

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
October 26, 2020**

Approved 11-23-20

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

ALTERNATES PRESENT: Robert Bourque, Blakely Minor III; Wendy Chase

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 7:00 p.m. The meeting is being recorded.

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 are 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.

CASE # 20-12-Z

Applicant: Charles Cleary, Esq.
Wadleigh, Starr and Peters PLLC
95 Market Street
Manchester NH 03101

Property Owner(s): Pembroke Golf LLC
15 West Road
Canterbury NH 03224

Property Address: Whittemore Road
Pembroke, NH 03275
Tax Map 634 Lot 2, Portion of Lot 1 in the R1 and AC District.

Present: Robert MacCormack; Charles Cleary Esq

Case 20-12-Z A request has been made for a **Special Exception under Article IX Overlay District, § 143-68 F Aquifer Overlay District**. The applicant, Charles Cleary of Wadleigh, Starr & Peters PLLC, 95 Market St. Manchester NH 03101 is requesting a **Special Exception** to construct A Clubhouse for the Pembroke Pines Golf Course. A **Special Exception** is required under **§ 143-68 F of the Aquifer Overlay District**. The property is owned by, Keystone Pembroke LLC 17 Bridge St #203 Billerica MA 01821. The property is located at 65-89 Whittemore Rd, Map 634 lot 2,1 in the R-1 Medium Density-Residential and the AC Aquifer conservation zoning Districts.

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

The Secretary read the following letters into the minutes:

1. 10/13/2020 Letter from Carolyn Cronin, Pembroke Town Planner
2. 10/15/2020 Matt Gagne Pembroke Water Works
3. 10/26/2020 Ammy Heiser, Pembroke Conservation Commission
4. 10/26/2020 Vincent Greco, Pembroke Health Officer

All four letters supported the application for Special Exception Aquifer Conservation District. Matt Gagne stated he had no concerns for water quality or quantity. Storm water drainage is very well designed and will one hundred percent meet the requirements of the Aquifer Conservation District.

Assessing cards, Certified Authorization dated October 5, 2020 allowing Keystone Golf, LLC and its co-applicant Keystone Pembroke, LLC, to file applications and appear before Town of Pembroke boards as necessary to obtain approvals sketches of front and rear of the building and floor plans were provided in the agenda packet.

Chairman Kudrick opened the public hearing at 7:05 p.m.

Charles Cleary, Esq, Counsel for the Applicant reviewed the Findings of Fact 143-68F Zoning Requirements. Pembroke Golf, LLC has applied for a Special Exception under Zoning Ordinance Section 143-19 to permit the construction of a new Clubhouse at the Pembroke Pines Country Club on Tax Map 634, Lot 2. The Clubhouse site exists within the Aquifer Conservation District, which requires the ZBA to make certain findings of fact that the proposed use is not detrimental to the aquifer.

143-68F Requirements

1. The proposed use will not have a detrimental effect on the quality of groundwater contained in the aquifer by directly contributing to pollution or increasing the long-term susceptibility of the aquifer to potential pollutants. The applicant's proposed use is for a new Clubhouse to replace an existing Clubhouse that has existed in the Aquifer Conservation District for decades. The new Clubhouse will be connected to public water and public sewer. It will be a modern building with no pollution directly released to the aquifer.
2. The proposed use will not cause a significant reduction in the long-term volume or capacity of the aquifer as it will be connected to public water. The existing Clubhouse will cease to operate and be razed, so the net effect is one Clubhouse utilizing approximately the same amount of public water.
3. The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this section. It is the applicant's intent to connect the Clubhouse to public sewer such that no wastewater will be discharge on site.
4. The proposed use complies with all other applicable sections of this section. As the proposed use is a Clubhouse, not one of the prohibited uses under 168D, and not the type of use that releases pollutants to the groundwater, it complies with all other applicable sections of Zoning Ordinance Section 143-68.
5. The Applicant shall request opinions from the Conservation Commission, the Health Officer, the Planning Department and Pembroke Water Works that the construction of the new Clubhouse for Pembroke Pines Country Club is consistent with the Aquifer Conservation ordinance. All of these letters were received, and were read into the record.

Chairman Kudrick asked how storm water would be handled due to increased parking. Jeff Merritt of Granite Engineering, stated parking has been added to the project with storm water graded such that it flows to catch basins directed to an infiltration basin and detention pond. Vice Chairman Bourque asked if there would be an oil/water separator. Jeff Merritt said there would be a snout that allows hydrocarbons to float on top. The project needs State of NH Alteration of Terrain permit. Vice Chairman Bourque asked how often the oil would be collected. The operation and maintenance plan submitted to NH DES will include a schedule for pumping. There will be no alarms or sensors.

Natalie Glisson summarized the case. This is **Case 20-12-Z** A request for a **Special Exception under Article IX Overlay District, § 143-68 F Aquifer Overlay District**. The applicant, Charles Cleary of Wadleigh, Starr & Peters PLLC, 95 Market St. Manchester NH 03101 is requesting a **Special Exception** to construct A Clubhouse for the Pembroke Pines Golf Course. A **Special Exception** is required under **§ 143-68 F of the Aquifer Overlay District**. The property is owned by, Keystone Pembroke LLC 17 Bridge St #203 Billerica MA 01821. The property is located at 65-89 Whittemore Rd, Map 634 lot 2,1 in the R-1 Medium Density-Residential and the AC Aquifer Overlay District. Representative of the applicant discussed the criteria. Chairman Kudrick asked how storm water would be handled due to increased parking. Site engineer answered and spoke to specifics. Vice Chairman Bourque asked about oil/water separator. Engineer answered. No one in favor spoke. No one opposed spoke. Applicant had nothing further to add.

There being no further input, Chairman Kudrick closed the public hearing at 7:20 p.m. The Board will decide all cases within 30 days.

The Board reviewed the Special Exception Aquifer Conservation District 143-68F Requirements:
143-68F Requirements

1. The proposed use will not have a detrimental effect on the quality of groundwater contained in the aquifer by directly contributing to pollution or increasing the long-term susceptibility of the aquifer to potential pollutants. The new Clubhouse will be connected to public water and public sewer. It will be a modern building with no pollution directly released to the aquifer.
2. The proposed use will not cause a significant reduction in the long-term volume or capacity of the aquifer as it will be connected to public water.
3. The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this section. It is the applicant's intent to connect the Clubhouse to public sewer such that no wastewater will be discharge on site.
4. The proposed use complies with all other applicable sections of this section. As the proposed use is a Clubhouse, not one of the prohibited uses under 168D, and not the type of use that releases pollutants to the groundwater, it complies with all other applicable sections of Zoning Ordinance Section 143-68.
5. The Applicant shall request opinions from the Conservation Commission, the Health Officer, the Planning Department and Pembroke Water Works that the construction of the new Clubhouse for Pembroke Pines Country Club is consistent with the Aquifer Conservation ordinance. All of these letters were received, and were read into the record.

MOTION: Tom Hebert moved to approve **Case 20-12-Z** A request for a **Special Exception under Article IX Overlay District, § 143-68 F Aquifer Overlay District**. The applicant, Charles Cleary of Wadleigh, Starr & Peters PLLC, 95 Market St. Manchester NH 03101, having come before the board, is requesting a **Special Exception** to construct A Clubhouse for the Pembroke Pines Golf Course. A **Special Exception** is required under **§ 143-68 F of the Aquifer Overlay District**. The property is owned by, Keystone Pembroke LLC 17 Bridge St #203 Billerica MA 01821. The property is located at 65-89 Whittemore Rd, Map 634 lot 2,1 in the R-1 Medium Density-Residential and the AC Aquifer Overlay District.

Approval is subject to the following conditions:

1. Applicant will follow all state and local regulations.

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

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

CASE # 20-13-Z

Applicant: Pembroke Golf LLC

Co-Applicant: 15 West Road
Canterbury, NH
Keystone Pembroke, LLC
17 Bridge St, Ste 203
Billerica, MA 01821

Property Owner(s): Pembroke Golf LLC
15 West Road
Canterbury NH 03224

Property Address: Whittemore Road
Pembroke, NH 03275
Tax Map 634 Lot 2. Portion of Lot 1 in the R1 and AC District.

Present: Robert MacCormack, golf course owner; Jeff Merritt, Granite Engineering; Surveying representative; Stephen Pernaw, Traffic Engineer; Charles Cleary, Esq.

Case 20-13-Z A request has been made for a **Special Exception under Article IV, Use Regulations, § 143-19 Table of Uses Community Facilities #5**. The applicant, Keystone Pembroke LLC, 17 Bridge St Billerica MA 01821 is requesting a **Special Exception** to construct A Clubhouse for the Pembroke Pines Golf Course. A **Special Exception** is required under **§ 143-19**. The property is owned by, Keystone Pembroke LLC 17 Bridge St #203 Billerica MA 01821. The property is located at 65-89 Whittemore Rd, Map 634 lot 2,1 in the R-1 Medium Density-Residential and the AC Aquifer conservation zoning Districts.

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

Chairman Kudrick opened the public hearing at 7:25 p.m.

The Secretary read the following letters into the minutes:

Certified Authorization dated October 5, 2020 allowing Keystone Golf, LLC and its co-applicant Keystone Pembroke, LLC, to file applications and appear before Town of Pembroke boards necessary to obtain approvals.

Assessing cards, sketches of front and rear of the building and floor plans were provided in the agenda packet.

Charles Cleary stated the new location of the Clubhouse is to the left of the old Clubhouse, on a bluff in a spectacular spot for views. The lower level will have locker rooms, rest rooms, pro shop, and golf cart storage. The upper level will have a kitchen and pub, function rooms with separate kitchen, golf simulators and decks to take in the views. Charles Cleary stated we do not have the benefit of a non-conforming structure. Due to the new location of the Clubhouse, we need a variance. There are commercial and economic benefits to the town. The existing Clubhouse, built in the 1960's, does not fit with the improved golf course.

Charles Cleary, Esq. reviewed the Special Exception criteria:

Please give a detailed description of your proposal below:

To construct a 12,800 square foot Clubhouse in replacement of the aged existing Clubhouse located on Tax Map 634, Lot 23. The new Clubhouse will be two stories and modernized to serve the members and public guests of the Pembroke Pines Country Club (hereinafter referred to as "PPCC"). The new Clubhouse will have a pro-shop, restaurant, locker rooms and restrooms; there will be adequate parking as shown on the Plan accompanying this application.

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** PPCC serves residents of Pembroke and the surrounding community with a large well-maintained land area for the recreational game of golf. Essential to any golf course is a Clubhouse of sufficient size and amenities to accommodate both members and the visiting public including pro-shop, dining, kitchen, gathering space and restrooms. PPCC has an existing Clubhouse which is very old and of insufficient size to accommodate all its guests. The new Clubhouse will be desirable to the visiting public in terms of improved views (overlooking the 18th green), location and convenience.
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.** The requested use is in the form of a new Clubhouse replacing the older Clubhouse located in the the adjacent lot. The new Clubhouse will be a considerable improvement over the former and is situated in a location that offers a considerable buffer between existing residential houses. A Clubhouse is not a use that generates any excessive noise or disturbance. The character of this particular area has been long associated with the golf course and the new Clubhouse will continue to fit within the character of the area. The healthy sport of golf, and a necessary Clubhouse, will promote the health, morals and general welfare of the community.
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 proposed use is on a small rise of land with incredible views overlooking the 18th green. It will be situated behind the recently constructed The Lodges at Pembroke Pines, with Eagle's Way providing a second means of access. The nearest single family residence to the proposed Clubhouse is at least 300 feet away.
4. **Please show that no factual evidence is found that the property value in the district would be adversely affected by such use.** There are limited third party abutters to the site on which the Clubhouse will be built. Because of its green space and wooded buffers, living nearby to the PPCC is desirable, as evidenced by the demand for occupancy in the new housing recently constructed at The Lodges at Pembroke Pines. Furthermore, new construction, especially quality construction that is itself an amenity to the public, has been shown to increase surrounding property values. Therefore, the applicant is not aware of any factual evidence that the construction of the Clubhouse would diminish property values in the R-1 Zoning District.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No. The applicant expects approximately the same traffic to the new Clubhouse as currently exists. The applicant has proposed primary driveway access off Whittemore Road. A secondary access is available over the private way known as Eagle's Way. However, if an interested person expresses legitimate concern with traffic in the Nadine Road neighborhood. If acceptable to the Town of Pembroke, the applicant will support a "no right turn" sign at Eagle's Way/Nadine Road intersection. The Clubhouse is a source of recreation, relaxation, and dining and will not present a nuisance or unreasonable hazard. An updated traffic report will be presented to the Planning Board as part of the Site Plan process.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** The applicant intends this Clubhouse to be an attractive, convenient facility drawing golfers back to the PPCC for rounds of golf. All facilities necessary for the game of golf will be available and modern, including but not limited to pro-shop, dining, lounge, locker rooms, restrooms, putting green and function facility. There are sufficient on-site parking spaces for the proposed Clubhouse.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** The applicant is not aware of any objections from abutting property owners.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** The proposed Clubhouse has access to public water supply and public sewerage.

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**

Steve Pernaw, PO Box 172, Concord NH stated that he performed the traffic report when the Lodges were put in. He did Addendum 2 from fieldwork on 10/23/2020 to the original traffic assessment. A historical review of Route 3 showed that pre COVID numbers at the time of Lodges construction were higher. Because the restaurant size in the new Clubhouse is larger, Mr. Pernaw added trip generation estimates based on “high turnover sit down restaurant” with no through traffic. Trip estimates are taken from the ITE manual. There would be 10 vehicles per hour at peak traffic on weekend, and 8 vehicles per hour at peak on weekday. At the Bow Lane traffic signal, there would be seven vehicles per hour at peak weekend hour and three vehicles per hour at peak weekday. All of these numbers make diminimus impact on Route 3 traffic.

Wendy Chase asked about the size of the function rooms. Bob MacCormack, 44 Whittemore Road, stated that an average golf tournament would have 120-125 people attending. There is a larger conference room and a smaller one with a divider between them. With the divider open using both rooms, a wedding party of 150-200 people could be accommodated. Vice Chairman Bourque asked how many parking spaces the new Clubhouse would have. Jeff Merritt, Granite Engineering, pointed out two areas of parking 77 plus 80 for total of 157 spaces. In addition, 6 handicapped accessible parking spots are within walking distance to the door. Natalie Glisson asked how many parking spaces the Clubhouse has now. There are 125 parking spots now.

Jeff Merritt located the power line easement on the plan. Chairman Kudrick asked if the applicant was working with Eversource. Jeff Merritt said yes, there will be a joint use agreement with Eversource. Chairman Kudrick asked about hours of operation. Bob MacCormack said the golf course is open sun up to sun down. The golf carts need to be in fifteen minutes after dusk. We currently have 12-20 wedding functions per year in the off season. Wedding functions could last to midnight. The restaurant opens 10:00 am to close currently. The restaurant and pub may stay open until 9 pm in summer when it stays light longer. Men’s league plays golf from 5:30 pm until 7 pm and may stay at the Clubhouse another two hours. We do not have rigid hours. Sometimes the chef will come in early and make breakfast sandwiches to grab and go and sell them off a cart in the pro shop. Chairman Kudrick asked what period is anticipated for construction to begin, and for the new Clubhouse to open. Bob MacCormack said they are still working out the details. Some joint infrastructure related to the Lodges project has been done, like design of sewer and water. The soonest construction may start is spring 2021. We hope to open the Clubhouse in 2022. We will keep the old Clubhouse and existing parking open until the new Clubhouse is ready for occupancy. There are practice greens and driving ranges over by the old Clubhouse. The parking is in front of them. Long-term plans are to move the practice greens and driving range to 15 acres of land next to the new Clubhouse, after the new Clubhouse is operational. Once the new Clubhouse is operational, the old Clubhouse will be razed. We will leave the upper gravel parking as for auxilliary parking. We will keep the paved parking for overflow parking. We talked about a full-scale comprehensive Clubhouse, parking and storm water treatment. Dana Pendergast has contacted Paulette Malo, Pembroke Sewer Commission, and she indicated that building “A” will switch to “Building B” with the net result of a wash, no increase. Wendy Chase asked if the new Clubhouse would be visible from Route 3. It will not be visible.

Natalie Glisson summarized the case. This is **Case 20-13-Z**, a request for a **Special Exception under Article IV, Use Regulations, § 143-19 Table of Uses Community Facilities #5**. The applicant, Keystone Pembroke LLC, 17 Bridge St Billerica MA 01821 is requesting a **Special Exception** to construct A Clubhouse for the Pembroke Pines Golf Course. A **Special Exception** is required under **§ 143-19**. The property is owned by, Keystone Pembroke LLC 17 Bridge St #203 Billerica MA 01821. The property is located at 65-89 Whittemore Rd, Map 634 lot 2,1 in the R-1 Medium Density-Residential and the AC Aquifer conservation zoning Districts. Representatives of the applicant discussed the criteria. They spoke to where the new Clubhouse would be located. Stephen Pernaw presented traffic information. Chairman Kudrick asked when the study was done. Mr. Pernaw answered. Wendy Chase asked about size of function room. Mr. MacCormack spoke to size and use. Vice Chairman Bourque asked about amount of parking. Site Engineer answered.

Natalie asked about how many parking spots there are now. Chairman Kudrick asked about location of power lines. Engineer answered that they are in contact with Eversource. Bruce asked about hours of operation. Mr. MacCormack clarified. Bruce asked about time frame. Mr. MacCormack answered. Bruce asked about old Clubhouse and old parking. Mr. MacCormack clarified that both would remain for now. The old parking would be used for auxiliary parking and the old Clubhouse will be destroyed. Bruce asked about sewer. Dana Pendergast said he spoke to Paulette at the Sewer Commission.

There being no further input, Chairman Kudrick closed the public hearing at 8:00 p.m. The Board will decide all cases within 30 days.

The Board reviewed the Special Exception criteria:

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** Dana Carlucci said the Clubhouse has been desirable to the public 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.** The use has not changed. The new Clubhouse will be updated and better than the old Clubhouse built in the 1960's.
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 new facility will have proper facilities, locker room and function facilities, town water and town sewer.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** The plan is well thought out and fits well with the concept. Balconies will be installed for weddings and taking in views. The plan is good design and fits well with the overall development.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** Traffic study did not indicate any issues.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Nothing has changed. The Clubhouse will be modern with updated electric and plumbing.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** There was no one who spoke against the proposal.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** The Clubhouse will have town water and town 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

MOTION: Tom Hebert moved to approve **Case 20-13-Z**, a request for a **Special Exception under Article IV, Use Regulations, § 143-19 Table of Uses Community Facilities #5**. The applicant, Keystone Pembroke LLC, 17 Bridge St Billerica MA 01821, having come before the board, is requesting a **Special Exception** to construct A Clubhouse for the Pembroke Pines Golf Course. A **Special Exception** is required under **§ 143-19**. The property is owned by, Keystone Pembroke LLC 17 Bridge St #203 Billerica MA 01821. The property is located at 65-89 Whittemore Rd, Map 634 lot 2,1 in the R-1 Medium Density-Residential and the AC Aquifer conservation zoning Districts.

Approval is subject to the following conditions:

1. Applicant will follow all state and local regulations.
2. The proposal will follow submitted plans, as modified in the site review process, with Planning Board approved plans and conditions as the final plan.

Dana Carlucci seconded.

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

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

CASE # 20-14-Z

Applicant: Russell Leighton
21 Pine Street
Newport, ME 04953

Property Owner(s): Estate of Frederick Leighton, Russell Leighton Executor
419 Ross Road
Pembroke, NH 03275

Property Address: 419 Ross Road
Pembroke, NH 03275
Tax Map 565 Lot 81-82 in the R1 Zoning District.

Present: Rick Mulcahy, 17 Melissa Drive, authorized representative of Russell Leighton, Executor

Case 20-14-Z A request has been made for a **Variance under Article VI Special Conditions, Section § 143-31-A-C Recreational Vehicles**. The applicant, Russell Leighton of 21 Pine Street Newport, ME 04953 is requesting a **Variance** to occupy a Recreational Vehicle by someone other than the owner for 120 Days when 60 days is allowed. The property is located at 419 Ross Rd. Map 565 lot 81-82 in the R1 Zoning District and is owned by The Estate of Fredrick Leighton Russel Leighton Executor.

The clerk read the case description and the list of abutters. The clerk read a letter from Any Manzelli and Chad Turmell, 418 Ross Road, into the record. Ms. Manzelli and Mr. Turmell wrote of concerns of loud motorcyles, unregistered vehicles and disarray on the property, traffic in and out and lights in the night at the property.

Chairman Kudrick opened the public hearing at 8:10 p.m.

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.

Certified authorization dated September 29, 2020 was provided from Russell Leighton to Richard Mulcahy, 17 Melissa Drive, Pembroke NH to speak to the Board on his behalf.

Richard Mulcahy, 17 Melissa Drive, explained that the town allows a person other than the property owner to occupy a Recreational Vehicle for 60 days. The applicant is requesting a variance of 120 additional days for the caretaker, James Carey, to occupy the RV and provide oversight and security to the site while the property is in probate. Chairman Kudrick asked the Code Enforcement Officer if he had responded to any complaints at the address of 419 Ross Road. Dana Pendergast, CEO, indicated he had been at the address multiple times over the last year and more so over the summer of 2020. The property does need to be cleaned up. There are three unregistered vehicles remaining on site, down from nine vehicles initially. A Mercedes, one old Cadillac and a Yukon are still on property. The recreational vehicle is hooked up to the existing water and sewer from the house. The house nearly burned to the ground in July 2019. The recreational vehicle is connected to electric power. James Carey, is residing in the recreational vehicle, which is registered and owned by Mr. Carey. Mr. Carey was the personal assistant to Russell Leighton until his passing August 4, 2020. Dana Pendergast noted that electrical and plumbing permits were pulled days before Fred Leighton's passing. Mr. Carey had an apartment in Manchester NH. The apartment was available through August 31, 2020. Mr. Carey did have someone doing framing who stayed in the recreational vehicle before it was hooked up. Mr. Carey has been

staying in the recreational vehicle since September 1, 2020. The 60 days a person other than the property owner can stay in a recreational vehicle end October 30, 2020. The matter is in probate. The back yard needs to be cleaned up. The hot tub is gone. Lumber in the front yard has been relocated. A small utility trailer is in the front yard. The van is gone. The Mercedes is meant to be taken by the person doing the framing work.

Tom Hebert asked what the anticipated date that probate will be over is. It has been over a year since the fire of July 2019. What are plans for construction and what is Plan B. Rick Mulcahy said the lights seen on the property at night are Mr. Carey with a headlamp checking on the perimeter. Construction is shut down because Fred's deceased wife's sister in New Mexico is inheriting the property. Bob MacCormack asked if the 120 days would start October 31, 2020 at the end of the first 60 allowed days.

Ann Bond, 433 Michel Road, stated I can see the property. The front yard has been cleaned. The back yard is fenced. The recreational vehicle is off to the side and is not an eyesore. The property is not being used as a hangout zone. Ann believes the ZBA should grant a 120 day extension starting after the first 60 days. It has been a year since the fire. Amy Manzelli, author of the letter read into the record, is directly across from the property. Amy is a lawyer and understand how long the probate process can take in New Hampshire. The problem is no one owns the property right now, and the Executor is incurring expenses at this time.

Ken Rochon, 417 Ross Road, said he knew Fred Leighton for 34 years. He remembers the night of the fire July 6, 2019. He did not know that Fred was not in the house when the fire broke out. Ken is concerned about an extension on the stay in the recreational vehicle. The construction has been off and on and I do not know if there is a plan.

Lewis Poggi, 19 Melissa Drive, said he got to know James Carey, the caretaker, over the past three summers. Mr. Carey is looking over the property. He does have a loud motorcycle that he runs for five minutes every other day. He was also starting up the vehicles on the property regularly. There was some vandalism and theft last winter. There is no active construction right now until probate is over. There three unregistered vehicles left, several temporary structures and sheds. There is a BBQ area. I would prefer someone living on the property to oversee it. The property has been a blight for over a year. Fred was a general contractor at one time, and believed he could do more of the work himself. The cancer weakened him. Mike Yeaton came in to do rough electric and Fred died the next day. This property is a valuable piece of land and the house needs to be reconstructed.

Ann Bond, 433 Michel Road, said she has loud vehicles on her street which may be part of what Amy Manzelli hears. I would rather have someone on site so the situation does not get any worse. Paul Paradis asked if the recreational vehicle is heated. Dana Pendergast clarified that the recreational vehicle is connected to water, sewer and electric and is heated. A plumber hooked sewer up to an injection pump in the basement. The occupant will have to keep the lines from freezing.

Lewis Poggi, 19 Melissa Drive, noted that having someone on property would not speed up construction. That is correct.

Chairman Kudrick noted that the town allows only two unregistered vehicles per property.

Richard Mulcahy addressed the Variance criteria:

Please give a detailed description of your proposal below:

Request a variance to the 60 day limit imposed by Article 143-31A, B on an occupied Recreational Vehicle. Request that variance be granted to meet the requirements of 143-31 paragraph C in that the 60 day limit will not be sufficient for the caretaker to monitor and maintain the unoccupied property during the Probate of the

Estate and subsequent completion of the house while providing security, grounds maintenance and construction supervision. Request a variance to allow 120 days with a re-evaluation at that time.

1. **The variance will not be contrary to the public interest.** The variance would not be contrary to the public interest by caretaker's maintaining the property, providing security and preventing vandalism.
2. **The spirit of the ordinance is observed.** The spirit of the ordinance is observed wherein 143-31 Para.C discusses the use as living quarter in conjunction with construction work, provided, that such is shown to be a temporary expedient, and conforms to the provisions of 143-21 etc.
3. **Substantial justice is done.** Justice is done by allowing for proper maintenance and security of the property while it remains in probate until constructions can resume.
4. **The values of surrounding properties are not diminished.** The values of the surrounding properties will not be diminished by allowing the variance. The recreational vehicle has been stored on the property for some time. The only change is that it will be occupied. Protection of the property from vandalism and regular property maintenance will help to protect the values of 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 unnecessary hardship would be that in order to protect the unoccupied property the Executor of the Estate lives in Newport Maine 3.5 hours away and would be required to travel that distance frequently in order to maintain the property and inspect for any damages. Supervision of the subsequent construction would be a hardship as well
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.

Natalie Glisson summarized the case. This is **Case 20-14-Z**, a request for a **Variance under Article VI Special Conditions, Section § 143-31-A-C Recreational Vehicles**. The applicant, Russell Leighton of 21 Pine Street Newport, ME 04953 is requesting a **Variance** to occupy a Recreational Vehicle by someone other than the owner for 120 Days when 60 days is allowed. The property is located at 419 Ross Rd. Map 565 lot 81-82 in the R1 Zoning District and is owned by The Estate of Fredrick Leighton Russel Leighton Executor. Richard Mulcahy read the criteria. Bruce Kudrick asked about issues noted by an abutter. Dana Pendergast answered and discussed the condition of the property and the concerns of neighbors. Bob Bourque asked who would be staying in the recreational vehicle. Applicant answered. Bruce Kudrick asked how many unregistered vehicles are allowed. The town allows two unregistered vehicles per property. Bruce Kudrick asked about when the recreational vehicle has been occupied. Applicant clarified that occupancy began September 1, 2020. Bruce Kudrick asked about "stuff" in yard. Mr. Mulcahy reported having no idea of completion date for construction or another plan. Bob Bourque asked when the 120 day extension would start. Ann Bond spoke in favor of a variance, stating they have cleaned up the property. An abutter spoke in opposition, expressed concerns about continued extensions. An abutter Lewis Poggi stated being neutral about the variance and spoke of positives of having security on the property. Applicant addressed letter and concerns by abutter. Lewis Poggi, 19 Melissa Drive, pointed out that the occupant of the recreational vehicle is the caretaker. Paul Paradis asked about the recreational vehicle being heated in winter. Dana Pendergast answered that it is a heated, hooked up recreational vehicle.

There being no further comment, Chairman Kudrick closed the public hearing at 8:44 p.m. The Board will decide all cases within 30 days.

Chairman Kudrick noted that at present, there is one more unregistered vehicle than allowed on the property. Paul Paradis asked who is in charge of vehicles. Russell Leighton, Executor, brother of Fred Leighton who lives in Newport Maine is inheriting the vehicles. Fred Leighton's deceased wife's sister (sister in law of Fred) who lives in New Mexico is inheriting the property. Could Russell Leighton petition the court to restart construction? Who would pay for the work? Dana Carlucci asked if the town could make the probate court aware of the situation and the impact on the Town of Pembroke. Could the Board of Selectmen write to probate court and request priority attention. Police and fire involvement is likely if the property is not properly secured. Chairman Kudrick said the property is an attractive nuisance. Tom Hebert noted that court is very backed up due to COVID. It is not reasonable to assume that probate court will be completed within 120 days. If the extension is granted, and probate is not complete, the applicant would have to file a new application and fee for a new process. The money for expenses is coming from the Executor of the estate. Could the Zoning Board of Adjustment grant a longer extension? The applicant requested 120 days. Is a variance the proper relief in this instance? A variance runs with the land, and that could lead to unintended consequences. Would an extension start on the date the first 60 days expire? The applicant would need to return the Zoning Board of Adjustment before an extension, if approved, expires. The time frame extends into the holidays, and the worst of winter.

Deliberations: ZBA members discussed the Variance criteria.

1. The variance will not be contrary to the public interest. It is in the public interest to keep someone on the property for security.
2. The spirit of the ordinance is observed. For safety, the caretaker walks the perimeter of the property when noise or activity is noted.
3. Substantial justice is done. Dana Carlucci stated this is a rare case. Police and fire costs may be incurred.
4. Property values are not diminished. No evidence presented on property values. The property value will diminish if the property becomes more unsightly.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The hardship is that the property owner passed away, the Executor lives in Maine, and the case is stuck in probate court.

Discussion: Tom Hebert asked if the ZBA could set a time on a variance. How valid are any conditions the ZBA may set on a variance? Blakely Minor suggested that the extension of occupying a Recreational Vehicle by someone other than the owner for 120 Days should expire when the primary residence is repaired and receives a certificate of occupancy. How could that stipulation be accomplished? Chairman Kudrick stated that the ZBA needs legal counsel on the correct procedure to employ in this case. Tom Hebert agreed. Chairman Kudrick requests that legal counsel attend the next hearing date. Chairman Kudrick stated this is a bad situation that we do not want to make worse for the town.

MOTION: Chairman Kudrick moved to continue **Case 20-14-Z and its public hearing**, a request for a **Variance under Article VI Special Conditions, Section § 143-31-A-C Recreational Vehicles** by applicant,

Russell Leighton of 21 Pine Street Newport, ME 04953 to Monday, November 9, 2020 at 7:00 pm to obtain information from Pembroke Legal Counsel. Tom Hebert seconded.

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

MOTION TO CONTINUE CASE #20-14-Z TO NOVEMBER 9, 2020 PASSED ON A 5-0 VOTE

Chairman Kudrick noted that the case would not be renoticed to abutters. Interested persons should check on the town website for a future ZBA agenda.

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of September 28, 2020 as amended. Dana Carlucci seconded.

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

MINUTES OF SEPTEMBER 28, 2020 APPROVED AS AMENDED ON A 5-0 VOTE.

OTHER BUSINESS /CORRESPONDENCE

Signs for Jesus – Dana Pendergast provided an update on a court appeal that has gone on three plus years. The Boston appeal court ruled in favor of the Town of Pembroke. There is a certain time for an appeal to Washington DC Supreme Court. Dana Pendergast will email a copy of the decision to members.

NEXT MEETING

Date of next ZBA meeting – Chairman Kudrick noted the next ZBA meeting would be on **Monday, November 9, 2020 at 7:00 p.m.** Natalie Glisson is unable to attend November 9, 2020.

ADJOURN **Motion:** Bob Bourque moved to adjourn. Dana Carlucci seconded. Vote was unanimous in favor of motion. Meeting adjourned at 9:20 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary