

**MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT**

September 26, 2016

DRAFT pending 9-30-2016

MEMBERS PRESENT: Bruce Kudrick, Chair; Tom Hebert, Vice Chair; Dana Carlucci, Paul Paradis, Mark Simard

ALTERNATES PRESENT: William Faith, Ann Bond

EXCUSED:

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

Chairman Kudrick called the meeting to order at 7:00 p.m. He introduced Ann Bond, new Alternate Zoning Board of Adjustment member, and thanked her for agreeing to be on the Board. Mark Simard is moved up to Regular Zoning Board of Adjustment member.

Cases #16-06-Z

Applicant: MBI Trucking
2627 East 139th Street
Burnham, IL 60633

Property Owner(s): D’Pergo Realty Investments LLC
PO Box 293
Concord, NH 03301

Property Address: 107 Sheep Davis Road
Pembroke, NH 03275
Tax Map (561) Lot (35) in the C-1 Commercial/Light Industrial
and the AC Aquifer Conservation Zoning Districts

Case 16-06-Z a request has been made for a **Special Exception** under Article IX Overlay **Districts §143-68 Aquifer Conservation (AC) District F**. The applicant, MBI Trucking, 2627 East 139th Street, Burnham, IL, 60633 is requesting permission to utilize a separate 4,475 square foot building at the rear of the property at 107 Sheep Davis Road to repair commercial vehicles /tractor trailers in the **Commercial/Light Industrial (C-1) & Aquifer Conservation (AC) Districts**. **Automotive service and repair shops** are a permitted use with a **Special Exception** in the **Commercial/Light Industrial (C-1) District**. The property is owned by D’Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning Districts. Mr. Everett Hodge confirmed that all abutters were notified.

Chairman Kudrick opened the public hearing for Case 16-06-Z at 7:02 p.m.

There were 5 regular members and 2 alternate members present. Therefore, there was a full five-member board present for this hearing. Chairman Kudrick explained the rules of the hearing. The Board makes its decision based upon the facts presented by the applicant. If any of these facts are subsequently found to be different, the Board reserves the right to revisit its decision.

A notarized authorization letter dated August 31, 2016 from John Dapergolas of D'Pergo Realty Investments, LLC, allowed MBI Trucking to make application for a special exception at 107 Sheep Davis Road, Pembroke NH. Representatives from Richard D. Bartlett and Associates, LLC will represent the property owner and MBI Trucking before the Board.

Change of Use Plat prepared for MBI Trucking by Richard D. Bartlett & Associates, LLC, in August 2016 was included with the application.

The clerk read a letter dated September 16, 2016 from Pembroke Water Works, Board of Water Commissioners, stating that they had provided a letter to the Planning Board dated August 22, 2016 siting multiple Best Management Practices violations from John's wrecker and MBI Trucking located at 107 Sheep Davis Road. A follow up inspection found that compliance issues had been met, with the exception of the test well which is being drilled and is expected to be complete the week of September 19, 2016. An additional two weeks is needed before the well can be tested to provide baseline water sampling for the original site plan for John's Wrecker Service. The baseline was supposed to be completed before John's Wrecker occupied the building the latter part of October.

MBI Trucking is already occupying a building in the back of the site for the purpose of tractor trailer repair business. The use is prohibited in the Aquifer Conservation District because of the risk to the quality of water provided by this Department and therefore this Department recommends that the use not be allowed in the overlapping protection area of three of our wells. Please keep in mind that this use was not discussed during the original site plan. MBI Trucking moved into this facility without prior approval and poses a significant risk to the water quality of the Aquifer. Thank you for allowing the input from this Department on this matter.

The clerk read a letter dated September 7, 2016 from Paulette Malo, Operations Director, Pembroke Sewer Commission, noting that John's Wrecker Services is not in compliance with Planning Board conditions that the property must be connected to the Town sewer system prior to a Certificate of Occupancy being issued. Pembroke Sewer Commission asks that the first set of conditions be completed prior to any new conditions being added to this property address.

While before the Planning Board for change of use, John Dapergolas of John's Wrecker Services proposed leasing the small 4,475 square foot building in the northwest corner of the property to MBI Trucking. He explained that MBI Trucking is a national company that hauls recyclables and services transfer stations in NH. The use was proposed as tractor trailer maintenance, while the original plan stated trailer maintenance was the proposed use in the small building. John Dapergolas confirmed that John's Wrecker Service has not received a Certificate of Occupancy. They do not fully occupy or operate on the land in Pembroke. The business is still located at 12 Integra Drive, Concord NH.

John Dapergolas stated that the test well was expected to be complete the week of September 19, 2016, however the driller hit bedrock 43 feet down. The 3rd attempt is underway and at 65 feet has reached bedrock. The town hired geologist and John's geologist agree the location is the correct place to continue drilling the well. MBI would store 10 dry vehicles and perform preventative maintenance on trucks and trailers (brake job, clutch job, grease, oil change, etc.)

and house the trucks overnight for use the next day. MBI Trucking has a similar use to John's Wrecking Services but a different commodity, trash and recyclables. MBI has been a customer of John's Wrecker Services for 4-5 years. John Dapergolas felt they were a good fit to lease the small building. Nationally, MBI Trucking has 1,300 trucks and has a proactive, responsible management team. Minor repairs would be done on site, but MBI Trucking would use outside services like NH Peterbilt depending on the severity of the work needed. The 4,475 square foot building is 100' long and 45' wide. An entire tractor and trailer can drive into the building and be worked on with enough room to walk around it. The trailers that come in are empty. MBI Trucking's loaded trailers are set up in Concord NH.

Dana Carlucci clarified that plans from January 2016 indicate trailer maintenance and revised plans from August 2016 indicate tractor trailer maintenance in the building. Does MBI Trucking occupy the building now? Yes. Does MBI Trucking have a certificate of occupancy? No.

Matt Gagnon, Water Works Commissioner, stated that the engineer recommended and Water Works has the final approval of test well location. A baseline test on the water is necessary before other operations on the property negate any future testing. The baseline test can be compromised if oil, antifreeze or other spillage into the ground occurs in that area.

Paul Paradis asked if a six-month time period to drill a well is realistic. John Dapergolas stated it has been very costly and time consuming. It has taken 2 weeks to drill 65 feet for an 8 inch well. The pounding equipment is fracturing the earth and capturing samples for later analysis as it digs. The Hydrogeologist watches the process every day. John Dapergolas stated that the length of time the well is taking and the work with credentialed professionals like NH Boring, which can only bore 50 feet, has been a learning experience.

Dana Carlucci asked if any other Planning Board Conditions of Approval are not yet met. The two remaining items are town sewer hookup, which the contractor is starting next week and well drilling. The sewer contractor had hoped the well driller would be done before his work began. The process will continue on the well but the ledge is creating a barrier between the property and the wells. John's geologist is not in agreement with the town geologist that a testing well is necessary with this much ledge. William Faith stated that he understands John Dapergolas' frustration, but the well is a condition of approval meant to protect everyone. John Dapergolas stated he is taking the path of least resistance and putting in the monitoring well no matter what it takes.

John Dapergolas stated that he started lease negotiations with MBI Trucking in December 2015. The lease agreement took five months to craft. MBI's lease in Auburn NH expired and they moved to the 107 Sheep Davis Road location.

Dana Carlucci stated that the Zoning Board of Adjustment has a real good track record with Pembroke Water Works and Pembroke Sewer Commission. The Board takes their input and recommendations seriously.

John Dapergolas stated that the Planning Board Chair authorized limited temporary permission for John's Wrecker Services to move some equipment onto the property and to use the administrative offices.

Matt Gagnon, Pembroke Water Works, stated that a recent inspection of the 4,475 square foot building found cracks in the floor, oil not picked up and oil drums not in secondary containment. There is a pathway for oil to seep into the ground and this is a major concern. MBI Trucking is operating on the site with maintenance as a primary use, and Matt does not believe that is allowed.

All parties had discussed an option to use another existing test well. However, Pembroke Water Works is unable to tie back any contamination found at that well to a specific use. There were problems with a leaking water line. A new water line was reconnected to the model home. There are other utilities, like sewer, in the area. Paulette Malo, Operations Director, Pembroke Sewer Commission, stated there is no water or bathroom facility in the small building used by MBI Trucking. She does not know where the employees are going to the bathroom.

Ann Bond asked if the Planning Board has given conditional approval and one of the conditions is to discontinue the prior septic system before occupying the buildings, how can employees of John's Wrecker Services and MBI Trucking be occupying the building now?

Chairman Kudrick stated that is a good question. John Dapergolas stated that the hookup to sewer work is in process and they will be hooked up to sewer in the next two weeks. The property has a functional sewer system now. It is not a failed system. MBI Trucking is renting office space and bathroom facilities in the big garage, along with the 4,475 square foot building.

Mark Sargent, Richard D. Bartlett and Associates, stated that auto repair is permitted as a primary use in this district with a Special Exception. Mark respectfully disagrees with the statement Matt Gagnon of Pembroke Water Works made earlier.

Matt Gagnon, Pembroke Water Works, stated that the town well does not have a 400 foot well radius; it is more like a 4,000 foot radius in a cone shaped area from Concord to Sixth Range Road that has been delineated by studies. Matt is not surprised that the property owner hit ledge. When the Route 3 well #2 was drilled, it hit ledge in 1953.

Mark Sargent addressed the Special Exception criteria:

Detailed description of proposal:

MBI Trucking proposes to utilize an existing 4,475 square foot building, located at the northeast corner of Map 561, Lot 35. 107 Sheep Davis Road, for the repair and maintenance of tractor trailer trucks. The applicant will use a portion of the property for the storage of dry trailers.

1. Please describe how the requested use is essential or desirable to the public convenience or general welfare.

MBI Trucking provides an essential public service by transporting and relocating recyclables and transfer station materials throughout New Hampshire.

- 2. Please state how the requested use will not impair the integrity or character of the district, or adjoining zones, nor be detrimental to the health, morals or general welfare.**

Repair and maintenance services will take place within a building. Precautions will be taken to prevent and address any spills of fuels and oils, and materials will be stored in containment areas.

- 3. Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.**

The site was recently approved as the operations facility for John's Wrecker Service. The proposed use is very compatible with the wrecker service.

- 4. Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.**

The proposed use is compatible with existing uses on the site and surrounding properties.

- 5. Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.**

No, MBI Trucking anticipates 6 round trips per day of tractor trailer trucks, 3-4 round trips per day of small commercial vehicles, and 6-8 round trips per day of personal vehicles.

- 6. Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.**

The property has direct access to Route 106, ample area for parking and storage, and appropriate water, sanitary sewer and drainage facilities.

- 7. Please show that there are no valid objections from abutting property owners based on demonstrable fact.**

We are not aware of any objections.

- 8. Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.**

The site is serviced by municipal water and the property owner is currently upgrading the sanitary sewer system and connecting to the municipal sanitary sewer.

- 9. If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system?**

N/A.

William Faith asked how a company can enter into a lease agreement without possessing a certificate of occupancy. William Faith stated that John has a great company in Concord and John knows that the building at 107 Sheep Davis Road is not ready.

Jim Steiner, Attorney for John's Wrecker Services, of Concord NH stated that Cases 16-01Z, 16-02-Z and 16-03-Z were approved for John's Wrecker Services for a similar proposed uses. He suggested that the ZBA walk through the Special Exception conditions for this application and

link this request to the same conditions of approval. The original plan approved had trailer maintenance and this plan has tractor trailer maintenance. This does not substantially change the proposed use. There is no excess use of water, sewer or town services. The ZBA approved John's Wrecker Services use with a test well to be tested every six months for five years. I recommend that the Board apply the same conditions as the approval granted to John's Wrecker Services if it were to grant approval to this application. There is no drainage system in this 4,475 square foot building. There is no water in this building.

Jim Steiner stated that traffic of 10 trucks per day compared to John's Wrecker Services trucks and vehicles is a negligible footprint. John's Wrecker Services received a Special Exception for auto maintenance and repair. MBI Trucking is a large, well respected trucking firm looking to use this location as a regional hub. The town is interested in making sure the town has healthy clean water. Jim Steiner stated that the landowner is responsible for any contamination found in future testing.

William Faith noted that John's Wrecker Services adds approximately 5-6 up to 10 cars a day to crush and parks them on gravel in Concord. State regulations govern cleanup of crushed cars. I am concerned that the Water Works inspection showed work needed at the small building to make it safe for the aquifer. MBI Trucking should not be working in the building. There is no base line provided for the water. Vehicles have been parked on site over the past year.

Jim Steiner noted that John Dapergolas has made a significant investment in the property and is trying to make sure all the conditions are done in a timely manner. To the extent that vehicles were parked on site, the volume of tractor trailer traffic in Epoch's heyday was far greater. The Planning Board authorized limited office use and storage of crushed cars.

William Faith asked what if Epoch polluted the property while they were operating on this site. Whose responsibility would the cleanup be? Jim Steiner again stated that the current property owner is responsible. Whatever is found from testing, John's Wrecker Services is responsible. William Faith stated that occupancy and use of the site should not have happened without certificate of occupancy. William noted this is our drinking water. Ann Bond noted that the sewer system is supposed to be disconnected prior to occupancy and that has not happened.

Jim Steiner, Attorney, stated that John's Wrecker Services had authorization to establish a physical presence in November 2015. They can't be fully functional at 107 Sheep Davis Road and are still based at 12 Integra Drive, Concord NH. The Special Exception approval was given February 22, 2016. John's Wrecker Services will have full use of the site after fully meeting all the conditions. Everett Hodge confirmed John's Wrecker Services building is clean. No maintenance is being done at 107 Sheep Davis Road. Everett was at the site when Epoch occupied it, and it is much better now.

Paul Paradis asked what the average connection time is to connect to town sewer. Paulette Malo, Operations Manager, Pembroke Sewer Commission, stated it takes about a day to complete hook up. Paulette talked to the contractor working on the sewer connection and discussed what had to be removed three months ago. There are two septic systems and a leach field. The sewer connection will need a pump. John Dapergolas stated a complete redesign of the sewer system is

underway. The hookup was planned to be one of the last tasks as there is a functioning sewer system.

All four buildings are included in the conditions. John Dapergolas asked why he has to decommission a functioning system previously used for 140 employees. Chairman Kudrick responded 1) to eliminate any possibility of contamination and 2) any drainage needs a gas/oil separator to protect the aquifer. William Field added that the business uses gas, oil, lubricants and chemicals. We want your business to succeed and we also want to make sure everyone is safe. John Dapergolas confirmed the sewer connection will be made before the certificate of occupancy is issued.

Chairman Kudrick summarized **Case 16-06-Z**, a request for a **Special Exception** under Article IX **Overlay Districts §143-68 Aquifer Conservation (AC) District F**. The applicant, MBI Trucking, 2627 East 139th Street, Burnham, IL, 60633 is requesting permission to utilize a separate 4,475 square foot building at the rear of the property at 107 Sheep Davis Road to repair commercial vehicles /tractor trailers in the **Commercial/Light Industrial (C-1) & Aquifer Conservation (AC) Districts**. **Automotive service and repair shops** are a permitted use with a **Special Exception** in the **Commercial/Light Industrial (C-1) District**. The property is owned by D'Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning District.

MBI Trucking is using the 4,475 square foot building in the northwest corner right now for tractor trailer maintenance. John's Wrecker Services was given temporary permission from the Planning Board to store equipment in the main building and use the administrative offices. MBI Trucking is there without any permission. There is no water or sewer to the 4,475 square foot building. Pembroke Water Works is monitoring the site as the property owner works to meet the conditions of approval. An inspection by Water Works found many problems, such as cracks in the floor and oil on the ground, in the 4,475 square foot building. Previous violations have since been corrected. Drilling continues for the test well and they have hit bedrock at approximately 60 feet. The hookup to town sewer is not complete, and John's Wrecker Services has not completed all the conditions of their Special Exception granted February 22, 2016. John's Wrecker Services maintains a clean main garage on site.

There being no further comments, Chairman Kudrick closed the public hearing at 8:17 p.m.

Deliberations: Chairman Kudrick stated that at the first hearing in February, there was discussion about the use of the entire property. Since then, the Planning Board gave permission to John's Wrecker Services to store equipment in the big garage. The condition goes to the entire lot. Repair and maintenance by a separate entity is not allowed in the small building. Cease and Desist action is in process. John's Wrecking Services needs to locate vehicles towed in on paved area to store them. Chairman Kudrick noted that if paving is not begun in the next month, it will likely be too late to obtain paving material this season.

Dana Carlucci stated that a lot of time has gone by since occupancy began in November 2015. Any amount of contamination could have occurred. There is no baseline now. What if

contaminants were dumped on site? Jim Steiner, Attorney, stated that would be the buyer's problem. The property owner is held accountable for actions of lessee. Dana Carlucci maintained that it would have been cleaner to establish a baseline prior to repair and maintenance work on site.

William Field asked if the test well was located between the house and the building. The test well is located north of the main building, the large garage. Paul Paradis noted if something leaks now, it may not be picked up at the test well. Chairman Kudrick noted that two hydrogeologists are working with Pembroke Water Works and the property owner on the location of the well. Paul Paradis noted that trailer repair was mentioned at the first hearing in the small building, with activities like sandblasting, painting and welding. Ann Bond asked if any soil testing had been done. No, Chairman Kudrick stated the Board was more concerned about ground water and had not requested soil samples. Tom Hebert noted that the existing test well cannot track contamination to a distinct location.

Chairman Kudrick noted that asbestos had not been used on site that long by Epoch. Paul Paradis asked if the Zoning Board has all the information we need to make a decision tonight. Chairman Kudrick stated that he has a problem with extending approval on a property where the original conditions have not been met. Dana Carlucci asked if we do not issue a decision, does the town have grounds for cease and desist. Everett Hodge confirmed that the Planner sent a letter to the Board of Selectmen on September 21, 2016 noting that the Planning Board voted on September 20, 2016 to request that the Code Enforcement Officer issue a Cease and Desist order to the property owner and MBI Trucking.

Chairman Kudrick stated if we go through the conditions that need to be met for a Special Exception, there is a conflict with health and welfare. We should not make a decision until Pembroke Water Works gets the information it needs. Once a well is polluted, you never get it back. We are lacking the results of the test well, no paving has been done, and town sewer hookup is not complete. We can't approve one part of a site when conditions for the entire site are not met. Dana Carlucci stated that MBI Trucking is asking for a Special Exception but has no one present at the hearing, has no certificate of occupancy and uses oil and diesel fuel in its operations. Is the testimony of the Pembroke Water Works sufficient detriment to determine criteria #2 is not met? William Field stated we do not know what the test well results will show. We don't know if contamination has gone into the ground.

Chairman Kudrick suggested we could continue the Zoning Board of Adjustment meeting for one month to give the applicant and property owner the benefit of the doubt and time to provide missing information. Paul Paradis stated this has everything to do with the property as a whole and nothing to do with John's Wrecker Service. Paul agrees that continuing the decision to next month would give them the opportunity to straighten out unresolved matters and allow the Board to make an informed decision. Dana Carlucci asked what if the applicant continues to operate with no regard for conditions. The Code Enforcement Officer will enforce a Cease and Desist order Friday, September 30, 2016. Tom Hebert noted that the property owner is getting a sewer design involving a forced main, and has two systems that are working. Dana Carlucci asked where is a representative from MBI Trucking. The property owner is ultimately responsible and

is present. It costs a huge amount of money to clean up mpe's. Responsibility for any contamination issues falls on John's Wrecker Services.

MOTION: Mark Simard moved to CONTINUE **Case 16-06-Z**, a request for a **Special Exception** under Article IX Overlay **Districts §143-68 Aquifer Conservation (AC) District F**. The applicant, MBI Trucking, 2627 East 139th Street, Burnham, IL, 60633 is requesting permission to utilize a separate 4,475 square foot building at the rear of the property at 107 Sheep Davis Road to repair commercial vehicles /tractor trailers in the **Commercial/Light Industrial (C-1) & Aquifer Conservation (AC) Districts. Automotive service and repair shops** are a permitted use with a **Special Exception** in the **Commercial/Light Industrial (C-1) District** to Monday, October 24, 2016 to allow the applicant time to come into compliance with prior ZBA approvals.

Paul Paradis seconded.

Discussion: Chairman Kudrick noted that the property owner has run into issues with ledge with the wells. He is making a sincere effort to get it done. A month would give him time to resolve outstanding matters with Pembroke Water Works and Pembroke Sewer Commission. The Board of Selectmen /Planning Board have started legal process for enforcement. MBI Trucking is requesting a Special Exception for a second entity to occupy a building on John's Wrecking Services property as a whole. A Special Exception cannot be allowed if the original conditions of approval have not been met. Mark Simard noted that technically, the applicant should not have come to ZBA at this time and the application is premature.

VOTE: MARK - YES TOM - YES BRUCE - YES
PAUL - YES DANA- NO

MOTION TO CONTINUE CASE 16-16-Z TO OCTOBER 24, 2016 PASSED ON A 4-1 VOTE.

Chairman Kudrick asked Zoning Board of Adjustment members to think about questions they may want to ask at the next public hearing, such as, can a company occupy a building without water.

MINUTES OF PREVIOUS MEETINGS

MOTION: Dana Carlucci moved to approve the minutes of February 22, 2016 as amended.

Tom Hebert seconded.

VOTE: MARK - YES TOM - YES BRUCE - YES
PAUL - YES DANA- YES

MINUTES OF FEBRUARY 22, 2016 APPROVED AS AMENDED ON A 5-0 VOTE.

NEXT MEETING

Date of next ZBA meeting – Everett Hodge noted the next ZBA meeting would be on **Monday, October 24, 2016 at 7:00 p.m.**

ADJOURN **Motion:** Tom Hebert moved to adjourn. Dana Carlucci seconded. Vote was unanimous in favor of motion. Meeting adjourned at 9:00 p.m.

Pending 9-30-2016

Respectfully submitted,
Susan P. Gifford
Recording Secretary