

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT

December 20, 2016

Pending 12-22-2016

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. Due to the number of interested parties, this meeting was held at the Pembroke Hill Elementary School gymnasium. Estimated 75 people were in attendance.

Chairman Kudrick explained the public hearing procedures. The Zoning Board of Adjustment meeting ends at 10:00 p.m. So that all who want to comment can be heard, Chairman Kudrick asked that everyone who provides testimony keep their comments succinct and not repeat what was already stated.

Case #16-07-Z

Applicant:	Bob MacCormack Keystone Pembroke LLC 17 Bridge St, Suite 103 Billerica, MA 01821
Property Owner(s):	Keystone Pembroke LLC 17 Bridge St, Suite 103 Billerica, MA 01821
Agent(s):	Timothy Peloquin, LLS Promised Land Survey, LLC 230 Rockingham Road Derry, NH 03038
Property Address:	31-39 Whittemore Drive Pembroke, NH 03275 Tax Map (634) Lot (001) in the R1Medium Density-Residential and the AC Aquifer Conservation Zoning Districts.

Case 16-07-Z A request has been made for a **Special Exception** under **Article IV Use Regulations, §143-19 Table of Use Regulations Residential #3**. The applicant, Keystone Pembroke, LLC, 17 Bridge Street, Billerica, MA 01821 is requesting a **Special Exception** to construct 19 4-plex housing units. A **Special Exception** is required under §143-19 **Table of Use Regulations Residential #3** in the R-1 Zoning District. The property is owned by Keystone Pembroke, LLC 17 Bridge Street, Billerica, MA 01821. The property is located at 31-39 Whittemore Road, Map (634) Lot (1) in the R-1 Medium Density-Residential and the AC Aquifer Conversation Zoning Districts.

Everett Hodge confirmed that all abutters were notified. The clerk took the roll call and all members were present. Chairman Kudrick opened the public hearing 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. Anyone who wishes to speak will give their name,

address and interest in the case. All questions are directed to me, the Chair. I will not allow this hearing to get out of order. If everyone is courteous, the public hearing will run smoothly. 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.

Chairman Kudrick noted that we do not have a sound system at Hill School so please speak up as loud as possible.

A letter dated December 1, 2016 from Timothy Peloquin LLS, Promised Land Survey, LLC, 230 Rockingham Road, Derry, NH 03038, and Special Exception Exhibit plans for 634 Lot 1, 31-39 Whittemore Street, Pembroke, NH prepared November 30, 2016 by Promised Land Survey LLC for Keystone Pembroke LLC were included in the agenda packet.

Timothy Peloquin, Licensed Land Surveyor, Promised Land Survey, LLC, agent for the applicant explained that the applicant's proposal is to build 19 4-plex buildings (76 units total) on this 88.8 acre parcel of land. In turn, we would be dedicating/deeding 33.3 acres of land along the Merrimack River and abutting White Sands Conservation Area to the Pembroke Conservation Commission to protect the Merrimack River and the town aquifer. The main roadway would be off Whittemore Road, with small secondary roads. Our intention is that the roads will be public roads built to town standard. The applicant is agreeable to installing a town controlled gate at Nadine Road as an emergency second outlet if the Board requires this.

Our intention is to construct these buildings along the Whittemore Road frontage (northeasterly part of subject parcel). The back land will remain as is. Additionally, there is an area bisected by the 100' wide PSNH easement in the middle of the 88.8 acre parcel that is intended to be reserved for future Pembroke Pines activity associated with the golf course (i.e. driving range, putting greens, etc.). This development, we believe, respects the environment and the surrounding properties.

As you may have seen, Mr. MacCormack, said owner, has gained great respect in maintaining and improving Pembroke Pines County Club. His full intentions are to make improvements to the subject parcel being considered for ZBA Special Exception. Mr. MacCormack has completed many projects of this type over many years and has gained an excellent reputation in many towns in NH as well as MA.

Bob MacCormack stated that we strongly feel that the 4-plex buildings and development layout per plans submitted is the most cost effective and environmentally safe way to build out this parcel. The development will generate necessary revenue to keep and effectively maintain improvements at Pembroke Pines. The units will have a first floor master bedroom and bath, and be limited to 2-bedrooms. Each unit will have a garage. The units will be tastefully designed with many higher grade amenities to target a mature market.

Bob MacCormack stated that the trend is people are moving out of state. This project targets mature customers, such as empty nesters seeking to downsize. The Town Master Plan supports residential development in the existing R1 zone along Pembroke Street. The plan maintains the existing tree buffer and is sensitive to neighbors. We will do extensive landscaping. Lastly, we propose the deeded 33.3 acre conservation area to benefit abutters and allow trails to connect to White Sands Beach.

Timothy Peloquin noted that in September/October, Mr. MacCormack went to the Conservation Commission meetings. In October/November Steve Cummings went to the Sewer Commission. In November 2016, Bob MacCormack went to the Planning Board for a conceptual discussion about plans A, B and C – single family homes, duplexes (both allowed by right) and 4 plex townhomes. The number that was proposed to the Sewer Commission in October was 32 duplexes. Single family homes and duplexes would eventually use the entire parcel. Planned development with a higher density limits development and keeps open space. There would be 76 townhomes versus 140 single family homes.

Timothy Peloquin addressed the Special Exception criteria:

Detailed description of proposal: This is a new construction proposal of nineteen 4-plex townhomes will consist of a living room, dining room, sunroom and master bedroom and bath on the first floor. The second floor will consist of a bedroom, study and bathroom. In exchange for this approval of a Special Exception, we would deed 33.3 acres of this property to the Town of Pembroke to hold in conservation. The area to be donated abuts the Merrimack River and connects via a trail to the White Sands Conservation Area.

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

This property would assist in filling the extreme need for new residential housing. We would be targeting a mature customer; offering complete first floor living and abutting a beautiful golf course.

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.

We believe this development would indeed fit into this one and two family residential zone. Allowing this 4-plex townhouse design will allow for more open space. Additionally, this luxury style of construction will enhance the area and improve property values.

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.

This development will condense the building area of this property. The property abuts Pembroke Pines Country Club, which is well suited for townhome development to mature buyers. We will be installing screening and landscaping to enhance the area.

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

These units will be valued at or above that of existing home in this area, which, in turn will help increase the local property values.

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

No. This property would accept a density of over 140 homes. By limiting the density to the 2-bedroom townhomes, this will create less traffic than building an area of 3 and 4-bedroom homes. Targeting a mature customer would create a nice neighborhood community.

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

We propose to construct a road to town standards with a sidewalk. Also, we will install an on-site drainage system. Lastly, each townhome will have a garage to be able to park a car inside.

Please show that there are no valid objections from abutting property owners based on

demonstrable fact.

We have heard from several local homeowners that this type of residential development would fit well into the neighborhood and golf course setting.

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

We have hired a civil engineer who is in the process of designing a complete water and sewerage system to serve this development. There is water and sewer on site.

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

Paulette Malo, Sewer Commission Operations Manager, stated that a response from the judge regarding ongoing litigation between Allenstown Sewer Commission and Pembroke Sewer Commission is expected before the end of 2017. The Sewer Commission is in the middle of a lawsuit with Allenstown Sewer Commission and it is unclear whether there is adequate sewer capacity for 76 units. In October 2016, 33 units were proposed by the applicant. Until the ruling from the judge is made, Pembroke Sewer Commission cannot confirm adequate sewer capacity for 76 units.

Chairman Kudrick stated that until definite information is received from Pembroke water and sewer, the Zoning Board of Adjustment will not be making a decision tonight. Dana Carlucci stated that personally, he would like to hear the comments of the people present at tonight's meeting. Bob MacCormack asked if the ZBA could make a decision on the Special Exception application contingent on having water and sewer capacity. Chairman Kudrick stated that while conditions with contingency are standard for the Planning Board, the Zoning Board of Adjustment would rather not make a decision until full information is available.

Ann Bond noted that no water information was available either. Chairman Kudrick asked if any representative of Pembroke Water Works was present. No one was present. Everett Hodge referenced an email dated December 6, 2016 from Matt Gagne, Superintendent, and Pembroke Water Works confirming his Board met with Steve Cummings and confirmed water capacity for 33 units but not for 76 units.

Christine Morrison, 51 Whittemore Road, asked if the units would be rented or owned, what a mature customer was, if owners would have pets, what the effect on surrounding property values would be, and the effect of traffic on Whittemore Road with the potential of an additional 160 vehicles per day.

Bob MacCormack responded that the intention is to sell units, targeting empty nesters, not specifically age 55 and over. There are no rules about pet ownership, similar to purchasing a single family home. A State of NH study shows 7.7% growth in population state wide, but growth in Pembroke at only .07%. The Pembroke Master Plan projected 50% growth in the next 20 years but growth has been just 5.5%. Mr. MacCormack stated that the report listed just one new construction home in Pembroke last year, 30 new houses in Concord and 16 new houses in Bow. These town homes will target a general audience with the benefit of proximity to the golf course. The Pembroke Master Plan talks about mixed uses and different types of homes for different needs. There will be some additional traffic. The traffic problem is coming from surrounding towns that are growing at a faster rate than Pembroke. There are not enough people in the Town of Pembroke to create the current volume of traffic. Traffic flow and intersections need to be studied. The price point of the town homes starts at \$279,000 and the average home will be \$330,000. The homes will be phased in as the market can sustain them. Rather than build 140 single family homes, we proposed to leave more of the property in its natural state.

Laura Watts, 47 Whittemore, stated her home is directly across from the golf course. The town is unsure of water and sewer capacity. The last influx of residents in the Donna Drive area caused the need to build Three Rivers School. How with the proposed subdivision affect our education system? Will classes of 16 become classes of 27 children? From 7:30 a.m. to exactly 8:05 a.m. you cannot drive 3 miles in town in less than 20 minutes. It takes me 45 minutes to drop children at 2 different schools. With town homes selling at \$289-\$330,000 I cannot get an equity loan for \$245,000 from a bank. I have lived at my home 16 years. Mr. MacCormack reached out to me about his plans. I support what he is doing for the community business wise. However, I am opposed to the clear cutting of trees across the road. The town stated that was a joint effort of the town and Mr. MacCormack using the same forester. The golf course construction is still going on after 8 months. Headlights shine into my window and I can't allow my children to ride bikes on Whittemore Road due to speeding cars driven by golfers.

Bob MacCormack stated that part of what keeps the market price high is low inventory. Square footage of older homes is valued at \$115 per square foot, while new home square footage is currently valued at \$160 per square foot. There is a 30% to 35% difference in price between existing inventory and new inventory of homes. When realtors see comparable sales in the neighborhood, existing home values will rise. I don't disagree there will be impact on septic but not as much on schools. Mr. MacCormack stated that the market we are seeking for the story and a half town homes are people downsizing who want one level living space. Laura Watts asked what if single parents with children wanted to purchase town homes and put bunk beds in the upstairs bedroom. Mr. MacCormack asked if it would be Ms. Watts's intention that no new homes be built in Pembroke. Laura Watts state this is a small, tight community. I would like to see homes built on individual lots.

Amy Manzelli, Esquire, of BCM Environmental and Land Law PLLC, speaking as a resident of 418 Ross Road in the Donna Drive development, stated she has lived at Ross Road for 10 years. Amy asked which of the Board members would be voting on this matter.

Chairman Kudrick called members attention to information on NH RSA 673-14 Disqualification of Member. Ann Bond stated my address is on Micol Road but I am not an abutter. Chairman Kudrick confirmed that all regular Zoning Board of Adjustment members would be voting and none has a conflict of interest.

Amy Manzelli provided a 7 page letter dated December 20, 2017 to ZBA members. She stated all of her points are in the first paragraph, and more detailed analysis follows for each point. This proposed development is high intensity and cannot be built without a variance for constructing more than one multi-family building per lot.

Amy Manzelli stated the sequence should be that the applicant first obtains a variance and then files Special Exception application. This proposal needs a Special Use Permit for the aquifer. The application lacks detail and raises numerous unanswered, but important, questions that relate to the required standards. The area is residential low to medium density and she recommends that the ZBA retain its own consultants as needed. Amy Manzelli stated that without a variance, constructing more than one multi-family in the R1 District is illegal. The plain language of the Pembroke Zoning Ordinance clearly allows only one multi-family building per lot.

Chairman Kudrick clarified that in the Town of Pembroke, two developments with more than one multi-family building per lot have been allowed in the past– Littlefield and Chickering. This is an allowed use in R1 District with a Special Exception.

Amy Manzelli asked is a variance needed or not. Is the Conservation Commission receiving deeded land as full fee interest deed or as conservation easement? The obvious implication is that this request must be approved or else there may be no land offered for conservation. Such an ultimatum is entirely inappropriate, and unnecessary. The applicant is free to offer any portion of this land into conservation at any time, and under any development design. Why is the developer now saying in criteria 4 units will be priced "at or above surrounding property value?"

The applicant's response that there will be less traffic is unsubstantiated. Ann Bond noted that Amy is referring to #5 of the criteria. Chairman Kudrick stated that requiring traffic studies is under the purview of the Planning Board, not the ZBA.

Amy Manzelli asked where the "extreme need for housing" comes from. Mr. MacCormack stated that is from a 2016 State of NH study that is compiled every two years on housing needs by regional planning commissions in different areas of the state. What are the plans for phasing? What is the plan for water and sewer? The Application seems inconsistent because it states that a civil engineer is "designing a complete [sic] water and sewer system to serve the development" and the proposed development will be served by town water and sewer. Why is the wetland buffer not shown on several portions of the plan? Where is wetland buffer on the plan?

Chairman Kudrick clarified that the housing studies are from the State of NH. This is the first hearing on this proposal. Part of the process is letting people know what the proposal is. The Planning Board has purview over any phasing of development.

Everett Hodge stated that full size plans are available to the public at the Town office that clearly shows the wetland buffer. People have observed these plans at town office.

Amy Manzelli stated that this topographical plan has elevation but not slopes. The information in the application does not meet the Special Exception criteria. Amy stated that public input is critical for general welfare. The Master Plan is an aspiration that is implemented in zoning ordinance. Amy Manzelli requested that this matter be continued until the applicant obtains a variance.

Chairman Kudrick clarified that the Zoning Board of Adjustment has already stated we are not going to make a decision tonight.

Amy Manzelli thanked the board and audience for their attention.

Everett Hodge, Code Enforcement Officer, stated that a variance is not required for this proposal. The applicant is seeking a Special Exception under open space development in the LO, R1 and R3 zoning districts for the use of building a 4-unit building. Under Planning Board regulations, the building may be located on individual lot, common lot, or combination thereof. Applicant is proposing 19 buildings upon a lot.

Rick Mulcay, 17 Donna Drive, stated that when two cars are queued ahead of me, it delays me 20 minutes to get out onto Route 3 in the morning. There are no sidewalks on Nadine. He is not opposed to development but traffic must be considered.

Ammy Haiser, 604 Buck Street, Chair, Pembroke Conservation Commission, stated that she looked at this proposal from a natural resources view. A planned cluster subdivision has less impact on the land than single-family homes. The Conservation Commission recently paid for a study for input to the revised Pembroke Master Plan. The zone next to the Merrimack River is a critical habitat and the goal is to disturb as little soil as possible. This area is in the top 10 resources in Pembroke being irreparably damaged. Ammy stated that the zoning ordinance must be revised to limit how much growth can occur. She sees this proposal as the lesser of two evils.

Amy Manzelli asked Ammy how much land the Pembroke Conservation Commission has now. Ammy responded they have 430 acres. Ammy said the Conservation Commission has a rating sheet and restricting development in the areas near the town's three rivers, an aquifer or wildlife corridor is their top priority.

Mark Cioffi, 453 Micol Road, stated he has a concern about infrastructure and the fact that only 33 units were proposed to sewer and water. He is concerned about excessive traffic impact from the proposed use. Is the developer doing things out of order?

Chairman Kudrick stated that all developers check with town departments – water, sewer, highway, planning and zoning, to develop plans based on information obtained about capacity and other matters. It is expensive to draw up plans, and every developer goes through this same process as part of their business to see what can be done with a parcel of land.

Bob MacCormack stated that after the meeting in Pembroke last winter, we went to town departments to ask for input. From that input, we put together a plan that seemed to be best for all involved. We are in a very preliminary stage. Building 33 duplexes in the top third of the lot, leaving 58 acres for future development, was our plan in October 2016. To reduce the density, we looked at locating 4-plex town homes in an upland area to meet all setback requirements.

Chairman Kudrick asked if there were Board member questions.

Ann Bond asked if the 76 town homes would have a HOA Homeowners Association. Mr. MacCormack stated the plan will have to go through NH Attorney General's office, and would likely have an HOA to manage driveways, sidewalks and other common areas. The roads are intended to be public.

Ann Bond asked how close the buildings would be to the residences on Nadine and Micol Roads. Mr. MacCormack stated the buildings would be greater than 100 feet to the residences, where a 15 feet setback is required. The distance is building to homes, not to property line.

Ann Bond asked how the gated access to Nadine Road would work, and who would control it. Bob MacCormack stated that the gated access was not a required component, but residents and town officials wanted to prevent the use of Nadine Road as a shortcut to Route 3. Mr. MacCormack stated that police and fire do not like having only one way in and out of developments. The most likely person to control the gate would be police or fire responding to an emergency call in the subdivision. They would open the gate to temporarily divert traffic. Mr. MacCormack also called attention to a triangle shaped area this is actually part of the golf course, the 10th hole. This area is part of an approved lot line adjustment. Once the plan is finalized this lot line may be modified again. Paul Paradis summarized that whether the gate is needed is up to the Boards, and the Town of Pembroke would control the gate. Chairman Kudrick stated that 99% of the time, the gate would be closed and it would only be used in an emergency situation.

Tom Hebert asked for and received clarification from Timothy Peloquin that the intent is that all units will have the same size garage and driveway.

A direct abutter at the bottom of the proposed development came up to the plan on display to calculate the distance from the nearest building to his property line. Timothy Peloquin pointed out the scale of smaller plans was different. The resident asked if sound impact and visual impact could be considered.

Chairman Kudrick reminded everyone that the only thing the applicant is seeking from the Zoning Board of Adjustment is a Special Exception to use multi-family dwellings. It is not about the layout or design of the plan. The Planning Board has purview on those details. Chairman Kudrick thanked the audience for being courteous throughout the public hearing.

MOTION: Dana Carlucci moved to continue the public hearing on **Case 16-07-Z**, a request for a **Special Exception** under **Article IV Use Regulations, §143-19 Table of Use Regulations Residential #3** at 31-39 Whittemore Road, to the January 23, 2017 ZBA meeting for the following reasons:

Additional information is requested from water and sewer departments regarding capacity.

Additional traffic information requesting approximate number of vehicles per day.

Appraisal information regarding the impact on surrounding property values.

Submit a more detailed site plan showing distances to existing abutting structures, parking and landscaping.

Paul Paradis seconded.

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

PUBLIC HEARING ON CASE #16-07-Z CONTINUED TO JANUARY 23, 2017 ON A 5-0 VOTE.

Chairman Kudrick stated that the original abutters for this application would not be renoticed. The public hearing on Case #06-07-Z was continued to January 23, 2017. All interested parties are encouraged to check the Town website or call the Zoning Department to get information pertaining to future meetings and locations.

Chairman Kudrick apologized for the lack of a sound system. Everett Hodge stated that Hill School was the only location available tonight due to Christmas programs. Everett Hodge will try to reserve Pembroke Academy for the January 23, 2017 ZBA meeting.

OTHER

Course on RSA 91-A Right to Know law – Chairman Kudrick recently attended a course on right to know law. He learned that governing bodies must be very careful about communications. Any meeting in person, by telephone, or electronic media like email shall be open to the public. David Jodoin, Town Administrator, noted that any person not following chain of command for their entity could be held liable as an individual.

For the Zoning Board of Adjustment, the chain of command is to pass along any request for information to the Chairman (Bruce Kudrick) who will pass the request to the Code Enforcement Officer (Everett Hodge) to fulfill.

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of October 24, 2016 as amended. Mark Simard seconded.

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

MINUTES OF OCTOBER 24, 2016 APPROVED AS AMENDED ON A 5-0 VOTE.

NEXT MEETING

Date of next ZBA meeting – Chairman Kudrick noted the next ZBA meeting would be on **Monday, January 23, 2017 at 7:00 p.m.**

ADJOURN **Motion:** Mark Simard moved to adjourn. Tom Hebert seconded. Vote was unanimous in favor of motion. Meeting adjourned at 9:15 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary