

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
November 22, 2021
(ADOPTED)**

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

ALTERNATES PRESENT: Wendy Chase, and Robert Bourque

EXCUSED: Natalie Glisson, Blakely Miner III,

STAFF PRESENT: Paul Bacon, Code Enforcement Officer

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

Roll call was taken by Alternate Member Chase.

Chairman Kudrick announced that the Board would hear Case 21-24-Z first.

PUBLIC HEARINGS:

Case 21-24-Z A request has been made for a **Special Exception under Article VI Special Conditions §143-38-F Day Care, Preschool or Kindergarten.** The applicant, Michelle Tango of 632 North Pembroke Rd., Pembroke, NH 03275 is requesting a **Special Exception** to open an accessory use in-home Daycare. A **Special Exception** is required under **§143-38-F.** The property is located at 632 North Pembroke Rd., Pembroke, NH 03275, Map 258, Lot 27 in the R3 Rural/Agricultural – Residential Zoning District and is owned by Jeffrey Gibbons of 632 North Pembroke Rd., Pembroke, NH 03275.

Applicant: Michelle Tango
632 North Pembroke Road
Pembroke, NH 03275

Property Owner(s): Jeffrey Gibbons

Property Address: 632 North Pembroke Road
Pembroke, NH 03275
Tax Map 258, Lot 27 in the R3 Rural/Agricultural – Residential
Zoning District

Included in the Member Packets: Fee Schedule Worksheet; tax map; assessing card; list of abutters; Map of Indoor Childcare Space; Daycare Map and Emergency Route; Map of Outdoor Space; map of Pembroke NH plot lines; NH Childcare Licensing Unit Zoning Verification; letters to abutters (Mr. Dubuque, Mr. Simonella), assessing cards for Jeffrey Gibbons, Todd Dubuque and David Simonella properties.

Present: Michelle Tango

Chairman Kudrick appointed Alternate Member Bourque to vote in place of Member Glisson.

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.

The case was read aloud by Vice Chairman Hebert.

Ms. Tango read the following:

Please give a detailed description of your proposal below:

I plan to open a home daycare at 632 North Pembroke Road. The daycare will provide services for ages infant to 4 years of age. The hours of operation will be from 7:30–5:30, Monday through Friday. Residents could see up to 6 families per day.

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** I feel a home daycare will provide a service that is in need here in the community and would help the community.
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 operation of this daycare will not impair the integrity or character of the district or adjoining zones, because this business would not create a lot of traffic or noise due to the low amount of children on the property at a time.
3. **Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.** The site will be ideal due to the secluded nature and little to no impact to adjoining properties. She said that there are many trees on each side of the property and cannot see the neighbors on either side.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** There would be no negative impact to the property value as there would be no changes to the structure or layout to the property.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No, there would be little to no traffic effects on or around the property.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Specific areas in the home and outside

will be zoned for daycare use. She said that only the first floor of the home will be used for the daycare and she has a gated area outside that will be used.

7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** A letter was sent to each abutting property owner stating the plans of wanting to open a family daycare. My contact information was also listed for them in case they have any questions or concerns. (Please see a copy of letters attached.)
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** Please see attached property form.
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.** This does not apply to this application.

No one spoke in favor or in opposition of the application.

Alternate Member Chase asked if Ms. Tango would be hiring staff.

Ms. Tango said that she would be the primary person. There would only be herself and the children on the site.

Member Carlucci asked if there was an agency that would oversee the daycare.

Ms. Tango responded that the NH Licensing Bureau of Concord will be the agency that will visit the site and finalize everything if she is approved.

Alternate Member Bourque said that he believes that there will be a State document that the Zoning Board will have to sign if the daycare center is approved.

Ms. Tango said that a copy of the document was given to the Board

There were no further questions or comments by the Board or the applicant.

Alternate Member Chase summarized the case:

Michelle Tango of 632 North Pembroke Road has come before the Board requesting a Special Exception to open an accessory use in-home daycare. Ms. Tango provided the following information: (1) the first floor would be the main daycare area; (2) there is a gated outside area; (3) she has notified the abutters and asked that they contact her if they would like additional information; (4) She provided information regarding the sewer and water situation; (5) She answered questions related to being the staff member and how the NH Licensing Bureau will oversee the daycare requirements.

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.

Seeing no further questions from the Board or the public, Chairman Kudrick officially closed the hearing at 7:11 p.m. He said that the Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

ZONING BOARD MEMBER DELIBERATIONS:

The Zoning Board of Adjustment reviewed the Special Exception criteria:

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

Vice Chairman Hebert agreed with Chairman Kudrick that there is a need for home daycare.

2. **Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare.**

Chairman Kudrick said that the applicant's daycare will be on a large lot with a fenced-in area outside and the neighbors will not be disturbed by the business.

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.**

Chairman Kudrick said that because of the way the lot is set up, he could not foresee there being any on-site problems.

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 no one has brought any evidence of property values decreasing because of an in-home daycare.

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 there will not be many people going to the location, so it would not impact the traffic flow.

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

Vice Chairman Hebert said that the applicant has submitted a detailed plan of how the inside would be laid out and how the outside area would be used.

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

Vice Chairman Hebert said that the applicant and the Town has notified all abutters and no one has objected to the daycare.

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

Vice Chairman Hebert said that the vision card shows the property in good repair.

9. **If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system. N/A**

Vice Chairman Hebert stated that, in reference to Case 21-24-Z, Special Exception requesting an in-home accessory use daycare having been presented to the Board for consideration, a Special Exception is required under the Town ordinance.

MOTION: Vice Chairman Hebert moved to approve a **Special Exception under Article VI Special Conditions §143-38-F Day Care, Preschool or Kindergarten** with the following conditions: (1) The applicant must follow all state and local regulations pertaining to daycare operations; and (2) the enrollment is limited to 6 children. Seconded by Dana Carlucci.

VOTE: B. Kudrick – Y T. Hebert – Y D. Carlucci – Y
 R. Bourque – Y P. Paradis – Y

MOTION TO APPROVE A SPECIAL EXCEPTION UNDER ARTICLE VI SPECIAL CONDITIONS §143-38-F DAY CARE, PRESCHOOL OR KINDERGARTEN WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS PERTAINING TO DAYCARE OPERATIONS; AND (2) THE ENROLLMENT IS LIMITED TO 6 CHILDREN PASSED ON A 5-0 VOTE

At 7:15 pm, Chairman Kudrick announced that the next hearing was a continuation of Case 21-21-Z, a variance for 225-229 Beacon Hill Road, to build multi-family dwellings greater than 6 units per building.

Case 21-21-Z A request has been made for a **Variance under Article IV Table of Use Regulations, §143-19, #3**. The applicant, William E. Evans, 194 Woodhill Hooksett Road, Bow, NH 03304, is requesting a variance to allow multi-family dwellings having greater than six dwelling units per building. The property is located at 225-229 Beacon Hill Rd., Map 563, Lot 15 in the R-1 Medium Density-Residential District and is owned by the applicant.

Applicant: William E. Evans, Trustee
194 Woodhill Hooksett Road
Bow, NH 03304

Property Owner(s): William E. Evans and Mary Lou Evans Irrevocable Trusts

Property Address: 225-229 Beacon Hill Road
Pembroke, NH 03275
Tax Map 563, Lot 15 in the R-1 Medium Density-Residential District

Present: Robert L. Best of Sulloway & Hollis, PLLC and William E. Evans

Chairman Kudrick appointed Alternate Member Chase to vote in place of Member Glisson.

Chairman Kudrick said that the Board, this evening, received a petition consisting of 301 signatures. He asked if anyone in the audience wanted to speak about the petition. No one came forward.

Chairman Kudrick said that the petition talks about Beacon Hill Road, the size of the property, and the proposed 101 units. He said that he would not read the entire petition because much of it was brought up at the last meeting. He also said that some of it involves the second case (Case 21-22-Z) pertaining to the road, etc.

Vice Chairman Hebert said that the petition was specifically addressed to the Board of Selectmen and not the Zoning Board of Adjustment.

Attorney Best explained that the applicant is seeking 2 variances which the Board is handling separately. The first case is for multi-units greater than 6 per building. There were a few questions from the last meeting that needed answers. He said that he would cover those specific items and would cover any gaps or elaborate on anything that the Board feels is necessary, but did not want to “torture” anyone with a rerun of last month’s meeting unless the Board wanted it.

He said that there were 3 questions. One question which the Board intended to seek legal advice about regarded whether the limitation on senior housing is a 30-year or a 99-year commitment.

Chairman Kudrick stated that he received paperwork on Chapter 354-A:15 – Housing for Older Persons. He asked Attorney Best to go over it quickly for the public.

Attorney Best explained that when someone undertakes age-restricted housing (62 and over) and receives financing from the NH Housing Finance Authority (NHHFA), it is necessary to make promises to a number of different agencies. There are requirements on how the property and building is to be maintained, how to deal with the tenants, how responsive one is to repair needs, make sure that the right people are living there that fit within the qualifications along with other requirements. If those requirements are not met, the State takes away the rights of the property and takes over the management of it and, essentially the owner would get “the boot”.

He said that there are many different agencies involved, and each agency comes with their own set of requirements. For example, when it comes to taxes, in order to receive the tax breaks, there is a 30-year commitment to the project.

The NHHFA requires a 99-year commitment. Attorney Best showed an example of a NHHFA Agreement for age-restricted property which was recorded at the Registry of Deeds. (The sample was copied and placed in each Board Member packet prior to the meeting.) He referred to page 10, Section 9 (Term), (a) which states that “This Agreement shall become effective as of the date hereof and shall remain in full force and effect for a period of ninety-nine (99) years following the first day of the Credit Period in which the Project is placed in service.” The Agreement is recorded at the Registry of Deeds and is public record.

Attorney Best said that the second question was with regard to availability of water services at the site. He read aloud a letter from the Pembroke Water Works, addressed to the Pembroke Zoning Board, dated November 19, 2021 which states that the area is not currently serviceable with water based on the elevation. It would require a booster station which the applicant has agreed to install. The Pembroke Water Works Board of Commissioners have granted conditional approval to begin the engineering. Attorney Best said that there is no question that water can be brought to the site, they merely have to go through the process.

The third question was with regard to whether property values would diminish if a senior housing complex was built on Beacon Hill Road.

Attorney Best said that he brought information on comparable properties, along with Doug Ricard, an expert on property appraisals.

He handed photos and information on comparable properties to the Board and said that he took the photos on November 1, 2021. He explained:

1. The map on the first page explains the Braemoor Woods Community which includes workforce housing, private condominiums, senior housing, duplexes, and single family homes in Salem, NH.

2. The building on the bottom of the first page shows a model of an exact copy of what Mr. Evans is proposing to build and which is presently under construction.
3. The top photo on page 2 is workforce housing development buildings in Salem, NH (identical to the one Mr. Evans is proposing).
4. The bottom photo on page 2 shows market-rate condominiums in the background and workforce housing in the front.
5. Page 3 is a Zillow listing of one of the condos that sold for \$470,000 10 days ago. Zillow's zestimate indicates that the present 2 bedroom, 2 bath condominium would now be worth \$18,000 more.
6. Page 4 shows a duplex that sold last year for \$619,000 for one side of the duplex.
7. Page 5 shows other duplexes and streetscapes with rooftops of senior housing and workforce housing buildings in the background. His point is that, considering the price that the buildings have been sold for, there is no indication that the senior housing or workforce housing units would decrease property values.
8. Page 6, are photos of single family homes recently sold (\$750,000), just up the street from the workforce housing.
9. Page 7 shows walking paths that are behind the workforce housing development – the same type of paths that would be contemplated near the senior housing development in Pembroke.
10. Page 8 shows a view from the first floor balcony of one of the buildings under construction and illustrates the density of the woods while being only a few hundred feet from a retail building.
11. Page 9 is an entrance lobby of the exact senior living building that is being proposed for Pembroke. The intention is to look like a high class hotel with carpeting and mailboxes.
12. Page 10 shows 3 types of common areas in a senior living building. The reason for building 3 buildings near each other rather than 22 buildings spread out across the site, is that the social component, as it relates to seniors, is vitally important. Attorney Best said that if they placed 6 units in a building, it would cut down, by 80%, the number of people that the residents get to communicate with or visit with without going outside into the snow or weather or walking a long distance.
13. Page 11 shows an elevator lobby which will be on each floor. The laundry area on each floor is located in the elevator lobby.
14. Page 12 is the interior of one resident's apartment in the senior living facility.
15. Page 13 is a Londonderry development that identical except it is 4-stories high. The buildings have solar panels on the roof that provide power to the residents. He pointed out the rain gardens, landscaping, and swales that will be similar in Pembroke. He said that the buildings in Pembroke will be closer together than the buildings depicted in Londonderry. It is typical that the parking lots are about half full.
16. Page 14 shows the front entrance of a Londonderry senior housing building.

Attorney Best said that the point he wanted to make is that the property values of abutting properties are not diminished because they are near a senior housing development.

The Board received a copy of Doug Ricard's letter (copy attached) which states that he has no reason to expect that this project will negatively impact the surrounding property values. He states that the senior housing project is exactly what Pembroke needs.

The rents for the senior apartments will be approximately \$950 - \$1150 per month. The waitlist is approximately 2 years. With regard to the comments at the last meeting about people coming from outside the community to access these properties, Attorney Best said that there are studies that suggest that the vast majority of the folks come from the community. He said that as seniors move into senior living housing, it is freeing up those single family houses and apartments that are able to provide places for working class workforce housing.

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

Doug Ricard, a longtime resident of Pembroke, said that this is exactly what the town needs -- affordable housing for older people with no impact on the Town's expenses. If the applicant builds 22 buildings instead of 3, the Town would have roads to take over. If they are consolidated, there will be no impact to the Town - no plowing, road maintenance, sanding or salting. He said that people 62 and over, are not out at night "tearing around the town" and are pretty good neighbors. He said that he walked the property and looked at the plans and, if the buildings are positioned the way they are shown on the plan, there will be very minimal impact on anyone's enjoyment of their own property. He strongly urged the Board to approve the variance in favor of making it 3 buildings instead of 22.

Mr. Ricard clarified that he did not work for the Department of Revenue Administration; he worked for the State Supreme Court and sat in judgment of the work done by the Department of Revenue Administration.

Opposition to the case:

Stacy Kallelis, 254 Beacon Hill Road, asked what zone the Salem housing was in. She pointed out that Salem is a very different market from Pembroke when comparing assessment and value. She stated that, with regard to traffic, if there are fewer cars in the parking lots, then there is commuter traffic. She said that, in her opinion, Mr. Evans wants to make as much money as he can with his land, but it should be within reason. She asked that the Board not grant the special exception.

Alison Lamothe, 240-246 Beacon Hill Road (Lot 5), said that the Zillow zestimate tool is questionable and has been in the news lately.

Danny Boyer, 223 Beacon Hill Road, said that he disagreed with the market study.

Mark Dumas, 318 Beacon Hill Road, said that he opposed the case because it negatively impacts the R3 zone. He said that he does not argue that the project is a good project for Pembroke, it just is not a good project for the neighborhood.

Rebuttal by applicant:

Attorney Best said that there is a suggestion that there is a grand exception being requested by the applicant. 101 units of senior housing is a key focal point that many abutters talk about but that is not the question that is before the Board. He said that 101 homes can be built on this site as a matter of right. It is a question of whether 101 units are built in 22 buildings or in 3 buildings. He asked if it is a grand exception to build on a compact corner and keep most of the wooded parcel undeveloped permanently and forever or for seniors who need to have the ability to socialize together and need to have something that is affordable. He admitted that it will cost more to build 22 buildings which would result in more expensive housing for the seniors and would put it out of the market. He said that that is why nobody builds that kind of housing.

He said that it is not a grand exception. He said that it is a more sensible way to build senior housing. When building 101 units on a property, is it less sensible to do it in a way that covers the whole property with buildings in comparison to consolidating all the buildings into one location where services are easier to deliver, people can get in and out, and most of the undisturbed woodland is preserved.

Attorney Best said that an abutter felt that they had been equivocal about traffic. He said that senior housing does not have as much traffic as workforce housing. He said that although people come and go, and many have cars, seniors use their cars a whole lot less than workforce housing.

With regard to mortgages and comparing Zillow's estimates, Attorney Best said that he is not suggesting that there is a \$700,000 duplex that will be built next to the senior living complex in Pembroke. What he is saying is that the value of these buildings will not hurt the property values of surrounding properties. It did not hurt the property values in Londonderry and the development sits in a residential district.

Although he is not sure what zone the Salem buildings are in, he said that they are in a wooded rural area which he thought was in a residential zone. Multi-family senior housing is appropriate in a residential district. He said he would challenge anyone to point to a spot in Pembroke where it is allowed and where it would work better than this particular site.

Attorney Best said that the Town of Salem has asked the developer to build another development like the previous one downtown in Salem. It is the same architecture except that the design would have a clock tower.

He said that the proposed site is as close as possible to the commercial, light industrial, limited office, medium density residential zones. It is not within walking distance but it is as good as you can get and be in your community and provide those kinds of housing options for seniors.

Rebuttal by the Opposition:

Danny Boyer, 223 Beacon Hill Road, asked where the Londonderry development was located.

Mr. Evans said it was on Sanborn Street and it connects to Route 28.

Alternate Member Bourque asked if 3-story buildings were allowed in Pembroke.

Chairman Kudrick said that there is a height requirement – 35 feet.

Attorney Best said, before meeting with the Board, they spoke with the fire officials and other departments and there were no indications that a height variance would be needed.

In response to Alternate Member Bourque's question about apartment prices, Attorney Best said that generally \$950/month is for a one-bedroom apartment in the senior housing unit. He thought that the 2-bedroom units would be approximately \$1200/month.

Alternate Member Bourque referred to the application map and asked if certain areas were wetland. Attorney Best said that they were buffers around wetlands.

Alternate Member Bourque noted that it cuts the lot into 3 slices. Attorney Best agreed.

Alternate Member Bourque said that, based on that, he did not believe that the applicant would have the right for 101 residences.

Attorney Best said that he believes that the Yield Plan was developed in consultation with the Town and he would stand behind it.

Alternate Member Bourque said that the applicant would have to get a number of wetland crossings given that the contiguous buildable area on a Class V road is only in the front third.

Attorney Best said that each lot is designed to have enough contiguous area, which is why some of them have four units and some have 6 units in them. All of that was taken into consideration and was prepared by engineers.

There were no more additional questions from the Board.

There were no further comments by the abutters or by the applicant.

Alternate Member Chase summarized the case as follows:

Case 21-21-Z was a continuation. The meeting began with a sharing of information regarding fair housing. A letter was also provided by the Pembroke Water Works. There was discussion by Mr. Ricard regarding surrounding property values. Residents opposing the application spoke of concerns with the property development plan.

The Board asked questions regarding the cost per unit, buffers to the wetlands, and the number of stories that Pembroke buildings are allowed.

There were discussions about traffic. A letter was received from the Pembroke Water Works and the Sewer Department indicating that there is water and sewer capacity.

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 applicant or the audience.

Chairman Kudrick officially closed the hearing at 8:12 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Alternate Member Bourque said that he did not believe that, by right, 101 residences could be placed on that property given the wetland crossings that would be necessary.

Member Carlucci asked if the Planning Board would deal with that topic.

Alternate Member Bourque said that once it is approved by the Zoning Board, the Planning Board's hands would be tied.

Mr. Bacon disagreed.

Chairman Kudrick said that the Board is approving 3 buildings with a total of 101 units.

Alternate Member Bourque said that he felt that the calculations were incorrect based on the wetlands crossings in 2 locations which would cut the property into thirds, and where a little more than a third of the property is on a Class VI road.

Chairman Kudrick clarified that the Zoning Board was approving a use of those buildings and he was under the impression that the Planning Board had the right to increase or decrease the number of units.

Member Carlucci said that the Board is here to hear the multi-unit use of more than 6, and not to lay out the plan of where the buildings are going, or frontage, or setbacks.

Chairman Kudrick reiterated that the Board is only looking at the use of more than 6 and does not believe that the Board would be, in any way, tying the hands of the Planning Board.

Vice Chairman Hebert said that the applicant is not coming for a use of more than 6. He said that, based on their application, the applicant proposes the construction of 101 age-restricted multi-family residential units. He continued to say that, even though he agrees that the Board is approving the essence of the regulations, the applicant is asking relief from a multifamily more than 6 but the way that the application is worded, they are asking for 101 units which is what the Board would be approving if it approved it as the application was presented.

Vice Chairman Hebert continued to say that Alternate Member Bourque sits on the Planning Board and has knowledge of its methodology. He said that the Zoning Board would not want to tie the Planning Board's hands by approve something that is based on the way the application is written vs. the way the ordinance is written and the specific relief that they are asking. He said that he would not want to make a clerical mistake. He said that Alternate Member Bourque had a valid concern. In essence, the ordinance says up to 6 and the applicant is asking for relief of that ordinance, but the proposal is specifically for 101.

Chairman Kudrick said that, on a recent case, he was under the impression that the Planning Board could reduce the number of units from 6 to 4 if they wanted. In that particular case, there were conditions, such as snow storage on the lot that could warrant a reduction of the units that could be built. It was his understanding that the number of units would be determined by the Planning Board and based on input from the Fire Department, Police Department, and other Town departments.

Vice Chairman Hebert said that, in that particular case, they presented a plan that showed 6 units and they were asking for relief of the same ordinance that says "multi-family up to 6". He said that, in the past, the Zoning Board has used the following language: "... adhering to the plans presented except to the extent that they are modified through the Planning Board process, the Planning Board plans being the final plan."

Chairman Kudrick said that another example was the original golf course plan. The Planning Board changed the number of houses after the Zoning Board approved Phase 1. He said that he thought that the Planning Board had the right to change the number of units.

Alternate Member Bourque said that he only called it into question because of the wetlands cutting through the property and whether or not 101 residential units would be allowed by right.

Vice Chairman Hebert gave a further example of the Planning Board changing a decision approved by the Zoning Board -- the gate that was installed for the golf course. He said that although the Zoning Board thought they were doing a good thing, after it went through the Technical Review Committee, the gate was opened.

Chairman Kudrick said that he is of the opinion that the Planning Board has the ability to modify the number of units if they see fit once the buffers, wetland calculations, and drainage are reviewed.

1. The variance will not be contrary to the public interest.

Member Carlucci said that the Master Plan points to a need for senior housing. He said that there would be less of an impact with senior housing than there would be for 22 houses with potentially 4 occupants. He did not see anything that was contrary to the public interest.

Vice Chairman Hebert said that he would wait to comment on No. 1 because Nos. 1 and 2 are tied together. Chairman Kudrick agreed.

2. The spirit of the ordinance is observed.

Chairman Kudrick said that he agreed that senior housing is needed but, when looking at the location, he felt that it would alter the character of the neighborhood which consists of duplexes and single family homes. In his opinion, constructing 3 large buildings on that site would change the character of the neighborhood.

Vice Chairman Hebert agreed. He said that, not having written the regulations, he wondered what the reasoning was for saying that they wanted to limit the number of units to no more than 6 without having more oversight. The buildings will alter the character of the neighborhood because the character of the neighborhood does not include such large buildings.

Member Carlucci said that, after listening to some of the abutters who ride their horses in the area, the 3 buildings would have less of a footprint than if the wetlands were disturbed and there was less access to the conservation area. If 22 houses were built on the site, the public would not be able to use any of the land, even though, at this point, there is no guarantee that the remaining land could be used by the public if only 3 buildings were built.

Vice Chairman Hebert said that there is no doubt that sprawling over the entire footprint would not protect the land as much vs. only consuming the front third of the site.

Chairman Kudrick said that he keeps thinking about the character of the neighborhood which is a residential area consisting of duplexes and single family homes. Building 3 very large buildings will change the character of the neighborhood. He said that he understood what

Member Carlucci was saying with regard to taking one large lot and only using a very small portion of it, but the housing of smaller units would stay within the character of the neighborhood even though the Town would have to maintain the additional roads.

Vice Chairman Hebert said it is not a given that the Town would take over the road. He gave examples such as San-Ken's development, Chickering Meadows and Littlefield Condominiums which are also sprawling and private. He said that there are instances where the Town does not accept or the applicant does not want to put the monies into building a roadway that will be accepted by the Town. The management company would work the cost into whatever maintenance agreement or contract that they have for snow removal, landscaping, etc. It is not a given that the Town would need to assume maintenance of that area if it remains a private type of entity.

Member Carlucci said that, with regard to San-Ken, that was an open-space development. The homes are on smaller lots to conserve conservation space, vernal pools, etc.

Vice Chairman Hebert said that open space was eliminated after San-Ken's development was approved.

3. Substantial justice is done.

Member Carlucci said that affecting all of Town land with runoff is not just.

Alternate Member Chase said that the reason for the variance is to build the complex but it does not feel like it fits into the spirit of the present community. She said that it also does not feel like the Board is in keeping with the zoning law which says that the Town does not want more than 6 units in one building. She said that there is a reason why the zoning was created in the first place.

Member Carlucci said that the Town has organizations such as the Pembroke Woman's Club, Meet Me In Suncook, and library volunteers where older residents are a huge benefit to the community. They are, for example, the ones that plant flowers at the "Welcome to Pembroke" sign and do other things that benefit the Town.

Alternate Member Chase said that there are zoning areas in Town that the 3-building senior housing complex would be zoned for, but this area is not zoned for that use.

Member Carlucci said that he did not know if Pembroke Street was even zoned for the senior complex that was built at the former French's Farm location.

Vice Chairman Hebert said that he did not think anyone would say that a project similar to this would be a detriment to the Town or that providing housing for a senior community is a bad thing. What kind of an impact this project will have on that specific site is more of the question. All the arguments are just. Everyone wants to provide for our senior community and ensure life safety, but, right now, it is a very narrow scope that the Board is looking at approving and it does not matter what it is for, it is a unit more than 6 on that specific spot.

Chairman Kudrick said that there is definitely a benefit to that type of housing.

Vice Chairman Hebert said that the Board needs to focus on that use, at that location, and if it meets the criteria that is set forth, specifically asking for relief for the density of more than 6, regardless of the type of housing i.e. senior, workforce, etc.

4. Property values are not diminished.

Chairman Kudrick said he realizes that there will not be \$700,000 homes in that location, but the applicant demonstrated that the value of those type of buildings did not decrease the value of the surrounding properties which is what the Board asked for.

Vice Chairman Hebert agreed that it was not intended to be an apples-to-apples comparison because it is a different market. He said that the applicant had expert testimony from someone in authority on assessed values in real estate which was good information.

Chairman Kudrick said that the applicant gave the Board the information that they requested.

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.

Member Carlucci said that, in his opinion, this property is different. It has an interest in conservation and to sprawl on the site would go against what the Conservation Commission would want. The property probably contains more wetlands than other properties further up on Beacon Hill Road. It has specific conditions which prove hardship of the land.

In explaining hardship to Alternate Member Chase, Member Carlucci said that the applicant is trying to consolidate their buildings on one portion of the property to protect the conservation

areas on the other portions of the property. The alternative would be the potential development of single family homes.

Chairman Kudrick said that he did not believe that the applicant established the special conditions of the property.

Vice Chairman Hebert said that, when considering senior housing and its benefits to the residents, it is more affective when the buildings are compact but as it is stated, it is possible, but not as desirable, to build 22 buildings. It would be a more costly build-out to put in roadways and 6 or 4-unit buildings vs. consolidating it into 3 larger buildings at one end of the lot. Any of us faced with that choice would choose the same thing from a financial standpoint in order to make this project as viable as possible. The increased cost would be passed down to the end-user who is the senior that is renting it. He said that, from a business standpoint, that concept would not change.

Chairman Kudrick said that it will alter the character of the neighborhood. The applicant is still allowed to build whatever number of units that he wants, he can build on that property but just can't build 3 large units on one spot. He can build 22 units if he wants. In Chairman Kudrick's opinion, it is not a hardship of the land, because he still can do it. It is just that he wants it all in one spot. The Board cannot use cost as a hardship consideration.

Vice Chairman Hebert said that the Board has to look at the general public purpose to the ordinance provision and apply that purpose to that property. It all goes back to: What is the purpose of the ordinance stating that they don't want more than 6 in a building. It makes it unreasonable from a financial standpoint of building out a roadway etc. but financial burden is not something that the ZBA takes into consideration.

Chairman Kudrick said that the applicant can still go out and build 101 units, but in 22 buildings.

Chairman Kudrick said that in a residential area, you want to keep it the same.

Member Carlucci said that the street that he lives on is residential and no one would ever know that there are 35 units 2 blocks down the street from him because the buildings are not seen. He questioned whether the 35 units changed anything? He said that he does not count the cars that go by his house. Member Carlucci said that the neighborhood will still be rural and, in his opinion, the site will be able to be used more than if the entire lot was built out so nobody could enjoy the land. Sprawling would ruin the vernal pools and will affect storm water.

Chairman Kudrick said that if they built out the entire lot, the applicant would have to follow all the regulations pertaining to drainage, wetlands, etc.

Vice Chairman Hebert asked what the impervious area difference would be between 3 large buildings and 3 large parking lots vs. 22 building with small driveways, roads, etc. He said that those topics are Planning Board issues.

Vice Chairman Hebert asked if the hardship is fair and substantial? He asked if the restriction is specific to that site which is burdensome to the applicant because there is no other use for that lot.

There were no other comments by the Board members.

Chairman Kudrick asked if the Board wanted to continue the case in order to speak with Town Counsel about whether the Zoning Board would be tying the Planning Board's hands if the Board approved the 101 units and the Planning Board does not agree with the number of units.

Vice Chairman Hebert said that they could ask Town Counsel to clarify what the ordinance says and the sections that the applicant is asking relief from vs. the proposal. He said that it may be a technicality but the Board does not want to tie the Planning Board's hands in any way. We want to make sure that the Planning Board can do their job.

Chairman Kudrick said that he thought that the Planning Board had the right to modify the plans.

Mr. Bacon said that the Board is getting into the Planning Board's area. He said that the Zoning Board's scope is very narrow. The Board is here to consider the use. Whether the Planning Board can do something or not is irrelevant to the Zoning Board.

Chairman Kudrick said that the Zoning Board is just approving the use.

Alternate Member Bourque said that he does not agree that, by right, the applicant has a right to 101 residences on that property.

Vice Chairman Hebert agreed that the Board has a very narrow scope of whether to approve a multi-family greater than 6. Chairman Kudrick agreed.

(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 this is in reference to **Case 21-21-Z**, a request for a variance having been presented to the Board for consideration. A variance is required because the

proposed development would have a larger number of dwelling units than allowed by code for that area.

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

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

MOTION TO APPROVE THE APPLICATION (CASE 21-21-Z) AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO ADHERE TO THE SUBMITTED PLANS EXCEPT TO THE EXTENT THAT SUCH PLANS ARE REASONABLY MODIFIED THROUGH THE PLANNING BOARD SITE PLAN REVIEW PROCESS WITH THE PLANS APPROVED BY THE PLANNING BOARD BEING THE FINAL PLANS WAS DENIED ON A 4-1 VOTE.

Chairman Kudrick stated that the reason for the denial is that it would alter the character of the neighborhood: No. 1 (The variance is contrary to the public interest) and No. 2 (Spirit of the Ordinance). Vice Chairman Hebert confirmed that the Board does not feel that the variance meets those criteria.

Chairman Kudrick said that because Case 21-21-Z was denied, and is associated with Case 21-22-Z, Case 21-22-Z will not be heard.

The public hearing closed at 8:55 pm.

IV. Approval of Minutes – October 25, 2021.

MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF OCTOBER 27, 2021 AS PRESENTED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

V. Other Business/Correspondence

Mr. Bacon said that the December meeting consists of several variances.

VI. Adjournment

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

Meeting adjourned at 8:59 p.m.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary