

**MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
July 27, 2009 Approved 8/31/09**

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

ALTERNATES PRESENT: Paul Paradis, Mark Simard

EXCUSED: Mick Pinard

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

Chairman Bonney called the meeting to order at 7:00 p.m.

PUBLIC HEARING

Paul Paradis recused himself from Case #09-13-Z.

Case #09-13-Z

Applicant: Lisa Mills dba Nicole's Greenhouse
311 South Main Street
PO Box 1478
Concord NH 03302

Property Owner(s): Angela Webster
Real Estate Unlimited, Inc.
13430 Stewart Road
Galveston, TXS 77554

Property Address: 91 Sheep Davis Road
Pembroke, NH 03275
Tax Map 561 Lot 6-1 located in the C1 Commercial/Light Industrial and the AC Aquifer Conservation districts

Special Exception under *Section 143-19 Table of Use Regulations* - Applicant is proposing to erect two commercial greenhouses at 91 Sheep Davis Road. Commercial greenhouses are not allowed in the C1 District per 143-19. The property is owned by Real Estate Unlimited, Inc. of Galveston TX. The property is located at 91 Sheep Davis Road 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 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. Chairman Bonney explained the rules of the hearing.

Tax map information, a copy of the assessment card, a certified letter dated July 6, 2009 from Angela Webster authorizing Lisa Mills dba Nicole's Greenhouse to function as her agent before the Planning Board and Zoning Board of Pembroke and a copy of a prior Special Exception #97-04-Z to operate a child care facility from the property were provided. Also, a site plan prepared for Lisa Mills by RJB Engineering, PO Box 6589, Penacook NH dated 7-16-09 was provided to ZBA members. Lisa stated that the 15 parking spaces shown exceed the number of spaces she is required to have for the space. An overflow parking area is indicated on the plan. Lisa stated the month of May is traditionally the busiest, with Memorial Day, Mothers Day, and Fathers Day etc. along with people getting their garden materials ready.

Lisa Mills dba Nicole's Greenhouse stated that the notice is incorrect in that it states two demountable greenhouses and her plan proposes three 112' x 30' demountable greenhouses and an additional 48' x30'; more permanent greenhouse attached to the existing building by a breeze way. Commercial greenhouses are defined as any greenhouse that grows and sells products. Most of Lisa's products are delivered to her retail shop. Her business is not as large as New England Flower Farms. Because the property is located over the aquifer, Lisa Mills met with Norm Provencher of Pembroke Water Works to explain the fertilizer product she uses when she is growing. However, she has not grown for the past two years and doesn't plan to grow at the Pembroke location. Lisa lives at 311 South Main Street, where her business is, and has been able to water the plants and heat as needed with a wood boiler in the winter. She stated she does not fertilize any outside product, and does not plan to use any fertilizer at the Pembroke site. Lisa does not anticipate any effect on the aquifer from fertilizer.

Lisa plans to heat the moved greenhouses with oil heat. There will be (2) separate 500 gallon oil tanks on site, with proper containment and located in utility buildings at the end of the greenhouses. It was discussed that if the tanks leaked, oil could leach into the aquifer. The three demountable greenhouses are not taken down in the winter. In response to Board questions, sewer service is within 100 feet of the property, but the property owner is not required to hook up to town sewer unless the septic system fails. Due to the moratorium on new connections, Paulette Malo stated this has been the policy of the Sewer Commission. However, if a property owner is in an area without town sewer, he must have a State approved septic plan that meets today's requirements on file, so if the septic system fails, it can be implemented. Lisa Mills provided a copy of a letter dated July 20, 2009 she wrote to Chris Culbertson, Pembroke Water Works, explaining the product she has used for fertilizer and how water is handled at her Concord location.

Bruce Kudrick asked if the existing well would supply enough water for the business needs. Lisa Mills has not been able to test the well yet. No tractor trailers will be arriving on site. Product is delivered in trucks similar to those used by Capital Distribution. The distance between the northeast entrance and Borough

Road is estimated at over 40 feet. Paulette Malo stated that the Roads Commission has not met on this site plan. Setbacks are shown on the plan. The ZBA may be approving a concept. The plan is an initial draft.

Lisa proposes to move existing greenhouses from her business in Concord to this property. The business will operate year round, offering annuals, perennials, herbs, hanging plants, shrubs, trees, as well as cut flowers, garden supplies and wood pellets. The plan also shows a 48' x 30' greenhouse attached to the existing building by a breeze way. In response to Board questions, Lisa stated that nursery trees will be displayed in pots or wrapped in burlap. Trees will not be grown in the ground. Correspondence to the Pembroke Water Works dated July 10, 2009 was provided, describing the fertilizer product Lisa has used, but does not plan to use at the Pembroke site. Chairman Bonney noted that the applicant will need a Special Use Permit from the Planning Board because the property is over the aquifer.

Lisa Mills 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. *Property is currently not used and has had a few different tenants. We will make the property owner occupied with a vibrant business not currently available in the area.*
- 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 district is commercial and there are currently businesses on both sides of the property, as well as across the street. Moreover, the proposed business would be of the scale that it is believed the current zoning restriction is intended to address.*
- 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 level and has road frontage on Route 106 and Borough Road. Our business will add a new type to the area and bring additional potential customers to the area.*
- 4) Please show that no factual evidence is found that property values in the district will be adversely affected by such use. *An empty parcel of land will affect property values negatively. A vibrant business will have positive effects.*
- 5) Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *No, again this area is already commercial and regular customer traffic is expected. Our business produces no additional noise and is actually very aesthetically pleasing.*
- 6) Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. *We will be completing a site plan with our surveyor to show placement of the greenhouses, parking and all associated needs.*
- 7) Please show that there are no valid objections from abutting property owners based on demonstrable fact. *I have spoken with a few of the abutters to this point and they have been very positive.*
- 8) Please show that the proposed use has an adequate water supply and sewerage systems and meets the applicable requirements of the State. *As a greenhouse business, there is minimal need for sewerage. The current private sewer is sufficient. The water supply will also be private, using the well on the property. Any additional state requirement as determined by our surveyor would be addressed in the site*

plan.

- 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. Lisa Mills dba Nicole's Greenhouse is seeking a Special Exception to allow three (not two, as in the notice) commercial greenhouses 112' x 30' with an additional 48' x 30' greenhouse attached to the existing retail shop. The owner does not grow product on the property. This would be an owner occupied business. If fertilizer is used, it is just used between February and April. Lisa Mills stated she will not be growing at all, or using fertilizer, at this location. Lisa agreed the restriction of using no fertilizer could be a condition if the proposal is approved. Everett Hodge researched the type of containment that will be needed for the (2) 500 gallon oil tanks. The applicant agreed to install adequate containment. The nursery stock will be potted or wrapped in burlap. The property is within 100 feet of the sewer main. Septic must meet State regulations. If the system fails, the property must hook up to town sewer. Nicole's Greenhouse will be a vibrant business not currently available in this area. The lot is zoned commercial, and the proposal is a commercial application. The property is level. The business would bring additional customers to this area. Lisa Mills spoke with abutters, and they are very positive about the business. Water and sewer will be private on the lot. Tom LoPizzo asked for confirmation on how fertilizer will, or will not, be used at the Pembroke location. Lisa Mills stated that fertilizer will not be used at the Pembroke location at all. Under 143-68, the Planning Board will address a Special Use Permit because the lot is over the aquifer. Petroleum products, road salt and any potential contaminants to the aquifer must be stored above ground level in a fully enclosed structure designed to contain any spill.

There being no further input, Chairman Bonney closed the public hearing at 7:34 p.m.

Chairman Bonney led a review of the Special Exception criteria. 1) Essential or desirable to the public, agree. 2) Applicant will not use fertilizer and the fuel tanks will be adequately contained. 3) The proposed business is in a commercial district, with other commercial businesses around the property. 4) Flowers will not adversely affect property values. 5) There is already traffic on that area of Route 106. 6) The Planning Board will provide site plan review. There is good line of sight. 7) No one attended the meeting stating they were opposed. 8) Planning Board site plan review will address. 9) *N/A*

Motion: Bruce Kudrick moved to approve a Special Exception to erect four commercial greenhouses at 91 Sheep Davis Road, Map 561 Lot 6-1 in the Commercial/Light Industrial and Aquifer Conservation Districts with the following conditions:

1. Maximum number of greenhouses will be 4.
2. Must provide a letter from a licensed septic designer that the existing septic system is adequate for the intended use.
3. Each 500 gallon fuel oil tank must have be installed per **Section 143-68 E Special Use Permit** subpart (2).
4. No fertilizer will be used on plants, trees, or shrubs or anywhere else on the property.

5. Must follow all guidelines of Section 143-68 Aquifer Conservation (AC) District in the day to day operation of the greenhouse.
 6. Must follow all applicable State and Town regulations.
- Tom LoPizzo seconded.

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

MOTION TO GRANT A SPECIAL EXCEPTION AT MAP 561 LOT 6-1 TO ALLOW FOUR COMMERCIAL GREENHOUSES APPROVED WITH CONDITIONS ON A 5-0 VOTE

Paul Paradis returned to the Zoning Board of Adjustment.

PUBLIC HEARING

Case #09-14-Z

Applicant: (Billy) Georgopoulos Vasilios
 Dba Veano's Italian Kitchen
 Unit 2 16 Sheep Davis Road
 Pembroke Crossing
 Pembroke NH 03275

Property Owner(s): Dick Anagnost
 Pembroke Commercial Group
 33 South Commercial Street
 Manchester, NH 03101

Property Address: 16 Sheep Davis Road
 Pembroke, NH 03275
 Tax Map 634 Lot 48-3 located in the C1 Commercial/Light Industrial
 District, the AC Aquifer Conservation District, and AD the Architectural
 Design District.

Use Variance from *Article IV Section 143-62 Dimensional Table of Signs and 143-58 General Requirements* of the Zoning Ordinance. The applicant is requesting permission to install (1) 44 square foot internally illuminated roof sign facing Route 106 and (1) 22 square foot internally illuminated roof sign facing the parking lot near the entrance to Veano's Restaurant at 16B Sheep Davis Road. The property owner is Pembroke Commercial Group, Inc. A Use Variance is being requested because roof signs are prohibited by zoning regulations for signs in the C1 zoning district. The property is located at Map 634 Lot 48-3 in the C1 Commercial/Light Industrial, the AC Aquifer Conservation District and AD the Architectural Design 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 8:00 p.m.

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

Assessing card information, a certified letter dated June 8, 2009 from Pembroke Commercial Group authorizing Vasilios Georgopoulos dba Veano's to proceed before Pembroke ZBA and Planning Board, and design sketches by NE OP CO Action Signs, 5 Crosby Street, Concord NH were provided with the application. Minutes from Planning Board meeting of July 10, 2007 were also provided to ZBA members.

The applicant proposes to install two internally illuminated roof signs per sketch VIK090707GS and per sketches provided. Signs will be similar in size and structure to the existing signs of the adjacent tenant, The Meat House. The Meat House Use Variance was granted on September 25, 2007 Case #07-20-Z for a 72 square foot internally lit roof sign. Meat House actually hung up a smaller sign than approved.

Glen Schadlick of NE OP Co Signs addressed the 5 points necessary for a Use Variance:

- 1) Granting the variance would not be contrary to the public interest because *the proposed signs are similar in size to existing signs in place by another tenant. The signs will be of similar materials and colors as the Meat House signs.*
- 2A) How does the Zoning Ordinance interfere with your ability to reasonably use your property, considering you property's unique setting in its environment? *The building sits low on the property. The signs shall direct the public to the restaurant from adjoining highways. The smaller set will face the parking lot and the larger set will face Route 106.*
- 2B) Explain why the proposed use can not be achieved through some other reasonable method other than an use variance. *The building is set down and away from the road. The proposed signs are typical for the designated use and are appropriate for this location, as it is similar to existing signs within this area. The larger bottom sign measures 20" x 12 feet, letters are 28" x 11" and the oval is 36" x 50". The smaller sign dimensions are bottom 14" x 96", letters 18" x 7" and oval 22" x 32"*
- 2 C) Please state how granting the variance will not hurt the public or private rights of others.
The proposed signs will be of quality materials in keeping with the context of existing signs. The bottom will be fluorescent plastic casing, individual letters spell Veano's and the oval will be on top. Dunkin Donuts, Meat House and the storage facility all have similar signs.
- 3) How would granting the variance be consistent with the Spirit of the Ordinance? *The establishment of the signs will draw customers to the restaurant, and to other businesses in Pembroke Crossing.*
- 4)How would granting the variance ensure that substantial justice is done? *There has been no negative feedback from abutters. As stated above, all abutters have similar size and design signs.*
- 5) Granting the variance will not diminish surrounding property values because: *If the proposed signs*

are not granted, the business will not succeed. All of the existing commercial abutters have similar signs.

In response to Board questions, the maximum of 40 total signs approved at the complex is not nearly reached. Directional signs for Dunkin Donuts do not count in the total. Abutters have signs of similar size and material, and if the signs are not approved, it will hurt the prospects of the restaurant business. Tom LoPizzo noted he would like the signs to be sufficiently large to be seen by passing traffic, as a safety precaution.

Chairman Bonney summarized the case. Case 09-14-Z is a request for a Use Variance to install (1) 44 square foot internally illuminated sign facing Route 106 and (1)22 square foot internally lit sign facing the parking lot at 16B Sheep Davis Road. Roof signs are not allowed in zoning. The signs will be three parts – a lower box, individual letters, and an oval top. All of the sign pieces are attached on one frame, and will be hung on either side of the building. The building sets low on the property, so the larger sign will face Route 106. The signs will be made of sheet metal casing and wired per UL standards. The size is similar to the existing Meat House sign, and the signs will be adequately supported on the roof.

There being no further input, Chairman Bonney closed the public hearing at 8:25 p.m.

Deliberations: Bruce Kudrick noted that the history of why roof signs were put on the Meat House is that the Planning Board approved an entire site plan with the roof signs on it, realized the error and sent the applicant back to the ZBA for a Use Variance.

The ZBA reviewed each of the five variance criteria. 1) The proposed use is not contrary to the public interest, agreed, other businesses in the area have similar signs. 2) The property sits low and interferes with signage being seen by passing traffic, agreed 2A) The signs will draw customers from Route 106 and Route 3 Without the sign, no one will know the restaurant is there, agreed.. 2B) The proposed size and design of the signs is the minimum needed for visibility from the road, agreed 3) No, the proposed sign will not hurt the rights of others. Abutters have similar size signs. 4) Consistent with intent of ordinance, Yes and 5) yes, it ensures substantial justice is done.

Motion: Bruce Kudrick moved to grant a Use Variance to install (1) 44 square foot internally illuminated roof sign facing Route 106 and (1) 22 square foot internally illuminated roof sign facing the parking lot near the entrance to Veano's Restaurant at 16B Sheep Davis Road, Map 634 Lot 48-3 in the C1 Commercial/Light Industrial, the AC Aquifer Conservation District and AD the Architectural Design District with the following conditions:

- 1) The approved signs are restricted in size, location and per sketch VIK090707GS as presented at the ZBA meeting, which is in the application file, and
- 2) All state and local rules, regulations and ordinances are followed.

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

MOTION TO GRANT A USE VARIANCE FOR TWO INTERNALLY ILLUMINATED SIGNS AT MAP 634, LOT 48-3 APPROVED WITH CONDITIONS ON A 5-0 VOTE

MISCELLANEOUS

Discussion with Paulette Malo, Pembroke Sewer Commission – The definition of a dwelling unit is that it is separate from the other unit, with cooking, sleeping and sanitary facilities for a household. It is possible that several family members live in an “in-law apartment.” Paulette confirmed the property owner would not be getting a second sewer connection, but would pay a permit fee for the expanded use. A second unit impacts the sewer system, as does adding a bedroom. The only difference in an in-law apartment is providing a kitchen for cooking. Bruce Kudrick explained that the Hooksett Sewer Department changes a “system development fee” for future upgrades, and not a connection fee. Pembroke Sewer Commission uses similar “connection permit fees” for line maintenance, pump station work and manhole covers. Paulette made reference to a Special Exception that the ZBA approved on 4/27/05 allowing a single family home use to change to a duplex/owner occupied unit with in-law apartment. The second unit is 576 square feet. Some of the conditions were Item H, that the property have one electric meter, one sewer and water connection; that the unit meet all codes – sewer, water and state, that there be one interior connecting door, and that the unit permanently remain a non-rental unit. The owner was able to get two electric meters, and if they don’t get two sewer or water connections, they want the Town of Pembroke to bear the cost or waive the sewer fee. If a ranch home puts on an addition, it can’t have a separate electric meter and must pay water and sewer fees separate if the addition is a “dwelling unit.” Paulette explained that currently, only condexes have separate water meters, and businesses have meters up and downstairs for business and possible residential uses. The intent is that there is one main line coming in to the property, and to make sure all the plumbing is connected. Sewer usage fees are based on water usage. If a property on private septic adds an in-law apartment, the property owner must obtain a state approved septic design for the added usage, and if the system fails must upgrade to the approved septic plan.

Section 143-18-1 Accessory Dwelling Units, the ordinance passed on March 10, 2009 allows in-law apartments that meet certain criteria. The ordinance was written by the Planning Board, with input from the Zoning Board of Adjustment. Among the criteria, there must be one electric meter, one water line and one sewer connection. The two in-law apartments approved by the ZBA in June 2009 are on town water and sewer. Paulette explained that the Sewer Commission assesses a permit fee, \$2,000 for in-law apartment sewer and \$750 for Water Works, which goes into a fund to upgrade and repair sewer and water infrastructure. Recently, a mother-in-law wanted a separate electric meter so she could pay her own utility. Two water or sewer connections are not needed to the same building, so the property owner is asking that the Town waive the permit fee. There may be a language issue with item “H” under the in-law apartment ordinance. Town Counsel has been asked to review the situation and provide written comment. Paulette stated it is not a hindrance to the Sewer Commission to collect permit fees for new dwelling units, as the occupants increase the use of the sewer system.

Paulette asked how the Town or the ZBA knows if the in-laws or family members move out of the unit. How does the Town know it never becomes a rental unit? Realtors advertise homes with in-law apartments or advertise the property as a duplex. How does the town know the proper value of the rental? Do they obtain information from the property owner? Dana Carlucci stated that he receives a questionnaire about his commercial property, and wondered if a similar questionnaire could be sent to owners with in-law apartment status. Bruce Kudrick stated that the intent of the ordinance for in-law accessory apartments is to allow families to take care of family members in a space attached to the original home. The criteria make it difficult to turn an in-law apartment into a rental unit. **Action Item:** Everett Hodge will provide ZBA members with the background and written legal opinion on this matter for further review.

MINUTES OF PREVIOUS MEETINGS

Motion: Bruce Kudrick moved to approve the minutes of June 29, 2009 as amended. Dana Carlucci seconded.

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

MINUTES OF JUNE 29, 2009 APPROVED AS AMENDED ON 5-0 VOTE.

OTHER

Date of next ZBA meeting – The August 2009 meeting will be on Monday, August 31, 2009.

ADJOURN Motion: Tom Hebert moved to adjourn. Bruce Kudrick seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:55 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary