

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
January 25, 2021**

**Approved March 8, 2021**

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

**ALTERNATES PRESENT:** Robert Bourque, Wendy Chase

**EXCUSED:** Paul Paradis, Blakely Miner III

**STAFF EXCUSED:** Dana Pendergast, Code Enforcement Officer

**STAFF PRESENT:** Susan Gifford, Recording Secretary

The clerk took the roll call and 6 members were present. Chairman Kudrick designated Wendy Chase to vote on Case #21-01-Z

Chairman Kudrick called the meeting to order at 7:00 p.m.

**Case #21-01-Z**

Applicant: Dennis and Susan Patten  
241 Buck Street  
Pembroke, NH 03275

Property Owner(s): Dennis and Susan Patten Family Trust  
241 Buck Street  
Pembroke, NH 03275

Property Address: 241 Buck Street  
Pembroke, NH 03275  
Tax Map 266 Lot 146 in the R-1 Medium Density-Residential Zoning District.

Present: Dennis and Susan Patten

**Case 21-01-Z** A request has been made for a **Variance under Article V Dimensional and Density Regulations, § 143-21, F, G Front and Side Setback**. The applicant, Dennis & Susan Patton of 241 Buck St Pembroke NH, is requesting a **Variance to construct a garage 14' from the front and 6' from the side setback where 30' Front and 15' side is required**. The property is owned by, Dennis & Susan Patton of 241 Buck St Pembroke NH 03275. The property is located at 241 Buck St, Map 266 lot 146 in the R-1 Medium Density-Residential Zoning Districts.

Bob Bourque read the case description and the list of abutters.

A tax map, assessing cards, photographs, sketch of existing lot, existing measurements, detail of proposed garage, list of abutters were included in the agenda packet.

Chairman Kudrick opened the public hearing at 7:02 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 than what was presented, the Board reserves the right to reconsider the approval.

Dennis Patten stated he purchased his home in Pembroke over forty years ago. Mr. Patten has a photograph of the original garage on the property in 1928. Another stall was added in the 1950s. There are four different foundations, the structure has rot and the roof leaks. Dennis Patten plans to use the rough footprint of the existing garage to build a new three-stall 36' x 28' garage to house two vehicles, a travel trailer and lawn maintenance equipment. The deck post in the rear is on ledge. The addition to the house missed hitting ledge by 18 inches. The house is already in the setback. On the back side, there is 10-foot cliff with exposed ledge. When blasting was done for Chickering Meadows, Dennis Patten said the blasting shook their house as it shares the same ledge.

A new leach field was built on the side of the house. There is a standby generator and two large propane tanks on the other side of the house. It would be costly to move and rewire the generator. It would be costly to add piping for the propane tanks. The house was built in 1788 and sits on an open stone foundation. Dennis Patten said he would have to extend the driveway 100-150 feet at a cost of \$5.30 per square foot. A driveway extension would cost between \$7-10,000. It would be several thousand dollars to move the generator and excavate the foundation.

Dennis Patten stated he had a 2003 Tundra for eighteen years that fit in the existing garage. They now have a 2021 Tundra that does not fit in the garage. Mr. Patten is trying to limit encroachment to 9 feet on the side and 16 feet from the front boundary line. No one lives in the house next door, and there is 40 feet buffer of trees and brush. The motor home is parked in the back yard. Mr. Patten needs 12 feet clearance to get the motor home past the garage. Mr. Patten needs to be able to get the truck behind the house to load camping equipment from the deck. His disability prevents him from lifting items into the truck. There is a stone wall in the middle of the property and a retaining wall behind the garage. There is a perimeter drain from the 2006 addition in the back yard.

Chairman Kudrick asked what would be kept in the garage. Mr. Patten would keep two vehicles, a 2021 Tundra and a RAV 4, and a John Deere subcompact tractor and lawn mowers in the third stall. Dennis Patten has not designed the garage yet. He proposes to build a 28' by 36' wide building in the same spot that was a square, with a nose added and then another bay. The current depth is 23 feet and Mr. Patten would like 28 feet. There is an existing 10' x 16' shed that is not usable. Bob Bourque invited Dennis Patten to view his garage on Pheasant Run that is 28' x 28' with an attached shed.

Dennis Patten addressed the Variance criteria:

**Please give a detailed description of your proposal below:**

We are asking for a 6' side variance and a 14' front variance. We would like to remove an existing garage and replace it with a three-stall garage. Presently the garage is 9' 2 3/4" on the side and 16' 8 1/2" on the front. The hill behind the garage has an overabundance of ledge that would require blasting or hammering, which would damage our house foundation. Moving the garage footprint would eliminate any access to the back yard. We have a motorhome we need to get in and out, plus propane tanks for the generator.

1. **The variance will not be contrary to the public interest.** The existing structure has been there since at least 1928 as shown in the photograph. Second stall added probably 1950s or 1960s. Building in the same rough footprint would not be contrary to any public interest. The building has occupied that spot for 92 years. House has been here since 1788 (230 years).
2. **The spirit of the ordinance is observed.** There would be no overcrowding, obstruction of light or views. The structure is roughly 75-80 feet away and is buffered with 30'- 40' trees and bushes. This replaces an existing structure that is slightly larger, safer and updated.

3. **Substantial justice is done.** No ill effects are created by expanding the width of the garage, using the roughly same footprint. The new building would be a better, safer building and would not diminish any surrounding property values. It is just an upgrade.
4. **The values of surrounding properties are not diminished.** This could only be determined by an appraisal, but since it would be newer, larger building it would be more uniform in appearance, and would more than likely add to the tax revenue.
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.**  
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**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.**

Chairman Kudrick noted that there is a great distance from the property line to the street because at one time, the State was going to build Route 28 along that road. Sixty feet (30 feet from each side) is reserved for road improvement. Another resident in this area built a porch. The property line is halfway up the front yard due to the reserved area.

Natalie Glisson summarized the case. This is **Case 21-01-Z**, a request for a **Variance under Article V Dimensional and Density Regulations, § 143-21, F, G Front and Side Setback**. The applicant, Dennis & Susan Patton of 241 Buck St Pembroke NH, is requesting a **Variance to construct a garage 14’ from the front and 6’ from the side setback where 30’Front and 15’ side is required**. The applicant discussed how the current garage has been updated over the years. The proposed garage is 28’ x 36’. Mr. Patten wants to keep the encroachment to 6 feet on the side and 9 feet in the front. Applicant has not designed the garage yet. Bob Bourque asked clarifying questions where the garage would be located and what will be stored in the garage. Mr. Patten stated that all improvements to the property have been done in character with the building.

Chairman Kudrick announced that the Board will decide all cases within 30 days. Notice of decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. This hearing is officially closed at 7:28 p.m. The Board will approve, deny or continue the deliberation. No comments will be taken from the audience.

**Deliberations:** ZBA members discussed the Variance criteria.

1. The variance will not be contrary to the public interest. Dana Carlucci said abutters would be protected by a buffer.
2. The spirit of the ordinance is observed. The Pembroke Zoning Ordinance has changed a lot since this garage was built.
3. Substantial justice is done. The proposed garage will be in the rough same footprint of the existing garage.
4. Property values are not diminished. No evidence received. New garage will like increase property values.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.  
Location of leach field, generator, propane tanks and exposed ledge limits the location of the garage.

Tom Hebert noted that the road was originally a state highway. There is an additional 30 feet from the front yard property line to the street in front of the existing structure.

**MOTION:** Tom Hebert moved to approve **Case 21-01-Z**, a request for a **Variance under Article V Dimensional and Density Regulations, § 143-21, F, G Front and Side Setback**. The applicant, Dennis & Susan Patton of 241 Buck St Pembroke NH, is requesting a **Variance to construct a garage 14' from the front and 6' from the side setback where 30' Front and 15' side is required** with the following conditions:

1. Applicant will follow all state and local regulations.
2. Construction will adhere to site plan as submitted. Maximum encroachment will be 14 feet in front (maintain 16 feet) and maximum encroachment of 6 feet on the side (maintain 9 feet).
3. Applicant will coordinate an appointment with the Code Enforcement Officer to verify the front and side setback lines in relation to the proposed garage.

Dana Carlucci seconded.

**VOTE:** WENDY - 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:** Bob Bourque moved to approve the minutes of November 23, 2020 as presented. Dana Carlucci seconded.

**VOTE:** WENDY - YES TOM - YES BRUCE - YES  
DANA- YES NATALIE - YES BOB - YES

**MINUTES OF NOVEMBER 23, 2020 APPROVED AS AMENDED ON A 6-0 VOTE.**

#### **OTHER BUSINESS /CORRESPONDENCE –**

**New zoning book** - Dana Pendergast passed out 2021 State Zoning books and binder updates.

**Signs for Jesus** - Chairman Kudrick reported that 90 days have passed since the decision in favor of the town was made. No appeal has been received, so Town Counsel consider this matter closed.

**Date of Town Meeting** – Bob Bourque noted that state government has made a decision to leave the date of town meeting up to each town. The voting warrant will occur as scheduled.

**Master Plan update** – Bob Bourque reported that the recently updated guidance document, Pembroke Master Plan, will be voted on at Town Meeting. The Planning Board will hold a hybrid public hearing (ZOOM and in person at Pembroke Academy) on February 9, 2021 on the updated Master Plan. Details will be posted on the town website.

#### **NEXT MEETING**

**Date of next ZBA meeting** – Chairman Kudrick noted the next ZBA meeting would be on **Monday, February 22, 2021 at 7:00 p.m.**

**ADJOURN** **Motion:** Bob Bourque moved to adjourn. Natalie Glisson seconded. Vote was unanimous in favor of motion. Meeting adjourned at 7:41 p.m.

Respectfully submitted,  
Susan P. Gifford  
Recording Secretary