

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
June 28, 2021
(ADOPTED)**

MEMBERS PRESENT: Bruce Kudrick, Chairman, Thomas Hebert, Vice Chairman, Dana Carlucci, Natalie Glisson, and Paul Paradis

ALTERNATES PRESENT: Robert Bourque, Blakely Miner III

EXCUSED: Alternate Member Wendy Chase

STAFF PRESENT: Carolyn Cronin, Town Planner and Paul Bacon, Code Enforcement Officer

Chairman Kudrick called the meeting to order at 7:02 p.m.

Roll call was taken by the recording secretary.

Chairman Kudrick welcomed everyone. Since the meeting was being held in the Pembroke Academy Cafeteria, he pointed out the fire exits. All audience chairs were placed 6 ft. apart. With regard to masks, Chairman Kudrick said that if anyone wishes to wear face masks, to please do so. He stressed that everyone should do whatever makes them feel comfortable.

Considering the large number of cases to be presented, Chairman Kudrick asked the Board if they would be willing to proceed without reading the abutter's list for each case. He pointed out that one case has 4 pages of abutters and, if the Board prefers to have the list read aloud, it would have to be done for all the cases.

MOTION: Alternate Member Bourque moved to waive the reading of the abutter's list for all cases. Seconded by Vice Chairman Hebert.

VOTE:	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

**MOTION TO WAIVE THE READING OF THE ABUTTER'S LIST FOR ALL CASES
PASSED ON A 5-0 VOTE.**

PUBLIC HEARINGS:

Chairman Kudrick said that the first case was a continuation of:

Case 21-09-Z A request has been made for a **Variance under Article IXA Soucook River Development (SR) District, §143-72.6 Permitted Uses**. The applicant, Steven Voydatch of 55 Jewett Rd., Dunbarton, NH 03046, is requesting a variance to allow sand and gravel excavation as a primary use. The property is located at 612-644 Pembroke St., Map 634, Lot 47 in the Soucook River Development (SR) District and is owned by MNP Realty, LLC.

Applicant: Preeti Munjal, Member of MNP Realty, LLC
6 Steeple Court
Andover, MA 01810

Property Owner(s): MNP Realty, LLC
6 Steeple Court
Andover, MA 01810

Property Address: 612-644 Pembroke Street
Pembroke, NH 03275
Tax Map 634, Lot 47 in the Soucook River Development (SR) District

Included in Member Packets: Memo to Steven Voydatch from Carolyn Cronin, Town Planner dated April 27, 2021; Email to Carolyn Cronin from Diane Benoit dated April 26, 2021; Email to Carolyn Cronin from Ed Roberge dated May 28, 2021; letter to Matt Gagne, Pembroke Water Works from Emery & Garrett dated May 21, 2021; Figure 1 Wellhead Protection Area map; Figure 2 Sanitary Protective Area map; Email to Carolyn Cronin and Preeti Munjal from Matt Gagne dated June 14, 2021; Letter to Carolyn Cronin from Steven Voydatch received June 21, 2021.

Present: Steven Voydatch of 55 Jewett Road, Dunbarton, NH 03046, representing the Applicant and J. P. Rivard of Rivard Trailer Sales (potential buyer).

Alternate Member Bourque recused himself.

Chairman Kudrick noted that the Board requested, at the last meeting, that Mr. Voydatch provide additional information.

Mr. Voydatch began by saying that the Board wanted an engineer to come up with a plan to utilize the entire property. He presented the Board with two maps.

He said that the problem is that the Town of Pembroke has a 3-inch pipe that covers everything on the other side of the road as far as drainage is concerned. He said that all the surrounding drainage runs onto this parcel. There is open land that the Town's water goes onto. He said that the parcel will never be developed because of the Town's pipe, the Town's leases, and the State's leases. Mr. Voydatch said that they would like to do whatever is necessary to try to help the Town, but at this point nothing can be developed until the Town decides how to handle its portion of water coming from Rt. 3.

Mr. Voydatch pointed out the area on the map where he would like to remove the gravel. He said that Kline Way will never be developed because it drops off in such a manner that if the road was extended, the Town would put Associated Grocers' trucks in danger. Mr. Voydatch said that his road to the property would come off to the side of Kline Way.

He pointed to a banking on the map where he said gravel could never be removed. The Town's requirements would give him plenty of room away from the aquifer. He said that the Town's

drainage is running down 95' from the road with contaminants from the surrounding area going onto his parcel. He said that they would create a 30' x 30' pad at the edge of the road for their trucks to park. They would have fuel come in for the loader and lay 100 ft. of pavement so there would not be debris coming onto the road.

Mr. Voydatch said that the engineer responsible for handling the licensing and state requirements, has contacted the owner and given her a price.

Chairman Kudrick asked if the water that Mr. Voydatch is talking about is storm water.

Mr. Voydatch said yes.

Chairman Kudrick said that the storm water belongs to the State.

Mr. Voydatch agreed but said that it comes from all the Town's private concerns.

Chairman Kudrick said he wanted to clarify that when Mr. Voydatch talks about Town water, he means stormwater.

Mr. Voydatch said yes. He said that all drainage crosses over the highway from a 30-inch pipe and kills an entire area with its debris such as gases and oil. He said that the water is contained in an area that the Town would like to develop. He said that it would be a tremendous cost to relocate the 2 gas lines and place water pipes under ground in preparation for development.

Chairman Kudrick asked how deep he would be digging in order to remove the gravel.

Mr. Voydatch said that he could not answer that because he is just a logger. He said that the State's engineer would determine that.

Chairman Kudrick reiterated that that was one of the Board's concerns at the last meeting.

Mr. Voydatch said that Ms. Munjal has hired an engineer to handle that part of the operation. The State and the federal government have regulations that would control every part of the operation. He said that it is not up to the owners for the removal of the gravel.

There were no further questions from the Board.

Chairman Kudrick said that the Board received information from the Pembroke Water Works. The study that was requested by the Board was prepared by Emery & Garrett Groundwater Investigations.

Mr. Voydatch said that it would be nice if Matt from the Pembroke Water Works, VJ from Pembroke Highway Department, the Building Inspector, the Town Planner and the Zoning Board could look at the property and see what is good and what is bad.

Chairman Kudrick said that the study, prepared by Emery & Garrett states on page 3: “. . . that the amount of groundwater recharge to the PWW Wells 2 and 3 will decrease from northeast to southwest within the area to be excavated.” Chairman Kudrick said that that is a big concern because the wells provide the Town’s water supply.

Mr. Voydatch said that there is very little water from the samples that were taken. It is almost pure sand, not water content. He reiterated that the State would control how much gravel can be taken and what might affect the aquifer.

Chairman Kudrick said that the main concern is that if there is 1 million gallons taken from a well, the Town cannot just go somewhere else to replace the gallonage.

Mr. Voydatch insisted that Matt Gagne of Pembroke Water Works would protect the Town’s interests along with VJ of the Highway Department and the Building Inspector.

Chairman Kudrick said that the Board is here to make sure that the wells are protected. With the information that Mr. Voydatch has given the Board, they still do not know how deep they plan to dig.

Mr. Voydatch said that presently there is a 150-ft. face. He asked if he could take half of it, or how much could he take to satisfy the Board and not hurt the aquifer. He insisted that the State and the Federal government would control that part.

Chairman Kudrick asked if Mr. Voydatch had anything more to say.

Mr. Voydatch said no, except to invite the Board to visit the property so they could see that they are not going to hurt the Town. They will help the Town because the parcel is presently in current use and all the tax money would return to the Town.

No one spoke in favor of the application.

Chairman Kudrick asked if anyone wished to speak in opposition of the application.

Robert Bourque of Pembroke said that the aquifer not only stores water for the Town but it also cleans water for the Town. If layers of gravel and fines from the aquifer are removed, the filtering process for the wells would be lost and, therefore, the Town would lose their water. He also said that the Emery & Garrett report noted that if the Town lost the wells, the Town would have to pull water out of the Soucook River and the cone that filters water from the wells would go further and further and there would be no water to add to it. The excavation would damage the aquifer from what it is now. If they remediate it later, whatever they put in for fill, will act differently on how it filters and whatever is in that material would get into the water. He said that Mr. Voydatch cannot tell the Board how deep they will be digging and how much they will be removing. Mr. Bourque said that this application is not ready for consideration by the Zoning Board at this time. There needs to be a more accurate description and plan.

No one else spoke in opposition.

Member Carlucci said that the engineers recommended, in their study, low impact commercial development on that property.

As a rebuttal, Mr. Voydatch said that he and Mr. Rivard are not qualified to say what can be done, but there is an engineer that will handle every part of the operation and all the applications needed. He pointed out the area of wetlands, the 125' slope, and the portions of the parcel that cannot be developed because of the water and gas lines. He said that someone at the State level will protect the aquifer and control how much gravel is removed and make sure that no drainage will run into the river.

There were no other questions from the Board or the public.

Vice Chairman Hebert commented that the Emery & Garrett report also recommended that Operations and Maintenance Plans be submitted along with Source Water Protection Plans, and Long Term Groundwater Monitoring Plans. He pointed out that there is a significant amount of things that are missing. He has no doubt that the State will be doing their due diligence and overseeing the project along with National Mining Association for the mining side of things, but there are items that the Board would like to see before even considering this application to be complete. Vice Chairman Hebert said that he understands that Mr. Voydatch does not have the knowledge or authority to make those decisions, but there seems to be more than just a hydro-geological assessment that is incomplete. He said that the presentation of this case is premature.

Mr. Voydatch said that an engineer has talked to Ms. Cronin and Ms. Munjal. He said that the engineer will guarantee that all of the Board's questions are answered. He asked if the Board would consider continuing the application for another month in order to make sure that everything is done properly rather than voting no.

Chairman Kudrick said that it would be up to the Board to decide if they would want to continue this application. He stressed that this is the Town's water supply which cannot be replaced. He said that he worked for a water department where a well was lost from a gravel operation. He said that the board asked for a lot of information 2 months, ago and still did not receive it.

Chairman Kudrick said that if the Town loses the wells, they would lose 1 million gallons a day and would cost \$4-5 million to find another site for another well. The Town's water supply cannot be replaced. It is very important.

Mr. Voydatch said that nothing will run into the aquifer if they are very careful.

Chairman Kudrick reiterated that Emery & Garrett's report states that removing the material will decrease the storage of the Town's wells. He said that the Board has to protect the Town and the water system.

MOTION: Member Carlucci moved to close **Case 21-09-Z A request for a Variance under Article IXA Soucook River Development (SR) District, §143-72.6 Permitted Uses.** Seconded by Vice Chairman Hebert.

VOTE: B. Kudrick – Y T. Hebert – Y D. Carlucci – Y
 N. Glisson – Y P. Paradis – Y

MOTION TO CLOSE CASE 21-09-Z A REQUEST FOR A VARIANCE UNDER ARTICLE IXA SOUHOOK RIVER DEVELOPMENT (SR) DISTRICT, §143-72.6 PERMITTED USES PASSED ON A 5-0 VOTE.

Member Glisson summarized **Case 21-09-Z** continuation: Mr. Voydatch stated that he completed the requested engineering plans - the hydrogeological study. He said his biggest challenge is Pembroke's pipes for the water. He said that he would not be able to develop the land because the Town needs to decide how to handle the water in the Town's pipes. He also stated the dangers and hazards if the road were to be extended. He said that an engineer would be hired to make sure that all State and local laws were followed. Chairman Kudrick clarified that the water was not Town water but instead was stormwater that technically belongs to the State. Chairman Kudrick asked how far down they would be digging for gravel. Mr. Voydatch said that he did not know and that it would be up to the engineers. Chairman Kudrick stated that one of the questions the Board had, was how far down they would dig. Chairman Kudrick directed the attention of the Board to page 3 of the report which stated that the water supply to the Town would be decreased. Mr. Voydatch stated that he feels that there are good people in the Town that would protect the Town's water supply. Chairman Kudrick stated that the decrease of water would be detrimental. No one spoke for the application. Bob Bourque of Pembroke spoke against it due to the damage that it would do to the aquifer. Mr. Carlucci wanted to direct the attention to the recommendation of low impact development for the land. Mr. Voydatch assured the Board that the State would protect the water (the aquifer supply). Vice Chairman Hebert clarified that there was certain information that the Board would like to see in order to make this decision. Mr. Voydatch stated that engineers spoke with Carolyn Cronin about the project and suggested that the Board continue the application. Chairman Kudrick stated that the wells cannot be replaced.

Chairman Kudrick asked Mr. Voydatch if he had any other information to share with the Board because once the meeting is closed, he would not have a chance to speak.

Mr. Voydatch said that the property owner paid a lot of money for the land and cannot develop the land at all. He said that, the way the land sits today, the owner cannot even put a house on it because of the Town's water.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:28 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

1. **The variance will not be contrary to the public interest.** Chairman Kudrick said that he was very concerned with this application because it may affect the Town's water supply. He said that the application would alter the character of the neighborhood because it would go from a commercial property to a gravel pit which is not allowed.
2. **The spirit of the ordinance is observed.** Member Carlucci said that much of the Town's ordinance is based on the Master Plans. In the 2004 Master Plan, the Soucook River Development District was slated to increase our commercial development. Since the Town, in 2004, only had 6.9% of Town land for commercial development, he said that it would be against the spirit of the ordinance.
3. **Substantial justice is done.** Chairman Kudrick said that there is potential harm to the general public because of the potential damage to the Town's wells which must be protected.
4. **Property values are not diminished.** Chairman Kudrick said that there was no proof that property values would decrease. Member Glisson stated that the property may not be able to be used for commercial development in the future if the gravel was removed. Chairman Kudrick agreed because the gravel was not going to be moved around the site in order to construct a building. In this case, the gravel would be removed.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

(A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one. Chairman Kudrick said that, in the past, people have considered doing something with the property that would have fit nicely. Although Mr. Voydatch stated that there was no access to the property, Chairman Kudrick pointed out that there is access to the property from Kline Way. He does not believe that there is any hardship.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

Vice Chairman Hebert said that, in reference to Case 21-09-Z an application for a Variance was presented to the Board for consideration because sand and gravel excavation, as a primary use, is not allowed in the Soucook River Development District.

MOTION: Vice Chairman Hebert moved to deny the application (Case 21-09-Z A request for a Variance under Article IXA Soucook River Development (SR) District, §143-72.6 Permitted Uses) as presented. The reason for denial follows along with the criteria as outlined in the application process. As Items 1 and 2 are related, the proposal would be contrary to the public interest and goes against the spirit of the ordinance. (1) A sand and gravel operation is not allowed in this zone as per

Town regulations. (2) The proposal does not follow the Master Plan use for this area. (3) The potential loss or damage to a well threatens the public's health and welfare and the cost to treat or source a new supply is estimated at being in the millions of dollars and such cost would be passed onto the consumer. (4) As to substantial justice, it would not be done because the applicant would benefit by having his request granted but the taxpayers could be burdened with treatment and/or the sourcing of a new water supply. (5) As to unnecessary hardship, he believed that it is not shown in Part A that the zoning restriction of not allowing a sand and gravel operation in that area is, indeed fair and substantial in order to protect the Town's water source. Part B, as to the proposed use being a reasonable one, there are preexisting permitted uses for that property as outlined in the Master Plan other than a sand and gravel operation. Seconded by Member Carlucci.

VOTE: B. Kudrick – Y T. Hebert – Y D. Carlucci – Y
 N. Glisson – Y P. Paradis – Y

MOTION TO DENY THE APPLICATION (CASE 21-09-Z A REQUEST FOR A VARIANCE UNDER ARTICLE IXA SOUHOOK RIVER DEVELOPMENT (SR) DISTRICT, §143-72.6 PERMITTED USES) AS PRESENTED, PASSED ON A 5-0 VOTE.

Case 21-10-Z A request has been made for a **Variance under Article IX Overlay Districts, §143-68, D. (8) Aquifer Conservation (AC) District Prohibited Uses**. The applicant, Steven Voydatch of 55 Jewett Rd., Dunbarton, NH 03046, is requesting a variance to allow sand and gravel excavation in the Aquifer Conservation (AC) District. The property is located at 612-644 Pembroke St., Map 634, Lot 7 in the Souhook River Development (SR) District and is owned by MNP Realty, LLC.

WHERE CASE 21-10-Z WAS DEPENDENT ON APPROVAL OF CASE 21-09-Z AND CASE 21-09-Z WAS DENIED, CASE 21-10-Z COULD NO LONGER BE HEARD.

Case 21-12-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, H Rear Setback**. The applicant, Carolyn Werner, of 529 Buck St., is requesting a variance to install an above-ground pool, 19' from the rear setback where 55' is required. The property is located at 529 Buck St., Map 870, Lot 1 in the R3 Rural/Agricultural - Residential Zoning District and is owned by the applicant.

Applicant: Carolyn M. Werner
 529 Buck Street
 Pembroke, NH 03275

Property Owner(s): Carolyn M. Werner
 529 Buck Street
 Pembroke, NH 03275

Property Address: 529 Buck Street
 Pembroke, NH 03275

Tax Map 870, Lot 1 in the R3 Rural/Agricultural - Residential Zoning District

Included in Member Packets: Application for Variance dated June 3, 2021; Tax Map, Assessing Card, List of Abutters.

Present: Carolyn M. Werner

Chairman Kudrick called the meeting to order at 7:42 p.m.

The Recording Secretary read aloud the case.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application 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.

He stated that anyone wishing to speak must first 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 its approval.

As requested by Chairman Kudrick, the Applicant read the application aloud:

Please give a detailed description of your proposal below. Ms. Werner said that, because of the way that the property is situated, she only has one place to install a pool. The best they could do was position the pool nineteen (19) feet from the rear property line.

1. **The variance will not be contrary to the public interest.** The above-ground pool would be in the back yard and down a slight hill. It would not be visible from the road and would be barely visible to abutting properties. The property line with any visibility is used for agricultural purposes.
2. **The spirit of the ordinance is observed.** I believe the spirit of the ordinance would be observed as the above-ground pool would not occupy more than 25% of the space, would not be visible from the road, would not create a nuisance for any abutters, would not create obstacles or visual barriers, or create any other manner of disturbance, and the pool would be 19 ft. from the rear property line.
3. **Substantial justice is done.** I lost my youngest brother just over two years ago, I am now raising his two young daughters. Having an above-ground pool would provide them with a family home with a yard suitable for gathering with family and friends. It also provides them with outdoor physical activity where bike riding is not an option due to the level of traffic on Buck Street. I am doing my best to provide the nurturing home they never had.
4. **The values of surrounding properties are not diminished.** Please see number two (above). Surrounding properties would have no negative impact from the installation of an above-ground pool behind the house at 529 Buck Street.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** (A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one. The property was built prior to the current ordinances going into effect. Due to the way the house is situated on the property, the only location an above-ground pool could be set up is on the right side of the house or behind the house just beyond the septic system/leach field. Both options would require a variance. The request to set up behind the house would better support the spirit of the ordinance as it would not be visible from the road or abutting properties.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it. I believe the criteria is established.

Stanley Grimes, Jr. said that he formerly lived at that address. He is presently an abutter. He spoke to all the abutters and no one has any objections. The pool will be behind the house abutting the hayfield. The pool would not be visible from the road and would sit down over a banking.

Harold Thompson of Buck Street said that he was in favor of the swimming pool.

No one spoke in opposition of the variance.

There were no questions from the Board.

Chairman Kudrick described where the property is located -- across from Mr. Grime's farm. There is a field behind the house and to the north there is a cornfield and a road. There are no real abutters except for a hayfield owned by Mr. Grimes.

Mr. Grimes said that there is 720 ft. of abutting property of which he owns 500 ft. He owns the east side, south side, most of the north side of the property under discussion. There are abutters on the west side. The pool would be located where there is still a stone wall and trees along it. It is isolated.

Vice Chairman Hebert asked Ms. Werner to comment on the condition of the existing septic system.

Ms. Werner said that the septic system is an older system, but asked Mr. Grimes to comment.

Mr. Grimes said that the septic system is behind the house. There is a banking that sits approximately 5 ft. below the house elevation where the pool is proposed. The septic system is located approximately at the middle of the house. He said that the pool would be below that and to the side.

Ms. Werner said that when she purchased the house and they inspected the system, she was told that it was an old pipe and stone system and was in good shape. She also said that there was only Mr. Grimes' mother and father who lived there for years and then eventually only his mother lived there before her passing so the system did not get an abundance of use.

Vice Chairman Hebert explained his reason for asking: Should the septic system fail, he wanted to be sure that there would be adequate space to put another one in.

Ms. Werner said "Definitely".

Mr. Grimes said that the present septic system is not the original one. The existing septic system was installed in approximately 1980 and was checked out before Mrs. Werner purchased the house and was determined to be a good system.

Member Glisson summarized the case as follows: This is **Case 21-12-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, H. Rear Setback**. The Applicant, Carolyn Werner read through the criteria and described that there is one place that they would be able to put the pool. She went through the criteria. Stanley Grimes, Jr. stated he spoke to all the abutters and they are all in favor of this pool. Another abutter, Harold Thompson, also spoke in favor. Chairman Kudrick stated that the main abutter is agricultural property. Mr. Grimes clarified that it is a very private property, with trees, and a stonewall. Mr. Hebert asked if the septic system was an old septic system. Mr. Grimes clarified that there would be enough space to build a new septic system should the existing one fail.

There were no other comments or questions from the Applicant or the Board.

Chairman Kudrick stated that the Board would decide the case within 30 days. The Notice of Decision would be posted for public inspection within 5 business days of the decision and would be sent to the applicant. The Board will either approve, deny, or continue deliberation. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:47 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

1. **The variance will not be contrary to the public interest.** Alternate Member Bourque said that it would not be contrary. Chairman Kudrick agreed.
2. **The spirit of the ordinance is observed.** Chairman Kudrick said that the property is limited in space and felt that the spirit of the ordinance is observed.
3. **Substantial justice is done.** Alternate Member Bourque and Chairman Kudrick agreed.
4. **Property values are not diminished.** Chairman Kudrick said that the surrounding properties are hayfields and would not diminish the property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Chairman Kudrick said that Ms. Werner has a hardship because it is a very small lot, and the ground goes away from there and does not have a lot of room to put the pool without being in the setback. This case is a hardship of the land. Vice Chairman Hebert, Member Carlucci, and Alternate Member Miner expressed their agreement.

Vice Chairman Hebert said that, in reference to **Case 21-12-Z**, where an application for a variance was presented to the Board for consideration, a variance is required because the proposed construction is closer to the rear lot line than what is allowed by code.

MOTION: Vice Chairman Hebert moved to approve the application as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) Construction to adhere to the plans as presented indicating that the pool will be no closer than 19 feet to the rear lot line; (3) Prior to the start of construction, the Applicant must coordinate with the Code Enforcement Officer for a site visit. The purpose of the site visit is to identify the property line in question and the location of the proposed pool in relation to that property line. Seconded by Member Carlucci

VOTE: B. Kudrick – Y T. Hebert – Y D. Carlucci – Y
 N. Glisson – Y P. Paradis – Y

THE MOTION TO APPROVE THE APPLICATION AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO ADHERE TO THE PLANS AS PRESENTED INDICATING THAT THE POOL WILL BE NO CLOSER THAN 19 FEET TO THE REAR LOT LINE; (3) PRIOR TO THE START OF CONSTRUCTION, THE APPLICANT MUST COORDINATE WITH THE CODE ENFORCEMENT OFFICER FOR A SITE VISIT. THE PURPOSE OF THE SITE VISIT IS TO IDENTIFY THE PROPERTY LINE IN QUESTION AND THE LOCATION OF THE PROPOSED POOL IN RELATION TO THAT PROPERTY LINE PASSED ON A 5-0 VOTE.

Case 21-13-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, F Front Setback**. The applicant, David Michaud, of 147 Pembroke St., is requesting a variance to install an 8' x 8' foot mudroom, 17' from the front setback where 30' is required. The property is located at 147 Pembroke St., Map 266, Lot 99 in the R1 Medium Density - Residential Zoning District and is owned by the applicant.

Applicant: David Michaud
 147 Pembroke Street
 Pembroke, NH 03275

Property Owner(s): David Michaud
 147 Pembroke Street
 Pembroke, NH 03275

Property Address: 147 Pembroke Street
Pembroke, NH 03275

Tax Map 266, Lot 99 in the R1 Medium Density - Residential Zoning District

Included in the Member Packets: Tax map, assessing card, list of abutters, Residential Permit-Minor Alterations and Repairs, NH Residential Energy Code Application, hand-drawn picture of house and property.

Present: David Michaud

Chairman Kudrick called the meeting to order at 7:53 p.m.

The Recording Secretary read aloud the case.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application 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.

He stated that anyone wishing to speak must first 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 its approval.

As requested by Chairman Kudrick, the Applicant read the application aloud:

Mr. Michaud said that the property was created before the zoning ordinance existed. He is surrounded by 3 streets. He would like to remove the existing deck and replace it with a smaller mudroom, next to the garage door. It is the only place to put it.

Please give a detailed description of your proposal below. Remove existing deck (18' x 10') and open roof (6' x 4'). Pour 4' frost wall. Pour concrete slab for 8' x 8' mud room. This new addition would exist inside the (18' x 10') deck (existing).

1. **The variance will not be contrary to the public interest.** The footprint of the mud room would be smaller than the existing deck structure and would be within the current boundaries of the existing deck.
2. **The spirit of the ordinance is observed.** It is not increasing the encroachment of the set-back. It will, in fact, reduce the encroachment.
3. **Substantial justice is done.** The current deck is older and in need of repairs. Being able to replace it with a smaller mudroom would give substantial relief to the owner without affecting neighboring properties.

4. **The values of surrounding properties are not diminished.** Replacing the deck will improve the appearance of the property and will ensure property values remain where they are currently.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** (A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one. The current house is within the setback. The property is surrounded on 3 sides with streets. The current deck is larger and encroaches more on the setback than the proposed mudroom would.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

There were no questions from the Board and no one spoke in favor or in opposition to the case.

Chairman Kudrick said that the Applicant’s deck is presently encroaching the setback more than the proposed mudroom would be.

Alternate Member Bourque said that it would be less nonconforming.

Member Glisson summarized the case as follows: **Case 21-13-Z** is a request for a variance. The Applicant stated that he would be removing the existing deck and replacing it with an 8’ x 8’ mudroom. He stated that there is a hardship in the property due to the three roads that surround him. The Applicant read through the criteria, no one spoke for or against.

There were no questions from the Board and the Applicant had no further comments.

Chairman Kudrick stated that the Board would decide the case within 30 days. The Notice of Decision would be posted for public inspection within 5 business days of the decision and would be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:56 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

1. **The variance will not be contrary to the public interest.** Chairman Kudrick said that he saw no problems with this request. Vice Chairman Hebert agreed.
2. **The spirit of the ordinance is observed.** Alternate Member Bourque agreed.
3. **Substantial justice is done.** Alternate Member Bourque agreed.

4. **Property values are not diminished.** Chairman Kudrick said that the value would not be diminished because the Applicant would be making the property better.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Chairman Kudrick said that the hardship is that everything is in the setback because the lot was established many years ago and is very small. Vice Chairman Hebert added that it is a unique setting with 3 frontages.

Vice Chairman Hebert said that this is a motion, in reference to **Case 21-13-Z** application for a variance having been presented to the Board for consideration. A variance is required because the proposed addition is located closer to the front setback than what is allowed by regulation.

MOTION: Vice Chairman Hebert moved to approve the application (**Case 21-13-Z A request for a Variance under Article V Dimensional and Density Regulations, §143-21, F Front Setback**), as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) Construction to comply with the plans as presented indicating the proposed addition would be no closer than 17 feet from the front setback; (3) Prior to the start of construction, the Applicant must coordinate with the Code Enforcement Officer for a site visit. The purpose of the site visit is to identify the property line in question and the location of the proposed construction in relation to that property line. Seconded by Member Carlucci.

VOTE:	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO APPROVE THE APPLICATION (CASE 21-13-Z A REQUEST FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, F FRONT SETBACK), AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO COMPLY WITH THE PLANS AS PRESENTED INDICATING THE PROPOSED ADDITION WOULD BE NO CLOSER THAN 17 FEET FROM THE FRONT SETBACK; (3) PRIOR TO THE START OF CONSTRUCTION, THE APPLICANT MUST COORDINATE WITH THE CODE ENFORCEMENT OFFICER FOR A SITE VISIT. THE PURPOSE OF THE SITE VISIT IS TO IDENTIFY THE PROPERTY LINE IN QUESTION AND THE LOCATION OF THE PROPOSED CONSTRUCTION IN RELATION TO THAT PROPERTY LINE PASSED ON A 5-0 VOTE.

Case 21-14-Z A request has been made for a **Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3**. The applicant, Panciocco Law LLC, One Club Acre Lane, Bedford, NH 03110, is requesting a Special Exception to construct six townhouse units. A Special Exception is required under §143-19, residential use #3. The property is located at 11-13 Kimball St., Map VE, Lot 132-1 in the B1 Business - Residential Zoning District and is owned by Kimball Street LLC, 27 Park Lane, Hooksett, NH, 03106.

Applicant: Panciocco Law, LLC
1 Club Acre Lane
Bedford, NH 03110

Property Owner(s): Kimball Street, LLC

Property Address: 11-13 Kimball Street
Pembroke, NH 03275
Tax Map VE, Lot 132-001 in the B1 Business - Residential Zoning District

Included in the Member Packets: Letter to Zoning Board of Adjustment from Panciocco Law, LLC dated June 7, 2021; Authorization letter to Zoning Board of Adjustment from Kimball Street, LLC dated June 7, 2021; Email to Carolyn Cronin from Matt Gagne of Pembroke Water Works dated June 21, 2021; N.H. Land Consultants conceptual layout for Kimball Street, LLC; tax map; assessing card; list of abutters.

Present: Patricia Panciocco, Esq.

Chairman Kudrick called the meeting to order at 8:03 p.m.

The Recording Secretary read the case aloud along with the letter addressed to the Zoning Board of Adjustment from the Pembroke Sewer Commission dated June 28, 2021.

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.

Attorney Panciocco said that she is presenting on behalf of Kimball Street LLC.

She said that Kimball Street LLC owns a 1.2 acre parcel of land located in the Village District in the block with Church, Main, Glass and Kimball Streets, a densely populated area. Tax Map VE 132, Lot 1. Sewer and water are both available in the street along the frontage of the property. Referring to the handout presented, she said that the first page is a rendering which shows 8 townhouses in a row. She said that the Applicant is proposing 6, as is allowed under the ordinance with special exception. She provided the rendering in order to give the Board a sense of what is being proposed as to the structures themselves.

Page 2 shows photographs taken along the frontage of the property. It is heavily wooded and largely untouched. The next set of photographs were taken in front of the property looking to the North and South standing in front of the property to give the Board a sense of what the neighborhood is like.

Attorney Panciocco said that page 3 has a few photos taken along Church Street, the block within which this property is located.

Page 4, is an overview of the tax map of the area. The property is outlined in a heavy black line. With the exception of the parcel marked “BANK”, this is the largest parcel in this city block. There are numbers on certain parcels. For example, above the Bank there is a 19, 2, 3, etc. These denote the number of units that exist on those particular lots. Clearly, the ones that are unmarked are single family homes. This block is a mixed use of residential and a commercial bank on one corner.

The last page is also a reference. It provides the addresses of all the properties listed on the prior page. For valuation purposes, the assessed value from the tax cards or the sale price was noted in order to give the Board a point of reference of the values of properties in the area given the criteria that needs to be satisfied for a special exception to be approved. In the last column, is the square footage that was noted on the assessor card for each lot. When calculated, it showed that many of the single family homes have very modest lot sizes.

Attorney Panciocco said that the Applicant is asking for 6 units and the square footage of the lot attributed to each unit is approximately 8,800 sf. which is far greater than what is listed on many of the single family homes.

With regard to the application, Attorney Panciocco said that the plot plan shows 147 ft. of frontage along Kimball Street where the fence is shown in the photo. The property is also split-zoned. The front portion of the property (marked on the site plan prepared by the surveyor) is zoned B1. The rear portion is zoned B2. A threshold matter for the board before taking up the criteria for the special exception would be a determination, if the Board finds that the criteria is met, which zoning district should control the parcel. Per §143-EF of the Town’s ordinance, she said that the Board can choose whether the Board would prefer to categorize the property as B2 (rear portion) or find that most of the proposed development is in the B1 zone. The Applicant would like the Board to make a finding on this for the record.

Attorney Panciocco said that they are requesting the special exception for the 6-unit multi-family as shown in the drawing. She said that a special exception, by definition, is a permitted use under the ordinance provided that the criteria listed in the ordinance are met. The criteria appear in §143-113 of the ordinance.

She said that, as to the setbacks for the two individual zoning districts, the Applicant needs both, therefore, whichever zoning district the Board chooses this land to be located in, the Applicant can meet all the set backs. She said that the parking also meets the setback in the front.

Attorney Panciocco said that the property is located in a thickly settled area. The documents that she assembled in the packet confirmed that multi-family homes are present within the city block. The estimated value of each unit averages \$195,000 using the assessed values from 2020, with the exception of the TD Bank’s site which is the only commercial site. All other uses are residential.

Attorney Panciocco pointed out that the July 20th draft Master Plan section for housing that was on the website, identified a need in the Town for 101 new units for housing in Pembroke. They specifically

identified a need for housing with less than 3-4 bedrooms because so many of the homes are that large and out-of-reach for many first-time buyers and for people looking to downsize.

She said that the Applicant has water and sewer as is required in the zoning ordinance for multi-family.

Chairman Kudrick pointed out that, as of today, and as mentioned in the letter from the Pembroke Sewer Commission which was read earlier, the Applicant does not have sewer.

Attorney Panciocco said that when she spoke with the Sewer Department, their understanding was that there has been an agreement between Pembroke and Allentown and it is a matter of an administrative approval by the EPA to approve the agreement that they have reached, and that eventually, permits will issue.

Chairman Kudrick said that he cannot get into details because he does not know if it is public knowledge, but there is a problem with Allentown's permit. It is a gallonage permit. He said that Attorney Panciocco is correct that it is with EPA, but as of today the Applicant does not have sewer capacity in the Pembroke system.

Attorney Panciocco agreed. She said that the Applicant is asking the Board to condition for that because eventually the permit will issue. She clarified that when she stated that they had sewer and water available, she was referring to the mains in the road. She understands that they do not have the permits.

Chairman Kudrick said that Pembroke and Allentown have been working on an agreement for at least 5 years and have not reached an agreement yet. He said that he wants to make sure that Attorney Panciocco realizes that the Applicant must meet all the requirements on all 9 of the criteria. He said that if they miss one of them, the Board must deny the application under the Town's regulations.

Attorney Panciocco said that under §143-117, the Board can approve subject to conditions.

Chairman Kudrick said that the Board does not do that. The Zoning Board can either approve, deny, or continue the application to the next meeting. The Planning Board can put conditions but the Zoning Board cannot.

Attorney Panciocco read aloud: **"§143-117- Conditional approvals. Updated on 3-9-2021 172 of 180 The Board, in granting a special exception or variance, may impose such conditions or safeguards it deems appropriate."**

Chairman Kudrick said that in the 30 years that he has been on the Zoning Board, the Board has never made conditional approval waiting for sewer.

Attorney Panciocco said that under the law, the Board has the authority to approve any application.

Chairman Kudrick emphasized that the Board has never granted a conditional approval for sewer.

Alternate Member Bourque asked if Chairman Kudrick would consider getting legal advice prior to the next meeting.

Chairman Kudrick asked the Board if they would like to continue the case in order to obtain legal advice from Town Counsel. The Board said yes.

Member Glisson said that, like in the prior cases, the Board grants conditions on approval such as following all local and state laws, but the Zoning Board does not grant conditional approvals.

Chairman Kudrick clarified that the Zoning Board does not grant approval based on a condition that Pembroke will issue sewer in the next year or so.

Attorney Panciocco said that she would like to take the chance of the Board seeking legal advice because she knows that the Board can grant a conditional approval and because the sewer and water lines are right in front of the property and they are second in line for a permit. She is open to a continuance.

Chairman Kudrick clarified for the Board and the audience, that the Applicant has to have an adequate water supply and sewer system. They presently do not have approval from the Pembroke Sewer Department to hook up to the sewer but they do for water. He said that the Board can only approve, deny, or continue the case to the next meeting. He said that if the vote goes through, they will continue the case until the next meeting, July 26, 2021 and the location and time will be posted on the Town's website.

Vice Chairman Hebert wanted to clarify the difference between approval by the Sewer Department for capacity and approval by the Sewer Department for hookup. He said that his understanding is that the Sewer Department has approved their hooking up to an existing system but, at the present time, does not have the capacity.

Chairman Kudrick said that, by RSA, since the Applicant is within 100 ft. of the sewer line, they have to hook up, but they do not have the capacity needed for the request.

MOTION: Alternate Member Bourque moved to continue **Case 21-14-Z A request for a Special Exception under Article IV Use Regulations, §143-19 Table of Use Regulations #3** to the August 23, 2021 meeting. Seconded by Member Carlucci.

VOTE:	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO CONTINUE CASE 21-14-Z A, REQUEST FOR A SPECIAL EXCEPTION UNDER ARTICLE IV USE REGULATIONS, §143-19 TABLE OF USE REGULATIONS #3, TO THE AUGUST 23, 2021 MEETING PASSED ON A 5-0 VOTE.

Attorney Panciocco asked that when the Board speaks to Town Counsel, that they make it clear that there is a sewer main in the street.

Chairman Kudrick recessed the meeting at 8:20 pm.

Chairman Kudrick continued the meeting at 8:30 pm.

Case 21-16-Z A request has been made for a **Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3**. The applicant, Keystone Pembroke LLC, 17 Bridge St., #203, Billerica MA 01821 is requesting a Special Exception to construct 65 dwelling units: 3 single family houses, 2 two unit buildings, 1 four unit building, and 9 six unit buildings. A Special Exception is required under §143-19, residential use #3. The property is located at 42 Whittemore Rd., Map 634, Lot 23 in the LO Limited Office District and is owned by the applicant.

Applicant: Keystone Pembroke, LLC
17 Bridge Street #203
Billerica, MA 01821

Property Owner(s): Pembroke Golf, LLC

Property Address: Whittemore Road
Pembroke, NH 03275
Tax Map 634 Lot 23 in the in the LO Limited Office District

Included in Member Packets: Request for findings of Fact Under zoning Ordinance Section 143-68F from Charles Cleary, Esq. dated June 4, 2021; Memo to Zoning Board from Carolyn Cronin, Town Planner dated June 11, 2021; Email to Lisa B. Murphy, Carolyn Cronin, harungal@msn.com; vgreco72@gmail.com from Matt Gagne of Pembroke Water Works dated June 11, 2021; Email to Zoning Board from Vincent Greco, Pembroke Health Officer dated June 8, 2021; Tax Map; Assessing Card and Abutters' List.

Present: Attorney Charles Cleary; Robert MacCormack; Tim Peloquin, Surveyor; and Jeffrey Merritt of Granite Engineering

Chairman Kudrick opened the public hearing at 8:32 PM

The Recording Secretary read the case aloud.

Alternate Member Bourque recused himself.

The Recording Secretary read aloud the June 28, 2021 letter from the Pembroke Sewer Commission to the Zoning Board regarding sewer capacity.

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.

Attorney Cleary asked Chairman Kudrick to run their proposal by Town Counsel also. He said that he somewhat agrees with Attorney Panciocco in that the Board has a two-year window on approvals for a Special Exception. If the Board chose to, the Board could consider availability of sewer to be “in the pipeline”. He said that it is not a matter of time for the Applicant but rather a matter of commitment by the Town to approve this project. He said that he thinks that the Board is aware of the overall plan because the clubhouse came before the Zoning Board and was approved for the golf course and then Mr. MacCormack and Attorney Cleary went to the Board of Selectmen and received permission to move forward with this project in terms of a discretionary easement that is on the golf course. He said that the idea is to use the residential development to fund the construction of the clubhouse and, therefore, prolong the life of the golf course.

Chairman Kudrick asked if the Applicant wished to continue this case to the next meeting.

Attorney Cleary said not yet because he needs the commitment from the Town that the project can be done in order to build the clubhouse which is the primary goal.

Chairman Kudrick asked if they understood the Zoning Board’s position and that they can only approve, deny, or continue a case to a future meeting.

Attorney Cleary said yes. He said that they would probably continue the case to the next meeting but that they have amended through discussion and based on what they overheard Chairman Kudrick say in the last case, they believe that they could go forward with a private sewer system pending approval from the Sewer Department.

Chairman Kudrick said that they would then need to come in with a plan showing the private sewer system. He said that all the Board requests is that the Applicant has, in the conditions, water and sewer whether on a sewer system or a septic system. At the present time, the application reads that it is on Town sewer.

Attorney Clearly said that, at the time, they did not know what the Board’s pleasure would be in terms of granting the special exception with the capacity issue.

Chairman Kudrick said that the contingency plan would have to be presented.

Jeff Merritt of Granite Engineering said that there is a fundamental difference between the last case, which had an acre of land, and their case which has approximately 300 acres over all. In a municipality where municipal sewer was not available, we would do a project like this with a private system and they are comfortable doing so. He said that the Board would like to see something, but where they sit, it is difficult for the Applicant to spend the resources to engineer something before he knows that he has the project.

Chairman Kudrick said that he is only following the rules which specifically says that it must show that there is an adequate water supply and a sewer system. They must see the documentation for the systems because the Board is responsible for the approval.

Mr. Merritt said that if they could not fulfill that requirement, then they would not have a project.

Chairman Kudrick said that the Board cannot approve something on your word alone that a septic system would be installed.

Mr. Merritt said that the process after the ZBA is a lengthy process through the Planning Board where they review the project and there is also a State process.

Chairman Kudrick reiterated that they must see a sewer system somewhere on a set of plans.

Robert MacCormack said that every project that he has ever done, at this stage, has always asked that they get a registered engineer certified that he can install something and he stamps that document which certifies that he has done the research and that it can be done. To ask them to go out and engineer something that may cost \$70,000 and then at the next ZBA meeting could deny it for another reason, is not a reasonable expectation for them.

Member Carlucci said that if there were a septic design would that be adequate to hear the case?

Chairman Kudrick said that he is looking at and going by the exact wording that says "sewer system". He said that he can discuss the question with Town Counsel but needs to see sewer lines or a septic system on the property that these units will be served by.

Mr. Merritt said that he agreed. They would obviously prefer to tie into a municipal sewer but to tie into a municipal sewer, at this level, does not include plans to do so. He said that it basically says that a project is by a road that has municipal sewer and, therefore, going through the engineering process we should be able to tie into it. It is the same thing on a septic system. He said that going through the engineering process, they know that they can build a system to meet the spirit of intent of what the ordinance is saying. He said that he thought that it was the same whether they go private or public as long as it is put into the record that that is the avenue that they choose. If municipal sewer is not available, then we would go private and the burden is on the developer to do so.

Chairman Kudrick said that if the Applicant would like a continuance in order for the Board to get clarification, that would be acceptable.

Attorney Clearly clarified that Mr. Merritt is offering a reliance letter that a sewer system can be built on the site.

Chairman Kudrick said yes, that he wants to see that a septic system can be built at a specific location for the project. The point will have to be clarified by Town Counsel.

Mr. Merritt said if there is a way that such as a letter or other document that is not so in-depth and with the understanding that, post approval, they could go the Planning Board, the State of New Hampshire, and do the approval process necessary, he thought that it could be done for a cost that would not be as significant.

Chairman Kudrick said that he is not comfortable going any further with this until he has a better understanding from Town Counsel.

Vice Chairman Hebert asked if Chairman Kudrick was thinking of a “doctored up” site plan or document stating that they have looked into this and anticipate that the system would be in a specific location to serve a specific set of units just to save the applicant that investment.

Chairman Kudrick said yes. He said that the Board does not need the perc test, etc., he just needs to know that what they are putting in will be serviced by a septic system.

Tim Pelloquin said that he is a licensed land surveyor and septic designer. He said that Chairman Kudrick’s point is good. They are looking for something that is not a full design, because once they engineer every individual house, come to one point where it will eventually hook to a municipal sewer, which is their full intention, yet they would go another direction which could be a sand bank that would work well for this type of thing. Perc tests are cheap money. The harder part is to engineer all the gravity feed, and what has to happen. He said that a full site plan has to be created in order to get to that point. He said that they can, with all confidence, show a suitable private sewage system area.

Chairman Kudrick said that the Town Planner will call legal counsel.

Attorney Cleary asked that the Board also ask Town Counsel if the existence of sewer lines, given the fact that it is just a capacity issue, meet adequate sewer under the special exception material which was the issue that the attorney in the prior case asked the Board. He said that he thought that the prior attorney was asking if Section 8 be read to find that sewer is available in the present situation.

Mr. MacCormack made the point that it places a large burden on them. He said that the Town is asking them to spend substantial amounts of money in order to make sure that a special exception can be approved and yet, on the next item which is a Variance, they could be denied. From a practical point of view, it would seem to make more sense to get the 2 things that do not require the special exception to either be approved or denied and then to go to the special exception and then spend the money because it is the only thing that they are relying on.

Chairman Kudrick said that he understood what Mr. MacCormack was saying but that there are a number of issues in this special exception that need to be addressed. He said that the Board always takes care of the Special Exception first and then usually the next case falls into place.

Attorney Cleary said that they would like to continue the hearing.

MOTION: Member Paradis moved to continue **Case 21-16-Z, Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3** to the July 26, 2021 meeting. Seconded by Vice Chairman Hebert.

VOTE:	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO CONTINUE CASE 21-16-Z, SPECIAL EXCEPTION UNDER ARTICLE IV USE REGULATIONS, § 143-19 TABLE OF USE REGULATIONS #3 TO THE JULY 26, 2021 MEETING PASSED ON A 5-0 VOTE.

Chairman Kudrick reminded the audience to check the Town's website for the location of the next meeting.

IV. Approval of Minutes – May 24, 2021

MOTION: Tom Hebert moved to approve the minutes of May 24, 2021 as amended. Seconded by Alternate Member Miner. Unanimously approved.

V. Other Business / Correspondence

Chairman Kudrick said that, with regard to the sewer, there is a problem with Allenstown's permit, which is not Allenstown's fault. The new permit went to EPA but because of COVID and everyone working at home, the permit was sitting in the office and the people who were suppose to be working on it were not working in the office.

He said that every 5 years, the permit must be renewed. In the case of Hooksett, Chairman Kudrick said that he renewed his permit 4 years ago and was suppose to hear back within a year. The applicant has 180 days to submit the permit application. Sometimes the process goes on for 10 years before the treatment plant hears from EPA. They are allowed to function and work off the old permit.

He said that that was the situation with Allenstown. They asked for an increase in their permit and because the paperwork was delayed, they are working off the old permit which is for less gallonage. Also, with the agreement situation between Pembroke and Allenstown, even if they get the new permit, they still have to have an agreement between the Towns. He said that that is why it could be a long time and would advise not conditioning anything that has gallonage at the treatment plant because no one knows what will happen.

Alternate Member Miner said that he understands that sewer is an issue in Town but it was only No. 8 on the criteria list. He asked if perhaps the Board should have looked at the other criteria.

Chairman Kudrick said that the Board specifically focused on criteria No. 8 because the applicant heard the prior case and the Board had the letter from the Sewer Department indicating that there is no gallonage and the rule is that if one of the 9 criteria is not met, then the case is denied.

Alternate Member Miner said that he understood but if the Board does not go through the other 8 criteria, the Applicant does not have a chance to go through and make any corrections to those other 8 criteria.

Chairman Kudrick said that he did not look at it that way.

Member Glisson said that perhaps they should look at all criteria in the future.

Alternate Member Bourque said that with each case that had a Special Exception and a Variance, if there are issues with the Variance, the Board cannot tell the applicant until they come before the Board again. He said he would prefer to lay all the cards out on the table and tell the applicant what issues the Board has with both of them.

Chairman Kudrick said that that is a good question for Town Counsel.

He asked Ms. Cronin to also get clarification from Town Counsel on this question.

VI. Adjournment

MOTION: Alternate Member Bourque moved to adjourn. Seconded by Member Carlucci. Unanimously approved.

Meeting adjourned at 9:13 p.m.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary