

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
June 22, 2020**

Approved August 24, 2020

MEMBERS PRESENT: Bruce Kudrick, Chair; Tom Hebert, Vice Chair; Dana Carlucci, Natalie Glisson, Paul Paradis

ALTERNATES PRESENT: Robert Bourque, Blakely Minor III

EXCUSED:

STAFF PRESENT: Dana Pendergast, Code Enforcement Officer; Susan Gifford, Recording Secretary
The clerk took the roll call and seven members were present.

Chairman Kudrick called the meeting to order at 7:05 p.m. The meeting is being recorded. Masks and hand sanitizer are available for use by all attendees.

Natalie Glisson recused herself for Case #20-09-Z as an abutter. Chairman Kudrick designated Robert Bourque to vote on Case #20-09-Z.

Case #20-09-Z

Applicant:	Ayn Whytemare-Donovan 439 Pembroke Street Pembroke, NH 03275
Property Owner(s):	Ayn Whytemare-Donovan 439 Pembroke Street Pembroke, NH 03275
Property Address:	6439 Pembroke Street Pembroke, NH 03275 Tax Map 565, Lot 100 in the R-1 Medium Density-Residential Zoning District.

Case 20-09-Z A request has been made for a **Special Exception under Article VIII Use Regulations, § 143-62 Dimensional Table of Signs**. The applicant, Ayn Whytemare-Donovan of 439 Pembroke St Pembroke NH 03275 is requesting a **Special Exception** to construct a 6 sq. ft. freestanding sign on lot 565-100. A **Special Exception** is required under **§ 143-62 Dimensional Table of Signs** in the R-1 Zoning District. The property is located at 439 Pembroke St Pembroke NH 03275, Map 565 lot 100 in the R-1 Medium Density-Residential, zoning District.

The secretary read the abutters list into the minutes. Assessment card was provided in the agenda packet.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak. All people wishing to speak must give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider the approval.

Chairman Kudrick opened the public hearing at 7:07 p.m.

Ayn Whytemare-Donovan brought her sign to the hearing. Ayn clarified that she only wants a 2 square foot sign, not 6 square feet as read in the case summary. It is a two-sided sign that reads "Found Well Farm NH

Plants for NH Landscapes”. Ayn Whytemare-Donovan read the Special Exception application criteria into the minutes:

Description of Proposal: Ayn proposes to erect a sign noting the location of her business. She explained that she was surprised that having a sign was not included in the Planning Board review and approval of her farm stand business. She is open two months a year and has an 800-person email list interested in her niche market. It will be a full time permanent sign.

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** The sign will direct traffic to Ayn’s retail farm stand.
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.** A farm stand has already been approved by the Planning Board.
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.** A two-foot square sign will be installed on a post 10 feet from the property line.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** The applicant is not requesting a use.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No undue traffic will result.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** The sign will be maintained. It is made of teak.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** Abutting property owners attended the public hearing and spoke in favor of the sign.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** N/A
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.

Dick Armstrong, 438 Pembroke Street, stated that he has a 2 feet by 4 feet sign for Deer Cutting that he hangs up for two months a year. He has been hanging his sign for twenty years. Dick has no problem with Ayn’s sign and is 100% for her proposal.

Natalie Glisson, 205 Center Road, stated she is in favor of the sign and noted it was a nice pretty sign.

Dana Carlucci summarized the case. This is **Case 20-09-Z** A request has been made for a **Special Exception under Article VIII Use Regulations, § 143-62 Dimensional Table of Signs**. The applicant, Ayn Whytemare-Donovan of 439 Pembroke St Pembroke NH 03275 is requesting a **Special Exception** to construct a 2 sq. ft. freestanding sign on lot 565-100. A **Special Exception** is required under **§ 143-62 Dimensional Table of Signs** in the R-1 Zoning District. Ayn Whytemare has requested a sign at 439 Pembroke St Pembroke NH 03275, Map 565 lot 100 in the R-1 Medium Density-Residential, zoning district. Abutters spoke in favor of the sign. No one spoke against the sign. This will be a year round permanent sign for Ms. Whytemare’s business, which was previously approved by the Planning Board.

Chairman Kudrick announced that the Board will decide all cases within 30 days. Notice of decision will be posted for public inspection within five business days of the decision and will be sent to the applicant. The Board will approve, deny or continue the deliberation. No comments will be taken from the audience.

This hearing is officially closed at 7:16 p.m.

The Board discussed the Special Exception criteria:

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.**
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.** Chairman Kudrick noted that Ms. Whytemare-Donovan meets all the requirements of a special exception.
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.**
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** Dana Carlucci stated it is a good safe sign to aid traffic.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Tom Hebert said the sign is not distracting at all.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** Chairman Kudrick noted that no one objected to the application.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** N/A
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

MOTION: Bob Bourque moved to approve **Case #20-09-Z, a Special Exception under Article VIII Use Regulations, § 143-62 Dimensional Table of Signs** having been presented to the Zoning Board. The applicant, Ayn Whytemare-Donovan of 439 Pembroke St Pembroke NH 03275 is requesting a **Special Exception** to construct a 2 square foot free standing sign on lot 565-100.

Approval is subject to the following conditions:

Dana Carlucci seconded.

VOTE: PAUL - YES TOM – YES BRUCE – YES
 DANA- YES BOB - YES

MOTION TO APPROVE SPECIAL EXCEPTION FOR A SIGN PASSED ON A 5-0 VOTE

Ms. Whytemare-Donovan noted that the Planning Board does not understand agriculture. The time and effort to obtain approval for a farm stand and sign is expensive and onerous. If the town is serious about maintaining agricultural uses in town, the regulations need streamlining.

Chairman Kudrick explained that unfortunately sign regulations are under the purview of the Zoning Board of Adjustment. All requests for signs are separate from Planning Board site plan review.

Natalie Glisson returned to the Planning Board as a voting member.

Case #20-10-Z

Applicant:	Keith Stasny 206 Brickett Hill Road Pembroke, NH 03275
Property Owner(s):	Keith and Susan Stasny 206 Brickett Hill Road Pembroke, NH 03275
Property Address:	206 Brickett Hill Road

Pembroke, NH 03275
Tax Map 563 Lot 35 in the LO Zoning District.

Present: Keith Stasny. Susan Stasny

Case 20-10-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, Section § 143-22-B Accessory Buildings**. The applicant, Keith Stasny of 206 Brickett Hill Rd. Pembroke NH 03275 is requesting a **Variance** to construct a 12' X 16' (192 sq. ft.) shed on lot 563-35 with in 8' of the side and rear setback where 15' is required. The property is located at of 206 Brickett Hill Rd. in the LO Zoning District and is owned by Keith Stasny of 206 Brickett Hill Rd.

The clerk read the case description and the list of abutters.

Chairman Kudrick opened the public hearing at 7:20 p.m. He noted a typographical error that the shed would be 8 feet from property lines, not three feet as noted in case description.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak. All people wishing to speak must give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different from what was presented, the Board reserves the right to reconsider the approval.

Assessing cards and a sketch plan dated May 17, 2013 by Stonehill Surveying, Barrington NH were provided in the agenda packet.

Keith Stasny gave a detailed description of the proposal:

I would like to build a 12' x 16' shed in the corner back left side of my property. Keith provided a plan with the shed and retaining wall shown in the left rear corner. The shed will be used to store gardening equipment. I would like to build a retaining wall foundation that will consist of 6' x 6' pressure treated timber and ¾" stone. This will be 8 feet from the neighboring property lines and the shed would be built on top of a retaining wall, for a total of ten feet away from side and rear property lines.

Keith Stasny addressed the Variance criteria:

1. **The variance will not be contrary to the public interest.** If granted, this variance will not alter the character of the neighborhood. This structure will not cause any risk or harm to the environment.
2. **The spirit of the ordinance is observed.** The Town of Pembroke provides zoning ordinance for the citizens to keep their property presentable. This variance will not violate the spirit of the ordinance.
3. **Substantial justice is done.** The granting of this variance will have no effect on the surrounding properties and neighborhood. If the variance is not granted, the structure cannot be built in the requested location.
4. **The values of surrounding properties are not diminished.** Granting the requested variance will not do harm or change the appearance of the surrounding properties.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
 1. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property; and:
ii. The proposed uses is a reasonable one.

The purpose of this variance is so that I may within reason get the most use out of my property. The portion of the property that I would like to add the shed to is not used to its potential. Once the shed is built, I will design plans for a future addition to the house at the location where the garage is now.

2. **If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to make a reasonable use of it.**

This variance, if not granted, will not cause any hardship. The value of the properties in the neighborhood will not diminish due to this request.

Zeke Gable, 511 Pembroke Street, noted he is the abutter to the rear of the property and just moved into Pembroke. I do not mind that the shed will be 10 feet from my property line.

Susan Stasny stated that the shed will look nice, and it will be finished to look like the house.

Keith Stasny stated his plan is to move all of the items in the garage to the shed, and then plan an addition to the house where the garage is located.

Dana Carlucci asked how close to any abutter the shed would be. Keith Stasny noted that Mary Hamilton's garage is 55-60 feet from the proposed shed. Tom Hebert noted that the Stasny back yard had quite a slope. Keith Stasny agreed, and stated that is why he is building a 32-inch retaining wall for the shed to be placed on.

Dana Carlucci asked Dana Pendergast if the Code Enforcement Officer looks at storm water drainage when he inspects a property. Dana Pendergast said he would if it had a larger impact, but would not for a shed.

Tom Hebert asked for and received clarification that the final structure would be 10 feet from the side and rear lot lines.

Natalie Glisson summarized the case. This is **Case 20-10-Z**, a request for a **Variance under Article V Dimensional and Density Regulations, Section § 143-22-B Accessory Buildings**. The applicant, Keith Stasny of 206 Brickett Hill Rd. Pembroke NH 03275 is requesting a **Variance** to construct a 12' X 16' (192 sq. ft.) shed on lot 563-35 with in 8' of the side and rear setback where 15' is required. The property is located at of 206 Brickett Hill Rd. in the LO Zoning District and is owned by Keith Stasny of 206 Brickett Hill Rd. Applicant went through the criteria. Abutter Zeke Gable stated he did not mind the shed. Applicant's wife stated approval. Applicant stated he would make the shed look nice and resemble the house. Tom asked question about slope of lawn and retaining wall. Tom asked Dana Pendergast clarification regarding retaining wall being in setback. Dana Carlucci asked about water runoff. Dana Pendergast responded. Tom Hebert asked for and received clarification that the shed will be ten feet total from side lot line and ten feet total from rear lot line.

There being no further comment, Chairman Kudrick closed the public hearing at 7:37 p.m. The Board will decide all cases within 30 days.

Deliberations: ZBA members discussed the Variance criteria.

1. The variance will not be contrary to the public interest. Considering the lot size and amount of space, the application is not contrary to public interest.
2. The spirit of the ordinance is observed.
3. Substantial justice is done. Dana Carlucci stated that it would.

4. Property values are not diminished. No evidence presented on property values.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

MOTION: Tom Hebert moved to approve **Case 20-10-Z**, a request for a **Variance under Article V Dimensional and Density Regulations, Section § 143-22-B Accessory Buildings** having been presented to the board. The applicant, Keith Stasny of 206 Brickett Hill Rd. Pembroke NH 03275 is requesting a **Variance** to construct a 12' X 16' (192 sq. ft.) shed on lot 563-35 within 10 feet of the side and 10 feet of the rear setback where 15' is required having been presented to the Board. Approval is subject to the following conditions:

1. Applicant will follow all state and local regulations.
2. Construction will adhere to site plan as submitted and shed will be 10 feet from side lot line and 10 feet from rear lot line.
3. Prior to construction, applicant will coordinate a site visit with the Code Enforcement Officer. The purpose of the site visit is to determine the location of the shed and verify it is 10 feet from the side lot line and 10 feet from the rear lot line.

Dana Carlucci seconded.

VOTE: PAUL - YES TOM – YES BRUCE– YES
DANA- YES NATALIE - YES

MOTION TO APPROVE VARIANCE WITH CONDITIONS PASSED ON A 5-0 VOTE

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of May 11, 2020 as amended. Dana Carlucci seconded.

VOTE: PAUL - YES TOM – YES BRUCE – YES
DANA- YES NATALIE - YES

MINUTES OF MAY 11, 2020 APPROVED AS AMENDED ON A 5-0 VOTE.

OTHER BUSINESS /CORRESPONDENCE – Chairman Kudrick stated he would like to postpone election of officers to the next meeting, when things are somewhat more normal.

NEXT MEETING

Date of next ZBA meeting – Chairman Kudrick noted the next ZBA meeting would be on **Monday, July 27, 2020 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 7:44 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary