

**Pembroke Planning Board
Meeting Minutes
July 26, 2022
(Approved August 9, 2022)**

MEMBERS PRESENT: Brian Seaworth, Chairman; Robert Bourque, Vice Chairman; Kathy Cruson, Brent Edmonds, Kevin Foss, Rick Frederickson, Selectmen's Rep.; Clint Hanson

ALTERNATES PRESENT: Bryan Christiansen

MEMBERS EXCUSED:

STAFF PRESENT: Carolyn Cronin, Town Planner; Susan Gifford Recording Secretary

Chairman Seaworth called the meeting to order at 6:30 pm. Seven members and one Alternate Member were present.

Vice Chairman Robert Bourque recused himself from both cases of old business, having participated in the Zoning Board of Adjustment hearing for these applications. Chairman Seaworth designated Alternate Member Bryan Christiansen to vote for Robert Bourque on these applications.

Old Business

- 1. Major Subdivision Application #22-01, Keystone Pembroke, LLC, owner of Tax Map 634, Lot 23 located at 42 Whittemore Road in the Limited Office (LO) Zone, the Aquifer Conservation (AC) District, and the Wetlands Protection (WP) District.**

The Applicant proposes to subdivide the lot into five lots: three single-family residential lots to be served by town water and sewer, one lot for proposed multifamily development, and the remainder as part of the golf course.

- 2. Major Site Plan Application #22-101, Keystone Pembroke, LLC, owner of Tax Map 634, Lot 23 located at 42 Whittemore Road in the Limited Office (LO) Zone, the Aquifer Conservation (AC) District, and the Wetlands Protection (WP) District.**

The Applicant proposes a 62-unit multifamily townhouse development to be served by town water, town sewer, and private roadway network.

➤ **Special Use Permit Application SUP-AC #22-305**

The Applicant requests a Special Use Permit in accordance with Article 143-68.E., Aquifer Conservation District, for residential use over the aquifer.

➤ **Special Use Permit Application SUP-WP #22-306**

The Applicant requests a Special Use Permit in accordance with Article 143-72.D.(2) and (3), Wetlands Protection District, for impacts to the wetlands and wetlands buffer to construct a roadway and alter the surface configuration of the land. The project includes 73,000 SF of buffer impacts and 365 SF of permanent wetland impacts.

Planner Cronin reported that both revised plans were submitted on July 19th. There were concerns about the buildable area calculation for each new lot. Applicant understanding is that the ZBA granted them a variance from the entire section of Dimensional Standards in addition to the density. Planner Cronin reviewed the file, ZBA minutes and Notice of

Decision provided for the plan at that time. If there is a questions, we may need clarification from the Zoning Board or the Town Attorney on what that variance covered. Chairman Seaworth asked what the next step would be to obtain reinterpretation. What would trigger a return to the Zoning Board of Adjustment? Planner Cronin stated it would be a request for clarification from the Planning Board on what the variance covered. Member Cruson stated that it would be prudent to review the variance.

At 6:44 p.m. Chairman Seaworth opened the public hearing on Major Subdivision application #22-01 and Major Site Plan Application #22-101 and associated Special Use Permit Applications. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be on the town website for a future agenda item. Members of the public who wish to speak should give their name and street address. The minutes are being recorded by a microphone in the ceiling. Please refrain from individual conversations. Please address all comments to the board or Chair. We have a lot on our agenda tonight.

Chairman Seaworth turned the meeting over to the applicant for presentation. Tim Peloquin, Promised Land Survey; Jeff Lewis, Northpoint Engineering; Bob MacCormack, owner; and Steve Pernaw, Traffic Engineer were present. Attorney Charles Cleary for applicant was also present.

Attorney Cleary stated that we were aware that the variance question would come up. We emphatically believe we received a variance that granted construction of sixty-five units on 15.5 acres. This includes sixty-two multi-family units and three single-family homes. The still currently used club house will be taken down when the new club house is ready for use.

Chairman Seaworth stated my concern is for the three-lot subdivision. Yes, the ZBA knew you were planning sixty-five units. It is hard to believe that ZBA would grant a variance from all setbacks and contiguous buildable area. We asked back in design review if the easement would affect the calculation of contiguous buildable area. It was a zoning decision. I would be surprised if the ZBA was aware they were being asked to waive contiguous buildable area. If they did, was it accidentally or intentionally approved? Tim Peloquin for applicant stated three 0.5 acre lots showed an easement in old script from the 1800's. It was hard to read and plat. Applicant is respecting all side setbacks and wetland setbacks.

Attorney Cleary stated that he reviewed the ZBA decision from last September. We do not look behind it unless there was an issue with it. The decision is clear, must be at rest and be final. What we presented to the ZBA was this exhibit with lot sizes noted on the plan. The easement runs through the middle of the lot. ZBA has the final say over their decision. When the variance was from all dimensional issues of zoning section 143-21, we presumed that the ZBA considered contiguous buildable area in broad terms for the sixty-five units but did not go into detail. We needed relief from dimensional issues looking at the plan and the decision does not raise issues. It shows sixty-five units. The Planning Board does not get into ZBA decisions.

Member Edmonds asked Planner Cronin how the contiguous buildable area came to her attention. Planner Cronin stated that she reviews each plan that comes in. I had questions whether it met the 70% minimum contiguous buildable area for that district which is 14,000 square feet. In my subdivision plan review I flagged that in design review and upon formal plan submittal. I do not provide subdivision review for ZBA. Applicant may have requested relief from the whole dimensional table, but there is no overall plan review for ZBA requests.

Attorney Cleary stated that before the ZBA hearing we made the plan more zoning compliant and the variance covered the rest, mainly density. The ZBA lists out sixty-five units in their decision. Mr. MacCormack noted that he reviewed the ZBA minutes from May through December 2021. Many times, ZBA decisions reference a specific item, for example (g) Side Setbacks. We asked for relief from 143-21 as a whole. Item #13 is contiguous buildable area. The plan met side setbacks, front setbacks, and square footage. The only thing not met was contiguous buildable area. A condition of approval on the ZBA decision is that construction is to adhere to submitted plans. Three single family homes are part of the sixty-five units. Chairman Seaworth noted that the Zoning Board of Adjustment would not have been aware unless told that the plan did not meet contiguous buildable area. How did the ZBA know? The Planning Board just found out the contiguous buildable area is not met.

Vice Chairman Bourque stated the Planning Board would like to hear the complete ZBA Notice of Decision read. Mr. MacCormack stated that the applicant did what they were asked to do. He made several decisions based on the ZBA decision, million-dollar decisions. He started building the club house based on the ZBA decision. I do not feel it is a fair practice to question the decision now. Chairman Seaworth confirmed that the Planning Board was given a copy of the full ZBA decision. Any voting will take place after the public hearing is held.

Tim Peloquin, Promised Land Survey, provided a recap of discussing the ZBA decision with Planner Cronin. It is not up to the Planning Board to decide the intention or the clarity of a ZBA decision. Chairman Seaworth stated this is very new information to us. This matter was not brought up previously. This is a legal issue outside the Planning Board. It is nice to hear both sides. We are happy to hear from Attorney Cleary, but I would argue against acting until we received clarification. Member Hanson suggested making clarification a condition of approval. We are not privileged to know ZBA intent. Chairman Seaworth noted the Planning Board could approve the site plan conditionally on subdivision approval. Planner Cronin asked how comfortable the Planning Board is with a condition? You could question the subdivision plan and continue it to next meeting. If the plans must be changed, will it be substantially? Chairman Seaworth said if the Planning Board approves a subdivision plan and a new plan is required, we have a recorded version at the registry. Member Cruson noted the ZBA decision states that the applicant must follow all state and local regulations. I am not sure the ZBA meant to exclude contiguous buildable area. Chairman Seaworth stated we do not have our own legal advice. Attorney Cleary stated that the ZBA did not mean to undo the variance. ZBA puts the condition to follow all state and local regulations on all their decisions. Chairman Seaworth noted that the typical ZBA request is a small ask. This is a request to go back to open space regulations. Open Space regulations did not exist at the time this variance went to the

ZBA. We clearly need to consult with legal counsel. Member Foss noted that the ZBA did not call out a specific item to cite. Selectmen's Rep Frederickson said I agree with Member Foss. The ZBA decision appears to be broad stroke based on the plan presented that meets other dimensional requirements but not contiguous buildable area. Vice Chair Bourque suggested looking at the recorded video of the ZBA meeting.

Chairman Seaworth moved on to the next section Major Site Plan #22-101. Planner Cronin. Planner Cronin provided an overview of a staff meeting on July 7, 2022. The meeting focused on the intersection design of Nadine and Whittemore road. Staff requested a 3-way stop design and additional signage at the intersection. On July 18th, a petition was sent to Planning and Police from abutters requesting a 2-way stop. Town engineer is reviewing the plans. Fire Department supports the roadway length waiver request as the units will be sprinklered and will approve the hydrant location.

Jeff Lewis, Northpoint Engineering, stated that TRC and board member comments were addressed on the plans. The last sheet shows potential sidewalk as an off-site improvement. A small widening is planned at Pembroke Street. Applicant needs NH DOT approval. The ability to put in a sidewalk depends on permitting. Alternative arrangements can be made to build the sidewalk as a capital improvement. Mr. Pernaw provided an addendum to his original study. Bottom line is a two-way stop would work fine. If issues arise, could change to a four way stop. Three way is not a conventional proposal for intersections. Addendum two adds advisory plaques. The town is overthinking the intersection. Chairman Seaworth stated that our Town Engineer is reviewing off site improvements of sidewalk and additional turn lane. Jeff Lewis met with the Town Engineer and DPW Director on site. The traffic study encompasses a wider area.

Mr. Pernaw explained that having two approach lanes is an advantage that also maximizes egress. Two approach lanes help reduce queuing and allows right turns without delay. Advantages outweigh disadvantages. Selectmen's Rep asked for comment on two ways versus three ways stop regarding speed. Steve Pernaw stated that stop signs should not be used for speed control. Signage should convey clear and simple message to drivers. Drivers will be regulars from the area. Member Christiansen advocated for a roundabout.

Planner Cronin stated that DPW is very opposed to speed tables, speed bumps or anything that interferes with winter maintenance. Fire Department is not in favor of traffic calming measures that negatively impact their equipment. With a four way stop, traffic leaving from the clubhouse would have two stops in a row and may cause stacking. Cars coming in from Route 3 need a stop sign. Mr. MacCormack stated we also need to consider safety for the cart path to the left of the driveway. There is a pole that cannot be moved. Mr. MacCormack is in favor of a four way stop for safety. Member Cruson asked about signage for a four way stop. Member Edmonds stated that it is easier to add a stop sign than remove one. He recommends that the town start with three ways stop at the intersection and increase to four ways if needed. Signage can be adjusted. Member Edmonds stated that he mentioned traffic calming measures. He approves the intersection as laid out. Chairman Seaworth stated he could support any configuration that prevents a catastrophic issue. A straw poll indicates that Planning Board favors a four way stop. Alternate Member Christiansen stated that a sidewalk on Whittemore is very important for pedestrian safety. Chairman Seaworth stated that the contingency plan is that if the

sidewalk is delayed, the applicant will provide funds to the town to complete the sidewalk as an appropriate offsite improvement.

Mr. MacCormack stated that he has received a quote for constructing the sidewalk. I propose to bond the amount and not do the work. Chairman Seaworth noted that the Town Engineer must determine the bond amount. Chairman Seaworth asked Planner Cronin to review the proposed conditions of approval for the major site plan.

Planner Cronin noted that there were twenty proposed conditions for the major site plan, and a copy was sent to the applicant. Condition #17 is that escrow amount to be determined will be made for the sidewalk. A new condition #21 will be added that the plan will be revised to show a four way stop at the intersection. Alternate Member Christiansen asked if a condition should be added to remove the netting on the utility poles. Mr. MacCormack stated he is willing to remove the netting but would have to go through the electric company, which would be at least a six-month process. Chairman Seaworth noted that if an approved site plan is recorded and changes occur after, it no longer matches the recorded plan. Planner Cronin stated that the escrow account in condition #17 is contingent on NH DES approval. Mr. MacCormack stated we do think NH DES will approve the sidewalk plan. Member Hanson stated that the contingency is on DES approval. If NH DES does not approve the sidewalk plan, funds will be calculated as an exaction fee in amount of said sidewalk. Planner Cronin stated that condition #17 must describe the intent of how the funds will be spent. Chairman Seaworth stated the purpose is to mitigate project safety on Whittemore Road for pedestrian accessibility. The sidewalk will be constructed according to plan. Mr. MacCormack stated the cost of the sidewalk in the amount of \$47,000 was approved by the Town Engineer.

Jeff Lewis, Northpoint Engineering, asked if the applicant can obtain final approval prior to the sidewalk being completed? Planner Cronin stated there is no timeline associated with the sidewalk in condition #17. Will it be a subsequent condition (not required before signature on the plan)? Mr. MacCormack proposed that the sidewalk will be completed before the last ten Certificates of Occupancy are issued. Will the sidewalk amount be added to the restoration bond and released on completion? Mr. MacCormack clarified that an account will be established prior to the 55th Certificate of Occupancy. Chairman Seaworth stated the holdup may be NH DES approval, or some other reason. We do not care why the sidewalk is not complete when it comes down to the last ten Certificates of Occupancy. I am not sure that we need to include contingent on NH DES approval in the condition. If the sidewalk is not completed prior to issuance of the 55th Certificate of Occupancy the owner shall establish an escrow account for the construction of the sidewalk.

Planner Cronin reviewed the proposed conditions of approval for the subdivision application. She read suggested Condition #11 to be added prior to signature, that the town attorney shall review the plan for compliance. Chairman Seaworth said there could be a potential delay while we wait for legal guidance. Jeff Lewis stated there are two internal lines on the single-family lots that would be affected. Planner Cronin stated that if the town attorney sees no issue, the applicant can record the plan. If not, the applicant would need to come back to Planning Board. Chairman Seaworth stated if the Planning Board vote approves the subdivision plan and the town attorney says yes, the plan in front

of us can be recorded, the applicant can proceed. If the town attorney says no, how do we remedy the situation?

Attorney Charles Cleary stated that my concern is expediency. Can the Planning Board hold a vote on approval of the subdivision with conditions #1-10 and approval of the subdivision with conditions #1-11? We made a plausible case tonight. Chairman Seaworth noted the options are 1) continue the subdivision hearing to August 23, 2022. 2) conditional approval with conditions 1-10, or 3) conditional approval with conditions 1-11. Member Foss stated I do not believe the subdivision plan needs legal review. I am in favor of conditional approval of the subdivision with conditions # 1-10. Member Edmonds stated I agree with Member Foss. The Planning Board does not second guess the decision of another town board. It is not our place to do so. Member Hanson stated I am in favor of conditional approval of the subdivision plan with conditions #1-10. Chairman Seaworth noted the board also must consider waiver requests for length of cul de sac and requirement for landscaping plan.

At 8:33 pm Chairman Seaworth closed the public hearing for tonight. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be on the town website for a future agenda item.

Chairman Seaworth stated we will start with a motion on the Major Subdivision Application.

MOTION: Member Foss moved to approve Major Subdivision Application #22-01 with the following conditions:

1. Prior to signature, all waivers and the date granted shall be listed on the plan.
2. Prior to signature, all conditions of approval shall be listed on the plan.
3. Prior to signature, the signature block shall be revised to match the language as depicted in the Major Subdivision Review Checklist.
4. All lot deeds shall include any restrictions, including Eversource easements as well as a drainage easement on Lot 23-1, describing any use limitations such as dumping, filling, and erecting structures.
5. The original signatures of all property owners shall be provided on the final plan.
6. The final plan shall be recorded at the Merrimack County Registry of Deeds. LCHIP check to accompany the final plan.
7. All recording fees shall be paid to Town of Pembroke.
8. Town Driveway Permits are required.
9. Prior to occupancy, house number location and style shall be satisfactory to emergency services.
10. The plan will not be considered as receiving final approval until all conditions of approval are met.

Seconded by Member Hanson.

VOTE: B. Seaworth – NO R. Frederickson – Y K. Foss - Y
B. Edmonds - Y K. Cruson – NO C. Hanson - Y
B. Christiansen - Y

MOTION TO APPROVE MAJOR SUBDIVISION APPLICATION #22-01 WITH CONDITIONS #1 - #10 PASSED ON A 5-2 VOTE.

MOTION: Member Foss moved to grant a waiver from the Site Plan Review Regulations, in accordance with Section 203-59, to waive Section 203-29.B., Design Standards, to allow a cul-de-sac length of 850 feet where a maximum 600 feet is required. Seconded by Member Hanson.

VOTE: B. Seaworth – Y R. Frederickson – Y K. Foss – Y
B. Edmonds – Y K. Cruson – Y C. Hanson – Y
B. Christiansen – Y

MOTION TO GRANT A WAIVER AS SPECIFIED PASSED ON A 7-0 VOTE.

MOTION: Member Foss moved to grant a waiver from the Site Plan Review Regulations, in accordance with Section 203-59, to waive Section 203-38, Landscaping, to allow the developer to provide plantings without a formal landscape plan. Seconded by Member Cruson.

VOTE: B. Seaworth – Y R. Frederickson – Y K. Foss – Y
B. Edmonds – Y K. Cruson – Y C. Hanson – Y
B. Christiansen – Y

MOTION TO GRANT A WAIVER AS SPECIFIED PASSED ON A 7-0 VOTE

MOTION: Member Cruson moved to approve Special Use Permit SUP-AC #22-305 conditionally until Major Site Plan #22-101 has received final approval, at which time the Special Use Permit becomes final for as long as the plan is approved. If at any time the plan is revoked or final approval is not received, the Special Use Permit becomes invalid. Seconded by Member Foss.

VOTE: B. Seaworth – Y R. Frederickson – Y K. Foss – Y
B. Edmonds – Y K. Cruson – Y C. Hanson – Y
B. Christiansen – Y

MOTION TO APPROVE SUP-AC-#21-305 WITH CONDITIONS PASSED ON A 7-0 VOTE.

MOTION: Member Foss moved to approve Wetlands Special Use Permit case SUP-WP #22-306 subject to the following conditions:

1. This Special Use Permit is in accordance with Article 143-72.D.(2) and (3), Wetlands Protection District, to construct to construct a roadway with one wetland crossing and alter the surface configuration of the land. It includes work within a wetland and wetland buffer and shall be constructed according to the submitted plans and the NHDES Wetlands Permit conditions of approval.
2. The Special Use Permit shall be recorded at the Merrimack County Registry of Deeds.

Seconded by Member Hanson.

VOTE: B. Seaworth – Y R. Frederickson – Y K. Foss – Y
B. Edmonds – Y K. Cruson – Y C. Hanson – Y
B. Christiansen – Y

MOTION TO APPROVE SUP WP-#22-306 WITH CONDITIONS PASSED ON A 7-0 VOTE

MOTION: Member Christiansen moved to approve Major Site Plan Application #22-101 with the following amended conditions:

1. Prior to signature, all waivers and the date granted shall be listed on the plan.
2. Prior to signature, all conditions of approval shall be listed on the plan.
3. Prior to signature, the plans shall be revised to address all review comments from the Town Engineer and any applicable concerns and issues.
4. The associated subdivision plan (application #22-01) shall be recorded at the Merrimack County Registry of Deeds.
5. The original signatures of all property owners shall be provided on the final plan.
6. The Site Plan Notice of Decision and the Special Use Permit Notices of Decision shall be recorded at the Merrimack County Registry of Deeds.
7. All recording fees shall be paid to Town of Pembroke.
8. Town of Pembroke Sewer approval is required.
9. Pembroke Water Works approval is required.
10. The plan will not be considered as receiving final approval until all conditions of approval are met.
11. Town Driveway Permits are required.
12. All proposed street names are subject to approval by the Board of Selectmen.
13. Applicant is notified through this notice that no site work shall begin and building permits will not be issued until the final plan is signed, the Notices of Decision are recorded, and a pre-construction meeting is held with the Town.
14. Pre-construction and construction requirements and procedures, including provisions for surety, shall comply with the Town of Pembroke Site Plan Regulations.
15. All building plans to be reviewed by the Building Inspector and Fire Chief.
16. Building permits are required.
17. The Applicant is responsible for construction of the Offsite Improvement Plan. If the sidewalk is not completed prior to the 55th certificate of occupancy, the owner shall establish an escrow account in an amount equal to the cost of the improvements, the amount to be approved by the Town Engineer, for the purpose of providing offsite improvements on Whittemore Road for pedestrian accessibility.
18. Any new pad mount transformers shall have a secondary containment system.
19. The property shall be landscaped in a manner consistent with Phase I.
20. The proposed roadways shall remain private roads and the owner is responsible for all street maintenance, stormwater infrastructure maintenance, snow plowing, streetlights, and trash removal.
21. Prior to signature, the plan shall be revised to a four-way stop on the Intersection Improvement Plan.

Seconded by Member Hanson.

VOTE: B. Seaworth – Y R. Frederickson – Y K. Foss – Y
B. Edmonds - Y K. Cruson – Y C. Hanson - Y
B. Christiansen - Y

MOTION TO APPROVE MAJOR SUBDIVISION APPLICATION #22-101 WITH CONDITIONS PASSED ON A 7-0 VOTE.

Chairman Seaworth stated that Vice Chairman Bourque rejoined the Planning Board at 8:40 p.m.

Since the time is approaching 9:30 p.m. with many agenda items left, the Planning Board considered whether the board is willing to continue the meeting past 9:30 p.m. if we need to. Consensus was to continue and look at this decision again at some point.

New Business

- 3. Major Site Plan Application #22-102, Scott Frankiewicz, New Hampshire Land Consultants, PLLC acting as Applicant on behalf of Kimball Street LLC, owner of Tax Map VE, Lot 132-1 located at 11-13 Kimball Street in the Business/Residential (B1) Zone, the Central Business District (B2) Zone, the Municipal Separate Storm Sewer System (MS4) District, and the Aquifer Conservation (AC) District.**

The Applicant proposes to construct a 6-unit residential development with associated parking and drainage to be served by town water and sewer.

➤ **Special Use Permit Application SUP-AC #22-307**

The Applicant requests a Special Use Permit in accordance with Article 143-68.E., Aquifer Conservation District, for residential use over the aquifer.

Planner Cronin reported that the applicant went before the Zoning Board last year for a Special Exception to construct a townhouse development not to exceed six units. In September 2021, the Special Exception was granted. The applicant proposes to build a 6-unit multifamily building to be served by town water and sewer with associated parking and stormwater infrastructure.

A TRC meeting was held on June 14, 2022. Driveway sight distance, Fire access, and sewer design were discussed. The Superintendent of Schools and the Conservation Commission had no concerns. The Health Officer and Water Works have no concerns relative to the aquifer.

Revised plans were submitted on July 15th. They address Planning and Engineering comments. The Town Engineer reviewed the revised plans dated July 15th and no issues. As of July 19th, the Fire Department review is pending.

Checklist Waivers - The checklist waiver requests are appropriate as they are not applicable to the project. They are Part A. K. Potential hazards, Part B.B.(11) Proposed streets, and Part C.C. Roadway cross-sections

MOTION: Vice Chairman Bourque moved to grant the waiver requests for checklist items Part A. Item K.; Part B. Item B.(11); and Part C. C.

Seconded by Member Foss.

VOTE: B. Seaworth – Y K. Foss – Y R. Frederickson - Y
 B. Edmonds - Y R. Bourque – Y K. Cruson – Y
 C. Hanson - Y

MOTION TO GRANT THE WAIVER REQUESTS AS LISTED ABOVE PASSED ON A 7-0 VOTE.

MOTION: Vice Chairman Bourque moved to accept the application as complete.
Seconded by Member Foss.

VOTE: B. Seaworth – Y K. Foss – Y R. Frederickson- Y
B. Edmonds - Y R. Bourque – Y K. Cruson – Y
C. Hanson - Y

MOTION TO ACCEPT THE APPLICATION AS COMPLETE PASSED ON A 7-0 VOTE.

Vice Chairman Bourque stated that the Planning Board had received a late memo from the Department of Public Works. The DPW Director is not convinced that the proposed driveway will meet Town of Pembroke regulations. I would hate to spend time on a case, and it not be able to obtain a driveway permit. Vice Chairman Bourque noted that during discussion at design review and Technical Review Committee, sight distance has been an issue. The latest status letter comes as a response to Chair request. The Planning Board must discuss and resolve this issue early. Member Cruson stated I have the same concern. Is it possible to relocate the driveway? Alternate Member Christiansen stated that at the recent town wide yard sale, he took a photo of almost being hit by a truck on Kimball Street. Chairman Seaworth noted that the applicant has brought a traffic engineer to the meeting. After we hear his presentation, if the Planning Board feels they need another engineer to weigh in we can discuss it. Selectmen's Rep Frederickson stated he observed that the drawing shows sight line from the crest of the hill. He would like a field visit to view the area.

At 8:53 p.m. Chairman Seaworth opened the public hearing on Major Site plan application #22-102 and SUP-AC-#22-307. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be on the town website for a future agenda item.

Scott Frankiewicz, New Hampshire Land Consultants PLLC, stated the proposal is for six two-bedroom units with a walkout in the back. The 120-foot driveway meets Fire Department requirements with a fire lane and signage added to the plan. A dumpster will be on site, fenced on the right side of the property. There is sufficient town water and sewer. We responded to all Mike Vignale's comments and received a clean letter back. Storm water will be treated and infiltrated on site and tested by an Amoozemeter. The height to the top of the second floor windows is twenty feet, eight inches, under the 35-foot maximum. We created a video of the proposed project that anyone can view on YouTube. NH DOT has cleared the sight line. Mr. Pernaw will present his traffic memo.

Steve Pernaw, Stephen Pernaw Company, stated he reviewed the sight line as well. He was given a plan from 2001 with the proposed driveway in a different location. The new driveway is located at the top of the crest, and you cannot get any better than that. As a professional traffic engineer, I confirmed the 200-foot sight distance in both directions and confirmed that in my September 24, 2021 memo. You have at least two hundred feet of sight distance in all weather conditions. The requirement is to keep the snowbank below 3.75 feet to maintain sight distance. There would be two trips in am peak hour and two trips in pm peak hour. This is less traffic than intersecting streets. Chairman Seaworth asked if the photographs had the camera position exactly where the driveway will be located. Steve Pernaw stated field work was on September 14, 2021 and the camera was exactly where the driveway will be. Vice Chairman Bourque asked if Mr. Pernaw

presented this information to DPW? Steve Pernaw submitted his report to Scott Frankiewicz, New Hampshire Land Consultants, PLLC. Photos were black and white in the TRC packet. Steve Pernaw said the hourly rate is two vehicles thirty minutes apart. There is no problem with adequate gap. Police and DPW discussed allowing right turn only, putting up a blind driveway sign and making Kimball Street a one-way street. None of these mitigations are needed for this driveway.

Vice Chairman Bourque stated two departments, DPW and Police have issues with the plan that must be resolved. How do we convince them this proposal is safe? Steve Pernaw stated 1) an engineering drawing 2) verified by a professional engineer and 3) photographs of the site. If anyone has different views, I would be happy to review their findings. My stamp is on my report.

Scott Frankiewicz, New Hampshire Land Consultants PLLC, stated he asked the Department of Public Works Director what would convince him, along with scientific numbers. Member Edmonds noted that Town Engineer Mike Vignale looks at roadway geometry and storm water systems. He would be the appropriate person to convince other town departments. Member Cruson added that three members of the board have been to the site and have concerns. Vice Chairman Bourque asked for clarification of window height. It is 20 feet 8 inches to the top of the second floor windows on the lowest side. This is under the 35-foot maximum. Selectmen's Rep Frederickson stated he does not see how a fire truck could drive around back.

Gerry Fleury, Kimball Street, stated I am opposed to the project and have six pages of notes. Most of my concern is the variance granted for six units to maximize rental income. The plan does not show ledge. There are safety issues on Kimball Street, which is narrowest at the top. In April 2021, the town prohibited parking on Kimball Street. The plan shows Lot 132 and Lot 132-1. Adjacent lots 146 and 147 (15 Kimball and 5 Kimball) created terrace parking for single family homes. Two traffic incidents on Kimball Street involved my vehicle. I have measured sight distance. A snow fence to prevent pedestrians from falling six feet has fallen into disrepair.

Gerry Fleury stated that per 197-K there must be an all weather fence plan. From the front bumper of vehicle to driver is six feet and three feet from ground up to driver's eyes. Steve Pernaw's report of fall 2021 and more recent revision recommend a stop sign and white line for all weather sight distance. The speed is posted at 25 but vehicles drive 40 miles per hour. There is no way to build parking unless you terrace it to protect the safety and interests of residents.

Sarah Hallock, 15 Kimball Street, stated within the last two months there has been a traffic accident. The road is already precarious at that end. Parking and traffic are my concerns.

Earl Phair, 179 Main Street, I opposed condominiums owned and rentals on this site. If the property owner had given me more than a week to purchase that property, I might have been able to arrange it.

Theresa Phair, 179 Main Street, stated at the last meeting the project was condominiums for sale. The real estate value affects abutters on Main Street. Runoff is my concern. There is already a blind driveway at 15 Kimball Street and oncoming cars cannot be seen.

Chairman Seaworth stated that legal defines the roles of Planning Board and ZBA. Planning Board has no authority to question a written ZBA decision. I appreciate your concerns with what happened at ZBA meeting. I would clarify that changes to topography are clearer and drainage is managed on site.

Chairman Seaworth that the self-contained drainage system meets MS4 requirements. Scott Frankiewicz, New Hampshire Land Consultants PLLC, stated that some elevations are 20% where max is 10%. Units will be on grade with ten foot fill in the parking lot. Maximum distance from car to the road will be two feet with 2% grade for twenty feet at the top of the hill as a platform. There is no opportunity for runoff. Water will be collected in swales and treated on site in twenty-seven storm chambers. Water will discharge into the ground. There is no discharge off site and no effect to abutters. Two PE stamps on the drainage system approve the plan.

Chairman Seaworth asked about the fence and drop off next to the sidewalk. Scott Frankiewicz, New Hampshire Land Consultants PLLC, stated the site will be leveled off at the driveway. Property manager will put in a 100-foot fence to make the site aesthetically pleasing and safe.

Gerry Fleury asked if there was record keeping and enforcement of storm water treatment systems. The brook now flows onto adjacent property. Chairman Seaworth noted that the consensus of the Planning Board is to have the Town Engineer review the findings and recommendations in reports.

Chairman Seaworth asked while we are in public hearing, is there any other information the board wants from the applicant. Member Cruson asked if the system fails, who would be responsible? Scott Frankiewicz, New Hampshire Land Consultants PLLC, said it is like a leach field. The owner is responsible for a private drainage system. Chairman Seaworth noted that we have in the past received ongoing maintenance plans for private treatment systems on commercial site. Vice Chairman Bourque asked if a maintenance plan with specifications is available from vendor ADS. Scott Frankiewicz, New Hampshire Land Consultants PLLC, responded yes, inspection and maintenance is covered on pages 4-5 of the manual. Inspections are held every six months the first year, like pervious pavement plan. Planner Cronin noted that in the MS4 zone, requirements are more stringent than commercial. The storm water plan must be filed at the registry, and language must be included in the deed that the property owner is responsible for any repair or failure. If the owner does not repair, the town has the right to fix any damage and assess the owner for the costs. Scott Frankiewicz, New Hampshire Land Consultants PLLC, stated that the property management will hire someone to maintain the drainage system.

Sarah Hallock, 15 Kimball Street, I have a 200-year-old historical house. Will there be any blasting? Scott Frankiewicz, New Hampshire Land Consultants PLLC stated two test pits were dug and no ledge was found. There is a fill situation on site with no cut. I do not believe any blasting is anticipated.

Chairman Seaworth reviewed the Planning Board directive to Mike Vignale to review the comments of Steve Pernaw's memo. Chairman Seaworth noted that Mike Vignale may suggest that the matter is beyond his expertise and another specialist is needed. Planner Cronin could expedite that request by seeking quotes from companies now. Scott Frankiewicz, New Hampshire Land Consultants PLLC, asked out a vote on regional impact. Chair Seaworth said that the major site plan was not even close to the criteria for needing Development of Regional Impact consideration.

There being no further input Chairman Seaworth closed the public hearing at 9:43 p.m. for tonight. Chairman Seaworth noted that if this application is not completed tonight, the application and its public hearing will be continued to a future meeting and not renoticed.

MOTION: Vice Chairman Bourque moved to continue Major Site Plan application #22-102 and Special Use Permit SUP-AC #22-307 and their public hearing to August 23, 2022.

Seconded by Member Hanson.

VOTE: B. Seaworth – Y K. Foss – Y R. Frederickson - Y
B. Edmonds - Y R. Bourque – Y K. Cruson – Y
C. Hanson - Y

MOTION TO CONTINUE MAJOR SITE PLAND #22-102 TO AUGUST 23, 2022 PASSED ON A 7-0 VOTE.

Chairman Seaworth called a five-minute break at 9:45 p.m.

As the time is approaching 10:00 p.m. the Planning Board considered whether the remaining items on the agenda could be discussed and resolved or should be continued to another meeting. Board consensus was that the next two items were special use permit cases and should be able to be addressed tonight. If time gets late, this decision will be revisited.

- 4. Special Use Permit Applications SUP-AC #22-308 and SUP-WP #22-309, Stantec Consulting Services, Inc. acting as Applicant on behalf of Eversource Energy, owner of a utility easement across Tax Map 632, Lots 2, 4, 8, 11, and 18 and Tax Map 634-47 located in the Commercial/Light Industrial (C1) Zone, the Soucook River Development (SR) Zone, and the Aquifer Conservation (AC), Floodplain Development (FD), and Wetlands Protection (WP) Districts.**
 - The Applicant requests a Special Use Permit in accordance with Article 143-68.E. for utility construction in the Aquifer Conservation District.
 - The Applicant requests a Special Use Permit in accordance with Article 143-72.D.(2) for utility construction within wetlands and wetland buffers.

Planner Cronin reported that the Applicant requests Special Use Permits for work, which includes temporary and permanent impacts, within the wetlands and aquifer overlay districts. The work involves removing wooden transmission line towers and replacing them with new steel towers. The project area is within the utility right-of-way and spans several properties.

The Health Officer and Water Works have no concerns with the proposal. The Conservation Commission had no concerns. A TRC meeting was held on July 12th and access for emergency vehicles was discussed.

Planner Cronin noted that there is no site plan or subdivision plan associated with these special use permit applications.

At 9:56 p.m. Chairman Seaworth opened the public hearing on SUP-AC-#22-308 and SUP-WP #22-309. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be on the town website for a future agenda item.

Jessica Hunt, Stantec Consulting Services, Inc., stated that she and a representative of Eversource were present tonight. We were here in February 2021 for a similar request. Not all the structures along the line are being upgraded. Just eight wooden structures need immediate attention. We have received a driveway permit and filed a building permit application. Member Edmonds asked why the FAA was asked for commentary. Vice Chairman Bourque explained that the new structures were fifteen feet taller than the existing structures.

Planner Cronin reviewed the suggested conditions of approval.

There being no further input Chairman Seaworth closed the public hearing at 10:02 p.m. for tonight. Chairman Seaworth noted that if this application is not completed tonight, the application and its public hearing will be continued to a future meeting and not renoticed.

MOTION: Vice Chairman Bourque moved to approve Aquifer Special Use Permit case SUP-AC #22-308 subject to the following conditions:

1. This Special Use Permit is in accordance with Article 143-68.E., Aquifer Conservation District, to perform utility construction work within the Aquifer Conservation District.
2. The Special Use Permit shall be recorded at the Merrimack County Registry of Deeds.

Seconded by Member Foss.

VOTE: B. Seaworth – Y K. Foss – Y R. Frederickson - Y
 B. Edmonds - Y R. Bourque – Y K. Cruson – Y
 C. Hanson - Y

MOTION TO APPROVE SUP-AC-#22-308 WITH CONDITIONS PASSED ON A 7-0 VOTE.

MOTION: Vice Chairman Bourque moved to approve Wetlands Special Use Permit case SUP-WP #22-309 subject to the following conditions:

1. This Special Use Permit is in accordance with Article 143-72.D.(2) and (3), Wetlands Protection District, to construct to construct a roadway with one wetland crossing and alter the surface configuration of the land. It includes work

within a wetland and wetland buffer and shall be constructed according to the submitted plans and the NHDES Wetlands Permit conditions of approval.

2. The Special Use Permit shall be recorded at the Merrimack County Registry of Deeds.

Seconded by Member Foss.

VOTE: B. Seaworth – Y K. Foss – Y R. Frederickson- Y
B. Edmonds - Y R. Bourque – Y K. Cruson – Y
C. Hanson - Y

MOTION TO APPROVE SUP-WP-#22-309 WITH CONDITIONS PASSED ON A 7-0 VOTE.

5. **Special Use Permit Application SUP-WP #22-310, Christopher Danforth, Keach-Nordstrom Associates, Inc. acting as Applicant on behalf of Pascal Belperron, owner of Tax Map 565, Lot 193-3 located at 245 Pembroke Hill Road in the Medium Density Residential (R1) Zone and the Wetlands Protection (WP) District.**

- The Applicant requests a Special Use Permit in accordance with Article 143-72.D. to construct a driveway with one wetland crossing.

Planner Cronin reported that the Applicant has filed a NHDES Wetlands Permit Application and Town of Pembroke Wetlands Special Use Permit for impacts to the wetland for the purpose of constructing a driveway to access a proposed single-family residence. The crossings will result in a total of 1,640 SF of permanent wetland impact.

A TRC meeting was held on July 12, 2022. Department heads discussed sewer connection, fire and ambulance access and turnaround, and encroachment issues from an abutter. The Town Engineer had no concerns. The Conservation Commission had concerns about potential homeowner activities in the wetlands. The application is necessitated by the impacts to the wetlands and wetland buffer from the proposed driveway.

The Planning Board should evaluate the Special Use Permit based on information about the wetland impacts and the criteria of the Wetlands Protection ordinance. Many department comments were received on the overall design of the driveway, but these comments are informational only as the Board is tasked with reviewing the wetland impacts only. A Driveway Permit will be required by DPW for the curb cut, which must conform to the requirements of the Town Driveway Regulations. Construction of the driveway will be subject to any conditions imposed by NHDES through their Wetlands Permit review and approval.

At 10:07 p.m. Chairman Seaworth opened the public hearing on SUP-WP-#22-310. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be on the town website for a future agenda item.

Paul Chisholm, Keach-Nordstrom Associates, stated that Christopher Danforth, listed on the application summary, is not present tonight. Pascal Belperron, owner, is present at the

meeting. The total acreage is 14.59 acres. Paul presented a color-coded concept of what the property would look like. Comments from TRC were addressed. Sight distance was reviewed, and the driveway is in a very straight and clear area. The cross hatched area is a 1,640 square foot wetland impact from the driveway. Emergency vehicle access can be accommodated with a turnaround using a sixty-foot extension off a sixty-foot leg.

Chairman Seaworth stated that town sewer was considered, but the applicant is leaning toward using a well and septic system. Does the applicant anticipate needing another wetlands permit? The sewer easement is along the side property line. Paul Chisholm stated we do not anticipate any additional impact to the wetlands. There is plenty of room for well and septic, and to build the turnaround the Fire Department requested. Chairman Seaworth noted that the driveway permit does not come from the Planning Board. The Director of Public Works issues driveway permits.

Member Foss stated that Conservation Commission discussed this application at their meeting and questioned if there was a spot on the property where the project driveway can go that does not impact the wetlands. Paul Chisholm, Keach-Nordstrom Associates, stated that technically, yes there is a spot, but the lot is smaller on the school side and NH DES Wetland Bureau said this application was a reasonable request for productive use of the land. Vice Chairman Bourque asked what the main obstacle was for the wetland crossing. Is there a stream? Paul Chisholm, Keach-Nordstrom Associates, stated there is not a stream on that side. It is described as isolated forested wetland. We could put a drainage pipe under the driveway in case Water Works or other departments needed to get to the other side. It was not identified as a vernal pool. If any further development is contemplated applicant would return to the Planning Board.

Mark Zydel, 378 3rd Range Road, stated that the easement runs adjacent to our property. In those twenty-five feet we pump sewage into a forced main. Our concern is damage to the pipes during construction. The pipes are shown on a 1991 plan but are not located or shown on this plan. How does the applicant plan to protect our sewer lines? The driveway will be over those lines. Member Cruson asked for clarification. The corridor at the proposed entry way is fifty feet. The easement is in front twenty-five feet from the abutter property lines. We do not know how deep the pipes are in the grounds. The pipeline could be located horizontally, and the driveway could be moved further to the west.

Mike McCarthy, 376 3rd Range Road, stated we have a sewer easement not a driveway. It was agreed to for sewer lines to drain out to Pembroke Hill Road. No construction trucks or logging operations can pass over the pipes. My second concern is the length of the driveway over 700 feet. Clearing for the driveway will impact the privacy of four houses. I suggest that the driveway be relocated over by the school where a wetlands crossing is not necessary.

Justin Jesseman, 247 Pembroke Hill Road, stated the manhole for their sewer pipes is four hundred feet into the wetlands and right of way. The sewer is in the middle of wetland and the manhole is close to the driveway. The previous Holden Engineering plan showed five house lots on the school side and two lots on this area. Beckee Jesseman, 247 Pembroke Hill Road, stated the driveway would impact their property values.

Mark Zydel, 378 3rd Range Road, stated that no grading is shown, and the grade of the driveway follows existing wetland.

Paul Chisholm, Keach-Nordstrom Associates, stated yes, we do not know where the four properties' sewer lines are located. The easement line is well off from the proposed driveway. Paul Chisholm, Keach-Nordstrom Associates, stated there is potential to move the proposed driveway over a little. Again, we only need a foot of cover, and we are in a fill situation where three feet of fill will be put in some sections. The location of the septic is not noted on the plan. However, the house can be situated in many ways. In the beginning we looked at a Holden plan with five lots mapped out. The ideal location is close to the middle of the lot. We like the wooded nature and will only remove trees as necessary for the driveway. We understand and respect the comments of abutters. Chairman Seaworth asked for the legend on the plan. Solid line is proposed location with grading. An architect will be involved in the choice of house. Paul Chisholm, Keach-Nordstrom Associates, envisioned a walkout located to avoid wetland buffers. Placard marking along the buffer could be put in place for future owners. Chairman Seaworth noted that if grading in the buffer triggers a revised plan, it would need a new permit. Paul stated that the turnaround that the emergency services requested can be accommodated. Member Cruson stated that she has concerns about the sewer easement and placing a driveway over sewer pipes which are not located or identified.

Paul Chisholm, Keach-Nordstrom Associates, stated that contractors will take special care and consideration during construction to avoid sewer pipes. The manufacturer specifies that one foot of cover is needed for a vehicle to drive over pipes safely. Resident asked if we could get something in writing from the applicant that if the sewer pipes are damaged, the applicant takes fiscal responsibility for the resulting damage. Paul Chisholm noted that a civil suit would decide any concerns. We are digressing from the wetland crossing permit application.

Chairman Seaworth stated that the Planning Board involvement is to consider the wetland crossing special use permit. This meeting is not an appropriate venue for discussions among people outside of the relevant Planning Board item. Resident stated that the Planning Board is deciding whether to give a wetlands protection special use permit to the applicant to construct a driveway with a wetland crossing. Chairman Seaworth stated that is correct. The Planning Board can neither approve nor deny a driveway. Resident asked then where do we go to discuss our concerns? We are here because a proposed driveway is being put in place. Planner Cronin clarified that the driveway location is a civil matter. Pembroke DPW has authority over the paved apron, curb cut and radius of a driveway. Other than that, the driveway can be as wide, narrow, long, or short as the homeowner wants. The Planning Board is reviewing a wetland crossing application. Resident stated that more run off could go into the wetlands because of the proposed driveway's slope whether it is paved or gravel. Is that concern relevant?

Paul Chisholm, Keach-Nordstrom Associates, stated we will look over the driveway regulations again relative to storm water. There are no triggers for a single-family home like with a 6-unit townhouse. Chairman Seaworth noted that impact to wetlands is covered by State permitting process. The Planning Board does not duplicate what goes on at the state level. We do not have that level of engineering or wetland science expertise. When

the Planning Board issues a Wetlands Protection Special Use permit, approval is contingent on getting the relevant state permits.

Resident asked regarding our concerns about the sewer pipes, who besides the four homeowners present have the potential to experience a ghastly experience if our sewer pipes are broken during construction? Chairman Seaworth stated that the language of each homeowner's easement is legally enforced in court. I apologize that the town does not have authority over private sewer lines. I do understand the difficulty of this. Planning Board is not the venue for some concerns that you have. All special use permits have the standard condition the NH DES permits are approved. Please hold conversations outside the meeting room.

There being no further input Chairman Seaworth closed the public hearing at 10:50 p.m. for tonight. Chairman Seaworth noted that if this application is not completed tonight, the application and its public hearing will be continued to a future meeting and not renoticed.

MOTION: Vice Chairman Bourque moved to approve Wetlands Special Use Permit case SUP-WP #22-310 subject to the following conditions:

1. This Special Use Permit is in accordance with Article 143-72.D.(2) and (3), Wetlands Protection District, to construct to construct a roadway with one wetland crossing and alter the surface configuration of the land. It includes work within a wetland and wetland buffer and shall be constructed according to the submitted plans and the NHDES Wetlands Permit conditions of approval.
2. The Special Use Permit shall be recorded at the Merrimack County Registry of Deeds.

Seconded by Member Hanson.

VOTE: B. Seaworth – Y K. Foss – NO R. Frederickson - NO
B. Edmonds - Y R. Bourque – NO K. Cruson – NO
C. Hanson - Y

MOTION TO APPROVE SUP-WP-#22-310 WITH CONDITIONS FAILED ON A 3-4 VOTE.

MOTION: Member Foss moved to DENY Wetlands Special Use Permit case SUP-WP #22-310. Seconded by Vice Chairman Bourque.

VOTE: B. Seaworth – NO K. Foss – Y R. Frederickson - Y
B. Edmonds - NO R. Bourque – Y K. Cruson – Y
C. Hanson - NO

MOTION TO DENY SUP-WP-#22-310 PASSED ON A 4-3 VOTE.

MOTION: Vice Chairman Bourque moved to postpone the rest of the July 26, 2022 agenda including minutes and Miscellaneous to the next Planning Board meeting August 9, 2022. Member Hanson seconded.

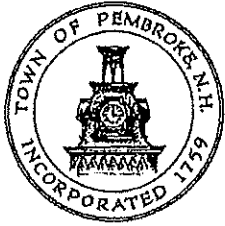
VOTE: B. Seaworth– Y R. Frederickson – Y C. Hanson - Y
K. Cruson - Y K. Foss- Y R. Bourque – Y
B. Edmonds- Y

MOTION TO POSTPONE THE REMAINDER OF AGENDA TO AUGUST 9, 2022 PASSED ON A 7-0 VOTE.

MOTION: Selectmen's Rep Frederickson moved to adjourn the meeting. Seconded by Member Foss.

Without objection the meeting was adjourned at 10:54 p.m.

Respectfully submitted, Susan Gifford, Recording Secretary



TOWN OF PEMBROKE

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Notice of Decision Pembroke Zoning Board of Adjustment

Case 21-15-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21**. The applicant, Keystone Pembroke LLC, 17 Bridge St., #203, Billerica MA 01821, is requesting a variance to construct 65 dwelling units: 3 single family houses, 2 two unit buildings, 1 four unit building, and 9 six unit buildings. The property is located at 42 Whittemore Rd., Map 634, Lot 23 in the LO Limited Office District and is owned by the applicant.

MOTION TO APPROVE CASE 21-15-Z, A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21 AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO ADHERE TO THE SUBMITTED PLANS EXCEPT TO THE EXTENT THAT SUCH PLANS ARE REASONABLY MODIFIED THROUGH THE PLANNING BOARD REVIEW PROCESS WITH THE PLANS BEING APPROVED BY THE PLANNING BOARD BEING THE FINAL PLANS PASSED ON A 5-0 VOTE.

