximum vehicle trips per day.

All necessary local and state approvals and permits must be obtained **and maintained**.

The existing operations plan, groundwater monitoring plan, source control plan, blasting plan, and hydrogeological study will be updated, maintained, and provided to the Code Enforcement Officer when revised.

Tom LoPizzo, 875 Wellington Way, complained that 50 minutes worth of letters had been read into the record, including 20 minutes of Nobis Engineering letters repeating some of the presentation by Brett Kay, and none of the many residents in attendance at the public hearing for the Development of Regional Impact had yet been allowed to speak about the proposal. Chairman Bonney ordered that the letters be read in their entirety.

Cherylanne Williams, 876 Wellington Way, stated that she understood that both the City of Concord and the Town of Pembroke had an excessive noise ordinance that did not allow mineral extraction or asphalt plant noise prior to 7:00 a.m. and the stated operating hours begin at 6:00 a.m. Ms. Williams stated that she has paid taxes for 20 years expecting a certain quality of life. Continental Paving has another Pembroke location on Ricker Road that will not affect traffic, wetlands, and habitat. Why can't they expand or rebuild over there?

Joan Dolan, 63 Borough Road, who is going to repair/rebuild the bridge when the increased traffic of 10 wheeler trucks over Borough Road destroy the bridge? A male resident of 474 Pembroke Road stated that the most likely time to have a leak is during the delivery of fuel oil to the holding tanks. Is there a sally port device used? Will the asphalt plant outlive the aggregate on location? Does the Town of Pembroke or the City of Concord have fire-fighting capability for fuel oil? Steven Smith, 605 Borough Road, stated we don't need or want this asphalt plant. This will negatively affect property values. Even if the company has 20 years experience dealing with petroleum products, any damage to the aquifer is unacceptable.

Mark Charbonneau, President, Continental Paving, addressed the questions posed. Fuel oil is delivered into vertical tanks in an encased area. Oil is pumped up by suction through steel piping into the tanks. The delivery truck sits on a pad during the delivery process. Mark Hopkins, 624 Borough Road, asked if the containment area could handle the full 20,000 gallons. Containment is built to 100% of tank capacity. The tanker truck usually carries 9,000 gallons of fuel. Rick Charbonneau stated the asphalt plant would outlive the 60 expected years of aggregate on site, and all of us.

Tom LoPizzo, 875 Wellington Way, stated that unanswered engineering questions aside, why is an asphalt plant being proposed in a Residential District? An asphalt plant is not a natural extension of processing stone. The building of an asphalt plant requires transportation of other products and a chemical heating process that is **manufacturing process not allowed in a residential district. #2, the process at the proposed plant is not a batch plant processing 6 tons at a time. Similar asphalt plants, operating 24 hours, have taken away a half million tons of asphalt - 500 tons per day. Truck traffic at night will increase and this is not addressed in Steve Pernaw's traffic report.** The proposed asphalt plant puts property values and quality of life in jeopardy. The expanded mining operation allowed last spring is already considerably louder than the previous operation.

Shawn Collins, 704 Borough Road, stated that the Concord reclamation plan for their portion of the site

states it is impossible for truck traffic to pass on the Concord land. How will the trucks get out at night?

Chairman Bonney stated at 9:20 p.m. that there is no way that the Zoning Board of Adjustment will be able to hear all the cases scheduled for tonight. Because the ZBA does not hear new case past its 10:00 p.m. limit, with apologies to the Lavoies and Mr. Bourque, Case #10-17-Z and Case #10-18-Z will be continued to Tuesday, September 13 at 7:00 p.m. Again, Chairman Bonney apologized profusely to the applicants and residents waiting to hear those cases.

Mark Hopkins, 624 Borough Road, stated he only saw Case #10-15-Z on the agenda. There is another page with Case #10-17-Z and Case #10-18-Z scheduled for the same date as the public hearing for a Development of Regional Impact Case #10-15-Z.

Dana Carlucci asked if any of the other Continental Paving plants bring in aggregate from off site. Rick Charbonneau stated that Ricker Road has aggregate trucked in, and the other two plants are located at a quarry. In addition, 5-7% natural sand is trucked in to each asphalt plant for use in the process. Mark Simard asked how much recycled product taken off the highway is reused. Mark Charbonneau responded that 18-23% of the recycled highway product captures 1% liquid asphalt. Mark Simard asked, if the Concord Planning Board does not allow trucks to exit on Route 106 would you have the trucks go out through land in Pembroke? Mark Charbonneau stated that Continental Paving, Inc. owns a legal right-of-way to go out through Concord using the existing driveway or reconfigured driveway if agreeable to both parties. Elizabeth Mason, 315 Borough Road, asked if the easement is for aggregate or asphalt. Mark Charbonneau stated that it does not matter what is in the trucks, the easement is owned by deed.

Betsy Gates, 738 Robinson Road, asked how the smell will be minimized? What other potential pollutants are coming out that have no odor? Mark Charbonneau stated that NH DES has delisted asphalt facilities as potential sources of pollution. A resident of 605 Borough Road asked what if the bridge falls apart due to heavy truck traffic? Rick Charbonneau stated that Continental Paving, Inc. has no intention to use the North Pembroke Road bridge. When asked if that could be made a stipulation of any approval, Rick Charbonneau responded yes. Bruce Kudrick clarified that there are two different bridges under discussion. The Merrill trucks travel Borough Road. The bridge on North Pembroke Road belongs to the Town of Pembroke and the City of Concord. Continental Paving is using the bridge on their own property to access Route 106.

Paul Paradis asked if 24/7 operation was considered at the proposed asphalt plant, would the front end loader back up alarm be part of the asphalt production procedure. Rick Charbonneau stated yes it would.

Darren Tesak, 880 Wellington Way, asked what the annual volume was at the Ricker Road asphalt plant. Mark Charbonneau stated that 90,000 tons of asphalt per year is produced at Ricker Road. The facility is not as updated and it cannot handle recycled material. The Ricker Road plant is 35 years old. Cherylanne Williams, 876 Wellington Way, asked how asphalt is recycled. Rick Charbonneau explained the recycled procedure in the dryer. In addition, spec oil is recycled. Betsey Gay, 738 Robinson Road, asked why not update the Ricker Road facility instead of building a new asphalt plant? Brett Kay responded that Continental Paving is trying to keep the truck count down. There would be more energy savings with a new plant. A complete rebuild would be required at Ricker Road, and aggregate would need to be trucked in. Tom LoPizzo, 875 Wellington Way, stated that it is not the responsibility of the Pembroke Zoning Board of Adjustment to make sure the applicant makes a good business decision. An asphalt plant is not allowed at the proposed site, even by Special Exception. The applicant has the option to rebuild at Ricker Road.

Brett Kay stated that the Town of Pembroke has this area zoned Commercial in the Master Plan future use map. Mark Simard noted that Mr. Charbonneau stated they eventually plan to close the Ricker Road facility. In response to Board questions, the power supply at Ricker Road is generators. Bruce Kudrick noted that the easement right-of-way could move. In response to Board questions, Tom Brebowski, Nobis Engineering, stated that brown water flows radially southwest toward the Soucook River and well field. The proposed asphalt plant is 1500 feet from the well field. Darren Tesak, 880 Wellington Way, asked how 90,000 tons per year at Ricker Road and 200,000 tons per year at the proposed site rank within the other Continental Paving asphalt plants. 200,000 tons per year is equal to the Litchfield asphalt plant. The Londonderry asphalt plant has older technology. Rick Charbonneau could not speak to how his production compares to Pike's operation.

It was discussed by Rick Charbonneau that silent camera and infrared technology exists that could replace the backup beeping noise of the front loader. Bruce Kudrick asked how many decibels of noise exist at the burner. The noise is 68 decibels at the burner, and truck tailgate noise would also be heard during night operation. Continental Paving is making a conscientious effort to modify noise by using an enclosed, insulated burner that emits clean emissions. Mark Charbonneau agreed to offer assurance that the camera and infrared sensor technology would be used on the front loader at the proposed asphalt plant. Since 1986, silent burners have been installed in all Continental Paving plants. The technology in Litchfield is equivalent to the technology that would be utilized at the proposed asphalt plant on North Pembroke Road. Bruce Kudrick noted that Steve Pernaw's traffic study was conducted from 7:00 a.m. to 7:00 p.m. by manual count and would not include truck traffic at night. The study was done by manual count. The report states the gate opened at 5:16 a.m. and closed at 5:37 p.m. Maximum daily load of 350 does not reflect 24-hour operation. Mark Charbonneau stated that 24-hour operation is very limited, and in reality would be 12-hour shifts either during the day, or at night. Mark Charbonneau stated that 25% of production, 110,000 tons of total 500,000 tons was produced at night this year. Mark Simard asked if Continental Paving sells wholesale to other companies, and Mark Charbonneau responded yes. Mark Charbonneau invited ZBA members to make a site visit to an operating asphalt plant. Sean Collins, 704 Borough Road, added imagine living near it while visiting the plant. Gary Hapgett, 880 Wellington Way, suggested that ZBA members also talk to abutters of currently operating plants, specifically in Litchfield NH. Elizabeth Mason, 315 Borough Road, asked about impact on Pembroke police and fire. A resident suggested lighting for the silos be on poles that shine inward. It was discussed that any spill over 25 gallons be immediately reported to NH State Police and the National Response Center.

Brett Kay, Nobis Engineering, was designated by Mark Charbonneau to facilitate the ZBA site visit. Since the Litchfield NH asphalt plant has the same technology proposed for the North Pembroke Road plant, it was selected as the destination. Mark Charbonneau stated that the Litchfield plant would be working nights next week starting Tuesday, September 7, 2010 and gave his cell phone number as the contact number. Shifts would run 7:00 p.m. to 5 or 6:00 a.m. Board members discussed that it would be beneficial to observe a night operation, before the next meeting. Bruce Kudrick suggested Tuesday, September 7 at 7:00 p.m. Board members would meet at Town Hall at 6:30 p.m. to carpool.

John French, 203 North Pembroke Road, suggested that Pembroke has suffered a loss of property tax revenue, and this company has an outstanding reputation in the asphalt production industry. Mr. French stated it would be wise to take in what they say, and document government official's observations at the site visit. Mr. French stated he would be interested in those observations, and would like the opportunity for

public input at the next meeting.

Motion: Because the hearing on Case #10-15-Z has gone beyond the 10:00 p.m. time limit for ZBA meetings, Bruce Kudrick moved to continue the hearing on Case #10-15-Z to Tuesday, September 13, 2010 at 7:00 p.m. and to continue Case #10-16-Z and Case #10-17-Z to Tuesday, September 13, 2010 at 7:00 p.m. Dana Carlucci seconded.

Discussion: The Board considered input from the attorney on the project. Whenever a full board is together, that is considered a public meeting.

Amended Motion: Because the hearing on Case #10-15-Z has gone beyond the 10:00 p.m. time limit for ZBA meetings, Bruce Kudrick moved to continue the hearing on Case #10-15-Z to Monday, September 13, 2010 at 7:00 p.m. and to continue Case #10-16-Z and Case #10-17-Z to Monday, September 13, 2010 at 7:00 p.m. AND a public site walk/ZBA meeting is scheduled on Tuesday, September 7, 2010 at 7:00 p.m. at the Continental Paving, Inc. asphalt plant on Morgan Road, Litchfield NH. The public is invited to attend the September 7, 2010 site walk/ZBA meeting. Dana Carlucci seconded.

VOTE: PAUL P - Y DANA - Y BRUCE- Y
TOM H Y BILL - Y

MOTION TO CONTINUE HEARING ON CASE #10-15-Z, 10-17-Z AND 10-18-Z TO MONDAY, SEPTEMBER 13, 2010 AT 7:00 PM AND TO INVITE PUBLIC TO SITE WALK/ZBA MEETING ON TUESDAY, SEPTEMBER 7, 2010 AT CONTIENTAL PAVING ASPHALT PLANT IN LITCHFIELD, NH PASSED ON A 5-0 VOTE

Tom LoPizzo returned to the ZBA.

OTHER

Date of next ZBA meeting – The next September 2010 meeting will be on Monday, September 13, 2010.

ADJOURN Motion: Tom Hebert moved to adjourn until the meeting continuation on September 13, 2010. Bruce Kudrick seconded. Vote was unanimous in favor of motion. Meeting adjourned at 10:25 p.m.

Chairman Bonney called the August 30, 2010 meeting back to order at 7:05 p.m. on Monday, September 13, 2010 and asked the clerk to take the role call. Chairman Bonney designated Paul Paradis to continue to serve on Case #10-15-Z.

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

ALTERNATES PRESENT: Mick Pinard, Mark Simard, Paul Paradis

EXCUSED: Tom LoPizzo

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

Chairman Bonney asked the clerk to read the following documents into the record:

1. Letter to ZBA from Ammy and Stetson Heiser, 374 Academy Road, Pembroke N H on behalf of the Pembroke Conservation Commission.

2. Bill and Jane Vickery, 860 Borough Road, Pembroke NH in opposition.
3. Travis Horne, 845 Borough Road, Pembroke NH in opposition.
4. Report from Everett Hodge regarding September 7, 2010 site visit to Litchfield NH plant.
5. Report from Dana Carlucci regarding September 7, 2010 site visit to Litchfield NH plant.

Mark Charbonneau, owner Continental Paving, home Windham, NH, clarified that the production figure at Ricker Road is 150 ton per hour, not per day. The proposed North Pembroke Road asphalt plant would produce 350 ton per hour, not per day. A typical day at Ricker Road is 1200 ton. A typical day at Litchfield, or the proposed plant is 2500 ton per day average.

A health professional, 890 Wellington Way, abutter, stated that he is an advocate for the public health risk of the proposed asphalt plant. Asphalt products are irritants, and have the potential to cause cancer. Multiple health problems are documented by workers employed in asphalt production. There is a very high incidence of skin and lung cancer. The federal 'safe' level of pollutants is a risk that is too high on the population. Noise, odor and the fact that the plant will be stationary in Pembroke are other concerns. Say no and avoid this risk. (applause).

Brian Marazek, 357 Pembroke Hill Road, a professor and hydrologist, stated that having 100,000 gallons of petroleum chemicals on the Pembroke aquifer is not a good choice. The particles are highly transmissive and easily contaminate. There have been problems in Milford and Portsmouth. If the Pembroke water supply were contaminated, we would have to build treatment plants at high cost to use the Merrimack River as our water source. Balance the risks and potential costs. What if there was a helicopter crash on the site? We have had tornados in Epsom, vandalism and terrorism could happen anywhere.

Chris Worssek, 744 No. Pembroke Road, stated that dump trucks going up his hill currently make a lot of noise. Traffic from the gravel pit goes up that hill and over Borough Road. I am very opposed to an asphalt plant.

Jonna Gaskell, 840 Borough Road, also spoke about increased truck traffic on Borough Road. Her husband, a police officer in town, looked into the legal limit for truck traffic on their road. Her children's health is not a risk she is willing to take as a taxpayer.

Molly Brown, 746 No. Pembroke Road, stated they have no children yet but want their house to continue to be a safe place. Molly noted that trucks are not allowed up the hill past 7:00 p.m.

Brett Kay, Nobis Engineering, stated that Continental Paving trucks are not using Borough Road or North Pembroke Road. They use Route 106 as their main point of access. In the nine conditions for a Special Exception addressed at the 8/30/10 meeting, there were no demonstrable facts presented against the plan. Mark Charbonneau noted that the asphalt content is 6.7% at most, and the rest is mainly sand and aggregate.

Brett Kay stated that the asphalt plant plans were reviewed by City of Concord, Pembroke and NH DES. Access would be south of Route 393 on Route 106 Continental Paving, Inc. opened asphalt plants in Pembroke (Ricker Road) - 1974, Londonderry 1988, Hudson 1996, and Litchfield 2002. Mineral extraction would continue. Current mineral processing would be shifted slightly to allow construction of the asphalt plant. The majority of the production area would be paved to keep dust down. Cold feed aggregate goes on a conveyor belt to the site after processing. Nomax bags, not burlap bags, collect dust to put it back in the

mix. The new 20' x 60' scale house will replace the scale house on the Concord site. There are two proposed bathroom facilities with septic systems. The asphalt plant operates 175 days per year on average. It is typically closed December to the first of April. Mineral extraction occurs 6:00 a.m. to 6:00 p.m. Mark Charbonneau stated that there are no plans to increase the aggregate production based on the economy. NH DES says an asphalt plant is an allowed use. Any spilled liquid asphalt would be 240 degrees and would harden and be picked up. Brett Kay noted that asphalt and tar are totally different products. Health effects are related to tar.

Betsey Gates, 738 Robinson Road, asked why is the town considering this proposal? What are the advantages to Pembroke? Chairman Bonney clarified that the ZBA is determining a) if the proposed use is an allowed use, and b) if it meets all the criteria for a Special Exception.

Chris Worsak, No. Pembroke Road, asked if highway access cannot be achieved to Route 106 through Concord, is there any contingency plan? Chairman Bonney stated that the Charbonneau's have a deeded easement through the land to Concord. It could be a condition of approval that Continental Paving not use North Pembroke Road as access.

A health professional from 890 Wellington Way stated that there are many studies related to health concerns related to asphalt. The density of the population in this area is a major concern. The professional stated he would be happy to prepare articles to document the health risks if the Board would like him to.

Joanna Haskell asked about the effect of an asphalt plant on property values, nature and animals. She does not believe noise and odor will not go beyond the property. Residents are concerned that gas and fumes from an asphalt plant are not similar to any other use in Pembroke. The traffic study presented is flawed, as it does not measure 24-hour use. Brett Kay stated that the property has been used for mineral extraction since 1985 and has not affected property values. The asphalt plant would not take a significant amount of water in the asphalt process. The impact on abutters would be minimal. The stockpile and operations area will be paved to protect groundwater from contaminants. The bridge on North Pembroke Road would not be used for Continental Paving truck traffic. Queuing on Route 106 will be minimal.

A resident stated that the impact of pollutants from 350 trucks a day is a concern. Brett Kay stated that 350 trucks are at peak design, and there would be no change from truck traffic today. Aggregate on site will still be sold, and asphalt will be sold as well. In the R3 zone, Agricultural/Residential, processing - treating, storing materials (milling) is allowed by Special Exception. Mark Simard noted that paved areas are impervious and minimize ground water pollution.

A doctor from 890 Wellington Way added that toxic particles are released as air pollutant, as well. If the proposed North Pembroke Road plant is approved, the Ricker Road plant will be discontinued over a period of time. Residents have stated that Ricker Road is located in the C1 zone and North Pembroke Road is in the R3 zone. When a Special Exception for an increase in mining was approved last year, the applicant did not mention the asphalt plant. It was noted that other options exist for the asphalt plant, such as Ricker Road. The mining noise occurs from 6:00 a.m. to 5:00 p.m. now. Tanker trucks carry 9,000 gallons of fuel and have 100% containment. No fuel tanks are in the ground.

Chairman Bonney summarized the case. It was discussed that this site is in the Concord wellhead protection area. Continental Paving, Inc. tries to use Best Practices. Overheating asphalt caused hydrocarbons. The

access drive is not paved at this time. Mark Charbonneau stated that the goal is to pave the access drive. The trip to Ricker Road is 2 ½ miles each way to haul aggregate. Continental Paving proposes to save energy by using aggregate on site at North Pembroke Road to make asphalt. The site is surrounded by 70 wooded acres. DES would continue to monitor the site. Mark Charbonneau discussed truck access to Route 106. There would be no impact to abutters on North Pembroke Road. The Pembroke Master Plan shows commercial use in the area in the future.

A permit for an asphalt plant is for 60 years. Production of asphalt requires a building and a chemical process. With continuous operations, Continental Paving has the capability to produce a million tons of asphalt per year. Abutters can hear mining operations now, and certainly would if an asphalt plant were constructed at North Pembroke Road. Again, the applicant stated they have no intention of having trucks go out on North Pembroke Road. Continental Paving Inc. has a legal deeded right to go out on Route 106. EPA delisted asphalt plants as a polluter in 2002. Continental Paving expects to produce 200,000 tons of asphalt yearly at North Pembroke Road versus 90,000 tons yearly at Ricker Road. The Ricker Road technology is 35 years old. Continental Paving would like to keep the truck count down by making asphalt on site. Continental Paving will use PSNH for power at North Pembroke Road. There would be no fueling of vehicles on site. Equipment needs to be fueled, as it does today for the gravel operation. Water runoff from the paved surface area will go to a retention pond. The noise of the burner is 68 decibels at the property line. The newer technology plant could run 24 hours some times. 25% of current work is night work for the entire company. Continental Paving, Inc. does sell wholesale to other companies.

Brett Kay stated that there is no documented decrease in property values at Continental Paving, Inc's other facilities. Continental Paving has a SPCC - Spill Control and Countermeasure Plan for any size spill. The observations of ZBA members during their September 7, 2010 site visit to the Litchfield NH asphalt plant were read into the record. The proposed use is an industrial use in a residential area. The proposed Pembroke asphalt plant would produce 1,200 tons of asphalt on a good day. It was stated by a health professional that asphalt, not tar, has caused cancer in some studies and we do not know the impact on women and children. The Capital Region is a concentrated area, and asphalt is a toxic substance, and has had health impacts. Having 100,000 gallons of petroleum chemicals over Pembroke's aquifer does not make sense. Building a new plant at Ricker Road would be expensive. There have been some updates, but Ricker Road was built in 1974. The applicant stated they would not use Borough Road or North Pembroke Road for hauling asphalt. The percent of asphalt in the product varies from 5% to 6.7% at greatest. The wells under discussion are Concord wells. Pembroke wells are farther away.

There being no further input, Chairman Bonney closed the public hearing at 8:27 p.m.

Deliberations:

Bruce Kudrick noted that he was very impressed with the facilities of Continental Paving, Inc. that he toured on September 7, 2010. Thirty years ago, Bruce said, asphalt plants were dirty, undesirable places to work. Now asphalt plants are clean operations that are located near homes and schools. Most of the hydrocarbons are put back into the mix. The crushing plant, however, is noisy and dusty. Bruce stated that he has lived 1,500 feet from an asphalt crushing plant and has to clean his yard of dust every day. Paul Paradis stated that the Bow PSNH plant is more of a polluter to residents in the Donna Drive area. Paul noted that the asphalt and gravel hauling trucks do have mufflers to minimize noise.

From *Webster's New Collegiate Dictionary, a Merriam Webster publication*, Bruce Kudrick read the definition of

Processing - a continuous operation or treatment, especially in manufacturing

Manufacturing - 1) to make into a product suitable for use, 2a) to make from raw materials by hand or machine and 2b) to produce according to an organized plan and with division of labor.

Chairman Bonney asked the ZBA members to go back to discussion of Table of Uses. The gravel operation consists of grading, drying, sorting, crushing, milling and removal of sand and gravel. Construction and manufacturing are not permitted uses in the R3 zone. When liquid asphalt is added to aggregate to make a product, the process is manufacturing, making from raw materials by hand or machine.

Processing is a continuous operation or a treatment in processing. Bruce Kudrick noted that when the Ricker Road asphalt plant went in, the use was considered Industrial #2, processing, treatment and storage of raw materials. Tom Hebert stated that when imported product is added to what is generated on site, the result is manufacturing.

Bruce Kudrick noted that the top three concerns for the ZBA were 1) is the use processing or manufacturing? 2) Protection of wells and potential contamination of groundwater 3) public health risks. Tom Hebert agreed that while the risk was low, the consequences were grave. There was abutter concern about whether the site is an appropriate location to store fuel and petroleum products. There was concern about odor, noise and 24-hour operations. Bruce Kudrick noted that the Continental Paving Litchfield asphalt plant site was very well lit and safely operated, even at night.

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. The Pembroke Town Planner and Code Enforcement Officer consensus as that the request fit #2 processing, treating and storage of raw materials

From *Webster's New Collegiate Dictionary, a Merriam Webster publication*, Bruce Kudrick read the definition of

Processing - a continuous operation or treatment, especially in manufacturing

Manufacturing - 1) to make into a product suitable for use, 2a) to make from raw materials by hand or machine and 2b) to produce according to an organized plan and with division of labor.

In the crushing operation, natural drying is an example of manufacturing. In the description of the process of making asphalt given by Mr. Charbonneau, there is a manufacturing process of mixing in 5-7% asphalt into aggregate. 95% of the materials are on site. Based on the definitions of "processing" and "manufacturing" from *Webster's New Collegiate Dictionary*, one can look at the product asphalt as the result of a manufacturing process combining materials from on and off site using a chemical action (heating). Paul Paradis stated that the gravel operation would be considered a separating process, sorting and grading materials, not resulting in a product. An extensive discussion of whether the 'processing' and 'manufacturing' ensued.

1a) Is the proposed asphalt plant use manufacturing or processing? On a voice poll on this one issue, whether this appeal is for a manufacturing process, Bruce Kudrick, William Bonney, Dana Carlucci and Tom Hebert stated YES and Paul Paradis stated NO.

1b) Is the use essential or desirable - agree, but not in this particular location. Applicant already has a batch asphalt plant on Ricker Road in Pembroke NH. 2) Detrimental to health, welfare or general morals - We heard a lot of testimony and concern from a public health specialist regarding long term risks of cancer and other health studies, and a hydro geologist regarding potential damage to the aquifer. The ZBA noted that the monitoring wells were put in for the gravel operation only 3) Regarding the site as an appropriate location, many abutters and owner of adjoining sites testified that they would be affected adversely, case in point, the letters from the Concord Planning Board. Again, the proposed site is in a residential R3 area. Ricker Road was stated to be a better location. 4) It was stated that the property values would be affected negatively, however no factual evidence was presented and the Bramley report dated July 21, 2010 disputed that claim. 5) There would be no undue nuisance and traffic based on Pernaw study of limited hours of gravel operation. 6) Adequate and appropriate facilities would be provided, similar to Continental Paving, Inc.'s Litchfield NH plant. 7) Objections from abutters were acknowledged and addressed by the applicant during the hearing regarding Development of Regional Impact. 8) Adequate well and septic would be provided for bathroom facilities. No water is used in process of making asphalt. There is no water supply or sewerage system on the property servicing the current operation. The applicant is proposing to install a potable water supply well, and two sanitary sewer septic systems on the property. The uses will be confined to four bathroom facilities, located within the proposed structures associated with the asphalt plant. The systems will be designed in accordance with applicable local and state regulations. The well and septic will be utilized for the disposal/discharge of human sanitary wastes only.

9) N/A

Case 10-15-Z A request has been made for a **Special Exception**. A **Special Exception** is required for this use in the R-3 Zoning District. The property is located at 773 to 793 North Pembroke Road Map (559) Lot (6) in the R-3 Rural/ Agricultural-Residential, and AC Aquifer Conservation Zoning Districts.

Motion: Regarding Case #10-15-Z, Bruce Kudrick moved to DISAPPROVE a Special Exception under Article IV **Use Regulations** section 143-19 **Table of Use Regulations**. The applicant, Continental Paving, Inc., c/o Rick or Mark Charbonneau is requesting permission to construct an asphalt plant at 773 to 793 North Pembroke Road, Map 256, Lot 6 for the following reasons, the proposal did not meet criteria 1 (The requested use is listed in the Table of Uses and is essential or desirable to the public convenience or the general welfare) or criteria 3 (The specific site is an appropriate location for the proposed use and the character of adjoining uses will not be affected adversely):

1. The Zoning Board of Adjustment determined the asphalt plant would be a manufacturing use, which is a prohibited use under §143-19 **Table of Use Regulations** and §143-15 **Use Regulations**.

2. Fuel should not be allowed to be stored in Concord's wellhead protection area.
Dana Carlucci seconded.

VOTE: PAUL P - NO DANA - Y BRUCE- Y
TOM H -Y BILL - Y

MOTION TO DISAPPROVE SPECIAL EXCEPTION ON CASE #10-15-Z PASSED ON A 4-1 VOTE.

The Zoning Board of Adjustment voted 4 to 1 to **Disapprove** the **Special Exception**.

The Board's decision is based on the facts presented by the applicant. If any of these facts are subsequently discovered to be different than as presented, the Board reserves the right to reconsider its decision.

PUBLIC HEARING

Case #10-17-Z

Applicant: Paul Lavoie
517 Borough Road
Pembroke, NH 03275

Property Owner(s): Denise Lavoie
521-523 Borough Road
Pembroke, NH 03275

Property Address: 521-523 Borough Road
Pembroke, NH 03275
Tax Map 561 Lot 101 located in the R3 Rural/Agricultural - Residential
Zoning District

Variance under *Article V Section 143-21 (Table of Dimensional and Density Regulations Note #13)* of the Zoning Ordinance. The applicant and owner is proposing to locate a new sewage disposal system within 40 feet of Sixth Range Road. A Variance is required because under Article V, Section 143-21 Note #13 it requires that all new septic systems be located on the "Buildable Area" of the lot. The required front setback for this lot is 60 feet. The property is located at 521-523 Borough 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 9:10 p.m. Mick Pinard was designated to serve on Case #10-17-Z.

There were 4 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. The Board makes its decision based on the facts presented by the applicant. If any of these facts are subsequently found to be different, the Board reserves the right to revisit its decision.

Copies of assessment card, tax map, Warranty Deed dated 7/12/10, Book 3202 Page 1961, Sewage Disposal System Plan dated 6/23/10 prepared by Rangeway Land Surveying and Design, 252 Daniel Plummer Road, Goffstown NH 03045, were included in the application packet.

Paul Zarnowski, of Rangeway Land Surveying and Design, 252 Daniel Plummer Road, Goffstown NH, stated that the property is an existing lot of record since 1971. The corner lot is subject to two front setbacks, 60 feet from both Borough Road and Sixth Range Road. Sixth Range Road is discontinued. The property includes a 5' x 12' poorly drained area and several wetlands. The septic system must meet a 75 foot setback from poorly drained and wetland areas, and maintain a 20 foot vegetative buffer. The proposed house is a single-story, 2-bedroom, 30' x 38' home with a deck. It will utilize the existing driveway that led to a shed

that used to be on the property. The small shed has been gone for several years. Paul Lavoie purchased the property in 2007 and sold it to his sister. The house and septic system design would have met zoning at that time. The septic system used in the design is Presby brand, which has very good treatment and testing and actually allows this system to be located closer to the high water table.

The owner, Denise Lavoie, provided a notarized letter dated July 28, 2010 authorizing Paul Lavoie to file a variance application on her behalf for the above property. The property was purchased in 2007 to build a home, and a change in zoning occurred on March 10, 2009 regarding locating the septic system on buildable area.

The applicant is requesting permission for the owner to construct a single-family residence and sewage disposal system on an existing lot of record created in 1971 and recorded in the Merrimack County Registry of Deeds as plan #2785. The sewage disposal area is proposed to be within the 60-foot front yard building setback. Article IV, Section 143-21 (13) requires that any buildings and any septic system be sited within the 70% minimum contiguous buildable areas but not within any setback or buffer. A shed was previously located on the site at the end of a paved driveway.

Paul Lavoie addressed the criteria necessary for a Variance as they applied:

Please describe how the requested variance would comply with the following criteria:

- 1) The variance would not be contrary to the public interest because *the property lies within a developed residential area and the use would not be any different than the surrounding properties. The proposed use does not exceed the sewage disposal loading capacity of the lot based on the State of NH DES lot loading capacity tables; therefore, it does not have an adverse effect on the public.*
- 2) The spirit of the ordinance is observed *because the ordinance provides for an existing lot of record to be developed.*
- 3) Substantial justice is done *because the owner will be able to develop the lot for the use that was intended at the time of its creation in 1971 and be able to construct a single-family home for themselves.*
- 4) The values of surrounding properties is not diminished *due to the fact that this will be a new house, state of the art septic system, and water supply. The use will be the same as the surrounding properties.*
- 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.
The section of the ordinance that applies was part of the March 10, 2009 amendments. Prior to that, the system could be placed in this area. The system cannot be constructed in another area because of the required wetland setbacks. If the variance is not granted, then the lot will not be able to be developed for the original purpose for which it was purchased, therefore creating an unnecessary hardship for the owner.
 - (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 sewage disposal system cannot be constructed outside of the 60' building setback due to

the town required 75' septic setback from the wetland to the southwest.

The existing lot is .92 acres, 40,000 square feet where 80,000 square feet is now the required area in the R3 Rural Residential-Agricultural Zoning District. The proposed septic system will accommodate 671 gallons per day sewage, and the proposed 2-bedroom house will generate just 300 gallons per day. Dana Carlucci asked what would keep you from moving the septic leach field closet to Sixth Range Road? Mr. Zarnowski explained that the tree buffer, higher elevation and contour of the property limit the possible areas for a septic system in a flat area. Bruce Kudrick noted that if the applicant moved the house over, the septic would then encroach in the no-cut zone of the wetlands. The proposed house is 30 feet by 38 feet, 1,100 square feet of living space, one story with 2 bedrooms. Because the lot is a corner lot, both roads are looked at as having front setbacks. Everett Hodge confirmed that Class VI roads are treated just as any other town roads, with a 60-foot front setback requirement in the R3 zoning district.

Chairman Bonney summarized the case. There used to be a shed on the property at the end of the paved driveway. The required area for building in the R3 District is 80,000 square feet. The septic system design can handle 671 gallons, and the proposed single-family home would only generate 300 gallons. The applicant and septic system designer considered other options but this design is the best happy medium. Because the lot is a corner lot, it has two front setbacks. The septic would impinge on the front setback of Sixth Range Road.

There being no further input, Chairman Bonney closed the public hearing at 9:35 p.m.

Deliberations: The ZBA reviewed each of the five variance criteria. 1) The proposed use is not contrary to the public interest, agreed. 2) Spirit of the ordinance is observed. Yes, this has been a lot of record since 1971 3) Substantial justice is done. Yes, because the house and septic could have been built prior to the March 10, 2009 change to the zoning ordinance 4) Values of surrounding properties are not affected, agree 5) yes, there is unnecessary hardship due to contour and soils of the property.

Motion: Bruce Kudrick moved to grant a Variance in Case #10-17-Z under Article V §143-21 **Table of Dimensional and Density Regulations** Note #13 to construct a single family residence and sewage system in the 60' front building setback, due to the town required 75' setback from the wetland to the southwest, at 521-523 Borough Road, Map 561, Lot 101 where the septic will extend into the 60 foot front setback of Sixth Range Road with the following conditions:

1. Must follow all State and local regulations.
2. If the leach field fails, it must be re-built in the same location as the failed system.
3. House, septic system, and driveway must be installed per plot plan submitted to the Zoning Board of Adjustment on September 13, 2010.

VOTE: MICK P- Y DANA - Y BRUCE- Y
TOM H - Y BILL - Y

MOTION TO GRANT A VARIANCE TO CONSTRUCT A SINGLE FAMILY RESIDENCE AND SEWAGE DISPOSAL SYSTEM IN THE 60 FOOT FRONT SETBACK OF SIXTH RANGE ROAD AT 521-523 BOROUGH ROAD, MAP 561, LOT 101 APPROVED WITH CONDITIONS ON A 5-0 VOTE

The Board's decision is based on the facts presented by the applicant. If any of these facts are subsequently discovered to be different than as presented, the Board reserves the right to reconsider its approval.

PUBLIC HEARING

Case #10-18-Z

Applicant: Robert Bourque
6 Pheasant Run
Pembroke NH 03275

Property Owner(s): Robert Bourque
6 Pheasant Run
Pembroke NH 03275

Property Address: 6 Pheasant Run
Pembroke, NH 03275
Tax Map 941 Lot 6-2 located in the R-1 Medium Density and the AC
Aquifer Conservation Zoning Districts

Variance under *Article V 143-21 Table of Dimensional and Density Regulations*. The applicant and owner, Robert Bourque, is proposing to locate a 10-foot by 12-foot lean-to on the right side of the existing garage within 12 feet of the side property line. A Variance is required because under Article V Section 143.21 of the Zoning Ordinance the required set back from the side property line is 15 feet.

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 9:45 p.m. Mark Simard was designated to serve on Case #10-18-Z.

There were 4 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. The Board makes its decision based on the facts presented by the applicant. If any of these facts are subsequently found to be different, the Board reserves the right to revisit its decision.

Copies of assessment card, tax map, sketch and photographs of existing garage and proposed lean-to, and a copy of a prior Special Exception #97-11-Z granted August 14, 1997 to operate an in-home business (electric power tool repair) at a 6 foot table in his garage.

Robert Bourque is requesting a variance to install a lean-to on the east side of his garage, 10 foot in width. The garage is located 22 feet south from the property line. The variance is to go 3 feet into the set back area, where 15 feet is the required side set back. Mr. Bourque stated he has two cars so both bays of the garage are used. I need to have shelter for my tractor close to the driveway for snow removal. No other location is suitable, and would require snow removal to get to the tractor.

Robert Bourque addressed the criteria necessary for a Variance as they applied:

- 1) Granting the variance would not be contrary to the public interest because *the lean-to would be on my property and would blend in with the surroundings.*

- 2) The spirit of the ordinance is observed: *The lean-to will be 12 feet from the property line and blend in with trees and shrubs.*
- 3) Granting the variance would do substantial justice: *I am limited by the layout of the property and ledge outcroppings. This is the only reasonable place to install the lean-to.*
- 4) The values of the surrounding properties will not be diminished: *Small structures, lean-to's, sheds and carports are common place in town. I do not believe the property values will diminish by adding a lean-to.*
- 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: *The home and garage is situated on the eastern side of the property and not centered. The only area that allows access to the driveway for snowplowing is the eastern side of the garage. Other areas of the property would require snow removal to get to the tractor so it can be used to remove snow in the driveway.*
 - 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.
If the eastern end of the garage cannot be used for the lean-to, my second vehicle will need to be stored at a facility, costing \$100 or more per month, and I would not have use of my second vehicle. Other locations on the property would not work for the purpose of sheltering the tractor.
 - (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 lot is .09 acres. Dana Carlucci asked if Mr. Bourque had considered locating the lean-to in back of the garage, with access from the garage or from a doorway between the garage and porch. Bob Bourque stated that a doorway abutting the garage and porch would impede his view and fresh air, a septic tank is located behind the porch and from the back of the garage to the right it is all ledge. Dana Carlucci asked what the height of the outcropping was at the rear of the garage. Mr. Bourque stated that the foundation is stepped and the ledge height is 5 feet up to the foundation. To locate the tractor under a lean-to in the back of the garage would defeat the purpose of having the tractor accessible for snow removal, as there would be too much snow and nowhere to put it. It would not be convenient to put the tractor in the back yard.

Kyle Tremblay, 7 Pheasant Run, stated that he lives across the street from Bob Bourque and is in favor of locating the lean-to on the right side of the garage as proposed.

Chairman Bonney summarized the case. The case is #10-18-Z regarding 66 Pheasant Run. The applicant is proposing to locate a maximum 10-foot wide by 15-foot long lean-to on the right side of an existing garage to shelter his tractor. Part of the lean-to will extend 3 feet into the required 15-foot side setback. The lean-to would not encroach 3 feet the entire length. The home is not centered on the property, ledge is located to the right of the garage and the septic system is located behind the porch.

There being no further input, Chairman Bonney closed the public hearing at 9:55 p.m.

Deliberations: Bruce Kudrick noted that only about 1/8 of the proposed lean-to would extend three feet into the side setback, and at only at one corner of the lean-to. From about half the length, the lean-to meets the 15 feet side setback.

The ZBA reviewed each of the five variance criteria. 1) Not contrary to public interest and the neighbor across the street is not opposed to the proposal 2) meets the spirit of the ordinance 3) Agreed, a Variance would allow Mr. Bourque to utilize his land as he has a right to 4) Yes and 5) yes, hardship of the land is the ledge and location of the house relative to ledge and septic.

Motion: Bruce Kudrick moved to grant a Variance allow construction of a maximum 10 foot by 15 foot lean-to on the eastern side (right side) of the existing garage at 6 Pheasant Run, Map 941, Lot 6-2 in the R1 District within 12 feet of the side property line, where 15 feet is required 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.

Dana Carlucci seconded.

VOTE: MARK S- Y DANA - Y BRUCE- Y
TOM H Y BILL - Y

MOTION TO APPROVE A VARIANCE TO CONSTRUCT A MAXIMUM 10' x 15' LEAN-TO WITHIN 12 FEET OF THE SIDE SETBACK AT 6 PHEASANT RUN, MAP 941, LOT 6-2 APPROVED WITH CONDITIONS ON A 5-0 VOTE

The Board's decision is based on the facts presented by the applicant. If any of these facts are subsequently discovered to be different than as presented, the Board reserves the right to reconsider its approval.

OTHER

Request for mileage line in ZBA Budget - Chairman Bonney directed Everett Hodge to include a line item for 'mileage' in the 2011 ZBA budget proposal to cover instances like the site visit to the Continental Paving, Inc. Litchfield NH plant on September 7, 2010.

Date of next ZBA meeting – The September 2010 meeting will be on Monday, September 27, 2010.

ADJOURN Motion: Bruce Kudrick moved to adjourn. Tom Hebert seconded. Vote was unanimous in favor of motion. Meeting adjourned at 10:05 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary