

**MINUTES**  
**PEMBROKE ZONING BOARD OF ADJUSTMENT**  
**November 22, 2010    Approved 1/24/2011**

**MEMBERS PRESENT:** William Bonney, Chair; Dana Carlucci, Tom Hebert, Tom LoPizzo

**ALTERNATES PRESENT:** Mick Pinard and Mark Simard

**EXCUSED:** Bruce Kudrick, Vice Chair; Paul Paradis

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

Chairman Bonney called the meeting to order at 7:02 p.m. Mark Simard was designated to vote for Bruce Kudrick.

**PUBLIC HEARING**

Case #10-20-Z

Applicant:                      Kimball's CAV'ern  
   Robert and Francis Cavanaugh  
   351 Pembroke Street  
   Pembroke NH 03275

Property Owner(s):        Robert and Francis Cavanaugh  
   351 Pembroke Street  
   Pembroke NH 03275

Property Address:         350 Pembroke Street  
   Pembroke, NH 03275  
   Tax Map 565 Lot 241 located in the R-1 Medium Density-Residential and  
   AD Architectural Design Zoning Districts

**Variance (by vote of ZBA 11/22/10)** from *Article VIII Signs, 143-58 General Requirements G (2) Maintenance*. The applicant, Robert Cavanaugh dba Kimball's CAV'ern is requesting permission to change the existing signage to reflect the name change. The existing signage is non-conforming in the R-1 Zoning District. A **Variance** is required to change the existing non-conforming signage. The property is located at Map 565, Lot 241 in the R-1 Medium Density-Residential and AD Zoning Districts.

There were 4 regular members and 2 alternate members present; therefore, there was a full five-member board present for this hearing.

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

Copies of assessment cards, Notice of ZBA Decision Case #10-3-Z, and a copy of Warranty Deed dated October 23, 2010 from Todd Smith to Francis Cavanaugh and Robert Cavanaugh were included in the application packet.

Chairman Bonney opened the public hearing at 7:05 p.m. He discussed the rules of procedure and stated that if any of the facts presented by the applicant are subsequently found to be different, the Board reserves the right to revisit its decision.

Robert Cavanaugh, owner, stated he is requesting permission to replace existing sign panels because of the name change of the business and to replace the wall sign in front of the building. The sign sizes will remain

exactly the same. Coca Cola is no longer involved, and Pepsi is now the sponsor of the signage. Mr. Cavanaugh provided drawings of the signs, as they will appear, with the addition of the Pepsi logo on the road sign.

The ZBA discussed that the application should have been submitted as a request for a variance, as Section 143-158 G refers to maintenance of a non-conforming sign, not replacement. A variance is needed to replace the 3' x 14' single face sign on the front of the building, the 2' x 8' single face sign on the side of the building and to replace the panels on the pole sign out front. The applicant provided written and verbal responses to the variance criteria.

Robert Cavanaugh, owner, 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 name and use of the property has changed to a restaurant, and we are trying to let folks know. Section 143-57 describes several purposes of a sign which are to provide a readable sign that does not obstruct traffic and adequately identifies the business to the public.*
- 2) The spirit of the ordinance is observed *because the existing sign has been there for many years, and we propose to replace the signage in the same size. Section 143-3 Public Safety-Transportation specifically states that signs that are more readable enhance safety.*
- 3) Substantial justice is done *because the sign has always been on the property. The ZBA approved a Special Exception in February 2010. This would also involve a sign reflecting the new use and name of the business.*
- 4) The values of surrounding properties is not diminished *due to the fact that the owner was granted a Special Exception earlier this year for a change in the business with no objections from abutters. In fact, all of the abutter's property has increased in value.*
- 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 existing signs have been on the property for years. The new business has a different vendor sponsoring the sign. All signs will be the exact same size as they currently are. The inability to advertise would be a hardship to the grandfathered business in that location.*
  - (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.

*Without the change of signs, the signage will not reflect the new business at the location.*

Chairman Bonney summarized the case. The applicant Robert Cavanaugh, dba Kimball's CAV'ern, is requesting permission to change the existing non-conforming signage due to the business name change. The front sign will be 3' x 14' single face wall sign. The side sign will be 2' x 8' single face wall sign. The double face 5' x 6' pole sign will include the Pepsi logo on the sign, unlike the drawing. The signs will be the exact same size as the previous signage. The signs will look exactly as presented to the Board, except that the Pepsi logo will be on the pole sign. The applicant needs the sign to go along with his new restaurant business at Kimball's. To enhance safety, signs will be more readable for patrons seeking out the business. Substantial justice will be done, as the signs will reflect the new business approved by Special Exception in February 2010. It is reasonable that the owner needs new signs to reflect the current business use. The value of surrounding properties has not diminished. It would be a hardship if new signs were not approved.

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

**Motion:** Tom LoPizzo moved that since the meeting was noticed as a Special Exception, the decision was made by the ZBA to change the request to a Variance, as in the ZBA’s opinion the applicant would be better served with an application for a Variance to Section 143-58 G (1) (2) and (3). Dana Carlucci seconded.

**VOTE:** TOM L - Y DANA - Y MARK- Y  
TOM H Y BILL - Y

MOTION TO CHANGE REQUEST TO A VARIANCE APPROVED ON A 5-0 VOTE

Chairman Bonney led a review of the Variance criteria. 1) The use is not contrary to the public interest. Agreed, the use will serve the public. 2) The spirit of the ordinance is observed because the business name and use has changed, and therefore, the owner needs new signage. 3) Substantial justice is done because the signs have always been on the property, and the owner is keeping the new signs the same size. 4) Values of surrounding properties have not diminished, agreed - no abutters came forward with any objections. 5) The proposed signs are reasonable, given that the ZBA approved a Special Exception for change of use in February 2010.

**Motion:** Tom LoPizzo moved to approve a Variance to allow the applicant to change the existing non-conforming signage to reflect the name change at 351 Pembroke Street, Map 565, Lot 241 in the R-1 Medium Density-Residential Zoning District with the following conditions:

1. Signage approved is a 3’ x 14’ single face, front wall sign, 2’ x 8’ single face, side wall sign, and 5’ x 6’ double-face freestanding pole sign.
2. All advertising on the sign will be as presented to the Board - Kimball’s CAV’ern Family Restaurant and sponsor logo of Pepsi.

Dana Carlucci seconded.

**VOTE:** TOM L - Y DANA - Y MARK- Y  
TOM H Y BILL - Y

MOTION TO APPROVE A VARIANCE TO CHANGE THE EXISTING NON-CONFORMING SIGNAGE AT 351 PEMBROKE STREET, MAP 565, LOT 241 IN THE R-1 ZONING DISTRICT PASSED WITH CONDITIONS ON A 5-0 VOTE

Robert Cavanaugh, owner, thanked the ZBA for its consideration and decision. Mr. Cavanaugh asked how he could obtain permission to stay open later for special occasions, specifically later than 10 p.m. on the Wednesday before Thanksgiving and later than 8 p.m. on Super Bowl Sunday. The conditions of the Special Exception approved February 23, 2010 specify the operating hours approved by the ZBA. A request to change the conditions/operating hours, even on an occasional basis, would require an application to change the conditions of the Special Exception and a public hearing. The Pembroke ZBA has always defined hours of operation based on input from applicant and abutters. The Applicant could request to come back to the ZBA to redefine hours of operation approved in Case #10-03-Z. The applicant could request extended hours for the business every day, or specify which holidays/special events they would like to be open longer.

**MINUTES OF PREVIOUS MEETINGS**

**Motion:** Dana Carlucci moved to approve the minutes of October 25, 2010 as amended (‘Howe’ name missing an ‘e’). Tom Hebert seconded.

**VOTE:** TOM H - Y TOM L - Y DANA- Y  
MARK - Y BILL - Y

MINUTES OF OCTOBER 25, 2010 APPROVED AS AMENDED ON 5-0 VOTE.

**NEW BUSINESS**

**Correspondence from Concord Planning Board** - The Recording Secretary read a two-page letter dated November 15, 2010 from the City of Concord Planning Board into the record. The City of Concord Planning Board supports and appreciates the decision of the Pembroke Zoning Board of Adjustment to deny a rehearing of the asphalt plant use case. The City of Concord Planning Board is still against the operation of an asphalt plant in that location, even with the use of natural gas for power. The Concord Planning Board feels the site is an inappropriate location, as it is in a sensitive Concord wellhead area.

**Possible zoning change** - Everett Hodge would like the ZBA members to consider adding language to Section 143-116 Expiration of Approvals to state that the Zoning Board of Adjustment has the right to revoke a Special Exception or Variance if not used within one year, or if the conditions of the approval have not been fully met. Right now, the Code Enforcement Officer can't enforce the condition that the applicant receives a Certificate of Occupancy within one year (has not been met) because "substantial construction" has been started. Trees have been planted, but not finished. There have been inspections of the foundation, wiring and plumbing but the house is still not connected to running water, and the property owner is working with her third contractor. The old wording did give the ZBA the right to revoke a variance, and require the applicant to reapply for an extension if he/she could not meet the specified deadline. In 2008, that wording was changed, and now the language needs to be adjusted back to the way it was pre-2008,

**New ZBA applications online** - Everett Hodge is working on putting ZBA applications on-line that can be filled out and printed so the application is legible.

**ZBA and Alternate ZBA terms are expiring** - Per RSA 673-6, any Land Use Board is allowed no more than five alternates. Currently, there are three alternate members and Chairman Bonney mentioned adding a fourth alternate to ensure a five-member board is always available to hear cases. In April 2011, Dana Carlucci, Tom LoPizzo and Mick Pinard's terms will expire and they need to decide if they will accept reappointment to the ZBA.

**OTHER**

**Date of next ZBA meeting** – If there is a December 2010 meeting, it will be held on Monday, December 19, 2010. There are no cases pending, other than an application for a Variance for the Methodist Church to install a handicapped lift 6' in the setback. This hearing may be scheduled for January 2011.

**ADJOURN Motion: Tom LoPizzo** moved to adjourn. Dana Carlucci seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:04 p.m.

Respectfully submitted,

Susan P. Gifford  
Recording Secretary