

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
August 23, 2021
(ADOPTED)**

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

ALTERNATES PRESENT: Robert Bourque, Blakely Miner III

EXCUSED: Wendy Chase

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

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

Roll call was taken by the Recording Secretary.

PUBLIC HEARINGS:

Chairman Kudrick said that the first case was a continuation from the June 28, 2021 meeting.

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; email to Attorney Panciocco, Esq. from Carolyn Cronin dated July 6, 2021 and email to Carolyn Cronin from Laura Spector-Morgan, Esq. dated October 16, 2020; letter to Zoning Board of Adjustment from Pembroke Sewer Commission dated July 20, 2021.

Present: Patricia Panciocco, Esq.

Chairman Kudrick said that there was no need to read the case description since it was read at the June 28, 2021 meeting.

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 represents Kimball Street LLC. The property is approximately 1.2 acres and is shown on the site plan that was submitted to the Board. Lot #VE132-1 is in a densely settled area located in the Village District and is bounded by four sides by Church Street, Main Street, Glass Street, and Kimball Street. Under the ordinance, multi-family is permitted for up to 6 units with a special exception. Her client is proposing 6 units in a straight line across with parking in front.

The property is heavily wooded. Photos were submitted with the application showing the property from various sides. On the first page, the 2 photos are looking into the property which shows the heavily wooded lot with large trees. The second page is a view to the North and South with a view of the property. The homes are very close. This is the water and sewer area of the Town. Behind the property, on Church Street (page 3) several multi-family homes are shown. There is only one other type of structure within the block which is TD Bank, otherwise it is residential -- a mix of single family and multi-family homes.

Attorney Panciocco said that with regard to the land ratio per unit, this proposal is 8,800 sq. ft. of land per unit which is quite generous. Many units in the area within the block have smaller land areas compared to the footprint of the building.

She said that at the June meeting, there was a threshold issue that was mentioned. The plan by NH Land Consultants shows that the property is in a split zone. From Kimball Street back to where the property widens to the vacant area in the back, she said that it is the B1 Zone and, behind that, the property is in the B2 Zone. She said that she received an email from the Town stating that the Town's interpretation is that the B2 Zone can be extended forward up to 100 ft. in width from the District boundary. She said that her client meets all the setbacks whether in B1 or B2 but said that it would be helpful if the Board determined which specific Zoning District, B1 or B2, should apply to the site.

Attorney Panciocco said that the other issue that was brought to her attention at the June meeting, was Item #8 of the 9 points for the special exception which is whether or not the Board could waive the sewer requirement if the Applicant could demonstrate a septic approval would

be obtainable. She said that she received an email on July 14, 2021 from the Building Inspector that there has been a discussion with the Town Attorney. The email said that Chairman Kudrick and Vice Chairman Hebert conferred with Town Counsel regarding Item #8 of the Special Exception and that obtaining a waiver from the Sewer Commission to construct a septic system as well as proposing a location for it, would be satisfactory to fulfill the requirement of Item #8.

Attorney Panciocco submitted a letter dated July 20, 2021 from the Pembroke Sewer Commission indicating that the sewer waiver was granted. NH Land Consultant performed test pits at the rear of the property. A map was provided that showed where a septic system could be installed, and the soils would support a 12-bedroom septic system if the sewer is not available when the units are constructed.

She said that Article 143 of the Zoning Ordinance permits up to 6 units with a special exception. A special exception is permitted in B1 and B2 provided that they meet the criteria. She said that they are requesting the 6 units as shown in an area that is already populated with mixed single-family and multi-family housing use.

Attorney Panciocco also said that under the Master Plan posted on the Town's website, there is a statement that the Town was in need of housing units with less than 3-4 bedrooms. Her client is proposing 1-2 bedroom units to be constructed on the Kimball Street site.

Please give a detailed description of your proposal below:

Applicant is proposing to construct six (6) townhouse units at 11-13 Kimball Street. A multifamily with up to six (6) units is permitted in the B-1 Business/Residential District by satisfying the special exception criteria of Article 143, Section 113 of the Ordinance. 11-13 Kimball Street is split zoned as Business/Residential and Commercial Business. Each proposed unit will be serviced by municipal sewer and water.

Attorney Panciocco read aloud:

- 1. Please describe how the requested use is essential or desirable to the public convenience or general welfare.** The Town's Master Plan states the Town's goal was to encourage mixed uses within the village and other infill areas close to Town services. The town presently has only about half of the number of the entry level homes it currently needs. The availability of municipal utility services along the property's frontage and the surrounding multifamily/single family uses makes this location along Kimball Street convenient to walk to certain places for work and to increase entry level housing within the Town.
- 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 block in which the property is located is already a mix of single family and multifamily homes with small lots served by water and sewer and a limited number of business uses. Creating another 6-unit multifamily in this area is consistent with the Master Plan, will not change the area, and will fill a housing need within the Town.

Attorney Panciocco said that her client would not impair the integrity or character of the location and what they are proposing would not be detrimental to the health, morals or general welfare.

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.** Currently, the block extending from Main Street to Glass and Kimball to Church includes a mix of modest single family and multifamily uses with a property abutting the subject to the west having 19 units on one lot. In addition, TD Bank is located at the corner of Glass and Church Streets. Adding a 6-unit townhouse multifamily use to the mix will be consistent with the Town's Master Plan as well as the character of the existing area.

Attorney Panciocco said that new housing tends to elevate an area and encourages people to improve older properties.

Walkable communities are also better for residents. Because this project will have parking on the lot where the units are constructed, there will not be any on-street parking added to what is presently available. There are 2 spaces proposed for each unit along with a handicapped space. The location is consistent with the character and use of the area.

4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** The average assessed value of a residential unit within the block during 2020 was between \$170,000 and \$255,000. Most of these properties were existing homes and the applicant's proposed construction of 6 new entry level residential units at a price point about the 2021 values of the existing units will be above those values because the units are new, and will therefore not adversely impact property values within the area.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** Since a special exception is a permitted use under the Ordinance, within a specific location and under certain conditions, and up to 6 multifamily units are permitted by special exception, it does not meet the legal definition of a nuisance or unreasonable hazard; and the units will not create any more traffic than other units existing within the block.

There is heavy tree cover on site and the applicant intends to preserve as much of the tree buffer along the boundaries as possible during the construction.

6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Both municipal and sewer are available for all the proposed units along the property's frontage. Each unit will have 2 parking spaces located between Kimball Street and the front door into each unit. There are existing trees

along the north and south boundaries of the lot and a large open area located to the rear to screen the site from abutting properties.

Attorney Panciocco said that there is sewer in the street but they can also install a septic system if the sewer does not become available within the proper time. If a septic system is installed, it will be installed in the back of the lot behind the units away from the street.

7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** We are not aware of any abutter objections to the proposed use of the property but should those arise, we are prepared to address them. The applicant is proposing new single family townhouse units which are currently in high demand. There are existing trees along the property's sidelines for privacy.

Attorney Panciocco said that she has not received any objections by abutters at this time.

8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** Town issues with sewer availability with the Town of Allentown were recently resolved. The property owner is at the top of the list to tie into municipal sewer and municipal water is already available along the frontage of the property.

Attorney Panciocco said that water and sewer are available and the applicant can accommodate a septic system.

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.** Yes and perhaps a septic system.

Chairman Kudrick asked Attorney Panciocco if the applicant had met with the Police Department or the Public Works Department about the location of the driveway.

Attorney Panciocco said that they had not. They view the driveway permit as being part of the Planning Board process, but they will be consulted.

He asked if there were any other 6-unit buildings in the area.

Attorney Panciocco said that on Church Street there is an area where there are 19 units on one lot.

Chairman Kudrick asked if there was a building that has 6 units in the area around the proposed site.

Attorney Panciocco said that that there is a unit that is set back from Church Street that lists, on the assessment card, that there are 4-8 units in one building which abuts the Applicant's property. TD Bank is on the other side of that property. There is a 3-family on Church Street VE-134. There is also 3-family diagonally across the street on Kimball Street, and a 6-unit

building on Kimball Street (VE-85) which fronts on Main Street. She also said that VE-96 is a 3-family unit.

No one spoke in favor of the case.

Chairman Kudrick asked if anyone in opposition of the project wished to speak:

Earl Phair (179 Main Street) said that his property abuts the proposed site. The site used to be the old Bates' property. He said that the week before he bought his home, the proposed site was sold to Mr. Esch. He said that he was left in Esch's will to buy the property but when he approached Everett Hodge, the Code Enforcement Officer, to inquire what could be done on the site, he was told that only a single family home could be built on that property, so he did not buy the site. He is opposed to the project.

Gerry Fleury (21 Kimball Street) said that he submitted a letter to be read into the record and, therefore, did not feel it was necessary for him to read it verbatim. He said that there are serious safety issues with the proposed project. He said that there is an unreasonable traffic hazard that will result if the project is allowed to proceed. The entire frontage of the property is a "no parking zone" pursuant to Town Code, Chapter 191. The reason is that this portion of the street is a direct result of compromised visibility associated with the street, which varies in width and is most narrow at the location of this lot. The property would require a driveway permit which can never meet the requirements of Town Code Chapter 198-11 K, which requires "An all season safe sight distance of (200) feet in each direction", which this property clearly does not possess.

He said that another ordinance that would be impossible to comply with, given the layout of the proposed plan, is Town Code Chapter 133 regarding solid waste disposal. He read that: "Chapter 133-1 defines multi-family dwelling eligible for municipal trash and recycling pickup to be limited to no more than 5 units. Units greater than 5 are required to have commercial trash pickup service and a location on the property of sufficient size for a dumpster to be located such that it can be safely emptied. The plans for this property allocate all land between the setbacks to be allocated to parking spaces, with nothing allocated for a dumpster pad. In light of Chapter 198-K, it would be impossible to locate such a pad on the property, even at the expense of parking spaces. The proposed layout of the units and their parking spaces also fails to allocate any space for snow accumulation, which is a very real issue and is an acute problem for even single-family dwellings on the street."

With regard to sewage, Mr. Fleury said that it is not clear when sewer capacity would be available and it would be irresponsible to grant approval on a speculation of future sewer capacity.

He also said that there is ledge on the property.

Theresa Phair (179 Main Street) said that the proposed project would affect the value of their home. When they moved in, they were told that that land was landlocked. They had a chance to purchase it, but when they checked on constructing a 2-family home on the property, they were told that they could not do so.

Ed Sampadian (owner of 16-36 Church Street) said that he also approached the sellers about purchasing that property. He also spoke with the Highway Department and was told that the traffic pattern did not meet the sight requirements (to see 250 ft. in each direction). He also said that they presently get runoff into his properties (water in the basements). He was concerned that when the developer begins to strip trees from the site, there would be more water in their basements. He asked if the developer would address that issue.

Mr. Sampadian also said that it is his understanding that there is a storm drain that runs diagonally through that property from the top of Kimball Street, through the back of his property (34 and 36 Church Street) and runs to the exit of TD Bank.

He also said that there are 2 existing wells on the proposed site that are covered over with rocks.

There were no other comments in opposition.

Attorney Panciocco said that if there are wells on the property that need to be decommissioned in accordance with the Code, they will be taken care of.

She said that she does not think that they have arrived at the point where all the detailed information required for a formal site plan to be approved, which would include locating such things as a well, has been gathered yet because the application would not proceed without zoning approval.

With regard to the storm drain and TD Bank, she said that she does not have complete information because this is not a site plan drawing that was given to the ZBA. It is only meant to give the Board an idea of what the applicant is proposing. She said that she has not found any easements to the Town for a storm drain, but if there is one, she assured the Board that it would be taken care of. She said that “the law requires that you keep your water on your own property unless you have permission from the person” the water is being sent to.

With regard to runoff on the property because of her client stripping trees, she said that her client’s desire is to keep as many trees as possible. She said that, with Town sewer, she can avoid clearing the rear portion of the property where the septic system would otherwise have to go although there is much vegetation in that area. Controlling the runoff is part of the drainage study which is handled during the Planning Board’s site plan approval process.

Attorney Panciocco said that it was unfortunate that someone was told that the proposed site was landlocked, but her client cannot control what was said to somebody or what a prior town official may have said was permitted. The language is clear -- 6 units are permitted with a special exception. What is also clear is that the State is in need of housing and municipals have been called upon to do their fair part. Even the Town’s Master Plan says that Pembroke needs housing with less than 3-4 bedrooms. She said that she did not see how this proposal would be counter to the public interest.

With regard to the traffic pattern and concerns about traffic, Attorney Panciocco said that it is part of the site plan process. The Applicant will be required to get input from engineers and prove that they meet all the criteria of the Planning Board's site plan regulations.

Attorney Panciocco said that tonight's hearing is only about the use of the property.

She said that she has no evidence that states that 6 new townhouses will adversely impact single family homes in the neighborhood. If anything, it would improve the appearance by cleaning up the old fence along Kimball Street and installing landscaping.

With regard to Mr. Fleury's response to Special Exception Criteria No. 1: "... the Town's Master Plan is alleged to encourage mixed use within the village" Attorney Panciocco said that it is the Town's Zoning Ordinance that is encouraging that as well as the Master Plan. The Master Plan is a non-binding document that guides the redevelopment of a municipality. It does not do so at the expense of violating other ordinances. She said that the reason they are here is to reconcile everything together. Six town houses is not a safety threat and does not impact people. It provides housing for those that cannot afford the 3-4 bedroom homes.

In Item No. 2, Mr. Fleury states that "... construction of the project as described will impair the character of the neighborhood for abutters and street residents" Attorney Panciocco said that she understands that when there is a vacant parcel of land that is remaining and has been undeveloped for a very long time, it feels like a real invasion when someone comes along and tries to develop it. It is uncomfortable and scary for residents, because they do not know what to expect. The developer still has to abide by all the Town's codes and regulations and the Town's inspectors will visit the site as things are done and nothing will be done without approved plans.

Item No. 3 of Mr. Fleury's submission stated that: "The vast majority of the homes on Kimball Street are single family, with a single duplex and a single multi-family dwelling." Attorney Panciocco said that she thought that by using the term "single multi-family dwelling", Mr. Fleury may mean that there are multiple units in one dwelling, like her client is proposing. "The construction of a six-unit multi-family home will encroach on abutters and damage the character and value of their properties." Attorney Panciocco said that the project will not encroach on abutters because they meet all setback requirements in the zone. With regard to "damage the character and value", she said that there is no evidence before the Board to show that this will diminish values in the area.

Item No. 4 says to "Show that no factual evidence is found that the property value in the district will not be adversely affected by such use." Attorney Panciocco said that she can only refer to how the Town's assessor values the properties in the area. Individual units will have a higher value than most of the units in this particular block. By statute, the Town's assessed values are supposed to be fairly close to fair market value.

Mr. Fleury's response states "a negative impact associated with the higher population density." As previously stated, they have 8,800 sq. ft. for every unit. Not every site within this block has that size but some of the surrounding sites have less. She said that she has not heard that the smaller square footage of land to a modest-sized dwelling has hurt values in the area.

Item No. 5 – With regard to undue traffic, nuisance or unreasonable hazard, Attorney Panciocco said that they will not be parking on the street. They have off-site parking on the lot, in front of each unit that meets the Town’s regulations. She said that this will be examined by the Planning Board and be reconciled along with the visibility issue when a vehicle is entering or exiting the site.

With regard to the dumpster, trash pickup, and snow removal area, Attorney Panciocco said that if the project needs these items, so be it. At this time, they do not have a site plan before the Zoning Board. Site plan is a Planning Board matter. Her client is before the Zoning Board for use only on Kimball Street. They are proposing 6 townhouses in a neat little row on Kimball Street with off-street parking.

No. 7 mentions “valid objections from abutters”. Attorney Panciocco said she is glad to hear what the concerns are so that they may be addressed.

No. 8 of Mr. Fleury’s comments stated that “There is no evidence that sewerage system connections are available at this time.” Attorney Panciocco said that that is true. They have the septic. They have a licensed septic installer who dug a test pit on the site. The Applicant has spoken with NH DES and they can install a 12-bedroom septic system to accommodate this project. They also have town water in the street.

With regard to sewer, Attorney Panciocco said that she cannot speak to that because she does not know what the status is with EPA, but if it becomes available, they will certainly use it. The Applicant has a backup plan. The fact that the sewer issue between Pembroke and Allentown has not been resolved, is uncontrollable. The Applicant has a septic design that is reasonable and the Sewer Department has waived the requirement that the Applicant have Town sewer.

Chairman Kudrick asked the Town Planner if she was familiar with Town Code 191. Ms. Cronin stated that she was not familiar with it.

Mr. Fleury said that Section 191 is part of the ordinance that lists where parking is prohibited. This year, Kimball Street was added to the list. It covers the crest of the hill on Kimball Street.

Chairman Kudrick asked Mr. Fleury to discuss Section 198-11 K. Mr. Fleury said that Section 198-11 K is a driveway permit application process. “K” indicates that there must be a clear unobstructive view from both directions. He said that, at the driveway of that property, you cannot see in the down-hill direction.

Alternate Member Bourque asked Attorney Panciocco if she had any idea from the Sewer Department when sewer will be available.

Attorney Panciocco said that although they have asked, she does not have an answer. She said that she thinks that the Sewer Department is hesitant to commit.

Attorney Panciocco said that, as to the comment on site distance, she does not have an answer. She said that she does know that it is a process that requires specific measurements to be taken by professionals and will be placed in the hands of engineers during the planning process.

Chairman Kudrick said that he understands that some of this is done at the Planning Board, but the Zoning Board also looks at the traffic and it would have been nice to have the Public Works Department and the Police Department look at this and give the Board a better handle on the subject. He said that he is not comfortable moving forward without input about this problem.

Alternate Member Bourque suggested that the Applicant speak to the Department of Public Works and ask them to visit the site and tell her if she could get a driveway permit for the area because of site distance before going through the entire planning process.

Attorney Panciocco said that that was an excellent suggestion because if her client cannot meet it and there is no way to remedy any shortcomings, the Applicant needs to know that up front.

Attorney Panciocco said that although it was a great idea, she was not sure that she agrees that it controls the use of the property. Even if there was a single family home there and there is a site distance problem, the problem would still exist.

Alternate Member Bourque said yes, but an engineer would be able to tell the Applicant if there is a way to remedy the problem.

Attorney Panciocco said that if the Board felt more comfortable, she would ask the Applicant to have that done and return with the results.

Chairman Kudrick said that that would help because it is a very unique area with a large outcrop and has been a big concern to the Town, to the Board of Selectmen, and the homeowners.

Member Carlucci said that he would like to continue the meeting but he said that he would like more information than just the site distance. He also wants information from the Police Department with a report on traffic and accidents that have occurred at that location.

Member Carlucci asked if the Department of Public Works could address the storm water issues. He asked for information pertaining to the mentioned stormwater pipe and on how to eliminate any potential devaluation of properties on Church Street because of storm water.

Chairman Kudrick said that he would like the Fire Department to look at the plan with a focus on fighting a fire. The Fire Department does its best to take care of those residences that presently exist, but the Board would not want to create a new problem that could cost someone's life because of access with their equipment. He also said that the Department of Public Works could discuss sight distance

Attorney Panciocco said that, with regard to storm water, she felt that this was going too far into the Planning Board's territory. She said that she can look into whether there is a drainage pipe as mentioned. They will eventually need a full drainage study by the Town Engineer.

Chairman Kudrick said that the Town may already have this information, such as where the drainage pipe goes and a die test can always be done to track where the drainage goes.

Attorney Panciocco said that she would look into how it is presently managed.

MOTION: Alternate Member Bourque moved to continue Case #21-14-Z to the September 27, 2021 Zoning Board of Adjustment meeting. Seconded by Dana Carlucci.

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

MOTION TO CONTINUE CASE #21-14-Z TO THE SEPTEMBER 27, 2021 ZONING BOARD OF ADJUSTMENT MEETING PASSED ON A 5-0 VOTE.

Chairman Kudrick pointed out to the Board that the Applicant has taken care of the sewer issue because they have shown that they can install a septic system and they have a letter from the Sewer Commission. The remaining issues deal with Items 5 and 6.

Attorney Panciocco asked if the Chairman could offer any other comments on what she has presented so far.

Chairman Kudrick said that other than the comments from the abutters and what the Board has requested, that should be it.

Chairman Kudrick said that the following cases are continued from the July 23, 2021 meeting. He opened the public hearing at 7:54 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.

Case 21-15-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21**. The applicant, Keystone Pembroke LLC, 17 Bridge St., #203, Billerica MA 01821, is requesting a variance to construct 65 dwelling units: 3 single family houses, 2 two unit buildings, 1 four unit building, and 9 six unit buildings. The property is located at 42 Whittemore Rd., Map 634, Lot 23 in the LO Limited Office District and is owned by the applicant.

Present: Attorney Charles Cleary, Tim Peloquin of Promised Land Survey, LLC; Steven Pernaw, Traffic Consultant; Rick Van de Poll of Ecosystem Management Consultants, and Robert Maccormack (by telephone).

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

Chairman Kudrick said that the Zoning Board received the following:

1. A letter from the Pembroke Sewer Commission dated July 20, 2021 which: (1) granted the Applicant a waiver from connecting to the Town sewer system; (2) allowed the Applicant to hook up to a private septic system; and, (3) if public sewer is available, to hookup to the public sewer system if the private system fails or ten (10) years from the date of installation of the private septic system.
2. An email from Tri-Town Emergency Medical Services dated July 27, 2021 stating their concern about the long driveway, one-way in and one-way out, the cul-de-sac, and the traffic.
3. An email from Paul Gagnon, Chief of Pembroke Fire Department dated August 1, 2021 which states his concern about the safety issues associated with increasing the units in a building from four to six.
4. Email from Paul Gagnon, Chief of Pembroke Fire Department dated August 16, 2021 that no longer had an issue with the dead ends because the plan presented will allow the Fire Department “to get in and out without obstruction.”

Attorney Cleary gave a quick history of the project. He said that last year, Mr. Maccormack worked on a plan to ensure long-term viability of the Pembroke Pines Golf Course. He was concerned that it would not survive in its current state. The plan that Mr. Maccormack came up with included substantial upgrades and a new clubhouse. Once he designed the new clubhouse, he brought it before the Zoning and Planning Boards and received approval.

With the available space on the front 9 of the golf course, Mr. Maccormack proposed leasing 15 acres from a discretionary easement that covers the whole golf course and proposed a housing project similar to the one that he created across Whittemore Avenue. He presented his plan to the Board of Selectmen in May 2021 and the Board of Selectmen approved the release of the 15 acres for the housing development subject to Zoning Board and Planning Board approval. Attorney Cleary said that he gave the Board copies of that application and minutes approving it.

In June 2021, they approached the Zoning Board and presented the Special Exception and Variance for a minimum lot area and density as far as was allowed and laid out the plan of what they are trying to do. Attorney Cleary said that they then got caught up in the Sewer availability issue which has since been resolved.

He said that they returned to the Board in July and presented their arguments and additional details. Since July, they have met with the Conservation Commission, the Fire Chief at the site, the Town Planner and Code Enforcement Officer, a traffic study was submitted, and some information from real estate experts that confirm that there will be no adverse impacts from the building out of Phase II.

Attorney Cleary said that, at the prior meetings, there were a number of members that were appointed and heard the case.

Vice Chairman Hebert said that Alternate Member Miner was chosen to vote in place of Chairman Kudrick while he was away.

Steve Pernaw, of Pernaw & Company, said that he is representing Keystone Pembroke LLC. He said that his office performed a traffic impact assessment for the project. He brought flipcharts and began to give an overview. The project consists of a total of 65 dwelling units. They received input from the Town on the scope of what the Town was looking for. They suggested that they: (1) get traffic counts, at morning peak and evening peak before end of school day, (2) look at the barrier system on Nadine Drive that is presently blocked, which he was told may be coming down; (3) and the issue of a “by-right” plan vs. current proposal.

He said that he studied the rate of traffic flow at the intersection of Route 3 and Whittemore Road and referred the Board to his Traffic Impact Assessment dated August 2021. June 15, 2021 and June 16, 2021 revealed that peak hour traffic occurred at 7:15-8:15 AM (1208 vehicles) and 4:30-5:30 PM (1579 vehicles). Whittemore Road carried 82 AM vehicles and 120 PM vehicles.

Mr. Pernaw said that they project that the number of vehicles in 2022 is 1500 AM peak vehicles and in 2032, 1900 PM peak vehicles if Phase II was not built. 136 vehicles coming out of Whittemore Road.

Based on their findings, the project will generate a total of 32 trips in AM peak and 42 trips in PM peak which is less than 1 car per minute. The “by right” figure for 50 units would be 25 AM peak vehicles and 33 PM peak vehicles. The difference between what is proposed (65 units) and the “by-right” plan (50 units) is 7 additional AM trips and 9 additional PM trips in a one-hour period. From a traffic-engineering issue, it is minimal and does not affect any of their analysis.

Future projections if Phase II was not built, knowing that most traffic will be to and from the north: 2032 will have 2% increase in the AM peak and 2% increase in PM peak at the intersection of Route 3 and Whittemore Road. He said that traffic fluctuates approximately 2% every day. The net increase on Whittemore Road is 42 trips which is less than 1 car per minute.

If the Nadine Road barrier system is removed, there will be cross-traffic between Whittemore Road and Nadine. In the AM peak hour, there will be a slight reduction of the Whittemore traffic if the barrier is removed and a slight increase during the PM peak hour. Mr. Pernaw said that having a loop connection is a great idea. During a snow storm or on a snowy day, vehicles will tend to not go up the hill at Whittemore Road which will then cause a slight increase.

With regard to the intersection, vehicles turning left (northbound) out of Whittemore Road onto Route 3 (Level of Service: F) is due to the amount of through-traffic going by (1400 vehicles per hour).

The northbound traffic turning left into Whittemore Road at AM peak is a Level A and at PM peak is a Level D (will experience short delays and minimal queuing). The southbound right turn does not get a Level of Service because it has priority which means that vehicles have no competing traffic.

With regard to the need for turn lanes, Mr. Pernaw said that when the traffic study was performed for Phase I, it was determined that there should be treatment for northbound left turns. Typically it is best not to have traffic stuck behind someone taking a left turn which would be rectified by creating an exclusive left turning lane. During Phase I, NH DOT was not in agreement to creating a left turning lane on Route 3 for northbound traffic turning onto Whittemore Road because there is, NH DOT's opinion, enough room on the right for through-traffic to go around a left-turning vehicle.

Looking at the southbound flow of traffic along Route 3 turning into Whittemore Road, the ultimate road would be to have a right turn lane, but presently there is enough pavement on the edge of the road to allow for traffic to pass by without delay.

With regard to the Whittemore Road approach, there is presently one lane. Without the development ("no-build"), one lane is fine. With the additional site traffic, technically there is a need for 2 approach lanes which will help reduce delays because those vehicles heading southbound (right) would not be delayed by someone turning left. It will reduce the stacking. This is their recommendation which the Applicant will propose at the site plan review.

NH DOT has a 400 ft. site distance guidelines which they have.

In conclusion, Mr. Pernaw said that every time a study is done, there is an impact but the finding of 2% is something that occurs on a daily basis from one day to the next, therefore, in his opinion, would have a minimal impact.

Attorney Cleary introduced Rick Van de Poll to speak on the 15-acre conservation land that would be donated to the Pembroke Conservation Commission.

Mr. Van de Poll said that in 2017 he was on the site when Phase I was created in order to help with the wetland delineation and mitigation which created an easement area that was added to White Sands. Now, with Phase II, he will talk about swapping 15-1/2 acres with an easement area that is along the inside of the old railtrail track that includes a fair amount of the old sand pit. He looked at that as a suitable area as an offset and highest and best habitat sites and came across 5 different observations.

He said that the land is in the area of the Soucook and Merrimack Rivers and is the best New Hampshire habitat in general for having highest value for wildland.

The forest type, where there is forest, is a dry pine forest (most unusual type of forest) which supports many species that did not live anywhere else in New Hampshire.

There is an ample amount of sand nesting habitat for turtles and snakes. This easement will include habitat for both of those species.

Another benefit is the nesting bald eagle. This easement would increase the buffer of unmitigated woodland protecting the eagle nest.

Lastly, there is a zone of conservation that is consistent with the old railtrail and would help protect the visibility's aesthetics of walking or accessing along the old railtrail should it be brought up to any kind of greater recreational use.

In his opinion, the value of this land cannot improve any more because of its wildlife value, water quality protection value on the river, recreational value on the land strip and protective corridor which is consistent with other parts of Pembroke.

Ammy Heiser (604 Buck Street), Chair of the Pembroke Conservation Commission said that Mr. Van de Poll worked with the Commission when they were preparing the National Resource Inventory and he identified at that time as having the highest and best value for conservation. She said that she and Brian Mrazik did a site walk of the existing Pembroke Pines Plan a few days ago when they witnessed 3 eagles flying overhead.

She asked if the strip included enough upland of the buffer zone or if it would be better to go deeper because they are aware that nesting happens upland of the actual wet area, while keeping the easement for the railtrail knowing that the Town and Master Plan would like to get the railtrail to the Town.

Mr. Van de Poll said that, right now the area, especially close to the corner, is a sandpit. In terms of the eagles, it would not be a gain since it is not a feeding or roosting area for them. What the Town would be gaining would be habit for the turtles and snakes as well as other important species. He said he considered going deeper but having a longer strip along the stretch is a higher value. He said that it does not go all the way up to the edge of the gravel pit so there is room to increase and widen that easement area in the future. But, in terms of strictly the 15-1/2 acres as it is presently laid out on the plan, is the best gain for habitat for all purposes involved.

Mr. Van de Poll also said that there are 2 temporary ponds in the strip which increase the overall value. He said that whoever drew up the plans, did a great job.

Chairman Kudrick asked if the property owners down in that area would have access to that property. Mr. Peloquin said that the property owners would have legal access.

With regard to the Phase I 33-acre donation, Attorney Cleary said that the land was deeded to the Town in 2019 and that the land abuts White Sands Conservation Area. Phase II, is also intended to be added to the White Sands Conservation Area.

The meeting recessed at 8:35 p.m.

Chairman Kudrick called the meeting back to order at 8:40 p.m.

He began by stating that the agenda lists 2 other cases which may not be heard because the Zoning Board does not proceed with meetings past 10:00 p.m. If by 9:30 p.m. the Board is still hearing the present case, they will reschedule the last 2 cases on the agenda for another meeting.

Mr. Peloquin said that with regard to Mr. Pernaw's report, the Applicant asked for an accident report pertaining to Whittemore Road at the intersection of Route 3 over the last 3 years from the Pembroke Police Department. They found that there were 2 accidents in a 3-year period (shown in Appendix D of the report).

Attorney Cleary said that initially the Fire Chief, in working with an 8-1/2" x 11" plan that was not readable, commented in his August 1, 2021 email that he was not in favor of the variance or the special exception. Realizing that Phase I was approved by the Fire Department, they contacted Chief Gagnon and invited him to the site. Ms. Cronin, Mr. Bacon, Mr. McCormack and Attorney Cleary met at the site and walked the Fire Chief through the property, answered all his questions and took measurements. On August 16, 2021, Chief Gagnon send an email to the Mr. Bacon saying that he was satisfied with everything.

Chairman Kudrick clarified that the Fire Chief does not have any problem going from 4 units to 6 units per building.

Attorney Cleary said that once the Fire Chief was given all the measurements, he realized that the buildings were spaced in accordance to the ordinance and had the proper separation, so he was no longer concerned.

With regard to the ambulance, Attorney Cleary said that they communicated by email with Mr. Gamache of Tri-Town Emergency Medical Service and he was looking for safe access. Attorney Cleary said that they convinced the Fire Chief that he had adequate access for their big trucks so it was concluded that the ambulance would be fine with access.

Mr. Peloquin said, with regard to the Fire Department and ambulance, Mr. McCormack is willing to post the road with "No Parking" signs so that there will not be on-street parking. They also have off-street parking as part of the development in various areas for overflow parking for visitors. So they will have ample off-site parking as well as resident parking in their driveway and garage. They will also post the road as "No Parking" so that the Fire Department and Ambulance will have full access.

Alternate Member Bourque asked if the 15.5 acres was part of the discretionary easement.

Attorney Cleary said that the clubhouse and parking lot was not in the discretionary easement which was approximately 3.9 acres. 11.5 acres was in the discretionary easement.

Mr. Peloquin clarified that 11.5 acres is being removed from the discretionary easement for the clubhouse and driving range that will be replaced by the proposed development. They gave more land than was required. They made an equal supplemental 15.5 acres.

Alternate Member Bourque said that the reason he is asking is because, in the Board of Selectmen minutes, it indicated that 11 acres is for development and yet the plan before the Board indicates 15 acres, so he needed clarification for the additional 4 acres.

Attorney Cleary said that the discretionary easement is for the green space golf course and not the structures and the paved parking, therefore, the 4 acres was never in the discretionary easement.

There were no additional questions from the Board.

Attorney Cleary said that the issue in both the variance application and the special exception is that there is no negative impact on surrounding property values which is shown in the submitted reports. He also said that they were not aware of any negative impact to surrounding property values caused by the Phase I development.

He said that the only issue left to discuss is the variance application for density.

Member Glisson asked if information pertaining to the Variance Application should be taken separately.

Chairman Kudrick said that, since the two applications are tied together and there is an overlap of information, he is allowing them to speak on both the Special Exception and the Variance Application and then will separate the two cases for voting purposes.

Attorney Cleary said that the hardship issue is only variance-oriented. The question is whether there are special conditions of the property that make it unique and justifies the variance. They believe that the golf course is a unique property in Town. They see it as an open-space recreational area that the invited members and the public use. The golf course is used year round – in the winter people are walking, cross-country skiing, and snowshoeing on it. It is a value and is open to the public at large. The density limitations in the ordinance are important but the question is whether they are substantially related in this case.

He said, for example, that if there is an existing subdivision with 15 acres in the middle of it, should that piece be allowed to exceed density. In this circumstance, the Applicant has 60+ acres of land that will never be built on. It will have people walking on it, and will be quiet 5 months out of the year. It is a truly unusual situation. Allowing some additional density on the 15-acre spot makes sense in this environment. There is an open-air field with 60+ acres, it is green and has trees. More importantly if the Town would like to continue the golf course into the future, Mr. McCormack had to come up with a plan to make it work. He had to find a revenue stream to pump \$2M back into the golf course. The golf course did not allow Mr. McCormack to increase the area and meet the density needed to make the plan work. The result, according to Attorney Cleary, is that they would have lost the golf course.

He continued to say that they took the space that was tucked between the 9th hole and the first tee which was the space they were left with (approximately 15 acres) after raising the old clubhouse and reclaiming the old parking lot. Since preserving the golf course was the goal, they need the land to make it work, which would result in the success of the entire plan.

Attorney Cleary said that the following is what they believe the golf course provides to the Town: (1) the large green permanent open space, (2) a public recreation area for more than just golfers, (3) will result in a new public restaurant, (4) new employee opportunities, (5) a donation of valuable conservation land, (6) increase in tax revenue, and (7) it alleviates the housing demand. He said that the NH Housing Crisis Task Force says that 20,000 housing units are needed statewide to meet demand. They are asking for an additional 15 units which far outweighs any detriment.

In opposition, Amy Manzelli (418 Ross Road) also representing her husband, Chad Turmelle, spoke. She said that she submitted an emailed pdf of the plan to the Board that was referenced in the deed. She requested that the Board not take final action on the application because, in her opinion, there has been a great deal of new information that was submitted such as the property value information that was only made available at the end of last week and she has “not had a meaningful opportunity to exercise” her “due process rights and comment on that” which she would like to do.

Attorney Cleary said that, with regard to continuing the case, he pointed out that this is the third hearing for the ZBA and said that Mr. Maccormack is not in favor of another continuance. He pointed out that the Board has heard from all the experts and he did not feel that a member of the public reviewing the material submitted would affect the application one way or the other.

Ms. Manzelli said that she understood that continuing the case is up to the Board’s discretion but she did not feel that it was appropriate to provide this amount of information and not give the public a meaningful opportunity to respond.

Attorney Cleary said that he might lean toward Ms. Manzelli’s argument if they had abutters or other interested parties interested in this application. There is not a lot of controversy to this project. He did not think that one member of the public should further delay the application.

Mr. Peloquin asked if it would be appropriate to read the letters from those in favor of the application.

The Recording Secretary read aloud the two letters: (1) Letter dated August 11, 2021 from Jeff White of 434 Nadine Road, Pembroke, NH; and (2) Letter, undated, from Christine Gross.

Mr. Peloquin said that although this is not part of the application, he said that it is worth mentioning -- the Applicant is looking to reconstruct the swale on Whittemore Road because there is a ditch on the side of the road that floods a small portion of the road. He said that it is a Town problem but is mostly a NH DOT problem, because it dumps on Route 3 to a very large culvert and a swale that has not been properly maintained. Mr. Maccormack would like to

improve the drainage which will help the golf course but it will also help the Town. As part of that reconstruction, Mr. Maccormack is looking to potentially build a sidewalk from US Route 3 to the golf course, on the golf course side of the road which will be another interconnected sidewalk from the 2 proposed new neighborhoods for the residents to safely walk to the golf course.

Member Glisson summarized the case as follows:

Case 21-16-Z is a continuation from last month. The meeting began with Chairman Kudrick referencing the letters from the Pembroke Sewer Commission waiving the sewer. Tri-Town Ambulance referenced concerns about the driveway, cul-de-sac, and traffic, and the Fire Department was originally concerned about the number of units in the buildings and the buildings being located together as noted in his August 1, 2021 email. Attorney Cleary reviewed the history of the application.

Mr. Pernaw reviewed the map and the review done recently by NH DOT. He discussed the daily traffic variations, the numbers associated with peak hours of the days, the “No-Build” counts, the trip generation summary, build diagram numbers, and percentages, and intersection capacity analysis as well as turn-lane analysis.

Mr. Van de Poll discussed the proposed donation of 15 acres to the Pembroke Conservation Commission and discussed 5 observations of the land characteristics that he felt would be beneficial to the Town. Ms. Heiser stated that she saw 3 eagles while walking the land and wondered if there was enough up-land to protect the nesting. She asked if it would be better to go deeper rather than longer. Mr. Van de Poll said that there would not be any benefit to the eagles and the longer strip would be more beneficial.

Chairman Kudrick asked how people could get across the land. The response was that there is legal access for people to get access to their land. There was also mention of the 33 acres given previously to the Conservation Commission as well as the Board of Selectmen file notes.

Attorney Cleary clarified that the Fire Chief approved the proposed access, stating that he recently walked the grounds with the Code Enforcement Officer, the Town Planner, and, after seeing the land and property, the Fire Chief had no objections which was referenced in his August 6, 2021 email.

Member Bourque asked about the discretionary easement and Attorney Cleary clarified the amount and location. Attorney Cleary referenced a report that showed no negative impact on property values. He also discussed density regulations and hardship. He pointed out that the golf course is a unique property and how the property itself needs a variance to make the golf course work.

Two letters in favor of the case were read into the record.

Ms. Manzelli spoke in opposition and asked that the case be continued so she could review the data presented. Attorney Cleary said that Mr. Maccormack was not in favor of continuing the case because this is the third session.

Ms. Manzelli stated that it is not appropriate to provide so much information and not allow the public to review it.

Attorney Cleary responded that he would agree if there were abutters in opposition.

Mr. Pelloquin discussed road issues and improving drainage and the possible installation of a sidewalk.

Alternate Member Bourque spoke to the Applicant and said that in the plan, there were roads and properties in the buffer zones and asked if they planned to alter that.

Mr. Pelloquin said that there is no plan to alter it. It is a Special Use Permit that needs to be sought through the Planning Board.

Alternate Member Bourque clarified that the Applicant will not be altering the plan from having construction in the buffer zone.

Mr. Pelloquin said that no construction, other than the roads, will be in the buffer zone which they will require a Special Use Permit from the Planning Board.

Vice Chairman Hebert said that the only Special Exception part that is still missing is from the Conservation Commission with regard to the aquifer. He asked Ms. Heiser to make an official statement.

Ms. Heiser said that she did not make a statement because she understood that the Conservation Commission meeting minutes were given to the Board and did not want to waste valuable time. The essence is that this is a high density project. She said that the Conservation Commission wanted some assurance that if the variance was granted and there was a total of 140 units on the property, that if, in 8 years, the golf course found that it was not viable that the golf course would not be turned into single family and multi-family homes. She said that the Pembroke Conservation Commission would love it if Mr. Maccormack would say that if it ever was not a golf course, the land would go to the Pembroke Conservation Commission and not be allowed to be developed. She said that the Commission was concerned about high density especially being in an area that is very high in conservation area. The Commission realizes that the Applicant has a right to develop the golf course and, if they get the variance, the Commission would prefer to see that, since the land is already disturbed. It does not have additional wetland impacts.

Attorney Cleary said that if the Town approves it, he intends to build the clubhouse before he does anything on this project. Also he is willing to extend the discretionary easement on the golf course for 10 years from the date of approval.

Mr. Peloquin added that, the investment in the clubhouse is an investment in the golf course. So his intention is to make the golf course work but he does not want to restrict what can be done 20-30 years down the road since he does not know what the future will bring. A full restriction of never building, is not on the table for Mr. Maccormack for obvious reasons.

There were no further questions from the Board, the Applicant or the public.

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 on the case. No comments will be taken from the audience. Chairman Kudrick officially closed the hearing at 9:11 p.m.

DELIBERATIONS: The Zoning Board of Adjustment reviewed the Special Exception criteria for CASE 21-16-Z:

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

Member Carlucci said that it meets the housing needs and caters to the needs of the Town as far as conservation area and open space. He thought it was a good plan.

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.

Member Carlucci said that, in his opinion, no significant information supported the idea that the project would lead to any detriment to health, morals, or general welfare of the community.

Chairman Kudrick said that his concern had to do with the Fire Department's August 1, 2021 comments pertaining to the increase from 4 to 6 units per building. Once the Fire Chief visited the site and commented in his August 16, 2021 email that the Fire Department was no longer concerned with the density, Chairman Kudrick felt comfortable with the plan.

Member Carlucci said that Captain Gagnon was more comfortable once he made a site visit.

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.

Member Carlucci said that the site is presently a golf course, with open space and conservation space.

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

Chairman Kudrick said that just by looking in the newspaper, it is obvious that houses are being sold for more than ever before.

Vice Chairman Hebert said that the newly constructed units will only increase in value.

Chairman Kudrick said that Phase I did not negatively affect the Donna Drive development or the selling price. He said that there was no evidence to the contrary.

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

Chairman Kudrick said that the traffic issue is more of a Planning Board item. He said that the Applicant came in with a traffic study which was helpful but that turning lanes and sidewalks are the Planning Board's purview. The Zoning Board looks at undue traffic or nuisance.

Vice Chairman Hebert said that Mr. Pernaw showed that the project would have a minimal traffic impact.

Member Carlucci said that the Applicant is willing to work with the Town on the right turning lane onto Route 3.

Vice Chairman Hebert said that, as much as the Applicant wants to improve the intersection, with Route 3 being a state road, he is not able to.

Chairman Kudrick said that with regard to any hazard, the Fire Department has given their approval.

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

Chairman Kudrick said that the Applicant will maintain everything himself, will post "No Parking" signs on the side of the road which will eliminate on-street parking which was a Tri-Town concern. Any additional details are the Planning Board's purview.

Vice Chairman Hebert said that the Applicant has done an excellent job with Phase I so there is no reason to think that he will not follow through with the same on Phase II.

7. Please show that there are no valid objections from abutting property owners based on demonstrable facts.

Chairman Kudrick said that they only had one individual that made a statement which the Board has taken under consideration. He pointed out that that particular resident is not a direct abutter but is a resident of the area.

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

Chairman Kudrick said that the project has adequate water. The Applicant showed the Board that it has a sewer system and that it can be connected to public sewer. The Applicant also has a waiver from the Sewer Commission.

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.

Chairman Kudrick said that the project will be served by town water and they have a waiver from the Pembroke Sewer Commission for a septic system if they cannot connect to Town sewer.

Chairman Kudrick asked if the Board would like to approve or continue the case.

Member Carlucci said that he felt that the Board received enough information and had a chance to review the real estate analysis. He said that he assumed that the residents also had ample time to do the same. He said that he did not believe that there was any more information that was needed by the Board.

In reference to **Case 21-16-Z**, request for a Special Exception having been presented to the Board for consideration -- the Special Exception is required for multi-family dwellings.

MOTION: Vice Chairman Hebert moved to approve **Case 21-16-Z** application as presented with the following conditions: (1) Must follow all state and local regulations; and (2) Construction to adhere to the submitted plans except to the extent that such plans are reasonably modified through the Planning Board review process with the plans approved by the Planning Board being the final plans. Seconded by Member Carlucci.

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

MOTION TO APPROVE CASE 21-16-Z APPLICATION AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; AND (2) CONSTRUCTION TO ADHERE TO THE SUBMITTED PLANS EXCEPT TO THE EXTENT THAT SUCH PLANS ARE REASONABLY MODIFIED THROUGH THE PLANNING BOARD REVIEW PROCESS WITH THE PLANS APPROVED BY THE PLANNING BOARD BEING THE FINAL PLANS PASSED ON A 5-0 VOTE.

CASE 21-15-Z A REQUEST HAS BEEN MADE FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21.

Chairman Kudrick opened the hearing at 9:35 p.m. and said that this was a continuation of the July 26, 2021 hearing.

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

Chairman Kudrick said that, since it is now 9:39 p.m., the 2 new cases on the agenda will not be heard. He directed the Code Enforcement Officer to make arrangements for the 2 cases to be heard first at the September 23, 2021 meeting.

Attorney Cleary said that the variance is for the additional 15 units. He said that they believe it is in the public's interest to keep the golf course functioning. It has other benefits other than just golf, such as providing additional conservation land, helps to resolve the housing shortage, and is part of Mr. Maccormack's overall plan to get the clubhouse built.

Attorney Cleary said that while the Zoning Ordinance likes to limit density to certain standards, it is unusual to have a development on 15 acres in a golf course. He said that if looking at the big picture of the site, it is not overly dense. It is 75 acres with only 65 units on it which is the feel that they are trying to create. The people that move there are those interested in a golf course-type setting. There's another 70 acres on the back 9. It is an expansive site.

He said that there are mutual benefits for both the Applicant and the Town such as: The Pembroke golf team uses it for free, the public uses it in the winter and walk it, the conservation land is a permanent donation to the Town and connects to White Sands, and the rail trail is potentially on the table. They feel that the additional 15 units are more than justified with all the benefits.

Attorney Cleary pointed the Board to the study that was provided to the Board showing that there will be no negative impact on value.

With regard to hardship, Attorney Cleary said that in order to grant a variance, the law is looking for the property to be unique in its setting or unusual in some way. He said that this property is very large. Situated on a golf course setting, the situation itself solves the density problem. Although it is 15 more units than the ordinance allows, the ordinance probably did not envision this type of development with permanent open space all the way around it. The proposed use of the site is reasonable because it is permitted with a Special Exception.

Attorney Cleary said that the hardship to the applicant is because in order to save the golf course, they are restricted by the size of the development parcel and there is nothing that they can do about it. It is the only way that the plan works.

Member Bourque asked what square footage the 15 additional units are based on.

Attorney Cleary said that the ordinance is based on 20,000 sq. ft. for the first unit and 10,000 sq. ft. for each additional unit.

Member Bourque said that that is if they have both Town water and sewer. Since they will have a septic system, they would need 60,000 sq. ft.

Attorney Cleary said that he is not giving up on the sewer. They believe that the EPA will publish the permit shortly.

Alternate Member Bourque said that Note 14 talks about keeping the septic system within the property, but the proposed septic system is designed on another property.

Mr. Peloquin said that the septic system is on a different map and lot number but is under the same ownership. He said that they can look for opportunities to merge a portion of one lot in order to gain the space if needed. Mr. Peloquin also said that the septic system is more than a septic system. It is a community leaching field and the intention is to hook to Town sewer. Mr. Maccormack's intention is to not build the development until he can hook to Town sewer which he expects within the year.

Alternate Member Bourque said that he does not agree that they are only adding 15 units. Based on 60,000 sq. ft., the Applicant would be adding more than 15 units. It is 3 times the area required without Town sewer. Since at this time, the Applicant does not have Town sewer, the figures need to change as they pertain to a septic system.

Attorney Cleary said that with regard to density, and the "crowding feel", he said that his argument does not change. He still has 75 acres surrounding the project.

Mr. Peloquin said that the septic systems will not be built within the confines of the homes. It will be collected into a series of sewer manholes that will take it further down hill to extremely sandy soils.

Alternate Member Bourque said yes but within the lot and it is not within the lot.

Mr. Maccormack said that he was given direction that under the ordinance there is an ordinance for a single lot. This is not a single lot, it is for a condominium. Under condominium law, they are allowed to have common open space land onsite or off site that can be used for septic systems. He said that it is listed in the definitions section of the Zoning Ordinance, the condominium statute is allowed to have common area and that common area can be attached or detached. In the "Common Area" it says that it can be used for utilities such as water and sewer.

Attorney Cleary read the definition into the record:

“Common Area: - Any parcel of land or area set aside and designed for the benefit and enjoyment of the residents of an Open Space Subdivision, Manufactured Housing Park, and Condominium Development and which may contain community accessory structures and improvements necessary and appropriate for educational, recreational, cultural, social or other noncommercial uses, plus any utility services utilized by the owners of the common areas.”

With regard to the 60,000 sq. ft., Attorney Cleary said that in his mind, it does not affect the density or the variance request. He said that the specific nature of this property justifies it regardless.

Mr. McCormack said that they are talking about the density, they are talking about 60,000 sq. ft. because they need the room on that site for a septic system and for an auxiliary septic system. He said that none of their septic system will be onsite. It is a mute point. They are putting in a private sewer system on an offsite location which will have more than adequate space to have a leaching field and 2 secondary leaching fields. It is approximately another 15 acres of land set aside for that purpose that will meet with all NH DES requirements and condominium statutes.

Attorney Cleary said that Pembroke Sewer Commission waiver indicates that they have no intention of our having a septic system forever. He said that the project will connect to the Town's sewer system – it is only a matter of time.

No one spoke in favor of the case.

In opposition, Ms. Manzelli (418 Ross Road) on behalf of herself and Chad Turmelle asked the Board not to take further action on the application because she had no time to review and comment on the additional information. She said that she has the right and would like to avail herself of the opportunity to obtain her own reviewing consultants. She said that that is not something that can be done at home after work hours or on the weekend. It could take a couple of weeks to do.

She also reminded the Board that she submitted a letter dated July 26, 2021. She highlighted 2 points: (1) Whether it is a municipal sewer system or not, does matter for the variance request because of the legal requirements associated with it. She referred specifically to her letter, page 3 which relates to the public interest and spirit of the ordinance. She said that the Applicant should provide the Board with the calculated units based on the 60,000 sq. ft. and a septic system. (2) On the last page of her letter regarding the hardship requirement, it is a business decision to fund a clubhouse through a housing development. There may be many positive things associated with it, but, in her opinion, it does not pass the hardship test because it is not a unique attribute of the land.

Attorney Cleary said that it is not the Applicant's fault that the Pembroke Sewer Commission is at odds with Allenstown. He has confirmed with EPA that they expect to publish the permit for

public comment shortly and they advised the Applicant that they thought it would be issued within the year. He said that while he could do the exercise on the square footage analysis in the ordinance, the real issue is whether the land is sufficiently unique and large enough to alleviate some of the density concerns that the basic zoning objectives point to.

Attorney Cleary said that the whole property is 168 acres.

There was no rebuttal in opposition.

On a different subject, Chairman Kudrick asked if it would be allowed for the Town to run a sewer line down through the conservation area which runs down the old railroad tracks.

Ms. Heiser said that she did not have an answer for that but the Conservation Commission tries to keep a piece of conservation land in its original condition and not make any drastic changes to the land.

Alternate Member Miner asked how far the conservation land was from the existing Donna Drive development south toward Memorial Field.

Ms. Heiser said that that was the old rail trail. She said that the Commission has approximately 110 acres along the Merrimack River.

Chairman Kudrick said that there is a sewer line that runs down there but it does not connect to the rail trail until it gets almost down to the Highway Department.

Ms. Heiser said that they have some sewer lines that came through with some of the developments and there is a gas line through some of the properties. Some of the developments offset the development with land that became conservation land, so they do have easements through several of the Commission's properties

There were no further comments.

Member Glisson summarized the case:

Case 21-15-z is a variance under Article V – Dimensional and Density Regulations 143-21. Attorney Cleary presented the criteria. He discussed hardship of the land and uniqueness of the golf course. Alternate Member Bourque asked about square footage and limitations if they are on sewer or septic. He referred to Note 14 that the septic area is limited by buildable area. Mr. Maccormack said that this is only in reference to a single family and not a condominium and stated that there can be a leaching field offsite. Attorney Cleary stated that the intention is that the condominiums be on Town sewer. Two letters in favor of the case were read into the record. Ms. Manzelli asked that the Board not take action on the case and that she would like to reserve the right to have her own private consultants review the case. She also stated that it does matter if it is a private septic system or town sewer and referenced her letter on

square footage and NH law on variances. She also referenced again that a business decision does not meet hardship criteria. Attorney Cleary stated that public sewer is expected to be approved. Chairman Kudrick asked about the size of the golf course which is 168 acres. Chairman Kudrick asked if the Town could put a sewer line down on conservation land. Ms. Heiser said that she was unsure but that the idea is to protect the land. Member Miner clarified the location of the conservation land.

There were no further questions from the public, the Applicant, or the Board.

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 on the case. No comments will be taken from the audience. Chairman Kudrick officially closed the hearing at 9:56 pm.

Chairman Kudrick said that he understood what Alternate Member Bourque was saying about the square footage issue when under normal conditions, but the Applicant is using the entire golf course.

Alternate Member Bourque said that 15 acres has been set aside to develop. He said that he had an issue with the density. He said that the Applicant keeps referring to 20,000 sq. ft. per unit and is asking for 15 additional units above what is allowed. Without Town sewer, the square footage goes up to 60,000 sq. ft. if no sewer is available. It does not mention condominiums. That fact would decrease the number of original units that can be built on the property. He said that it is an unreasonable request. If the ordinance allowed 20 units and they wanted to add an extra 5 or 10 units, it would be a possibility, but they want to go over what is really allowed by almost 100%.

Chairman Kudrick asked the Board if they would like to have the Applicant provide factual information to the Board.

Alternate Member Miner said that the Board may already have it. The Sewer Commission already sent a letter stating that (1) if the sewer capacity is available by September 1, 2022, all sewer connections will be to the Town sewer system; and (2) if, by September 1, 2022, public sewer is still not available to the project, Keystone may proceed with a private septic system and agrees to connect to the Town sewer system if available on the earlier of (a) failure of the private system or (b) ten years from the date of installation of such private system. Therefore, by 2032, the Applicant will be connected to the Town sewer system which would make the square footage a mute issue.

Alternate Member Bourque said that the Board should be basing the decision on what is happening today and not what will happen in 10 years. In his opinion they should be calculating the units based on 60,000 sq. ft. per unit.

Member Glisson said that Town Counsel said that the Board is allowed to make exceptions and variances based on the anticipated availability of sewer which they have. She said that she agreed with Alternate Member Miner. It is more than reasonable to assume that the sewer would be available. It is in the Applicant's best interest to connect to Town sewer.

Chairman Kudrick said that the Town is working with the Allenstown Sewer Commissioners. He said that the delay is with the EPA and once they've published the permit, there will be a 60-90 day comment period and a timeframe to review the information. It could take approximately one year because of COVID work situations.

Member Glisson said that it is unfair for the Board to deny a reasonable variance based on COVID restrictions.

Member Carlucci said that the whole property is owned by the same person and the unused portion is open land.

Alternate Member Bourque said that his understanding is that 15.5 acres is considered one lot and the single family homes were going to be on separate lots.

Alternate Member Bourque said that in Section 143-21, it states that the R1 District has 4 different descriptions for allowed square footage. In R1 permitted use with Town water and sewer is 20,000 sq. ft. In the R1 permitted use with Town water, it is 60,000 sq. ft. In R1 permitted use with only Town sewer available (no Town water) is 40,000 sq. ft. and any permitted use without Town water and sewer is 80,000 sq. ft. District A is the minimum lot area.

Vice Chairman Hebert pointed out that Mr. Peloquin mentioned that they could look into merging a portion of a lot in order to make it conform, if necessary.

Chairman Kudrick said that if each single family house does not have sewer, it would need 60,000 square ft.

Alternate Member Bourque said that he was not opposed to developing 15.5 acres, but the density is too much.

Vice Chairman Hebert said that Alternate Member Bourque's statement is based on the fact that the project may not get sewer at some point.

Alternate Member Bourque said yes. He also said that he does not agree with approving something that may change in the future. He said that the Board needs to base their decision on today's information.

Member Carlucci said that continuing the meeting would give the Board time to reach out to staff and clarify the wordage.

Chairman Kudrick said that now that the Applicant has heard the Board's discussion, it would be up to the Applicant to defend their position through the ordinance.

Vice Chairman Hebert said that the difference between 20,000 sq. ft. and 60,000 sq. ft. is a significant difference.

MOTION: Vice Chairman Hebert moved to continue the hearing of **CASE 21-15-Z** to September 27, 2021 in order to allow the Applicant to gather additional information to satisfy the Board's questions pertaining to square footage. Seconded by Member Carlucci.

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

MOTION TO CONTINUE THE HEARING OF CASE 21-15-Z TO SEPTEMBER 27, 2021 IN ORDER TO ALLOW THE APPLICANT TO GATHER ADDITIONAL INFORMATION TO SATISFY THE BOARD'S QUESTIONS PERTAINING TO SQUARE FOOTAGE PASSED ON A 4-1 VOTE.

IV. Approval of Minutes – July 26, 2021

MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF JULY 26, 2021 AS AMENDED. SECONDED BY ALTERNATE MEMBER MINER. UNANIMOUSLY APPROVED.

V. Other Business / Correspondence

A letter dated July 28, 2021, a Request for a Re-Hearing for **Case 21-09-Z and Case 21-10-Z** was received from Steven Voydatch of 55 Jewett Rd., Dunbarton, NH 03046

Chairman Kudrick said that in order to be reheard, the Applicant must produce new information that they did not have a chance to give to the Board or information that came up afterwards. On review of the letter, Chairman Kudrick said that he did not see any new information.

Member Carlucci said that the Applicant has an opportunity to engineer and reapply to properly develop the parcel under the Town's regulations.

Alternate Member Bourque said that nothing in the letter was mentioned about what the Board did wrong or how the Board misinterpreted the regulation therefore, in his opinion, the case is closed. If the Applicant wants to reapply and present new information, he is welcome to do so.

MOTION: Alternate Member Bourque moved to not rehear **Case 21-09-Z and Case 21-10-Z** . Seconded by Member Carlucci.

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

MOTION TO NOT REHEAR CASE 21-09-Z AND CASE 21-10-Z WAS APPROVED ON A 5-0 VOTE.

Member Carlucci said that if the Applicant came to the Planning Department they could guide him to §143-32.

With regard to a letter to all Zoning Board members from Bruce Kudrick, dated July 22, 2021 regarding Technical Review Committee (TRC) input, Chairman Kudrick said that the Zoning Board would benefit from TRC input prior to large developments coming before the Board. If, as on the Kimball Street project, they had met with the Fire Department and the Public Works Department, they may have discovered what they could or could not do.

Alternate Member Bourque said that it was mentioned to the Planning Director and his impression was that it was not a good idea to do so before the case is presented to the Planning Board. The Applicant can begin with the Zoning Board or the Planning Board. This particular Applicant recognized the fact that they needed Zoning Board approval and decided to come to them first for a special exception.

He said that if the applicant chooses to go before the Planning Board, they have to present a set of plans. They could also have gone to a conceptual meeting first and may have discovered that sight distance at the driveway location could be a problem.

Chairman Kudrick said that the reason he wrote the letter is because, while he worked at the Hooksett Sewer Department, he found that developers would go to the Zoning Board, Planning Board, Highway Department, etc. and would get approval. They then would come to the Sewer Department and discover that there were no sewer lines in the area, or there was no capacity, or the sewer lines were too small. The Sewer Commission looked like the bad guys because the applicant spent thousands of dollars on designs and engineers, etc. After many years, the Town of Hooksett concluded that including the Water Department, Sewer Departments, and the gas company in the application requirements was a good thing.

Alternate Member Bourque said that when an applicant comes to Zoning and proposes a project and the Code Enforcement Officer recognizes that the applicant will eventually have to go before the Planning Board to complete the project, it may be a good idea to suggest that they come before the Planning Board first for a conceptual design. At the conceptual, they will get input from everyone on the Planning Board. If they decide to do the project, they would create a preliminary design and present it to the Technical Review Committee that consists of all the department heads. At that meeting, they will receive comments from all the departments, and, at that time, can decide whether they want to pursue the project and go before the Zoning and Planning Boards.

Chairman Kudrick said that that was the goal that he was looking for.

Mr. Bacon said that Ms. Cronin suggested that the applicants informally speak to all the department heads. The problem with that idea is that it would be more time-consuming.

Chairman Kudrick asked the Board to think about the concept so they could continue the conversation at the next meeting.

Member Glisson was dismissed.

Chairman Kudrick said that he would check on how Hooksett and Goffstown handle the situations.

Alternate Member Bourque reiterated that the applicant for a large project should go to a conceptual meeting with the Planning Board. Once they receive comments from the Planning Board, they may revise their plan and go to a TRC meeting where all the department heads would comment on the plan as presented. The applicant may then decide to adjust the plan again before going before the ZBA or Planning Board.

Mr. Bacon said he would ask Ms. Cronin if there are any legal reasons why she was not in favor of the Zoning Board receiving comments from TRC.

VI. Adjournment

MOTION: Vice Chairman Hebert moved to adjourn. Seconded by Alternate Member Miner. Unanimously approved.

Meeting adjourned at 10:46 p.m.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary