

**PEMBROKE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
December 27, 2021
(ADOPTED)**

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

ALTERNATES PRESENT: Wendy Chase, Robert Bourque and Blakely Miner III

EXCUSED:

STAFF PRESENT: 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, who also read the case aloud.

PUBLIC HEARINGS:

Case 21-25-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, G, Side Setback**. The applicant, Anthony Petrillo, of 403 Pembroke St., is requesting a variance to leave his already-built shed, which is 1' from the side setback where 15' is required. The property is located at 403 Pembroke St., Map 565, Lot 108, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Anthony J. Petrillo III
403 Pembroke Street
Pembroke, NH 03275

Property Owner(s): Anthony J. Petrillo III

Property Address: 403 Pembroke Street
Pembroke, NH 03275

Tax Map 565, Lot 108 in the R-1A Medium Density-Residential District

Included in the Member Packets: Fee Schedule Worksheet and Abutters List Report.

Present: APPLICANT WAS NOT PRESENT.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

The Applicant was not present.

Chairman Kudrick said that the Board will proceed to the next case and will return to Case 21-25-Z once the Applicant arrives.

Case 21-26-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, A, Minimum Lot Area**. The applicant, Gregory Lofaro, of 61 Dicandra Dr., Bow, is requesting a variance to allow his (3) unit multi-family building on a lot that is 21,307 sq. ft. where 50,000 sq. ft. is required. The property is located at 43 Broadway, Map VE, Lot 14, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Gregory Lofaro
61 Dicandra Drive
Bow, NH 03304

Property Owner(s): Lofaro Residential LLC (solely owned by Gregory Lofaro)

Property Address: 43 Broadway
Pembroke, NH 03275

Tax Map VE Lot 14 R-1A Medium Density-Residential District

Included in the Member Packets: Fee Schedule Worksheet, Abutters List Report, tax map, assessing card, letter to the Zoning Board of Adjustment from Pembroke Sewer Commission, dated December 20, 2021.

Present: Gregory Lofaro

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

The Recording Secretary read the case aloud.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

The Applicant said that he purchased 43 Broadway 6 months ago. It contains 2 legal rental units. A third unit was constructed by the prior owner. It has 2 bedrooms, 2 bathrooms, a kitchen and enough living space for a family. He said that there is plenty of parking (pictures). He removed a few sheds and added 1000 sq. ft of parking space. There is enough parking for 10 cars.

Chairman Kudrick asked how long the third unit had been on the premises.

The Applicant said approximately 20 years. There was once a carport, which the owner closed in. There is also an old gas stove that the prior owner installed which the Applicant will replace.

Member Paradis asked if anyone had lived in the third unit.

The Applicant said that the prior owner's entire family occupied the whole house, including the unfinished third unit, but the third unit was never rented out.

Chairman Kudrick said that the Application mentions that the Applicant rehabbed the third unit. He asked what type of work he did.

The Applicant said that he did cosmetic things such as floors, painting, added a mini-split heater, bathroom on the second floor was rough-plumbed by the previous owners, so he finished it and the bedroom. When the Applicant purchased the property, Unit C had 1 bedroom and 1 bathroom but since he finished the upstairs, it is now a 2 bedroom/2 bathroom unit. He said that he did no plumbing, just did the finish.

Chairman Kudrick asked if Mr. Lofaro had done any electrical or plumbing work.

Mr. Lofaro said no, that he just replaced the fixtures. The rough plumbing was already done.

Member Carlucci asked if there were any permits or inspections done such as electrical, plumbing, or mechanical in Unit C. He also asked Mr. Bacon if there were any record of inspections having been done.

Mr. Bacon said that there were no permit applications or inspection slips in the folder for that property.

Mr. Lofaro said that he did not think that any inspections were done.

Member Carlucci asked if the Town knows what exists behind the walls as far as electric, gas piping, and plumbing.

The Applicant said that there were sections where he removed some wall panels to make sure everything was safe and then replaced the panels once he saw no issues. He said that the gas stove would be replaced with a direct-vent Rinnai system because the original gas stove was leaking gas/carbon monoxide. Mr. Lofaro said that there were no other major issues.

Member Carlucci asked if the Fire Department had inspected for egress.

Mr. Lofaro said that the Fire Department has not inspected yet. He said that the third unit has an entrance door and a sliding door on the first floor. The second bedroom has a full-sized window. There were smoke detectors in the building when he purchased it and added any that were missing.

Member Carlucci clarified that he is asking these questions because of liability to the Town and he wants to make sure that if someone is living in the third unit and the Town allows someone to occupy the unit, that it is safe to do so.

Mr. Bacon said that inspections will certainly have to be done by himself and the Fire Department.

Member Carlucci said that there are other New Hampshire agencies that can assist with plumbing and mechanical inspections which would be the responsibility of the Applicant to pay for.

Mr. Bacon said that he would be interested in talking to Member Carlucci about those agencies.

Member Carlucci said that he would give the contact information to Mr. Bacon.

Mr. Lofaro said that Units A and B are occupied. No one is living in Unit C yet.

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

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

Please give a detailed description of your proposal below.

Subject property currently is 21,307 sq. ft. Understanding the required lot size for a three-family in Pembroke is 50,000 sq. ft., I am requesting a variance to convert the subject property to a legal three-family. The prior owners had renovated the property to support a third family. It is complete with a full kitchen, bathroom, bedroom, and living room. This had taken place long

before I bought it sometime between 1999 and 2021. I have finished the rehab they started and is complete with 2 bedrooms/2 bathrooms.

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

Broadway, Pembroke, NH is mostly comprised of multi-family homes to include: 13-15 Broadway (three-family) and 45 Broadway (four-family). The subject property is legally a two-family home already, I am proposing just to legalize the already existing third unit. This conversion would only improve the neighborhood and town.

2. The spirit of the ordinance is observed.

In order to provide enough parking for three families, I added approximately 1,000 sq. ft. of driveway space from the existing lot using gravel and crushed asphalt and building a retaining wall. There is now sufficient parking for 9+ cars. Pictures included.

3. Substantial justice is done.

The intent for this variance is to legalize a third existing unit. To deny this request would cause further hardship on the property value, and would also take away the opportunity for a family to have a home during a time in real estate where listings and available rentals are at a record low.

4. The values of surrounding properties are not diminished.

As stated in Section 1, Broadway is already full of multi-families. The conversion from a two-family to a three-family would have no negative impact on the surrounding property.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

The subject property is currently a legal two-family within the last 10-15 years. The prior owners converted the property into a three-family complete with one bedroom, one bathroom, a full kitchen, and a natural gas heat source. Upon acceptance of this variance the property layout would be as follows: Unit A: 1 bedroom/1 bathroom; Unit B: 2 bedrooms/1 bathroom; Proposed Unit C: 2 bedrooms/2 bathrooms.

(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.

Although the subject property has only a 21,307 sq. ft. lot size, it has the capabilities to comfortably house three separate families. It is necessary to agree on a variance for the lot size requirements in order to legalize the third unit. In order to provide enough parking for three families, I added approximately 1,000 sq. ft. of driveway space on the existing lot.

Chairman Kudrick asked if Mr. Lofaro received a letter from the Pembroke Sewer Commission.

Mr. Lofaro said yes and that he understood that if the Board approved the Application, the Sewer Commission would require \$3,022.54 in order to get a Certificate of Occupancy.

Alternate Member Chase asked if Mr. Lofaro had added onto the building.

Mr. Lofaro said no and that Unit C is basically done except for the trim and the new gas stove which needs to be installed. He said that all work has been done by a licensed and insured contractor.

There were no further questions from the Board.

Member Glisson summarized the case as follows: **Case 21-26-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, A, Minimum Lot Area.** The applicant is Gregory Lofaro who presented his case. Chairman Kudrick asked how long the third unit had been there. The Applicant stated approximately 15-20 years. The Applicant stated that the prior owner occupied all the units in the house before selling it. Chairman Kudrick asked about the work done and the Applicant stated that he did cosmetic work and a mini-split system along with some bathroom and bedroom updates. Mr. Carlucci asked if there were any permits pulled for electrical, etc. and the answer was no. A question was asked about egresses and the Applicant stated that there are two means of egress and smoke detectors. The building inspector said that inspections should be done for electrical, plumbing, etc. They discussed having the inspections performed by external consultants. There are two tenants in the current two legal units and nothing external has been added onto the building.

There were no further questions by the Board.

The Applicant said that when he purchased the property, he saw the potential and hoped that the Board could also see the potential with the house.

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 7:18 p.m.

Chairman Kudrick said that the lot is short by quite a bit in square footage - having 21,000 where 50,000 is needed.

Vice Chairman Hebert said that even with a two-unit building, he would be short.

Chairman Kudrick said that the building's site had not changed. When the building was built, there were no zoning regulations.

Vice Chairman Hebert said that his only hesitation is the order in which the Board is reviewing the cases pertaining to this property. The Applicant has two variances and one special exception. He said that the Board is discussing a variance to allow a three-unit multi-family on a 21,307 ft. lot where 50,000 is required. He pointed out that the Board has not established that the three-unit building is legal and, therefore, how can the Board give permission for the Applicant to have the third unit on the 21,307 sq. ft. lot. He said that they are talking about whether the square footage is adequate for the lot, the second variance is for frontage, and the third is a special exception to create the third legal unit. Vice Chairman Hebert said that, in his mind, the wording on the case is almost as if the third unit is already there.

Chairman Kudrick agreed and said that the Board should take care of the Special Exception first.

Member Carlucci said that if there is no certificate of occupancy for the third unit, then the unit does not exist.

Vice Chairman Hebert said yes. The inspections would verify that the third unit is safe, then the Board could create the legal unit, and then the Board could address the other issues. He asked if the Board should table this variance?

Chairman Kudrick agreed. He said that the Board will table Case 21-26-Z, and proceed to Case 21-28-Z Special Exception in order to create the legal entity of the building and then hear Cases 21-26-Z and 21-27-Z to create the legal units.

The Board agreed. Chairman Kudrick said that if the special exception to create three units on the 21,307 sq. ft. lot is not allowed, then the other variances are unnecessary.

MOTION: Vice Chairman Hebert moved to table Case 21-26-Z. Seconded by Member Paradis.

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

MOTION TO TABLE CASE 21-26-Z PASSED ON A 5-0 VOTE.

Chairman Kudrick opened the following case at 7:27 p.m.

The Recording Secretary read the case aloud.

Case 21-28-Z A request has been made for a **Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3**. The applicant, Gregory Lofaro, of 61 Dicandra Dr., Bow, is requesting a Special Exception to allow a 3-unit multi-family building, where the building is already constructed and the owner seeks to make an existing 3rd unit a legal unit. The property is located at 43 Broadway, Map VE, Lot 14, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Gregory Lofaro
 61 Dicandra Drive
 Bow, NH 03304

Property Owner(s): Lofaro Residential LLC (solely owned by Gregory Lofaro)

Property Address: 43 Broadway
 Pembroke, NH 03275

Tax Map VE Lot 14 R-1A Medium Density-Residential District

Included in the Member Packets: Fee Schedule Worksheet

Present: Gregory Lofaro

Chairman Kudrick said that he would not re-read the rules as they were read earlier and will pertain to all three cases.

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

Please give a detailed description of your proposal below.

The subject property is legally a two-family, but sometimes between 1999-2021, the prior owners converted it, without the use of permits, to a three-family. I am proposing to make the

subject property a legal three-family home. The current layout of the property is as such: Unit A: one bedroom/one bathroom; Unit B: 2 bedrooms/1 bathroom; proposed Unit C: 2 bedrooms/2 bathroom.

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

Currently, the addresses via the post office for the subject property are 43 Broadway, Unit A and Unit B. In order to make a Unit C, and legally livable, this property must be converted to a three-family legally. That would provide Pembroke and its local businesses one more family's worth of opportunity.

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.**

Broadway, Pembroke, NH has many zoned multi-families to include 13-15 Broadway (three-family) and 45 Broadway (four-family). The subject property is currently a two-family but has been utilized as a three-family already for many years. Making it legal would change nothing negatively.

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 location is ideal for a three-family as there are already many properties zoned as multi-unit homes on the street.

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

Pembroke has seen its highest growth of home values with multi-families over the last year, many of which are found on Broadway. Converting the subject property from a two-unit to a three-unit will only improve its own value, and the value of homes around it.

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

No more traffic will result from the property than it has in the last decade as it has been utilized as a three-family since at least 1999.

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

Unit setup as follows: Unit A: 1 bedroom/1 bathroom; Unit B: 2 bedrooms/1 bathroom; proposed Unit C: 2 bedrooms/2 bathroom. There has also been added on the current lot approximately 1,000 sq. ft. of driveway surface to allow comfortable parking for tenants/future owners.

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

I have a good relationship with the owner of 41 Broadway. He has stated that he has no issue with the conversion to three-family. We are even working together on installing a new fence between our properties. The owner of 45 Broadway has stated that he would not have any issues as his building is a four-family.

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

Mr. Lofaro said that he left this question blank on the application because he was still working with the Sewer Department, but since then, the Sewer Department has stated that they would provide him with a Certificate of Occupancy.

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.**

The subject property is on Town sewage and water.

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

The Applicant said that he is willing to do whatever needs to be done to make it comfortable for the Board to approve the application.

There was no rebuttal by the opposition.

Chairman Kudrick said that the Board received a letter from the Pembroke Sewer Commission indicating that if the property becomes a three-family home, the Applicant will need to pay \$3,022.54 prior to receiving a Certification of Occupancy.

Vice Chairman Hebert asked if the Applicant contacted the Pembroke Water Works regarding connection fees.

The Applicant said that he spoke with the Pembroke Water Works and they did not mention a fee.

Chairman Kudrick said that he may have a charge for the third unit, but that it would be up to the Pembroke Water Works to inform him.

Member Bourque asked if the driveway was currently paved and if there was an asphalt apron between the driveway and Broadway.

Mr. Lofaro said that the driveway is currently paved and he only added crushed gravel on the additional area.

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

Member Glisson summarized the case as follows: **Case 21-28-Z, a Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3.** The Applicant read through the criteria. There were only a few questions. Mr. Hebert asked if Mr. Lofaro had been in contact with the Pembroke Water Works for fees. The Applicant said that he had but there was no mention of a fee. Bourque asked if the current driveway was paved where it meets Broadway. The Application replied yes.

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 7:32 p.m.

Chairman Kudrick said that the building started as a one-family which later was split into two units. It has not changed except to add a bathroom and kitchen in 1999 for a third unit. He said that the Sewer Department considers it a unit if it has a kitchen and a bathroom.

Member Carlucci said that the home is in close proximity to the Business District which has many multi-units.

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.**

Member Carlucci stated that the additional unit will provide patrons for the downtown businesses.

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 it is an apartment building like the others and will not stand out in any way.

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 it is legalizing what is there.

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 evidence was brought to the Board's attention.

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, at the most, there will be two additional cars.

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

Member Carlucci said that the building has Town water and sewer.

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

Chairman Kudrick said no one has spoken against the application.

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 the Board has received a letter from the Sewer Commission and the Applicant has spoken with the Water Department.

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 it would be served by Town water and sewer.

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

Vice Chairman Hebert said that this is in reference to **Case 21-28-Z**, a request for a **Special Exception** having been presented to the Board for consideration, a Special Exception is required in order to make the property a legal three-unit building.

MOTION: Vice Chairman Hebert moved to approve the application **Case 21-28-Z**, as presented with the following conditions: (1) The applicant must follow all state and local codes; (2) Must coordinate for a site visit with the Code Enforcement Officer. The purpose of said site visit is to review the structure and ensure that the building complies with building and life-safety codes. (3) The Applicant must apply for and secure a building permit for the third unit. (4) The Applicant must submit an Application with the related fees, to the Pembroke Water Works for the additional water connection; (5) The Applicant must submit an Application with the related fees, to the Pembroke Sewer Commission to secure an additional sewer connection; and (6) Must obtain a Certificate of Occupancy from the Pembroke Building Department prior to occupying the third unit. Seconded by Member Paul Paradis.

Chairman Kudrick asked if the Fire Department should get involved because of the gas connection.

Mr. Bacon said that the Fire Department does perform inspections and must sign off on the application in order to get a Certificate of Occupancy so it is not necessary to add it to the motion.

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

MOTION TO APPROVE THE APPLICATION CASE 21-28-Z, AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL CODES; (2) MUST COORDINATE FOR A SITE VISIT WITH THE CODE ENFORCEMENT OFFICER. THE PURPOSE OF SAID SITE VISIT IS TO REVIEW THE STRUCTURE AND ENSURE THAT THE BUILDING COMPLIES WITH BUILDING AND LIFE-SAFETY CODES. (3) THE APPLICANT MUST APPLY FOR AND SECURE A BUILDING PERMIT FOR THE THIRD UNIT. (4) THE APPLICANT MUST SUBMIT AN APPLICATION WITH THE RELATED FEES, TO THE PEMBROKE WATER WORKS FOR THE ADDITIONAL WATER CONNECTION; (5) THE APPLICANT MUST SUBMIT AN APPLICATION WITH THE RELATED FEES, TO THE PEMBROKE SEWER COMMISSION TO SECURE AN ADDITIONAL SEWER CONNECTION; AND (6) MUST OBTAIN A CERTIFICATE OF OCCUPANCY FROM THE PEMBROKE BUILDING

DEPARTMENT PRIOR TO OCCUPYING THE THIRD UNIT PASSED ON A 5-0 VOTE.

CONTINUATION OF:

Case 21-26-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, A, Minimum Lot Area**. The applicant, Gregory Lofaro, of 61 Dicondra Dr., Bow, is requesting a variance to allow his (3) unit multi-family building on a lot that is 21,307 sq. ft. where 50,000 sq. ft. is required. The property is located at 43 Broadway, Map VE, Lot 14, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Chairman Kudrick continued Case 21-26-Z at 7:43 pm

MOTION: Vice Chairman Hebert moved to “untable” and continue Case 21-26-Z. Seconded by Member Carlucci.

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

MOTION TO “UNTABLE” AND CONTINUE CASE 21-26-Z PASSED ON A 5-0 VOTE.

Chairman Kudrick said that the two-family presently has approximately 21,000 sq. ft. of land where 40,000 sq. ft. would be necessary.

Vice Chairman Hebert said that the property has been occupied for some time.

ZONING BOARD MEMBER DELIBERATIONS:

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

Chairman Kudrick said that he did not see where it would be.

2. **The spirit of the ordinance is observed.**

Member Carlucci said that there are similar size lots on Broadway but that the Applicant has one of the larger lots in the area

3. **Substantial justice is done.**

Chairman Kudrick said that the building is not getting larger and the Applicant is just using what he presently has.

4. Property values are not diminished.

Chairman Kudrick said that there is no evidence that values would be diminished.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Chairman Kudrick said that the hardship is that the house was built before zoning.

(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.

(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

Vice Chairman Hebert said that, in reference to **Case 21-26-Z**, a request for a variance having been presented to the Board for consideration, a variance is required because the lot is not large enough to support the proposed construction.

MOTION: Vice Chairman Hebert moved to approve the application, **Case 21-26-Z**, as presented with the following conditions: (1) The applicant must follow all state and local regulations. Seconded by Member Paradis.

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

MOTION TO APPROVE THE APPLICATION, CASE 21-26-Z, AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS PASSED ON A 5-0 VOTE.

Case 21-27-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, D, Minimum Contiguous Lot Frontage—Multiple Family**. The applicant, Gregory Lofaro, of 61 Dicandra Dr., Bow, is requesting a variance to allow his 3-unit multi-family building on a lot that has 70' of frontage where 150' is required. The property is located at 43 Broadway, Map VE, Lot 14, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Gregory LoFaro
61 Dicandra Drive
Bow, NH 03304

Property Owner(s): Lofaro Residential LLC (solely owned by Gregory Lofaro)

Property Address: 43 Broadway
Pembroke, NH 03275

Tax Map VE Lot 14 in the R-1A Medium Density-Residential District

Included in the Member Packets: Fee Schedule Worksheet

Present: Gregory Lofaro

Chairman Kudrick called the meeting to order at 7:50 p.m.

The Recording Secretary read the case aloud.

Chairman Kudrick said that he would not read the rules governing the hearing because the Board is still working with the same applicant.

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

Please give a detailed description of your proposal below.

Property currently has 70 ft. of frontage. Understanding that is less than the required frontage for a three-unit multi-family, I am requesting a variance to that rule as the house itself has enough living quarters for a typical three-unit home. Prior owners converted the end carport section into a third living area complete with a kitchen and a bathroom. A second bathroom was started but not completed. If accepted, it would have 2 bedrooms and 2 bathrooms.

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

Broadway, Pembroke, NH is mostly comprised of multi-families to include: 13-15 Broadway (three-family) and the adjacent property, 45 Broadway (four-family). 43 Broadway is a legal two-family with a third fully functioning unit that has been in existence since at least 1999 when the carport enclosure was closed up.

2. The spirit of the ordinance is observed.

There will be no change in height of the structure.

3. Substantial justice is done.

The intent for this variance is to legalize a current illegal, but long existing, unit. To deny this request would cause further hardship on the property value, and would also take away the opportunity for a family to have a home in an already low inventory market of real estate with high demand.

4. The values of surrounding properties are not diminished.

As stated in Section 1, Broadway has many multi-families. Converting the subject property from a two-family to a three-family would only improve the area as this would allow for more opportunity for local businesses.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

The subject property is currently a legal two-family. Sometime in the last 10-15 years, the prior owners converted the carport into a third living area complete with a finished bathroom and a full kitchen. After purchasing the property, my renovations now have made it a two-bedroom, two-bathroom unit. This third unit is fully functional and ready for occupants. Unit A: one bedroom/one bathroom; Unit B: 2 bedrooms/1 bathroom; proposed Unit C: 2 bedroom/2 bathroom.

(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.

Although the subject property has only 70 ft. of frontage, it has the capabilities to comfortably house three separate families. It is necessary to agree on a variance for the frontage requirements in order to legalize the third unit and set up a mailing address for a third family to inhabit the property.

No one spoke in favor or in opposition of the Case. The Applicant had nothing to add.

Member Glisson summarized the case as follows: **Case 21-27-Z A request for a Variance under Article V Dimensional and Density Regulations, §143-21, D, Minimum Contiguous Lot Frontage—Multiple Family.** The Applicant read through the criteria. No one spoke in favor or against the application and there were no further questions by 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 7:53 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

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

Member Carlucci stated that the building was in existence prior to zoning.

Vice Chairman Hebert said that it is his understanding that the reason for now requiring such a large frontage is for safety when exiting and entering the property. The property presently has a good site line and has existed for decades without any problems. The requirement for multi-family and duplex is the same.

2. The spirit of the ordinance is observed.

Member Carlucci said that it will be upgraded and inspected which will be better for the Town.

3. Substantial justice is done.

Chairman Kudrick said that adding another unit in the building would not enlarge the building, and would do no harm to the Town and would be a benefit to the owner.

4. Property values are not diminished.

Chairman Kudrick said that no evidence to the contrary was submitted.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Chairman Kudrick said that there was no ordinance when the building was built.

Vice Chairman Hebert said that the property is narrower on the road frontage and extends deeper in the rear.

(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.

(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

Vice Chairman Hebert said that, in reference to **Case 21-27-Z** a request for a variance having been presented to the Board for consideration, a variance is necessary because the lot does not have adequate frontage on the Town road to support the proposed construction.

MOTION: Vice Chairman Hebert moved to approve the application **Case 21-27-Z**, a request for a **Variance under Article V Dimensional and Density Regulations, §143-21, D, Minimum Contiguous Lot Frontage—Multiple Family**, as presented with the following conditions: (1) The applicant must follow all state and local regulations. Seconded by Member Paul Paradis

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

MOTION TO APPROVE THE APPLICATION CASE 21-27-Z, A REQUEST FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, D, MINIMUM CONTIGUOUS LOT FRONTAGE—MULTIPLE FAMILY, AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS PASSED ON A 5-0 VOTE

Chairman Kudrick advised the Applicant that he must sit down with the Building Inspector to go over some things and take care of Pembroke Water and Pembroke Sewer Department requirements.

Case 21-29-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, H, Rear Setback**. The applicant, Jules Pellerin, of 135 Tina Dr., is requesting a variance to build a 32' x 40' garage 15' from the rear setback where 40' is required. The property is located at 135 Tina Dr., Map 266, Lot 85-35, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Jules A. Pellerin
135 Tina Drive
Pembroke, NH 03275

Property Owner(s): Jules and Lisa Pellerin

Property Address: 135 Tina Drive
Pembroke, NH 03275

Tax Map 266, Lot 85-35 in the R-1A Medium Density-Residential District

Included in the Member Packets: Fee Schedule Worksheet, Abutters List Report, Tax map, Assessing Card.

Present: Jules Pellerin

Alternate Member Chase asked if there should be a preferred order for the cases.

Mr. Bacon said that he purposely put the setback variance first because the Applicant indicated that if he did not get approved for the ADU, he would like to still build the garage.

Chairman Kudrick agreed.

Chairman Kudrick called the meeting to order at 8:02 pm

The Reporting Secretary read the case aloud.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

He said that he would not read the rules for the next three cases since they are with the same applicant.

The Applicant said that he and his wife thought that once they were retirement age, they would winter in Florida, but now that they have grandchildren, his wife has decided not to go to Florida. They have now decided to build a garage in which he and his son could use. The way the site is configured with the water drainage easement, they could not put the garage at the end of the driveway and therefore opted to place it in the backyard. The primary entrance to their house has always been the slider on the back deck. They have never used the front entrance of the house. Mr. Pellerin said that if they utilized the 40' setback, the garage would be up against the house, the deck would have to be removed, the building would need substantial construction, and they would lose the majority of the back yard which they use with the grandchildren and the dogs.

Kim Diamond, 139 Tina Drive, said that they have been neighbors to the Pellerins for years and that they have no objection to the proposed garage.

No one spoke in opposition to the application.

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

Please give a detailed description of your proposal below.

To add a 1200 sq. ft. ADU to second floor of a proposed 32' x 40' detached garage. Due to site and setback restraints, attaching the proposed garage to the house is not feasible. Goal: To obtain a variance to allow a 15' rear setback.

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

The proposed structure is behind our house and not visible from the street.

2. The spirit of the ordinance is observed.

All steps of this construction request has been followed with emphasis on detail.

3. Substantial justice is done.

Due to size restrictions, these variances have been applied for to facilitate this project. Neighbors have been consulted, with none having objections. The proposed building will have no adverse effect on surrounding property values and is not visible from the street.

4. The values of surrounding properties are not diminished.

Structures/additions of this nature can only add to surrounding properties.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

This project has been a dream of my family’s for years. Now that we can afford to move ahead with this, these variances are the only way this can be accomplished. All of our neighbors are on board and understand that due to site restrictions, this is the only way we can construct this building.

(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.

Member Carlucci asked what is behind the proposed garage, over the property line.

Mr. Pellerin said that it is a wooded area. There are two abutters that split in the middle of the back property. They could not reach either one of them by telephone or come up with the information to contact them. The only two abutters that they have actually seen are the ones to the right and left of his home.

Vice Chairman Hebert asked if the Applicant can see a house behind his house.

Mr. Pellerin said no. The only thing they run into when walking the dogs in the woods is the cemetery.

Chairman Kudrick asked Mr. Pellerin if he could have moved the garage closer to the house.

Mr. Pellerin said no, not without removing the deck. If the garage was moved any closer to the house, it would be easier to diminish the size of the garage then it would be to remove the deck. The deck is an integral part of the existing structure.

There were no further questions by the Board.

Mr. Pellerin said that he and his wife spent a lot of time on the design of this structure, not only from a functional standpoint but from a tasteful standpoint in order to add value to their home and the surrounding area.

Member Glisson summarized the case as follows: **Case 21-29-Z**, is a **Variance under Article V Dimensional and Density Regulations, §143-21, H, Rear Setback**. There is one abutter who approved of the application. The Applicant read through the criteria. Mr. Carlucci asked what was behind the proposed garage and the Applicant stated that it is a wooded area and that they had not been able to connect with the people that own the property although they tried. Chairman Kudrick asked if the Applicant could move the garage closer to the house but the Applicant stated that they could not without removing the deck and it would be challenging.

Bruce Diamond, 139 Tina Drive, said that the only people who drive on Tina Drive are those that reside there because both ends of Tina Drive come onto Smith Avenue. He said that no one would ever know that the garage was behind the house and it would not be a detriment to the neighborhood.

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 8:10 pm

Chairman Kudrick said that Mr. Pellerin has a unique lot when you consider how the house was set. No one is behind him. There is quite a bit of land on both sides of the property. He also has a drainage ditch going through the property.

Vice Chairman Hebert said that, with regard to the drainage easements, he can see that the very corner of the garage is over the dash line that is the extent of the drainage easement. He said that

it would be an unlikely that anything would ever go through there and need to encompass the whole 35 ft.

Chairman Kudrick said that he thought it was an open culvert for the ditch line that went through the drainage easement. He said that the drainage easement is for the Town to dig it out when necessary. The driveway is already on part of it.

Chairman Kudrick thought that the Town owned the drainage easement.

Alternate Member Bourque asked if the Applicant would have to get permission from the Town to put pavement and a building in their easement.

Vice Chairman Hebert said that the pavement has been there forever. He said that it appears that the building is only maybe 5 ft. into the easement.

Chairman Kudrick said that it would be best not to have the garage in the easement.

Vice Chairman Hebert said that he would also prefer that, but if there is a reason from a building standpoint that would prevent that, the minimum would be to approach VJ at the Public Works Department or Mr. Jodoin, the Town Administrator, and present them with this and have them sign off that it is not an issue. He thought that the drainage easement was put there for a reason and the expanse of 35 ft. really should not be built on.

Member Carlucci said that the Board was here to determine the distance of the rear setback. When a building permit is pulled, the different departments sign off.

Alternate Member Miner agreed that the variance was just for the 15 ft. setback. He said that everything else that the Board has mentioned will be covered through the Building Inspector, the Public Works Department and other departments before giving the Applicant a Certificate of Occupancy.

Chairman Kudrick agreed that the Board is primarily looking at the 15 ft. setback and all other aspects of the garage would be taken care of by the Building Inspector and other departments. He said that it would be a good thing to make a note in the motion that the Applicant will have to confer with the Building Inspector and may have to alter the building.

Alternate Member Bourque said that the variance is only on the back property line and any other issues would have to be resolved at a different level.

Vice Chairman Hebert said that since the plan will not be going to the Planning Board, it was a good suggestion to identify the issue since this project will end with the ZBA.

Chairman Kudrick said that if the Town found it necessary to dig up the driveway, it would be the Town's responsibility to replace it since the driveway was approved on that easement many years ago.

There were no further questions or discussions by the Board.

ZONING BOARD MEMBER DELIBERATIONS:

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

Member Carlucci said that there is no evidence to that effect.

2. The spirit of the ordinance is observed.

Chairman Kudrick said that he felt that it is being observed.

Member Carlucci said that it is not imposing on anyone.

3. Substantial justice is done.

Vice Chairman Hebert said that the reason for having a 40 ft. rear setback is in case there is a neighbor behind him and there is no visible neighbor behind him.

4. Property values are not diminished.

Chairman Kudrick said that the value of the property will increase and will not be seen from the road.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Chairman Kudrick said that the hardship that the Applicant has is that the house is set deep into the property. If the house had been built in the front portion of the lot like the others along that street, he would not have a hardship. It is a hardship of the land.

Vice Chairman Hebert also said that with the easement on the side yard, he is limited.

- (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.

(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 21-29-Z** an application for a variance having been presented to the Board for consideration. A variance is required because the proposed construction is closer to the rear property line than what is allowed by code.

MOTION: Vice Chairman Hebert moved to approve **Case 21-29-Z** (A request for a **Variance under Article V Dimensional and Density Regulations, §143-21, H, Rear Setback**), as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) Applicant must coordinate a site visit with the Code Enforcement Officer prior to construction. The reason for the visit is to identify the rear property line and the location of the proposed construction in relation to that property line, thereby ensuring that there is a minimum of 15 ft. between them; (3) Upon discussion of the case, it has been identified that the submitted plans have the proposed garage extending into a 35 ft. drainage easement. The Applicant should address that with the Town authorities to ensure that there is no future problems. Seconded by Alternate Member Chase.

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

MOTION TO APPROVE CASE 21-29-Z (A REQUEST FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, H, REAR SETBACK), AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) APPLICANT MUST COORDINATE A SITE VISIT WITH THE CODE ENFORCEMENT OFFICER PRIOR TO CONSTRUCTION. THE REASON FOR THE VISIT IS TO IDENTIFY THE REAR PROPERTY LINE AND THE LOCATION OF THE PROPOSED CONSTRUCTION IN RELATION TO THAT PROPERTY LINE, THEREBY ENSURING THAT THERE IS A MINIMUM OF 15 FT. BETWEEN THEM; (3) UPON DISCUSSION OF THE CASE, IT HAS BEEN IDENTIFIED THAT THE SUBMITTED PLANS HAVE THE PROPOSED GARAGE EXTENDING INTO A 35 FT. DRAINAGE EASEMENT. THE APPLICANT SHOULD ADDRESS THAT WITH THE TOWN AUTHORITIES TO ENSURE THAT THERE IS NO FUTURE PROBLEMS PASSED ON A 5-0 VOTE.

Case 21-30-Z A request has been made for a **Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units**. The applicant, Jules Pellerin, of 135 Tina Dr., is requesting a **Special Exception** to construct an ADU over a proposed new garage. A **Special Exception** is required under **§ 143-18.1**. The property is located at 135 Tina Dr., Map 266, Lot 85-35, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Jules A. Pellerin
135 Tina Drive
Pembroke, NH 03275

Property Owner(s): Jules and Lisa Pellerin

Property Address: 135 Tina Drive
Pembroke, NH 03275

Tax Map 266, Lot 85-35 in the R-1A Medium Density-Residential district

Included in the Member Packets: No additional documentation

Present: Jules Pellerin

Chairman Kudrick called the meeting to order at 8:23 p.m.

The Recording Secretary read the case aloud.

Chairman Kudrick reminded the Board that the rules would not be read having already done so for the previous case with the same Applicant.

Mr. Pellerin said that originally they were going to put a game room over the garage but then decided that, if they have the space up there, it would be best to apply for an ADU now rather than after the fact. In this way, if they decide to construct an in-law apartment in that space, they would already have approval. They felt that it was better to have it and not need it than to need it and not have it.

The Applicant read aloud the application:

Please give a detailed description of your proposal below:

To construct a 32' x 40' detached garage adjacent to our home. Due to setback restraints and the general arrangement of lot, construction within the required setbacks is not possible. The garage

will have a 1200 sq. ft. in-law apartment upstairs. Due to the size of the garage, the “ADU” will be approximately 1200 sq. ft. Goal: To obtain a variance for a 23’ x 40’ detached garage with a 1200 sq. ft. ADU on the second floor.

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

The proposed improvements will have no impact on public convenience or general welfare. The structure is almost completely hidden from the street.

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 proposed structure will adhere to all building codes and zoning requirements. It will be constructed tastefully with emphasis on blending in with the existing home.

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 specific site is the only site that the structure is possible.

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

The proposed structure can only add to the property value and those surrounding properties.

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

No. This will not be used for a business. This building is for our “toys”.

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

Water and sewer departments have already been consulted. Eversource will run a second meter to the building.

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

All existing neighbors have been talked to about our proposal, and none have had any objections.

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

Water, sewer, electric will all have permits pulled and installed according to Pembroke Codes and requirements.

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 will be a single family unit and will be served by Town water and sewer.

Mr. Bacon said that an ADU cannot have its own electric meter, water supply, or sewerage.

Vice Chairman Hebert agreed and referred to Page 35 of the Zoning Ordinance, §143-18, Item G: “There will only be one electric, water and sewer service for both units.”

Alternate Member Bourque said that §143-18, Item C, reads “at least one interior connecting door or other access for persons to pass between the accessory dwelling unit and the single-family dwelling unit must be included.”

Alternate Member Bourque said that the variance is for Items A and B and not for Item C. He also said that he did not think that a variance can be granted on a state regulation (RSA 674-72, paragraph 3) and that the Town has not approved detached ADUs.

Member Glisson said that in order to be approved, the Applicant would have to attach it to their house.

Alternate Member Bourque stated that RSA 674:73 addresses detached dwelling units but the Town has not approved this regulation in its code. In order for it to be approved, it would have to be changed in the Zoning Regulations which the Planning Board would need to make and then be voted on at Town meeting.

Alternate Member Bourque said that the Zoning Board could recommend to the Planning Board to change the regulation to allow detached ADUs which would negate separate meters.

Chairman Kudrick said that the Planning Board, in the past, did not want the ADUs to be converted into apartments. The Applicant would have to change some things on his plan in order to attach the ADU to the single-family house.

Chairman Kudrick suggested that the Board check with the lawyer to see if they could override an RSA.

Alternate Member Bourque read aloud the ADU description from the State RSA.

MOTION: Vice Chairman Hebert moved to continue **Cases 21-30-Z, 21-31-Z, and 21-32-Z** to January 24, 2022 in order to allow the Board to consult with legal counsel to see if the Board could override an RSA and allow for a detached ADU. Seconded by Member Paradis.

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

MOTION TO CONTINUE CASES 21-30-Z, 21-31-Z, AND 21-32-Z TO JANUARY 24, 2022 IN ORDER TO ALLOW THE BOARD TO CONSULT WITH LEGAL COUNSEL TO SEE IF THE BOARD COULD OVERRIDE AN RSA AND ALLOW FOR A DETACHED ADU PASSED ON A 5-0 VOTE.

The Applicant said that there is no sense in approaching the other variances until the Board receives an answer from legal counsel.

The Board agreed.

Alternate Member Miner said that if the special exception is accepted by the attorney, then the Board can proceed with the other variances.

Chairman Kudrick reiterated to the Applicant that he could still build the garage.

Chairman Kudrick recessed the meeting at 9:00 p.m.

Chairman Kudrick continued the meeting at 9:06 p.m.

IV. Approval of Minutes – November 22, 2021

MOTION: ALTERNATE MEMBER BOURQUE MOVED TO APPROVE THE MINUTES OF NOVEMBER 22, 2021 AS PRESENTED. SECONDED BY ALTERNATE MEMBER MINER. UNANIMOUSLY APPROVED.

V. Other Business / Correspondence – Letter from Robert Best, Esquire (William Evans, Trustee vs. Town of Pembroke)

Chairman Kudrick said that when there is a rehearing, the Applicant must produce either new information or prove that the Board did something wrong.

In his opinion, 7a of the Motion for Rehearing, mentions “. . . significantly alter the character . . .” rather than “. . . alters the essential character . . .”, which Chairman Kudrick felt that it meant the same. He said that the Board felt that the project would significantly alter the character of the neighborhood because the neighborhood consists of single family and duplex homes, whereas the proposed project would be three large apartment buildings.

Member Carlucci said that the Motion for Rehearing talks about it being residential development in somewhat larger buildings and about the medium density zone.

Member Carlucci also said that the Motion in 7G talks about “. . . rendering the buildings nearly invisible from abutting parcels.” and (E) mentions “. . . the distance of 560 ft. beyond the nearest residence . . .”

Chairman Kudrick said that, for a rehearing, the Board must determine if the Applicant has given the Board more information and did the Board make a mistake in the way that they judged the case.

Alternate Member Bourque said that he is looking at this project as three multi-resident apartment buildings. In his opinion, it is a commercial building and not a residential building.

Alternate Member Chase suggested that Town Counsel help draft the rebuttal.

Mr. Bacon was not sure if Town Counsel received a copy of the Motion for Rehearing.

Chairman Kudrick and Vice Chairman Hebert agreed that it would be best to allow Town Counsel to determine if the Board erred in their decision.

MOTION: Vice Chairman Hebert moved to request that Town Counsel review the Motion for Rehearing regarding William E. Evans, Trustee, Case 21-21-Z and Case 21-22-Z along with the Board’s reason for denial and ask for a response. Seconded by Alternate Member Bourque.

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

MOTION TO REQUEST THAT TOWN COUNSEL REVIEW THE MOTION FOR REHEARING REGARDING WILLIAM E. EVANS, TRUSTEE, CASE 21-21-Z AND CASE 21-22-Z ALONG WITH THE BOARD’S REASON FOR DENIAL AND ASK FOR A RESPONSE PASSED ON A 5-0 VOTE.

Mr. Bacon asked how much time the Board had to respond.

Vice Chairman Hebert said that they have 30 days to act on it which has been accomplished by discussing the Motion and by forwarding it to Town Counsel.

Chairman Kudrick said that the Motion for Rehearing will be discussed at the next meeting (January 24, 2022) and, by then, the Board should have the response from Town Counsel.

With regard to **Case 21-25-Z** A request for a **Variance under Article V Dimensional and Density Regulations, §143-21, G, Side Setback**, the Board decided to continue the case to the January 24, 2022 meeting in order to allow the Applicant to be heard. The case will be put at the end of the next agenda.

MOTION: Chairman Kudrick moved to have the Code Enforcement Officer contact the Applicant in **Case 21-25-Z** to inquire why they did not show up, to inform them that the case will be placed on the agenda at the January 24, 2022 meeting, and if the Applicant does not appear at the next meeting, they will have to refile for a variance. Seconded by Vice Chairman Hebert.

Chairman Kudrick asked Mr. Bacon to inquire of the attorney whether: (1) if an applicant does not appear for a hearing two times in a row, can the variance be denied; and (2) what is the timeline to respond to a Motion for Rehearing.

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

MOTION TO HAVE THE CODE ENFORCEMENT OFFICER CONTACT THE APPLICANT IN CASE 21-25-Z TO INQUIRE WHY THEY DID NOT SHOW UP, TO INFORM THEM THAT THE CASE WILL BE PLACED ON THE AGENDA AT THE JANUARY 24, 2022 MEETING, AND IF THE APPLICANT DOES NOT APPEAR AT THE NEXT MEETING, THEY WILL HAVE TO REFILE FOR A VARIANCE PASSED ON A 5-0 VOTE.

VI. Adjournment

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

Meeting adjourned at 9:25 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary