

**Pembroke Planning Board  
Meeting Minutes  
October 25, 2022**  
(Approved on November 15, 2022)

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

**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. Six members and one alternate member were present. Chairman Seaworth stated that the applicant for New Business item #3 has requested a continuance to the November 22, 2022 Planning Board meeting.

**Old Business**

**1. Special Use Permit Application SUP-WP #22-315, 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 stated that at the September 27<sup>th</sup> meeting, a legal question arose as to whether the Board followed the correct procedure on hearing the Special Use Permit reapplication. The town attorney is of the opinion that the Board did not err in its procedure.

Planner Cronin reported that the Applicant appeared before the Board with a Special Use Permit application. The Board denied the application. In accordance with Zoning 143-147, Denial of Application, the applicant may reapply and the application shall be treated as a new application. Since the last submittal, the Applicant has received a DES Wetlands Permit, which could be considered new evidence to be considered by the Board.

At the September 27<sup>th</sup> meeting, there was a lot of discussion among the Board and abutters about the intent of the lot, how and for what purpose was it created. I researched the property and found two previous subdivision plans. One from 1985 and one from 1990. The lot was created with the intent to be a buildable residential lot. The current proposed driveway location is in same the location that was intended in the 1985 plan. However, this does not exempt the owner from wetland review or from filing a Driveway Permit. The previous two plans included a condition of approval that the lot must connect to sewer. This does not change the wetlands application before the Board, but it important for the applicant to note that in order to connect to septic, not only would a variance from frontage be required, but also an amended subdivision plan to amend the conditions of the previous plan. The applicant can choose how to proceed, but that decision is not within the scope of the Special Use Permit currently before the Board.

At 6:35 p.m. Chairman Seaworth opened the public hearing on SUP-WP-#22-315. If members of the public wish to speak, please be recognized by the Chair, state your name and address. 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.

Pascal Belperron, owner, stated that he measured between the iron pipes at the opening to the street and the width is confirmed at 46.291 or approximately 47 feet. It looks narrower. The proposed driveway is located in a similar position as prior plans. We will locate sewer lines and the depth they are at before beginning construction. Selectmen's Rep Frederickson asked if there was any other location to construct the driveway from Pembroke Hill Road and avoid impact to the wetlands. Pascal Belperron stated that the proposed driveway location has the least impact to the wetlands. Chairman Seaworth stated that the lower portion of the lot slopes down slightly. The land is not dry but does not qualify as wetlands. Member Cruson noted that the map for Makris subdivision is the same as the current map. Planner Cronin stated that Lot 565-195 was later consolidated into the large lot.

Terri McCarthy, 376 3<sup>rd</sup> Range Road, stated to add to the background, the proposed driveway in the subdivision was supposed to be a U shaped driveway and a proposed third house was not allowed. This is the history of why Makris could not build as he anticipated.

Mark Zydel, 378 3<sup>rd</sup> Range Road, stated he spoke to his land use attorney about the procedural issue. The attorney stated that if the Planning Board has the power to grant a wetlands crossing permit, if it were denied an appeal would go to Superior Court. Mark Zydel stated the map of the construction area is larger than the driveway. The map shows the wetland outside of the driveway is 4,700 square feet and the driveway itself is 1,640 square feet. How will construction be monitored? NH DES told me the project is too small for them to protect the wetland during construction. Mark Zydel suggested that the Code Enforcement Officer or Town Engineer monitor wetlands during construction. On page 2, item 2 of the NH DES permit it states "work shall not infringe on property value or enjoyment of land of abutters."

Pascal Belperron stated that if the permit is approved, spring construction is anticipated. Mark Zydel stated that 48 hour notice to DES is required and silt socks measuring 12-18 inches must be placed to stop silt invasion of the wetlands. Chairman Seaworth stated that submission of the application with NH DES permit makes it a unique application. In response to Mark Zydel's question on how to appeal the permit, it would be the same way as applicant.

Justin Jesseman, 247 Pembroke Hill Road, asked how many times can an applicant resubmit and appeal an application. When does the process end?

Member Foss stated that the Conservation Commission met last week and is still in opposition of this application. The question in July and September of this year was is there a place on this property where applicant can bring in a driveway without impacting wetlands. There is a location for a driveway that is not the applicant's preferred location,

but would not impact the wetlands. Vice Chairman Bourque stated that the Conservation Commission turned down the application on July 11, 2022 and again in September 2022. Substantial heavy equipment would be brought in, fill would be needed and tree cutting and stumping would occur which will damage wetlands. No mention of a restoration plan is made in the application. Vice Chairman Bourque stated that his objection is that the application is going to destroy the wetlands and the Planning Board may deny the permit under Subdivision Regulations 205-33 and Site Plan Regulations 203-35. Chairman Seaworth noted that this application is not a site plan or subdivision.

Mark Zydel, 378 3<sup>rd</sup> Range Road, stated he spoke to the NH DES reviewer who was disappointed that the Conservation Commission did not call her to discuss the concerns about the wetlands. Her name is on the permit. The reviewer advised that if abutters see stump removal outside the area, they should report it on a particular site. Construction would be going on for months. Who is watching the wetlands?

Chairman Seaworth stated that under 142-72(d) the Planning Board after public hearing may grant a special use permit for a use not otherwise allowed, so long as construction minimizes impact to wetlands. Uses we might approve are streets, roads, other access ways, utility access for productive and essential use of the land. NH DES uses the term "unavoidable impact" where local regulations ask if the use is essential. Member Foss stated it is the Planning Board's duty to look closer and see if wetland impact can be avoided altogether. Member Cruson stated I have the same concern, and I disapprove of the driveway going through wetlands.

Justin Jesseman, 247 Pembroke Hill Road, stated a driveway in the proposed location is essential only if the applicant is developing the entire piece of property, Minimal impact would avoid the wetlands altogether.

Chairman Seaworth stated I came up with two additional draft proposed conditions because there is no consideration for wetlands buffer. I would insert new number 2 and 3 and number 2 will be number 4.

1. This Special Use Permit is in accordance with Article 143-72.D., Wetlands Protection District, to construct a residential driveway with one wetland crossing. 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. Conditions 5-9 of the DES Wetlands Permit shall be applied to any disturbance to the wetland buffer resulting from the proposal.
3. Impacts to the wetland buffer are only approved insofar as they are necessary to the driveway and culvert installation as shown on the plan and any future wetland or wetland buffer disturbance shall require a new special use permit.
4. The Special Use Permit shall be recorded at the Merrimack County Registry of Deeds.

Member Cruson asked who is responsible for monitoring the NH DES permit conditions. We have heard in public testimony that enforcement is indirect by reports from abutters that are investigated by NH DES. Planner Cronin stated that the NH DES permit is monitored by NH DES. A town violation is a code enforcement issue. Monitoring on a

large construction site would be done by the Town Engineer. No regular inspections by the Town Engineer are required for single-family residential construction.

Chairman Seaworth read the proposed conditions of approval. Vice Chairman Bourque stated I would like to strike the words "residential driveway" in condition number one. Chairman Seaworth stated your point is well taken. The Planning Board is only considering the wetland impact of a crossing to construct a driveway. Planner Cronin stated the language is to construct one wetland crossing for the purpose of a residential driveway. The Planning Board is not approving a driveway.

Mike McCarthy, 376 Third Range Road, stated there was mention of a second house at the September 27, 2022 meeting. Can any approval be based on one house and one driveway as shown in this plan?

Mark Zydel, 378 3<sup>rd</sup> Range Road, stated that the application for special use permit interferes with the neighbor's use of property. How can a town approve a permit and not monitor the conditions? Chairman Seaworth stated Mark Zydel has valid concerns and I cannot answer his question in detail.

At 7:24 p.m. Chairman Seaworth closed the public hearing on SUP-WP-#22-315. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be found on the town website for a future agenda item.

Chairman Seaworth stated that it is necessary that the Planning Board complete a findings of fact form. This is a new statutory requirement and the board has only done this at two meetings. Do we want to discuss the form before or after a motion and vote? Consensus was after a motion and vote.

**MOTION:** Vice Chairman Bourque moved to approve Wetlands Special Use Permit case SUP-WP #22-315 subject to the following conditions:

1. This Special Use Permit is in accordance with Article 143-72.D., Wetlands Protection District, to construct a residential driveway with one wetland crossing. 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. Conditions 5-9 of the DES Wetlands Permit shall be applied to any disturbance to the wetland buffer resulting from the proposal.
3. Impacts to the wetland buffer are only approved insofar as they are necessary to the driveway and culvert installation as shown on the plan and any future wetland or wetland buffer disturbance shall require a new special use permit.
4. The Special Use Permit shall be recorded at the Merrimack County Registry of Deeds.

Seconded by Member Hanson.

**Discussion:** Vice Chairman Bourque stated my objection is the Planning Board has a responsibility to protect the wetlands. The proposed wetland crossing is not in the best interest of the town. The Conservation Commission voted not to support the application on

July 11, 2022 and September 12, 2022. No reclamation plan was proposed for damage to the wetlands. Member Hanson asked if the motion could be amended to specify that substantial change is not shown. Chairman Seaworth suggested adding another condition of approval that Conservation Commission support is required, along with a plan for on-site inspection. Vice Chairman Bourque stated he would support a proposal satisfactory to the Conservation Commission. Member Foss stated that the proposed wetland crossing does not meet the purpose of 143-72 to protect lands defined as wetlands. The applicant can avoid any impact to wetlands by locating the driveway in another location. Does the application meet the zoning criteria of the Special Use Permit? No it does not.

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

**MOTION TO GRANT THE SPECIAL USE PERMIT AS LISTED ABOVE FAILED ON A 0-7 VOTE.**

**MOTION:** Member Foss moved to deny Wetlands Special Use Permit case SUP-WP #22-315 because it does not meet zoning criteria of 143-72 (d).

Seconded by Vice Chairman Bourque

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

**MOTION TO DENY THE SPECIAL USE PERMIT AS LISTED ABOVE PASSED ON A 7-0 VOTE.**

**2. Minor Subdivision Application #22-02, Robert Degan, S & H Land Services, LLC acting as Applicant on behalf of MDR Rehab & Development, LLC, owner of Tax Map VW, Lot 58 located at 15 Lindy Street in the Medium Density Residential (R1) Zone, the Aquifer Conservation (AC) District, and the Municipal Separate Storm Sewer System (MS4) District.**

The Applicant proposes to subdivide the lot into 2 residential lots to be served by town water and sewer.

Present: Robert Degan, S&H Land Services, Inc.

Planner Cronin stated that the Applicant proposes to subdivide the parcel into 2 lots to be served by town water and sewer. The parcel has an existing single-family home, which will remain. The proposed lot 58 did not meet the required average lot depth of 120 ft. Applicant was granted a Variance on October 24, 2022 by the Zoning Board of Adjustment for an average lot depth of 118 ft.

Planner Cronin reported that a TRC meeting was held on September 12<sup>th</sup>. A variance for lot depth, sewer connection, and MS4 requirements were discussed. This is the first project to utilize the recently adopted MS4 Ordinance Small Projects waiver process. The Town Engineer will have to review any new impervious surfaces for compliance with the MS4 Ordinance. The Conservation Commission has no concerns. One abutter letter was included in the packet.

Planner Cronin stated project is under jurisdiction of the MS4 Ordinance and the Board must review mitigation for all new impervious surfaces in accordance with zoning section 143-70.C. Staff (planning and engineering) were mistaken that the stormwater controls could be made a condition of approval, but after reviewing the ordinance, found that it states otherwise. The applicant was notified of this error in interpretation on October 12<sup>th</sup>.

Staff requested that the items marked as not applicable be resubmitted as waivers. A revised checklist was not received until today. The items O. test pits, S. open space, and W. open space development are not applicable to the application. Item R. easements will have to be added to the plan as the Sewer Department pointed out at TRC that the sewer line is a private line.

The plans will need to be revised to show the sewer easement and the stormwater controls. The stormwater controls should be reviewed by the Town Engineer. The applicant was under the impression that the house and driveway location could be determined at building permit, like a typical subdivision. Upon further review, staff determined that the Planning Board must review and approve the stormwater mitigation. A waiver request from the full standards of the MS4 Ordinance was submitted today. The waiver and revised checklist were prepared by the applicant last month, it was in error that they did not send them in until today.

**MOTION:** Vice Chairman Bourque moved to grant the waiver requests for checklist items Part A. Items O, S and W, as requested by the applicant. Seconded by Member Hanson.

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

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

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

**MOTION:** Vice Chairman Bourque moved to grant the MS4 waiver as requested by the applicant. Seconded by Member Foss.

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

**MOTION TO GRANT THE MS4 WAIVER AS REQUESTED BY THE APPLICANT PASSED ON A 7-0 VOTE.**

At 7:50 p.m. Chairman Seaworth opened the public hearing on Minor Subdivision Application #22-02. Members of the public who wish to speak please state your name and address for the record. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be found on the town website for a future agenda item.

Robert Degan, S&H Land Services, Inc., stated that the existing house is serviced by private sewer line. The public sewer ends at the manhole. The applicant will tie into the existing line if it is in suitable condition. There will be an easement agreement executed to connect to the Pembroke Water Works main in the street servicing Lot 15. The lot will tie into stormwater at the west. Robert Degan showed a plan where blue is proposed, and red will be removed. The concrete pad and hard packed parking area will be removed and turned into lawn. The proposed house will have a two car garage under and a two car driveway. The construction area will be surrounded with silt fence. A gravel filled infiltration trench will catch any runoff. Applicant is proposing a foundation drain. Total impervious area is reduced.

Chairman Seaworth asked a question on minor subdivision process. Further conditions are not binding once a lot is created. Planner Cronin clarified that the Planning Board does not make binding decisions on location of house and driveway in a subdivision plan. MS4 regulations require calculations on impervious area. The MS4 regulations require a little more commitment on the part of developer. Chairman Seaworth asked in general, if a new lot is created under MS4 regulations, the lot is then sold, is the new owner directed back to MS4 or is the subdivision in compliance with MS4 as presented? Planner Cronin stated MS4 regulations are triggered by amount of square footage independent of subdivision.

Member Edmonds stated he would like clarification on a statement in the Technical Review Committee minutes that gravel is considered impervious. Planner Cronin explained that is how the town engineer defined it. Robert Degan offered that a packed gravel road becomes less pervious even though gravel is a drainage material. Member Edmonds disagrees that gravel is impervious.

Chairman Seaworth asked how does that impact the amount of impervious in MS4 calculations after subdivision? The plan accounts for new impervious, and total impervious is less after development of house and driveway. Vice Chairman Bourque asked if there will be a cellar hole. Robert Degan stated the house will be a raised split entry home. The lot is flat. Vice Chairman asked about removal of an underground tank on the property. Robert Degan stated a company will be hired to remove the underground tank, coordinating with Pembroke Fire Department and NH DES. Vice Chairman Bourque asked will there be on site testing to make sure no hazardous material is left in the ground. Robert Degan replied yes, the third party company will ensure proper testing and provide a report to that effect.

Chairman Seaworth read an email received from an abutter unable to attend this meeting. Abutter is concerned about possible blasting of ledge. Robert Degan stated we are tying into existing water and sewer lines. No blasting for the new line is planned. Planner Cronin noted that the town will inspect erosion controls in place before construction begins. Town Engineer will review calculations and stormwater plans. Vice Chairman Bourque asked how deep the sewer line to the house will be, and what measures will be taken if ledge is encountered during trench construction. Robert Degan replied depth of sewer line will be four feet to protect it from frost. If any ledge is encountered, we will use hammer drills.

Chairman Seaworth discussed that engineering review is pending. Some items can be made conditions of approval. Vice Chairman Bourque asked if there is any technical information we need to evaluate the application. Chairman Seaworth stated this is the first application subject to MS4 regulations we have received. Planning Board must review per regulations. Chairman Seaworth is concerned about open ended conditional approval tonight with staff work yet to be submitted.

At 8:16 p.m. Chairman Seaworth closed the public hearing on Minor Subdivision Application #22-02. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be found on the town website for a future agenda item.

Vice Chairman Bourque stated the Planning Board should make sure the applicant has of list of items needed for our next meeting. This would include letter from Town Engineer, draft easement, third party documentation about testing for hazardous materials after removal of underground tank, letter from Pembroke Sewer Commission, letter from Pembroke Water Works on connections.

**MOTION:** Vice Chairman Bourque moved to continue consideration of Old Business Agenda Item #2 to the November 22, 2022 meeting. Member Foss seconded.

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

**MOTION TO CONTINUE CONSIDERATION OF OLD BUSINESS ITEM #2 TO THE NOVEMBER 22, 2022 MEETING PASSED ON A 7-0 VOTE.**

### **New Business**

**3. Major Site Plan Application #22-106, Tobin Farwell, Farwell Engineering Services, LLC, acting as Applicant on behalf of Theroux Properties, LLC, owner of Tax Map 632, Lot 10 located at 52 Sheep David Road in the Commercial/Light Industrial (C1) Zone and the Aquifer Conservation (AC) District.**

The Applicant proposes to construct a 12,480 SF building addition with associated stormwater and site improvements.

➤ **Special Use Permit Application SUP-AC #22-316**

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

Planner Cronin explained that the applicant requested to continue to next month because their engineer had a conflict with a meeting in another town tonight.

**MOTION:** Member Foss moved to continue consideration of New Business Agenda Item #3 to the November 22, 2022 meeting at the request of applicant. Vice Chairman Bourque seconded.

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



## **MOTION TO CONTINUE CONSIDERATION OF NEW BUSINESS ITEM #2 TO THE NOVEMBER 22, 2022 MEETING PASSED ON A 7-0 VOTE.**

### **Minutes**

October 11, 2022

**MOTION:** Vice Chairman Bourque moved to approve the October 11, 2022 minutes as presented. Member Foss seconded.

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

**MOTION TO APPROVE OCTOBER 11, 2022 MINUTES AS PRESENTED PASSED ON A 7-0 VOTE.**

### **Miscellaneous**

1. Correspondence- none

2. Committee Reports – Central NH Regional Planning – Member Cruson stated that Attorney Ben Frost from NH Housing gave a presentation at the last meeting. Invest NH is offering grants to towns under several facets of housing including planning and implementation. He suggested towns consider what housing is currently available, what areas of land are available for development and what could be repurposed, like mill buildings. Substantial funds are available by application. Planner Cronin believes that hiring a consultant to look at town regulations around housing would be covered. Planning is one facet. Member Cruson suggested that housing could be developed in the upper levels of Main Street. Chairman Seaworth noted that zoning to support mixed use development in the village would be a future consideration. Conservation Commission – Chairman Seaworth stated that Conservation Commission met in October to continue work on deed language to create consistency. Some deeds are very old and progress is slow. Board of Selectmen – Selectmen's Rep Frederickson reported that the Board of Selectmen permitted a resident to build a barn on a range road, with a condition that he sign a waiver with from liability. The Town of Pembroke is spending \$8,000 a month to recycle, more than savings realized. Until more manufacturing use of recycled material comes about, the town continues to recycle so that the landfill does not fill up as fast. Some towns have stopped recycling. An assessing contract was signed. This is a tough budget season. Range roads were discussed. The recent approval to build a barn was based on the fact the building was for storage and not to be occupied, and the location was 200 feet from the paved road and a water source figured into the decision. Town will not accept any liability and property owner must get a signed waiver. Technical Review Committee -Vice Chairman Bourque stated TRC met at the beginning of the month. Zoning Board of Adjustment met last night. Over seventy people attended the meeting regarding TD Bank proposal. The item was continued to November 28, 2022 to be held at Pembroke Academy to accommodate the local interest in the case. Another case involved a court decision to direct the town to issue a permit in 1994/1995 to build a home on a Class VI road. The issue is whether court can overrule a liability waiver.
3. Other Business
4. Planner Items – Planner Cronin stated that an application from 7<sup>th</sup> Range Road or other range roads may be coming soon. Member Cruson stated that location matters. All requests are on a case by case basis. Planner Cronin stated that some future

applications may draw a larger audience than the Planning Board is accustomed to. Member Hanson noted that it is important to reserve the auditorium or cafeteria at Pembroke Academy prior to needing it for a meeting location. Vice Chairman Bourque asked about regional impact a case might have. Can the Planning Board restrict abutter input and manage the process for order of speaking. Planner Cronin stated the Planning Board has ability to set rules on public testimony. With recently revised statutory limits on making both Planning Board and now also ZBA decisions, limits can be placed on length of testimony and prohibiting second chances until all have a first opportunity to speak. Chairman Seaworth stated that the priority of a public hearing is to get the information the Planning Board needs from the applicant to consider the application. Public input from abutters is important as well. If the Planning Board is running into a time issue, one solution is to request the applicant agree to an extension of the hearing time. Another option if pressed for time is to vote to deny the application due to not receiving the necessary reports and material to consider the application.

5. Board Member Items – Vice Chairman Bourque stated that in the email to the Planning Board, the attorney talked about making “substantial change” to an application as basis for resubmitting. The board needs to define substantial change. Planner Cronin agreed and that in addition to “substantial changes” should include instances where new evidence is presented. With subdivision and site plan applications, it is easy to quantify a substantial change. It may not be the case with special use permits. Chairman Seaworth noted it is only an issue to determine with Special Use Applications coming in without an associated site plan or subdivision application. Planner Cronin will work with the town attorney to draft proposed language to discuss at the zoning amendment workshop in November.
6. Audience Items - none

**MOTION:** Vice Chairman Bourque moved to adjourn the meeting. Seconded by Member Cruson.

Without objection the meeting was adjourned at 9:02 p.m.

Respectfully submitted, Susan Gifford, Recording Secretary