

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
June 29, 2009 Approved 7/27/09

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

ALTERNATES PRESENT: Mick Pinard, Paul Paradis, Mark Simard

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 #09-08-Z

Applicant: John Cusson/Stephen Hart
624 Cross Country Road
Pembroke, NH 03275

Property Owner(s): John Cusson

Property Address: 624 Cross Country Road
Pembroke, NH 03275
Tax Map 2605 Lot 29 located in the R3 Rural/Agricultural district

Appeal of a decision made by the Code Enforcement Officer - The applicant is appealing the decision made by Everett Hodge not to allow the construction of a separate detached dwelling unit located at 624 Cross Country Road. The applicant was denied a building permit to construct a 1300 square foot detached "Guest House." This is not allowed under 143-8 Definitions, Use, Accessory which states in part, "or a use, not the principal use, which is located on the same lot as the principal structure"

The applicant appeals Mr. Hodge's decision not to allow a second detached guest/in-law house to be erected on the rear of the lot Map 260 Lot 29. In his letter of May 15, 2009 to John and Mary Cusson, Everett outlined three options:

1. Apply to the ZBA for a Special Exception under 143-18.1 Accessory dwelling units to construct a 675 square foot in-law apartment.
2. Apply to the Planning Board for change of use from single family to two-family, which is allowed in the R3 Zoning District.
3. Appeal my decision to the ZBA under 143-112.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters. Mr. Cusson was unable to attend the hearing, and provided a letter authorizing Stephen Hart, his son-in-law, to present on his behalf on this case.

Chairman Bonney opened the public hearing at 7:06 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.

Tax map information, an aerial photograph and a copy of the assessment card were provided for the property.

Stephen Hart, 208 Liberty Hill Road, Bedford NH stated that Mr. Cusson and his family have examined the possibility of adding an addition to the existing house, but there is no good way to orient an addition with a second septic system. Mr. Cusson would like to add to the value of his property. Mr. Hart spoke to each abutter personally, and all were encouraging of a plan to locate a second, detached dwelling unit in the rear of the property. The family also considered the option of subdividing the property but wants to ensure the entire parcel remains in the family. Board members questioned why the land could not be subdivided, with family members or one owner for both pieces. They also asked why two retired people need a three bedroom home. The main issue is that zoning does not allow two principal uses on one lot.

Mr. Hart was going to research the precedent of adding a second, detached dwelling to a property in other towns, but did not. He is focusing on Pembroke and its support of families taking care of their loved ones. The existing house is 2100 square feet plus a garage. The proposed second house is 25 feet 7 inches by 52 feet. The layout shows three bedrooms. Mr. Hart is not sure of the footprint of the main house. It is 2100 square feet, and a two-story cape.

Mr. Hodge clarified that the applicant could use the existing septic for both houses by State law, if, after evaluation it was determined that the land could sustain the larger septic system. Septic plans for the larger system must be submitted to the State for approval, and implementation if the existing septic system should fail.

Five abutters signed a document in support of allowing a second, single level ranch home on the rear half of the Cusson lot with separate well and septic system. An addition was considered, but is not desired. An in-law apartment of 675 square feet is allowed by the zoning regulations. Neighbors felt an addition could be an eyesore. The family wants the new home for John and Mary Cusson to be single level for easy living in their later years. The existing house has 256 feet of frontage, 175' to the front property line, and 75' to the side property lines. Board members asked, in the long term, who will live in the house in 20-30 years? Stephen Hart stated he and his wife would move to the single level house and his children would live in the main house and take care of them. How do you propose to cross the brook? Mr. Hart stated there are two existing culverts. The size of the lot is 5.2 acres.

This proposal will not alter the essential character of the locality as it is in keeping with the affluent nature of Pembroke NH. A 2nd guest dwelling or guest/in-law house is in keeping with the family nature of the neighborhood. We are building this home so that the property will be kept in the family for years to come. The plans are tasteful and complimentary to the neighborhood. We, as a community, take care of each other and our loved ones. It is in the public interest not to subdivide the property to make a smaller lot size. Abutters have been consulted and have no objections to the plan.

The zoning restriction, as applied, interferes with the applicant's reasonable use of the property as the owner is currently receiving unemployment benefits, is near retirement age and will need living assistance in the near future. The lot's unique characteristics are that it is a wide, long and largely undeveloped land that

allows for a discrete 2nd dwelling to be placed in the rear half of the land with proper frontage for building, septic and well. Creating an addition to the current house would create a hardship in that orientation of such an addition would encroach on neighboring boundaries, and would not allow placement of a second septic due to the running brook and shallow well.

The allowance of such a dwelling on this lot could be a steppingstone to making a statement to the community that we take care of our own. Abutters are unopposed and enthusiastic about our plans. Many abutters have been in this neighborhood for up to 30 years.

Our plan to move into the main house and provide the second detached dwelling is so the current owners can retire with dignity and privacy, yet allow family members to be nearby in the event care is needed. John and Marie may eventually not be able to sustain the property, which would fall into disrepair.

This proposal would increase the value of surrounding property.

Roger Ingerson, 628 Cross Country Road, stated that John and Mary Cusson have been good neighbors for many years. John was a septic installer, and put two 2-foot culverts across the brook himself. Mr. Cusson already has a gravel driveway to the back of the property. The land is well landscaped, and they have lived next to the Cusson's for 26 years.

Patricia Ingerson, 628 Cross County Road, stated that the Cusson's are considerate, family oriented neighbors who want to be around their children and grandchildren. The Ingerson's support the proposed detached dwelling.

Chairman Bonney summarized the case. Mr. Cusson was denied a building permit for a proposed 25' x 52' second detached dwelling. The dwelling would be a 1,300 square foot single-family one-story ranch. The family considered an addition to the existing house, including a 675 square foot in-law apartment but found no good way to orient an addition. Abutters agreed an addition could be an eyesore and five abutters signed a petition in favor of a second detached dwelling on the lot. The house lot is approximately 250' wide by 830' long. For an in-law apartment, an existing septic could be used for two dwellings, with State approved design plans. Otherwise, each dwelling unit would have its own well and septic. The back of the lot is obscured by thick woodland. The town and the applicant want families to be able to take care of their elders as they move into retirement years. The family is flexible and would either use the existing driveway to the back of the lot for the second home (a length of approximately 400 feet) or install a new one on the side of the property. Mr. Hart clarified that the land up to the brook is cleared. The lot is large enough to subdivide, but would require an Area Variance for frontage. The applicant also has the option of applying to the Planning Board to change the use from single-family to a 2-family duplex use.

There being no further input, Chairman Bonney closed the public hearing at 7:45 p.m.

Deliberations: Dana Carlucci noted that a 2006 amendment changed the definition of detached single-family dwelling. Dana likes the concept of a second house in the rear of the lot but there is adequate frontage for a duplex on the lot. Dana is concerned about legal complications if it weren't a family member owning both dwellings and the land. Two different people could own the buildings. Would the detached dwelling unit eventually become a rental unit?

It was discussed that there are other alternatives. There is room available on the lot for either an in-law apartment or a duplex. If the land were subdivided, two different driveways are preferred. A subdivision would require an area variance on the frontage from the ZBA. A shared driveway permit would be needed from the Planning Board. Bruce Kudrick stated that this kind of in-law apartment is why the criteria were put into the zoning ordinance. Allowing a second detached dwelling on one lot would lead to other requests. Board members stated that a couple of viable options need to be explored further. Bruce Kudrick stated that looking down the road 30 years from now; the town has added regulations for in-law apartments. Bruce has seen instances like Webster Woods, where an existing house and garage has a second unit (duplex) added on the other side of the garage with separate entrances and utilities.

Bruce Kudrick led a review of each of the variance criteria presented. 1) The proposed variance is not contrary to the public interest. NO, down the road there could be legal issues and safety issues with the long driveway. 2) The variance addresses unnecessary hardship. NO, the property owner has three other options: construct an in-law apartment, create a duplex, or subdivide the property to construct a detached dwelling. 3) The proposal is consistent with the spirit of the ordinance, NO; zoning allows one principal use on a lot. An accessory building would be a barn, shed or workshop. 4) Substantial justice would be done, NO; there are other options the owner can pursue within the zoning ordinance. 5) would not diminish the value of surrounding property. Agreed.

Motion: Regarding Case #09-08-Z, Bruce Kudrick moved to uphold the decision of the Code Enforcement Officer in his May 15, 2009 letter to John and Marie Cusson because the proposal for a second detached dwelling on the lot does not meet criteria 1, 2, 3, and 4 for a Variance and the applicant has three other options:

- 1) An attached addition, or duplex.
- 2) Subdivide the land and build a detached dwelling unit.
- 3) Construct an in-law apartment in compliance with zoning regulations.

Granting a variance is not in the public interest because zoning does not allow two principal uses on one lot, and the long driveway proposed is a safety issue. Dana Carlucci seconded.

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

MOTION TO UPHOLD DECISION OF CODE ENFORCEMENT OFFICER APPROVED ON A 5-0 VOTE

PUBLIC HEARING

Case #09-09-Z

Applicant: Michael J. Faria Jr.
 65 Sheep Davis Road
 Pembroke, NH 03275

Property Owner(s): Raymond Wentzell II
 55 Sheep Davis Road
 Pembroke, NH 03275

Property Address: 65 Sheep Davis Road
Pembroke, NH 03275
Tax Map 561 Lot 9 located in the C1 Commercial/Light Industrial and the
AC Aquifer Conservation District

Special Exception under *Section 143-29 Major Home Occupation* - Applicant is requesting permission to operate a pallet repair business located at 65 Sheep Davis Road. The property is owned by Raymond Wentzell dba 55 Sheep Davis Road. A Special Exception is being requested because the property is listed as residential and it is currently being used as a single family residential rental property. The property is located in the C1 Commercial/Light Industrial and the AC Aquifer Conservation 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 8:12 p.m.

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

Tax map information, a copy of the assessment card and a sketch of the proposed home occupation were provided for the property.

Michael Farina, renter of 65 Sheep Davis Road, is requesting a Major Home Occupation of recycling pallets, located at 65 Sheep Davis Road. The property owner, Ray Wentzell, 55 Sheep Davis Road, signed a notarized letter June 9, 2009 allowing Michael Faria to file paperwork to have a business at 65 Sheep Davis Road. Scott Phelps, 65 Sheep Davis Road, stated this is a small business consisting of two employees – Michael and myself. Scott stated he has 40 years experience. There is not much to the business. We recycle old pallets with recycled wood to fix and sell them. Equipment used is a hammer and nail and a skill saw. I have 15 companies that throw pallets away. Instead, I pick them up, fix them and sell them to other companies (two companies at present). I own a 12 foot flat bed truck, which holds 120 pallets. If I have more repaired pallets, I will arrange for a tractor trailer to pick them up as it can hold 500 pallets.

Following Mr. Hodge's instructions, we put up a fence to screen abutters from the business. In response to Board questions, Mr. Phelps stated that he has about 1,500 to 2,000 pallets of various sizes on the property right now. The pallets are stored in the rear of the lot 30' from the wetlands. The lot is 1.21 acres with wetlands in the back, and a pond that is located at 55 Sheep Davis Road. The Board discussed whether 143-29 Major Home Occupation was a correct designation for this business. One of the requirements is that the business be carried on by the principal owner or Permanent Resident and have no more than two non-resident employees. No more than 2 commercial vehicles are allowed (there is one flatbed truck) and no advertising is allowed. If the Major Home Occupation is approved, the applicant still needs Minor Site Plan Approval from the Planning Board. Everett Hodge noted that the applicant also needs a Special Use Permit from the Planning Board because they are located over the aquifer. Dana Carlucci noted that mixed uses are allowed in the C1 Commercial/Light Industrial zoning district after a 2005 amendment to 143-17. The residential use on this lot is grandfathered. The Board discussed what category the business might be – storage of raw material? An accessory use is permitted on a lot containing a principal use (residential).

Mr. Phelps stated the business activity is unobtrusive to neighbors. There is a house across the street. The lot is wooded and Commerce Way is located on the right of the lot. It is a residential use in an area zoned Commercial. Anyone living in a commercial zone would expect to have a business operating around them. Lots at 55 Sheep Davis Road and 65 Sheep Davis Road were once one parcel, but were subdivided.

Michael Faria 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. *Recycling helps the environment.*
- 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. *Wood pallets are made from wood, which is clean to the environment and can be recycled.*
- 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 proposed site for the business is in a business district. It is separated from other properties.*
- 4) Please show that no factual evidence is found that property values in the district will be adversely affected by such use. *There will be no pallets kept for long after being recycling and fixed. They will be sold and shipped out. There will be no permanent structure to bring down property values.*
- 5) Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *No, there will be no hazardous material on site or used in the process of recycling.*
- 6) Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. *Due to having a home on the property, we use the facilities there. The work area is kept clean throughout the day. Pallets are stacked neatly before and after recycling.*
- 7) Please show that there are no valid objections from abutting property owners based on demonstrable fact. *We believe that recycling of pallets is reducing waste affecting our environment. The location of the business sits uphill on the property, which reduces noise from reaching surrounding abutters. *
- 8) Please show that the proposed use has an adequate water supply and sewerage systems and meets the applicable requirements of the State. *The business is a small home business, so we have use of the home water and sewer facilities.*
- 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*

Regarding #5, Board members asked is there adequate parking for a tractor trailer, and room for it to turn around on the property? What are the proposed hours of operation? Mr. Phelps stated 7 am to 5 pm five days a week and a couple hours on Saturday morning to clean up. Mr. Phelps confirmed that he has 15 vendors who supply pallets, and two companies who purchase the repaired pallets. He expects to sell to 20-25 vendors maximum due to the work involved to repair the pallets with two employees. One truck would make a daily trip with 120 pallets. A tractor trailer would arrive about once a month. Mr. Phelps stated there is enough area in the yard for a tractor trailer to turn around, including a full sized basketball court.

Mr. Hodge stated that the Fire Chief has expressed concern about the amount of wood stored on the lot. There have been three complaints a week. Mr. Faria and Mr. Phelps also had an oil spill from the fork lift on pavement that was addressed. Mr. Hodge stated that three registered letters were sent to the property owner regarding the need for buffering with a fence, but the information was not conveyed to the business operators. The ZBA stressed that the business operators are responsible for meeting all requirements, regardless of whether they have knowledge of letters to the property owner.

In response to ZBA member questions, Mr. Phelps stated a normal amount of pallets to store would be potentially 3,000. How big of an area would be needed to store 3,000 pallets? The lot is 52,707 square feet. The house gross is 3,000 square feet. There are two sheds, one not involved in the business. There is steep slope in the back of the house and limited flat area for the business. An accessory use would be limited to 40% of the lot or 20,800 square feet. The sketch provided is not an adequate design plan, and may not be drawn to scale. It appears to show a 76' x 26' work area, a 10' x 100' pick up area, and 11,500 square feet pallet storage area. There about 14,300 square feet shown for business use. There are no power lines on the property. Power comes in from poles on the road. There is a utility easement. It was discussed that one cannot build or store items on a utility easement. The business operators plan to establish another driveway to make the drive a circle for easier access by truck. A neighbor owns the land near Commerce Way so the lot does not go straight to the road.

Chairman Bonney summarized the case. Case 09-09-Z is a request for a Special Exception for a Major Home Occupation. The permanent resident would like to establish a business to recycle pallets. The lot is owned by Raymond Wentzell who authorized Michael Faria to complete paperwork for the business. The business is clean, uses hand tools and there is no trash build up in the area. Mr. Faria and Mr. Phelps have companies line up to purchase the repaired pallets. Storage of 2,000 pallets is on the rear of the lot, near but not on the wetlands of another lot. The lot is 1.21 acres, 52,000 square feet. The house takes up 3,000 square feet. If approved for a Special Exception, the applicant needs Minor Site Plan Review by the Planning Board. The drawing provided of the layout of the business is not adequate to determine the area used. An appropriate design must be provided to the Planning Board. Recycling helps the environment, and the business is located near enough to big cities in NH. It was stated that no pallets are kept for a long time. The pallets come in, they are repaired, and they are sold. Work is not done in the confines of a building. Hours of operation proposed are 7 am to 5 pm five days and several hours on Saturday. Applicants have two buyers now and will ramp up the business if approved. One flatbed truck daily will hold 120 pallets. The property owner has had three complaints daily, and recently had an oil spill from the forklift. Three registered letters were sent to the property owner, instructing the tenants to stop work immediately. The usage of the property for business appears to be 14,300 square feet. The work area is 76' x 96', pick up area 1,000 square feet and storage area for waiting and repaired pallets. There is no power to the shed.

There being no further input, Chairman Bonney closed the public hearing at 9:06 p.m.

Deliberations: Bruce Kudrick led a review of the special exception criteria. 1) Yes, recycling saves trees and the landfill. 2) Yes, the proposed site is in a commercial area. 3) Adjoining uses are commercial, agreed. 4) No adverse affect on adjoining commercial businesses, if the area is kept clean and screened from abutters, agreed. The fence looks great and the buffer must be maintained. Agreed. 5) A hazard is perceived due to the amount of wood stored on the lot. There needs to be a fire protection plan in place. If the applicant goes to Planning Board, a comment sheet is forwarded to all department heads. Also, the tractor trailer stops on Route 106 and backs up the driveway. Site plan review would address this hazard. 6) The sketch does not provide an accurate design of the proposed business. This will be addressed at Planning Board site plan review. Agreed. 7) No valid objections have been brought forward by neighbors, agreed. 8) Town sewer and water was installed last fall, agreed. 9) Not applicable.

Motion: Bruce Kudrick moved to grant a Special Exception for a Major Home Occupation under 143-29 at

65 Sheep Davis Road to allow a pallet recycling and repair business at Map 561 Lot 9 in the C1 Commercial/Light Industrial and Aquifer Conservation District with the following conditions:

1. Hours of operation will be Monday through Friday 7 am to 5 pm and Saturday 7 am to noon.
2. Applicant must follow all regulations in Major Home Occupation 143-29 except “B work must be done within the confines of a building.”
3. Applicant must meet all state and local regulations.

Dana Carlucci seconded.

Discussion: Chairman Bonney asked if Major Home Occupation fits the situation. Major Home Occupation deals with a residential area. There is a house across the street, and the residential use at 65 Sheep Davis Road is grandfathered, in that the house has been there since 1921. Dana Carlucci noted that multiple uses are allowed in the C1 zoning district since the 2005 amendment. A Special Exception is also needed for an Accessory Use to a Residential use. It was discussed that the category of “Major Home Occupation” may be more restrictive than Commercial Use allowed in the C1 district. Chairman Bonney stated if approved for a Special Exception, the applicant still needs to obtain Minor Site Plan Approval from the Planning Board to establish the business and a Special Use Permit from the Planning Board because they are located over the aquifer. Bruce Kudrick stated he was trying to give the Code Enforcement Officer guidelines for operating the business, and provisions for revocation if the rules of Major Home Occupation are not followed. It was discussed that items 5 and 6 of the Special Exception Criteria are not fully met now, but will be specifically addressed at Planning Board Site Review.

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

MOTION TO GRANT A SPECIAL EXCEPTION AT MAP 561 LOT 9 TO ALLOW A MAJOR HOME OCCUPATION OF PALLET RECYCLING APPROVED WITH CONDITIONS ON A 5-0 VOTE

Chairman Bonney stated that although the ZBA approved a Special Exception, the applicant still needs to obtain Minor Site Plan Approval from the Planning Board to establish the business and a Special Use Permit from the Planning Board because they are located over the aquifer.

Chairman Bonney called a brief recess from 9:30 p.m. to 9:35 p.m.

PUBLIC HEARING

Case #09-10-Z

Applicant: Henry Huntington
New England Flower Farm
7316 Pleasant Street
Loudon, NHY 03307

Property Owner(s): New England Flower Farms
7316 Pleasant Street
Loudon, NHY 03307

Property Address: 830 North Pembroke Road
Pembroke, NH 03275
Tax Map 559 Lot 14 located in the R3 Rural/Agricultural and the AC
Aquifer Conservation District

Special Exception under 143-62 Dimensional Table of Signs. The applicant is requesting permission to erect a Free Standing sign at 830 North Pembroke Road. A Special Exception is needed because free standing signs are only allowed by Special Exception in the R3 zone. The property is located in the R3 and AC Districts.

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 9:36 p.m.

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

A photograph of the sign and a sketch were provided with the application.

Henry Huntington, 7316 Pleasant Street, Loudon NH, owner of Pleasant View Gardens and New England Flower Farms LLC would like to erect a sign at 830 No. Pembroke Road that is 3' x 8', with a 10 inch by 8 feet sign under it, measuring approximately 4' x 8'. The ordinance only allows for a sign that is 12 square feet. We want a sign that is 32 square feet so it is clearly visible from the road. The larger sign is more proportional to the existing Pembroke Sand and Gravel sign. The fire department also requested that we have a sign for life safety reasons.

It was discussed that New England Flower Farms has already mounted an additional sign on the free standing sign for Pembroke Sand and Gravel. The Pembroke Sand and Gravel sign predates zoning and does not have a sign permit. New England Flower Farms has been at their location for almost ten years, and just started customer pick up of wholesale materials at the site. They assumed that a sign in proportion to the Pembroke Sand and Gravel sign was allowed. Mr. Hodge confirmed that all fees were paid for a Special Exception request.

Henry Huntington 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 sign identifies our business location. This is essential for life safety of our employees and our facility.*
- 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 24 square foot sign remains in proportion to the existing sign to make it more desirable.*
- 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 sign is being added to an existing free standing sign.*
- 4) Please show that no factual evidence is found that property values in the district will be adversely affected by such use. *Property values have not been affected by the existing sign.*
- 5) Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *No, it will have no impact on traffic.*
- 6) Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. *N/A*

- 7) Please show that there are no valid objections from abutting property owners based on demonstrable fact. *We have had no objections from the neighbors in the past.*
- 8) Please show that the proposed use has an adequate water supply and sewerage systems and meets the applicable requirements of the State. *N.A.*
- 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. New England Flower Farms LLC is requesting a Special Exception for a 32 square foot sign, already installed to an existing free standing sign. A 12 foot square sign is the largest allowed in the R3 District, and the next case addresses the size. The sign identifies the location of the business for employees, customers and life safety. New England Flower Farms has been at their location almost ten years, and now need a sign for customers to locate their wholesale business. The Fire Department has also requested they erect a sign for life safety purposes.

There being no further input, Chairman Bonney closed the public hearing at 9:40 p.m.

Deliberations: Chairman Bonney led a review of the special exception criteria. 1) Yes, the proposed sign identifies the location of the business and is needed for life safety reasons. 2) Yes, the proposed sign is in proportion to the existing sign. 3) The sign will be added to an existing free standing sign, agreed. 4) The existing sign has had no adverse affect on adjoining properties, agreed. 5) No nuisance will result and no impact on traffic, agreed. 6) N/A. 7) No valid objections have been brought forward by abutters, agreed. 8) N/A and 9) Not applicable.

Motion: Bruce Kudrick moved to grant a Special Exception for a free standing sign at 830 North Pembroke Road, Map 559 Lot 14 with the following conditions:

- 1. Applicant must meet all state and local regulations.

Dana Carlucci seconded.

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

MOTION TO GRANT A SPECIAL EXCEPTION AT MAP 559 LOT 14 FOR A FREE STANDING SIGN APPROVED AS PRESENTED ON A 5-0 VOTE

PUBLIC HEARING

Case #09-11-Z

Applicant: Henry Huntington
New England Flower Farm
7316 Pleasant Street
Loudon, NHY 03307

Property Owner(s): New England Flower Farms
7316 Pleasant Street
Loudon, NHY 03307

Property Address: 830 North Pembroke Road
Pembroke, NH 03275

Tax Map 559 Lot 14 located in the R3 Rural/Agricultural and the AC
Aquifer Conservation District

Equitable Waiver of Dimensional Requirements under 143-62 Dimensional Table of Signs The applicant is requesting permission to erect a 32 square foot free standing sign at 830 North Pembroke Road. An equitable waiver is needed because free standing signs are only allowed to be 12 square feet in the R3 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 9:45 p.m.

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

Henry Huntington, 7316 Pleasant Street, Loudon NH, owner of Pleasant View Gardens and New England Flower Farms LLC stated he erected a sign at 830 No. Pembroke Road that is 3' x 8', with a 10 inch by 8 feet sign under it, measuring approximately 4' x 8'. The ordinance only allows for a sign that is 12 square feet. We want a sign that is 32 square feet so it is clearly visible from the road. The larger sign is more proportional to the existing Pembroke Sand and Gravel sign. The fire department also requested that we have a sign for life safety reasons.

Henry Huntington addressed the criteria for Equitable Waiver of Dimensional requirements. In error, New England Flower Farms did not apply for a sign permit, but did make their sign consistent with the existing sign for Pembroke Sand and Gravel. They assumed a sign of similar dimensions would be acceptable. Mr. Hodge confirmed that Henry Huntington has come to his office to abide by the requirements and pay all fees for permits.

It was discussed that the existing Pembroke Sand and Gravel sign predated zoning regulations, and did not have a sign permit.

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

2) Please state why this violation occurred. *Given the size of the existing Pembroke Sand and Gravel sign, we wanted the Pleasant View Gardens sign to be proportional. It has also been requested that we erect a sign for life safety reasons. We were not aware the sign was oversized*

3) Please state why this violation does not cause a nuisance, does not diminish surrounding property values, and does not interfere with or adversely affect any present or permissible uses of the property. *It is proportional with the existing sign.*

4) Please state why the costs of correcting this violation outweigh the benefits of compliance with the dimensional requirements. *The sign has already been installed and is in proportion with the existing sign.*

The cost of correction outweighs the benefit of compliance.

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

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

It was discussed that the existing Pembroke Sand and Gravel sign predated zoning regulations, and did not have a sign permit.

Chairman Bonney summarized the case.

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

Deliberations: Chairman Bonney noted that the applicant incorrectly assumed that a sign proportional with the existing sign would be acceptable. Mr. Hodge informed the applicant of the requirements and the applicant has applied for the needed permits.

MOTION: Tom Hebert moved to approve an **Equitable Waiver of Dimensional Requirements** at 830 North Pembroke Road, Map 559, Lot 14 for an already installed 32 square foot sign free standing sign, where 12 feet is the maximum size allowed. Tom LoPizzo seconded.

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

MOTION TO GRANT AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS TO ALLOW A 32 SQUARE FOOT FREE STANDING SIGN AT 830 NORTH PEMBROKE ROAD, MAP 559 LOT 14 PASSED ON A 5-0 VOTE

Member Bruce Kudrick left the meeting for a work related emergency.

PUBLIC HEARING

Case #09-12-Z

Applicant: Henry Huntington
New England Flower Farms
7316 Pleasant Street
Loudon, NH 03307

Property Owner(s): New England Flower Farms
7316 Pleasant Street
Loudon, NH 03307

Property Address: 830 North Pembroke Road
Pembroke, NH 03275
Tax Map 559 Lot 14 located in the R3 Rural/Agricultural and the AC
Aquifer Conservation District

Area Variance under 143-21 Table of Dimensional and Density Regulations. The applicant is requesting permission to erect a 12,235 square foot greenhouse on the side setback at 830 North Pembroke Road. An Area Variance is being requested because the required setback is 30 feet in the R3 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 10:00 p.m. Paul Paradis was designated to vote for Bruce Kudrick on Case #09-12-Z.

There were 4 regular members and 3 alternate members present; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

An as built site plan of Pleasant View Gardens, Map 559 Lot 14 prepared by T.F. Bernier, Inc., 39 Warren Street, Concord NH dated April 2009 was provided with the application.

Henry Huntington, owner of Pleasant View Gardens and New England Flower Farms, explained that a year ago, a major site plan was approved by the Planning Board for a wood chip boiler and an additional greenhouse. In the spring of 2009 we constructed a new greenhouse on our property at 830 North Pembroke Road, when the lot lines were not clearly delineated. After completing the construction, we had an as-built survey prepared at the request of the Pembroke Planning Department and discovered that the new greenhouse encroaches into the side yard setback. We are requesting a variance to allow the encroachment into the setback.

A letter dated June 8, 2009 from Frank Merrill, President, Silver Hill Development was read into the record in support of the variance request. The encroachment can only be seen by New England Flower Farms and Silver Hill Development. Because of the size of each property, the encroachment is not detrimental to either property owner.

Henry Huntington addressed the 5 points necessary for an Area Variance:

- 1) Granting the variance would not be contrary to the public interest because *the infraction is located inside the property where it can only be seen from within the subject parcel or from the abutting property belonging to Silver Hill Development. Silver Hill Development is not opposed to the granting of the variance.*
- 2 A) Explain why the area variance is needed to enable your proposed use of the property given the special conditions of the property. *The greenhouse was constructed in the spring of 2009 and the infraction was found during an as-built survey requested by the Planning Department.*
- 2B) Explain why the proposed use can not be achieved through some other reasonable method other than an area variance. *Requiring the owner to relocate the greenhouse would not provide equitable justice to the minimal affect on the public by granting the variance.*
- 3) How would granting the variance be consistent with the Spirit of the Ordinance? *The infraction only impacts the subject property and the one abutter. The parcels are very large, 24 and 70 acres in size. The infraction is not visible from any other properties. The owner and the affected abutter are in agreement that the granting of a variance would be a fair and equitable solution.*

- 4) How would granting the variance ensure that substantial justice is done? *Granting the variance would provide a fair and equitable solution to the error that occurred in the construction of the greenhouse.*
- 5) Granting the variance will not diminish surrounding property values because: *As noted above, the infraction can only be seen from the two properties. The abutting property is an open sand pit and the owner has no concerns with the variance being granted.*

Chairman Bonney summarized the case. The temporary greenhouse was turned to line up with another greenhouse and became a permanent structure. Mr. Hodge stated that no required permits were applied for, but the applicant has applied for the needed permits now. A temporary greenhouse would be a lighter structure with a gravel floor. This greenhouse has a concrete pad and an electrical panel. New England Flower Farms is using the greenhouse as a pick up yard for wholesale items. If the applicant were to come back to the ZBA for any future matters, Chairman Bonney would not expect to hear the project was lacking permits. The already constructed 12,235 square foot permanent greenhouse has been erected next to the property line, well within the 30 foot side setback. A letter from the affected abutter, Frank Merrill of Silver Hill Development, was read into the record in support of the variance. The greenhouse was turned around on the property from where it was, onto the property line where 30' side setback is required. The greenhouse is 84' by 144'. It was stated by the applicant that it would be a fairly large expense to rebuild the greenhouse. Mr. Huntington stated he would essentially have to rebuild the greenhouse. Again, a building permit was not applied for. However, plans for a "temporary greenhouse" in another location were approved by the Pembroke Planning Board.

Mr. Huntington explained that construction began in the winter, when the property line was not as recognizable. He stated that his business has added to the Pembroke tax base for about ten years and has not been a burden to the town. It is a good neighbor, and runs a clean operation. Mr. Huntington apologized for the infractions and stated he understood the point about obtaining necessary town permits before work is undertaken.

There being no further input, Chairman Bonney closed the public hearing at 10:15 p.m.

Deliberations: Chairman Bonney led the ZBA through a review of the five area variance criteria. 1) The greenhouse was constructed on the property line, where a 30' side setback is required. The land was surveyed before construction of an 84' x 144' greenhouse. The current abutter is in favor of a variance; however, if a new owner purchases the land from Silver Hill Development, they may not be so accommodating. If New England Flower Farms is able, they may purchase more land beside the greenhouse. The wood boiler construction and greenhouse construction were major improvements to the property. The current owner of the abutting property is in favor of the variance. Agreed.

2A) The greenhouse was constructed in the spring of 2009 and the infraction was found during an as-built survey requested by the Planning Department. Agreed. 2B) There would be minimal effect to the public by granting the variance, agreed. 3) The infraction only impacts the subject owner and one abutter. The parcels are very large, 24 and 70 acres. Agreed. 4) Granting the variance would be a fair and equitable solution to the error that occurred in the construction of the greenhouse. No permits were applied for, and the greenhouse is on the property line. 5) The abutting property owner has no concerns with the variance being granted. A future owner may have an issue. New England Flower Farms may purchase land from Silver Hill Development in the future and could comply with the setback in the future.

Motion: Tom Hebert moved to grant an Area Variance under Table of Dimensional and Density regulations 143-21 to maintain the already constructed 12,235 square foot greenhouse in the side setback, on the property line, at 830 North Pembroke Road, Map 559, Lot 14 where 30 feet is required in the side setback in the R3 district with the following conditions:

1. Applicant must meet all state and local regulations.
2. In the future, if the greenhouse is ever renovated, reconfigured, or its outside dimensions are changed, this greenhouse will be relocated to comply with the 30' side setback

Tom LoPizzo seconded.

Discussion: It was discussed that the applicant repositioned the greenhouse near the road to make it convenient for customer pick up of wholesale purchases. Mark Simard noted that the greenhouse, as constructed, does not seem that portable or "temporary". It has 8 inch roof leader and electrical panels. Mr. Hodge confirmed it is a very nice structure and does need various permits, which the applicant has applied for. Mr. Hodge and other town staff envisioned temporary greenhouses as made of hoops and plastic. As a temporary structure, it would not be assessed and would not need building permits. New England Flower Farms stated they will have the option of purchasing more land from Silver Hill Development as the gravel pit use is discontinued.

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

MOTION TO GRANT AN AREA VARIANCE AT MAP 559 LOT 14 TO MAINTAIN THE ALREADY CONSTRUCTED 12,235 SQUARE FOOT GREENHOUSE IN THE SIDE SETBACK, ON THE PROPERTY LINE WITH CONDITIONS ON A 5-0 VOTE

MISCELLANEOUS

Everett Hodge provided members with a revised ZBA member list and 2009 meeting schedule.

MINUTES OF PREVIOUS MEETINGS

Motion: Dana Carlucci moved to approve the minutes of June 22, 2009 as amended. Paul Paradis seconded.

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

MINUTES OF JUNE 22, 2009 APPROVED AS AMENDED ON 5-0 VOTE.

OTHER

Date of next ZBA meeting – The July 2009 meeting will be on Monday, July 27, 2009

ADJOURN Motion: Tom Hebert moved to adjourn. Tom LoPizzo seconded. Vote was unanimous in favor of motion. Meeting adjourned at 10:30 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary