

**MINUTES**  
**PEMBROKE ZONING BOARD OF ADJUSTMENT**  
**April 15, 2010 Approved 4/26/10**

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

**ALTERNATES PRESENT:** Mick Pinard, Paul Paradis

**EXCUSED:** Mark Simard

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

Chairman Bonney called the meeting to order at 7:05 p.m. Thomas Hebert recused himself from Case #10-05-Z. Mick Pinard was designated to vote for Tom Hebert on Case #10-05-Z.

**PUBLIC HEARING**

Case #10-05-Z

Applicant: Thomas Hebert  
6 Noyes Street  
Pembroke, NH 03275

Property Owner(s): same

Property Address: 6 Noyes Street  
Pembroke, NH 03275  
Tax Map 266 Lot 15 located in the R1 Medium Density-Residential, AD  
Architectural Design Overlay Zoning District

**Variance** under *143-105 A* of the Pembroke Zoning Ordinance. The applicant, Thomas Hebert, is requesting permission to add a 12 foot by 16 foot addition to his residence at 6 Noyes Street. A Variance is required because the property is non-conforming due to frontage and lot size.

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 7:06 p.m.

There were 4 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.

Copies of assessment cards, a sketch of the area, lot and proposed addition were enclosed in the packet.

The applicant is requesting permission to expand a single family home on an existing non-conforming structure at 6 Noyes Street by adding a 12' x 16' great room to the west side of the house. The property is just outside the B1 Zoning District, which has lower requirements for frontage and lot area.

Everett Hodge noted that a recent ruling from Town Counsel was that any house on a lot that doesn't meet current zoning requirements cannot be altered or enlarged. Tom Hebert noted that addition work has been done on a lot of the houses in the area. Tom Hebert stated he was notified of the restriction after construction had already started. Everett Hodge noted that the ordinance has been on the books but not interpreted in that way in the past. If a proposed addition on a non-conforming lot could meet current setbacks, Everett Hodge has issued building permits in the past.

In response to Board questions on how much construction had been done, Tom Hebert stated that he did site

work and poured and capped the foundation for the proposed addition. Mr. Hebert consulted with the Code Enforcement Officer on the cost of the permit and actually measured the setbacks with him. A required 15' setback looked close but measured 16' where 15' minimum is required. Mr. Hebert cut through the side of the existing house to access the new construction. The structure has been sitting that way since the first week of March 2010 when Mr. Hebert was notified of the need for a Variance. Since then, Mr. Hebert has done some dirt work and regarding. In the past, a variance was not needed if an owner enlarged or altered a structure on a non-conforming lot of record as long as current setbacks could be met. The lot does not meet area and frontage requirements. The lot has 112 feet of frontage where 120' is required.

Tom Hebert addressed the criteria necessary for a Variance as they applied:

- 1) Granting the variance would not be contrary to the public interest because *the addition would meet all setbacks and would be constructed to comply with current building codes. The current use is single family residential and will remain the same.*
- 2A) How does the Zoning Ordinance interfere with your ability to reasonably use your property, considering your property's unique setting in its environment? *An area variance is needed because the original lot was created in 1953 prior to any zoning regulations and became non-conforming when the current zoning regulations were adopted.*
- 2B) Explain why the proposed use can not be achieved through some other reasonable method other than an area variance. *The surrounding land is occupied with existing single family homes, and therefore there is no land available to purchase in order to achieve the required frontage and square footage.*
- 3) How would granting the variance be consistent with the Spirit of the Ordinance? *According to 143-3 the purpose of the ordinance, among other things, is to prevent overcrowding of the land, avoid undue concentration of population, and promote the general welfare of the citizens. **Currently, our existing residence covers 11.58% of the useable area on a 0.43 acre lot. After construction, The amount of area covered would total 12.81%. According to the regulations, a lot in the R1 district is required to have a minimum of 30% open space. After construction, we would have 87.19% open space.** Therefore, no overcrowding of the land would occur. We will not be adding additional bedrooms, so no increased occupancy will result. A variance would benefit our general welfare by allowing us to further utilize our property.*
- 4) How would granting the variance ensure that substantial justice is done? *By granting the variance, we would be able to improve our dwelling which in turn would increase the value of our home and generate more tax revenue for the town.*
- 5) Granting the variance will not diminish surrounding property values because: *the proposed addition would be in keeping with the residential makeup of the neighborhood. It's design simply extends an existing gable end of the building to create a great room. There have been similar projects completed in the surrounding neighbors property that have had no negative effects on property values.*

Bob and Linda Pitre, 5 Noyes Street, attended the hearing, and submitted a letter in support of the proposal in case they did not make the hearing. Bob Pitre stated at the meeting that the Hebert's are great neighbors and Tom Hebert is a master builder. Any addition to his home would be well built. Bob and Linda Pitre support the proposal.

John Bocci, 8 Noyes Street, stated that the planned addition would not be seen from the road. In fact, the nearest house to the Hebert home is 80 feet away on Broadway Street. There is also a hedge row buffer between the Hebert property and the nearest house.

Chairman Bonney summarized the case. The applicant proposes to construct a 12' x 16' addition to his residence at 6 Noyes Street, Map 266 Lot 15 in the R1 Medium Density Residential Zoning District. The lot is non-conforming in that there is 112' of frontage where 120' is required or 8' short, and the area is 18,295 square feet where 20,000 is required or 1,705 square feet short. The property is between Route 3 and

Broadway in the R1 Zoning District, very close to the B1 Zoning District. The applicant had already started construction and measured the setbacks with Everett Hodge. A new opinion from Town Counsel states that if a structure is non-conforming, it cannot be added to, altered or enlarged without a variance. In the past, building permits have been issued on non-conforming lots that can meet current setbacks. The original lot measures .43 acres and was created in 1953 before zoning was adopted. The structure covers 11.58 % of the lot now, and after construction would cover 12.81%, leaving 87% open space where 30% is required. There would be no negative effect to surrounding properties.

There being no further input, Chairman Bonney closed the public hearing at 7:30p.m.

**Deliberations:** Bruce Kudrick noted that he never noticed that “area” was stated in section 143-105A. This is a non-conforming lot that could not be built on by today’s zoning standards. The B1 Zoning District is very near this lot, and only requires an area of 10,000 square feet to build.

The ZBA reviewed each of the five variance criteria. 1) The proposed addition meets all current setbacks, agreed 2) Yes 2A) Applicant is unable to purchase additional land, and cannot build over 35’ high, agreed 2B) agreed 3) yes, because overcrowding is not an issue, agreed 4) Yes, there was favorable testimony from abutters and 5) yes, the nearest house is 80 feet away and the addition should increase property value.

**Motion:** Bruce Kudrick moved to approve a Variance to allow a 12 foot by 16 foot great room addition to the west side of a single family residence at 6 Noyes Street, Pembroke NH, Map 266, Lot 15 in the R1 Medium Density and AD Overlay Zoning Districts with 112’ of frontage where 120’ is required and with 18,295 square feet area where 20,000 square feet is required, with the following condition:

1) Applicant will meet all state, local and federal regulations.

Dana Carlucci seconded.

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

MOTION TO GRANT A VARIANCE TO AREA AND FRONTAGE AT MAP 266 LOT 15 TO ALLOW A 12 FOOT BY 16 FOOT GREAT ROOM ADDITION TO THE WEST SIDE OF A SINGLE FAMILY HOUSE AT 6 NOYES STREET APPROVED WITH CONDITIONS ON A 5-0 VOTE

Chairman Bonney asked Everett Hodge to request a written copy of the opinion provided by Town Counsel, and provide a copy to all ZBA members. Tom Hebert returned to the ZBA for Case #10-06-Z and Mick Pinard is no longer voting.

**PUBLIC HEARING**

Case #10-06-Z

Applicant: Shawn and Karen Matte  
716 Clough Mill Road  
Pembroke, NH 03275

Property Owner(s): same

Property Address: 716 Clough Mill Road  
Pembroke, NH 03275  
Tax Map 561 Lot 26 located in the C1 Commercial/Light Industrial Zoning District and AC Aquifer Conservation Overlay Zoning District

**Variance** under 143-105 A of the Pembroke Zoning Ordinance. The applicant, Shawn and Karen Matte, is

requesting permission to add a 24 foot by 30 foot additional living area to the new garage at 716 Clough Mill Road. A Variance is required because the property is non-conforming due to frontage and lot size.

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 7:40 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.

Copies of assessment cards, a sketch of area, lot and proposed addition were enclosed in the packet.

Shawn Matte stated he started a garage two years ago, and is trying to gain living space so he can take down the existing house, which is full of mold and mildew in the basement. The new living space would be safer for his family to live in, and would provide better air quality. Shawn Matte provided photographs for the file of the basement of the existing house. He stated he had with him a better drawing of the proposed new structure than was provided with the application, a plot plan with location of setbacks on the 1.10 acre lot.

Shawn is requesting permission to complete a project that was started with the construction of bedrooms and baths above a two car garage. I need this variance for kitchen and living room mostly. The main reason for new construction is bad air quality in the existing house. I need to keep 2 full-time air quality products going in my home at all times, as well as provide a bucket for drips on occasion. The basement is dirt with rocks (boulders) and only has half a block foundation. The roof looks as though it could collapse at any moment. I need this variance for the safety and well being of my family. The proposed addition to the garage is 24 feet by 30 feet.

Shawn Matte stated that the existing garage is 30' x 40', 2 floors with 1200 square feet each. The living space upstairs from the garage is dry walled with rough plumbing, rough electric and insulation. The second floor of the garage was built in a manner to accept the new addition as an interlocking piece. Shawn stated the second floor was fully inspected by the Code Inspector as he went along. After starting construction of the garage, Shawn realized the basement of the existing house had mold and mildew and was affecting the health of his family by giving the residents violent headaches. There are three bedrooms and two baths over the garage and Shawn would like to add on a kitchen and living room.

Shawn Matte stated that he acquired a building permit for the garage as an attached, accessory structure two years ago. What was built was a detached two story, 1200 square feet garage first floor and 1200 square feet living space over the garage. The floor of the new garage and second floor living space will be 4 feet higher than the current garage. The foundation will be stepped. The property is in the C1 Commercial /Light Industrial District where the front setback is 50', side setback is 25' and rear setback is 40'. Board members noted that the total proposed living space in the new second floor exceeds the living space of the current old house, which has 1,392 square feet. The old house was built in 1968 and is approximately 1400 square feet on one floor. The new configuration was supposed to be an attached garage of 1,200 square feet with 1,200 square foot family room above the garage. The lot is an existing, non-conforming lot zoned residential use in the C1 Commercial Zoning District. The junction of Clough Mill Road is about 300 feet from the lot. On an unrelated note, the wall map of the C1 District contradicts the boundaries shown on the 2005 Master Plan map. Everett Hodge clarified the lot is in the C1 Zoning District.

Shawn Matte addressed the criteria necessary for a Variance as they applied:

- 1) Granting the variance would not be contrary to the public interest because *the addition would increase property value with a finished grass yard and a safe, clean building.*

- 2A) How does the Zoning Ordinance interfere with your ability to reasonably use your property, considering you property's unique setting in its environment? *I was recently told by the town that the lot is non-conforming in frontage and square footage for the addition. An area variance is needed because the original lot was created in 1953 prior to any zoning regulations and became non-conforming when the current zoning regulations were adopted.*
- 2B) Explain why the proposed use can not be achieved through some other reasonable method other than an area variance. *The town informed me of this non-compliance just recently. There is no land available to purchase in order to achieve the required frontage and square footage.*
- 3) How would granting the variance be consistent with the Spirit of the Ordinance? *According to 143-3 the purpose of the ordinance, among other things, is to prevent overcrowding of the land. I will not overcrowd the existing lot. The addition will not infringe on any setbacks.*
- 4) How would granting the variance ensure that substantial justice is done? *By granting the variance, we would have better air quality and the living area would be more stable. The mold and mildew in the existing house give us violent headaches.*
- 5) Granting the variance will not diminish surrounding property values because: *the proposed addition would raise the value of the property and bring in additional tax revenue. The existing house would be demolished. Grass and landscaping can finally be done in the yard.*

Shawn Matte stated that if the variance were granted, he could complete construction and raise property values by demolishing the old house and landscaping the yard. In response to Board questions, Shawn Matte stated he planned to remove the old house as soon as the new addition is done. Hopefully, once construction is started on the addition, that would be a year at the most.

Dana Carlucci asked for clarity on what the variance is for. There is currently a residential use and an accessory garage on the lot. What is the footprint and size of the new living room addition? With the 24' x 30' addition, there will be 2,011 square feet of garage space including a new 10 x 12' entryway, and 2,011 square feet of living space, all on the second floor. This is with the understanding that a requirement of any variance granted would be removal of the old home. To summarize, the old house has 1,392 square feet of living space. The new house will have 2,011 square feet of living space all on the second floor and the garage will be 2,011 square feet of non-living space. The footprint will be the same.

Everett Hodge noted that the garage and "man room" above already has a permit dated March 14, 2008 as an accessory building. When the mold came out in the basement the indoor air quality worsened. As the existing house deteriorated, Mr. Matte's plans changed. Mr. Matte obtained proper inspections by the Town of Pembroke Code Inspector of the second floor plumbing, electrical and insulation. Everett Hodge stated that what he inspected and approved was not a "dwelling unit."

Bruce Kudrick stated that the applicant now wants to attach the garage to a new living space. There are three bedrooms in the old house and three bedrooms in the new house. The lot is in the C1 Zoning District and has well and septic. A new State approved septic has been installed. However, the applicant is substantially increasing the living area by 600 square feet, from 1,400 square feet to over 2,000 square feet. Chairman Bonney asked if Mr. Matte could utilize the second floor of the new building for total living space. Mr. Matte stated he could not, because it was not designed that way. During rough frame, he left 2 doors to connect to the proposed 24' x 30' addition. The building permit issued in 2008 showed attachment of the garage to the existing house. Last week, the applicant discovered that his building plan was subject to the Town Counsel ruling that a non-conforming structure cannot be enlarged.

Chairman Bonney stated that even though the applicant only had a week to prepare, the documents attached to the variance application were lacking sufficient detail to allow the ZBA to make an informed decision. The application did not provide detailed information, measurements, setbacks or fully provide an explanation of what the applicant's intentions were regarding this addition. The applicant did not communicate his plan well to Everett Hodge or the ZBA.

Dick Kruger, 494 Woodlawn Drive, stated that the applicant's proposal was a big improvement to the existing house and he was in favor of the proposal.

John Clark, Pembroke contractor, stated he did the foundation for the new building Mr. Matte has now. John Clark stated that Shawn Matte works hard and would do a good job on the addition. Mr. Clark stated that there is an extensive cost to remove mold and mildew and it is not always successful.

Chairman Bonney summarized the case. The applicant started the garage two years ago and now requests a 24' x 30' addition to the new garage. The applicant will raze the existing house once the addition is built. The current garage is 30' x 40' on two floors and is 75% finished. The setbacks of 50' front, 25' side and 40 feet rear will be met. The 24' x 30' addition to the garage has not been built. There is no town water or sewer at this location. The is well and a new septic system. The old house has 1,392 square feet of living space and the new house will have 2,011 square feet of living space, all on the second floor. The first floor will be 2,011 square feet of garages. The property is 300 feet from Old Borough Road. The air quality in the current house gives the occupant violent headaches. A building permit was issued March 14, 2008 for an accessory 30 x 40 attached garage with finished space above. The living area built above the garage was not approved. The Code Inspector looked at rough plumbing and electric **not for a dwelling unit**. The current residential building has three bedrooms. The applicant put in a State approved new septic system. The original Building Permit was for an accessory garage attached to the original dwelling. The garage was built unattached and will attach to the proposed new living space. Absent the new Legal Counsel interpretation of 143-105A, the applicant would not be in front of the ZBA seeking a variance.

There being no further input, Chairman Bonney closed the public hearing at 8:40 p.m.

**Deliberations:** Bruce Kudrick noted that the ZBA members had to pull all of the relevant information out of the applicant regarding the application. In a normal time frame, an applicant has four weeks preparation time. Because this applicant was under a time crunch after his discussion with the Town Administrator, it affected the quality of the application and presentation.

The ZBA reviewed each of the five variance criteria. 1) The applicant is improving the site by removing the source of mold and mildew, agreed 2) Yes, the proposed site is residential in the C1 Zoning District 2A) The house was built in 1968 and is a grandfathered non-conforming use, agreed. 2B) agreed 3) yes, the proposal is consistent with the spirit of the ordinance, but a **new** residence on the lot would not be a permitted use, agreed 4) Yes , it is for the health of the family and 5) yes, the structure could be marketed in the future as a commercial property with upstairs offices. No testimony was received that the proposal would negatively affect property values.

**Motion:** Bruce Kudrick moved to grant a Variance to frontage and lot size to allow construction of a 24 foot by 30 foot additional living area to a new garage at 716 Clough Mill Road, Map 561, Lot 26 in the C1 Commercial /Light Industrial Zoning District and the AC Aquifer Conservation Overlay Districts subject to the following conditions:

1. Applicant will meet all state, local and federal regulations.
2. The existing house must be torn down within one year of the date the foundation walls are inspected and approved for backfill.

Tom LoPizzo seconded.

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

MOTION TO GRANT A VARIANCE AT MAP 561 LOT 26 TO ALLOW A 24 FOOT BY 30 FOOT ADDITIONAL LIVING AREA ADDITION TO A NEW GARAGE AT 716 CLOUGH MILL ROAD

APPROVED WITH CONDITIONS ON A 5-0 VOTE

**MINUTES OF PREVIOUS MEETINGS**

**Motion:** Bruce Kudrick moved to approve the minutes of February 16, 2010 as amended. Tom LoPizzo seconded.

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

MINUTES OF FEBRUARY 16, 2010 APPROVED AS AMENDED ON 5-0 VOTE.

**Motion:** Bruce Kudrick moved to approve the minutes of February 23, 2010 as amended. Tom LoPizzo seconded.

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

MINUTES OF FEBRUARY 23, 2010 APPROVED AS AMENDED ON 5-0 VOTE.

**OTHER**

**Date of next ZBA meeting** – The next ZBA meeting will be on Monday, April 26, 2010.

**Guidance on Sign Ordinance** - The ZBA advised Everett Hodge to ensure that Hub Cap House obtains the necessary sign permits for their sign and message board, totaling 12 square feet which conform to current sign ordinances.

**Materials distributed** - Everett Hodge distributed a set of October 2009 Zoning Board of Adjustment regulations for member’s binders. He also provided a copy of “Riggins Rules” passed on from the Pembroke Planning Board.

**Approval of new Variance Application** - Because there is no longer a “use” or “area” variance, just a “Variance,” Everett Hodge created a new Variance Application according to the new template provided. The Board approved the application, and it will be put on-line and in the Town Hall office immediately.

**Discussion on “completed ZBA application”**- The ZBA members discussed that all relevant materials should be included with the application packet sent to members before the meeting. Applicants should be prepared to present their proposal, and should not be providing new information, photographs etc on the night of the hearing. It was discussed that there is a statutory time within which a ZBA decision must be communicated to the applicant in writing. Tom Hebert noted that the City of Concord never makes a formal decision the night of the hearing, and sends a decision to the applicant in the mail. If the application is lacking detail, or there is not sufficient information provided, the ZBA has the ability to continue the case to a future date certain. The ZBA relies on the Code Enforcement Officer to work with the applicant and review the ZBA application for thoroughness.

**Clarification on Legal Counsel opinion on non-conforming structures**- Because the recent legal opinion on Section 143-105A requires a variance to alter or enlarge or “increase the non-conformity of a non-conforming structure”, this could result in an increased volume of applications to the ZBA for variances. Therefore, the ZBA would like a meeting with Town Counsel, or a written opinion and comment on whether the section applies to an application for a deck. A variance goes with the land upon transfer.

Also, an existing lot of record can be built upon with conditions, as long as it meets the zoning setbacks at the time of construction (Section 143-103). Section 143-103 seems to contradict 143-05 A because a structure can be built on a lot of record as long as it meets setbacks, but cannot be altered or increased in size. Please have Legal Counsel comment on this.

Approved 4/26/10

The Code Enforcement Officer will research how other towns handle changes to non-conforming structures.

**ADJOURN Motion:** Bruce Kudrick moved to adjourn. Tom Hebert seconded. Vote was unanimous in favor of motion. Meeting adjourned at 9:25 p.m.

Respectfully submitted,

Susan P. Gifford  
Recording Secretary