

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
(ADOPTED)
December 19, 2022
Held: Pembroke Academy Cafeteria**

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

ALTERNATES PRESENT: Robert Bourque, Blakely Miner III

EXCUSED: Natalie Glisson, Wendy Chase

STAFF PRESENT: Paul Bacon, Code Enforcement Officer

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

Roll call was taken by the Reporting Secretary.

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

Continued Cases

Case 22-11-Z A request has been made for an **Appeal of Administrative Decision under article XIV, Zoning Board of Adjustment, Variances, and Special Exceptions, §143-112, Appeal of a decision made by the code Enforcement Officers.** The Applicant, Jerica-Lee Bell, 1009 Rimrock Road, Billings, MT 59102 is appealing the **Denial of a Building Permit** by the Code Enforcement Officer to build on a Class VI road. The applicant seeks a determination by the Board to establish that the lot is a buildable lot in accordance with §143-103. The property is owned by Jerica-Lee Bell and is located at 119-145 Seventh Range Rd., Map 868, Lot 29, in the R-3 Rural/Agricultural-Residential District.

Applicant: Jerica-Lee Bell

Property Owner(s): 1009 Rimrock Road, Billings, MT 59102

Property Address: 119-145 7th Range Road
Tax Map 868, Lot 29 in the R-3 Rural/Agricultural-Residential District.

Included in the Member Packets: Fee Schedule Worksheet, Tax map, assessing card, list of abutters, Warranty Deed of Herbert J. Hodgdon, II and Donna J. Hodgdon to Jerica-Lee Bell and Paul Henry Asenjo dated May 13, 2022, recorded at Merrimack County Registry of Deeds, Book 3792, Page 424; Deed of George P. Cofran to George B. Lake, dated October 23, 2914 and recorded at the Merrimack County Registry of Deeds, at Volume 419.

Chairman Kudrick announced that the applicant asked to have Case 22-11-Z continued to the January meeting.

Case 22-09-Z A request has been made for a **Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations, Community Facilities, #10.** The applicant, Fieldstone Land Consultants, PLLC, representing Live Free Recovery Services, LLC c/o Joel Asadoorian, of 273 Currier Rd., Candia, NH, 03034, is requesting a **Special Exception to allow a residential drug treatment/detox facility at the former site of the TD Bank.** The property is located at 50 Glass St., Map VE, Lot 137, in the B-2, Central Business District, and is owned by McDall, LLC, c/o David A. Moore.

Applicant: Live Free Recovery Services, LLC c/o Joel Asadoorian
273 Currier Road
Candia, NH 03034

Property Owner(s): McDall LLC c/o David A. Moore

Property Address: 50 Glass Street
Tax Map VE, Lot 137 in the B-2, Central Business District.

Included in the Member Packets: Letter dated December 7, 2022 to the Zoning Board of Adjustment from Paulette Malo, Operations Director for Pembroke Sewer Commission and attached Use/Gallon Per Day chart; letter labeled Exhibit 1 dated October 24, 2022 to the Town of Pembroke Planning and Building Department from Patrick Keeler of eXp Realty; letter labeled Exhibit 2 dated August 20, 2022 To Whom It May Concern from Maria Giakoumakis of V.A.M.P. LLC; Police Log, labeled Exhibit 3, dated November 22, 2022, 2:30 PM and Fire Incident List and Police Log dated November 28, 2022, 5:57 PM; NH Code of Administrative Rules labeled Exhibit 4.

Present: Ryan Gagne, Live Free Recovery Services LLC; . Alden Moore and Joe Asadoorian of McDall LLC, owners of Tax Map VE, Lot 137.

Chairman Kudrick said that the November meeting had been closed and he asked that a motion be made to reopen it.

MOTION: VICE CHAIRMAN HEBERT MOVED TO REOPEN THE HEARING OF CASE 22-09-Z. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

Chairman Kudrick said that the reason that he asked that the case be reopened is because, at the November meeting, the Board was under a time constraint. It was 10:50 pm and the Board was asked to be out of the cafeteria by 11:00 pm. The Board did not have an opportunity to ask questions of the Applicant and the Applicant was not given a chance to answer questions from the Board. He also said that new information has come forward that the Applicant should be aware of and that he wanted to be fair to the Board and the Applicant. By reopening the case, it

also reopens it to the public. Since the Board must be out of the cafeteria by 10:00 pm, after conferring with Town Counsel, he learned that he could limit public comments and, therefore, has decided that the limit will be 5 minutes per speaker.

Chairman Kudrick asked the Applicant to explain the difference between the other types of treatment facilities that were mentioned at the November meeting.

Mr. Gagne said that the difference between the treatment that was mentioned in a study of a Philadelphia facility, is that it was an out-patient facility, where people go during the day to receive a medication, commonly referred to as Methadone. The patients only go there to maintain the level of medication that they are taking in order to try to function normally in society. Many times those individuals are also still utilizing other illicit drugs. Mr. Gagne said that that example is not what he is proposing at the TD Bank facility.

Mr. Gagne said that they are proposing a facility to remove those drugs and that those drugs would not be allowed on the site. They would have protocols through the admissions screening and part of the intake portion. There would be certain drugs that would be used to help an individual come off of drugs. A common example would be someone withdrawing from alcohol, may be prescribed Benzodiazepines to taper so they do not go into precipitated withdrawals. He said that it would be the same thing for someone coming off drugs such as oxycontin medication. They would be given a medication to prevent precipitated withdrawals.

Mr. Gagne said that that is the extent of the drugs that would be on site. He said that that is also the extent of the withdrawal process. Most people would be able to go right into the residential program. There would only be a limited amount of detoxifying clients coming in the door.

Chairman Kudrick said that he understood that there would be a fence completely around the property. He asked how high the fence would be and whether there was a gate on the entrance and exit of the property.

Joe Asadoorian, 91 Hall Road, Londonderry, NH, said that they currently do not have gating in the area and that there is no fencing along the sidewalk. They currently have a 6-ft. fence on the plan which they would discuss further with the Planning Board. He said that the fencing is to protect the neighbors from seeing inside the parking lot. It will be a white vinyl non-see-through fence.

Chairman Kudrick said that, at the last meeting he asked if the applicant had spoken to the Sewer and Water Departments. He said that the Pembroke Sewer Department has a limited amount of sewer allocated to Pembroke. Even though the TD Bank Building is connected to the public sewer and water systems, the Board received a letter from the Sewer Department which outlines the gallonage necessary for the proposed facility. (7,958 gal. per day needed for the proposed use).

The Reporting Secretary read aloud the December 7, 2022 letter from the Pembroke Sewer Commission to the Zoning Board of Adjustment (see attached Exhibit 5).

Chairman Kudrick said that the Applicant also mentioned at the November meeting that they had met with the Technical Review Committee which brought to mind that last summer there was an applicant before the Board that needed Town sewer and there was none available.

Mr. Asadoorian said that, at the time of the meeting with the Technical Review Committee, the Sewer Department said that there was not an issue.

Chairman Kudrick explained that Pembroke does not have a treatment plant. The Sewer Treatment Plant is shared with the Town of Allenstown. A new agreement between Pembroke and Allenstown has been under discussion for a number of years.

Mr. Asadoorian stated that there is sewer capacity for 22-24 beds.

Chairman Kudrick said that the Board can only look at the application that was presented. He said if the Applicant wanted to come back with a different application, they would have to redo it and get a letter from the Pembroke Sewer Commission approving it. The Sewer Department only has a limited amount of sewer capacity available for the entire town.

Mr. Asadoorian asked for a few minutes to absorb the information that they just received.

After a short while, Mr. Asadoorian asked if they could cavaet any application that was made as a condition that the sewer capacity is secured. He said that they frequently get conditional approvals.

Chairman Bruce said that the Planning Board gives conditional approval but the Zoning Board does not.

Mr. Gagne asked if the sewer capacity was one of the things decided by the Planning Board.

Chairman Kudrick said no, it has to be decided by the Zoning Board. It is Special Exception Question Number 8 and presently the Applicant does not have a letter indicating that there is sewer capacity.

Mr. Asadoorian said that there are a lot of ways to solve that condition and many times they get a conditional approval.

Once again, Chairman Kudrick said that the Zoning Board does not give conditional approvals but the Planning Board does.

David Moore, McDall Corp. asked if he could have onsite septic capacity and not hook up to Town Sewer.

Chairman Kudrick asked Mr. Bacon if they would have to resubmit their proposal with the change of not hooking up to Town Sewer.

Member Bourque said that, his recollection is that if a property is within 100 ft. of a sewer main, then they had to connect to the sewer main.

Chairman Kudrick agreed that it is a state law.

Mr. Asadoorian said that NH DES allows them to have onsite septic. He also said that his understanding is that there is unlimited capacity to sewer, it is just a function of the size of the sewer line.

He asked about water.

Chairman Kudrick said that water capacity is up to the Water Commission.

Chairman Kudrick explained that Allenstown owns the Sewer Treatment Plant that is located in Allenstown. Pembroke owns a specific number of gallons that goes to that treatment plant under the current agreement. As of today, Pembroke has 3,600 gallons left in that original agreement. Pembroke has asked for additional gallonage which they are willing to buy but a new agreement has not been signed, but has been under discussion for a number of years. He added that part of the problem is that the Treatment Plant is only designed to take so many millions of gallons per day and Allenstown has been trying to upgrade their plant. He said that when a plant reaches 80%, they have to redesign the plant. He said that he does not know where the flow is at this time, and can only report what has been told to the Board.

Mr. Moore said that they were unprepared for this discussion and would like to request a postponement of the Case so they can research this, as they believe that there is a solution that can benefit the Town.

Chairman Kudrick asked Mr. Moore if he would like to continue the hearing.

Mr. Moore said yes.

Member Bourque asked how long the continuance would be.

Mr. Moore said they would like 4 weeks.

Chairman Kudrick then opened the meeting for public comment.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case, which he has already done; (2) Those in favor of the application will speak. He said that there was no one in favor of the application at the last meeting but there could be this evening;

(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.

Each speaker from the public will only have 5 minutes to speak. He said that the public was given plenty of time to speak at the last meeting which lasted 4 hours.

Chairman Kudrick 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.

Stephen Kaitz, 35 Sand Hill Drive, Concord, NH, and owner of 48 Glass Street, and the Pembroke Wellness Center practice which recently sold to Dr. McKenzie. He wished to address the “similar use concept” that was proposed for the in-patient drug facility. He said that it was said that Dr. Kaitz’s use was similar to the proposed use. He said that he has a “cradle to grave” family practice, meaning that they take care of babies, do well-checks, physicals, sports physicals, and people with all sorts of ailments. He has had his practice for 25 years. Dr. Kaitz said that they do not do any specific prescriptions for people with drug addiction problems. He emphasized that the earlier statements by the applicant were false. They do not do any specific drug treatment in his office. If they have someone with a drug addiction problem, they do not write any prescriptions such as methadone, suboxone -- they refer the patient out to another facility. He said that he wanted to make it clear that there is very little similarity to what the applicant is proposing, which is an in-patient drug treatment program, and a primary care medical office.

Gerard Fleury, 21 Kimball Street, said that he is the Vice Chairman for the Pembroke Budget Committee. Following the last meeting, the Budget Committee met in early December and were reviewing the Police Department budget. He asked Chief Gaskell if he had had the ability to review the proposal and whether he had any concerns that might have a budgetary impact. He also asked Chief Gaskell if he had any statistics on the number of police calls that might have been from any facilities operated by Live Free Recovery. Mr. Fleury said that there seems to have been some confusions or ambiguity on the number of calls, etc. Chief Gaskell responded to Mr. Fleury’s questions on the Town Hall Streaming, so it is possible for the public to see Mr. Fleury’s questions to the Chief and his responses at that meeting. It is at Time Index 1 hr. 33 min. In summary, Mr. Fleury said that the Chief reported that Keene had 3 police log responses in the last year and, at one of the 3 Manchester sites, had 14. Mr. Fleury said that, based on his recollection, that was a considerably higher number than what the public was led to believe at the last ZBA meeting. He said that the Chief also noted that he had taken those numbers and filed a copy of that report with the Building Inspector and, therefore, the Zoning Board should have that report in their files/packets. Mr. Fleury asked that the Board take those facts into consideration and make sure that they are accurately addressed.

Thomas Petit, 174 Main Street, said that all the rules and regulations notwithstanding, the overriding part of this process, is that he does not believe that this type of project will be a positive addition to the community of Pembroke. He said that if someone could prove how it would be a positive addition to him, that may be different but presently he could not see any upside to this use for the community.

Nancy Despres, 168 Buck Street, said that she does not want to see the quality of the Town suffer and the neighborhood suffer for the benefit of one business. Before the meeting, she had her husband drive down Main Street. She said that a drug and alcohol rehab center will not bring customers, stores, or anything to the economy or help it at all. For that reason, she does not approve of it. However, she also felt that the Town should help the owner of the building, in any way possible, to bring in a business or businesses that will benefit the Town. She concluded by saying that she has lived in Pembroke longer than most people in the audience and, in that time, she has seen many changes – some of which were very good and some not-so-good. But this one will definitely not be good.

Donald Bibeau, 27 Harvest Drive, Hooksett and owner of 116-122 Main Street, asked if the Board was aware if Live Free Recovery Services ran a methadone clinic or a similar out-patient drug/alcohol facility at any of their other facilities? He said that his concern is that unless the Town Attorney specifically includes language that excludes the possibility of the applicant putting something like that in the facility in the future, that that could happen down the road. He asked that, if the Board decides to approve this use, that they include language in the special exception that would specifically prohibit a methadone or similar out-patient clinic in the future.

Cathy Roche, 9 Middle Street, said that she wanted to remind the Board that a Special Exception lives with the land. Even though, at the present time, it could be a rehab facility, down the line there is nothing saying that it could not turn into a methadone clinic by a different user.

John Seeman, 179 Buck Street, said that the applicant stated that the numbers cited at the last meeting were a budgetary use. He said that that statement was false. The numbers that were cited from the 2017 report were from the expense report of the Town of Pembroke, which is the amount that the Town would actually spend on those services. As such, it is safe to assume that there will be an increased cost to the Town associated with these types of facilities. He said that it is not just a matter of dividing the budget by the total number of people in Town, it is a matter of talking about how much the Town is actually spending and the increase that may be needed based on the proposed use.

Mr. Seeman said that a statement was made by the ZBA, that part of the reason for this application was that McDall LLC was unable to find another tenant. He said that he was not able to find any significant evidence that they made a public offering or some form of public announcement that the space was available for lease. The owner, obviously, reserves the right to rent to whomever they choose, however, the granting of a Special Exception should not be given so flippantly without evidence that there was a good faith effort to try and fill this facility with a business that meets the zoning requirements. This includes facilities that are already approved

by the Zoning Ordinance such as places for churches, educational facilities, recreational facilities, theatres, business offices, legal service offices, retail offices for both goods and merchandise, as well as eating and drinking establishments. All these are currently permitted by the Zoning Ordinance and would not require a Special Exception.

Mr. Seeman said that the applicants did not adequately address the question about compromising the character of the B2 zone based on their proposed use. Some of the arguments which he brought up at the November meeting was the capacity of the facility and how such a high occupancy category would ultimately compromise other potential uses if the Special Exception were granted. Following that train of thought, he said that that question was not addressed in a satisfactory manner.

Richard Booker, 8 Millard Street, said that the use is suppose to be a benefit to the Town. He said that he did not see a long waiting list of people to get into this facility. The burden will ultimately go onto the citizens of Pembroke for the infrastructure problems that may occur from this facility and from the additional Police and EMTs. Pembroke presently has 1 ambulance. He said that this will incur costs to the citizens of Pembroke. As a citizen, Mr. Booker said that he is not willing to do that because it does not benefit him. It gives him nothing but a burden.

Kelly Bokhan, 4 Kimball Street, asked if the next meeting would be opened to the public.

Chairman Kudrick said that if the meeting is continued, it would be opened to the public.

Ms. Bokhan said that there are other properties that have more than half the number of people that have an outstanding number of fire and police calls. She said that this will burden the Town resources and the town will need to hire more police, fire fighters and EMS people which will cause an increase in taxes. She submitted the police/fire logs to the Recording Secretary (included in Exhibit 6).

Ms. Bokhan said that at the last meeting, the Applicant said that no one in the audience had a professional letter from a real estate agent stating that the use would negatively affect the property values. She presented such letter to the Recording Secretary (included in Exhibit 6).

She said that her group also submitted 2 case studies with substantial data that showed the negative effect of property values when a drug treatment facility is erected. She said that she also had a letter from a New Hampshire real estate agent as opposed to the Applicant's submission of someone from New York that also has a direct interest in their company.

Ms. Bokhan also said that there was no evidence that the property was listed for lease and that McDall LLC was unable to rent it for over a year. In actuality, the property was sold to McDall on 4/13/2022 and a month later, Live Free Recovery Services submitted the application.

She said that this use does not benefit Pembroke. The Applicant admitted that they would be bussing people in from around the State. In her opinion, this negatively affects the Town of

Pembroke. Many residents have stood up and said that they would not have bought their properties if they knew that the rehab clinic was here.

She said that there is no security preventing the “mentally disabled” (their words) from leaving and wandering the streets and putting the safety of the community in danger. They only have a staff of 2 people at night for 56 addicts.

Ms. Bokhan pointed out that not one person from Town spoke in favor of this use. The Board represents the Town, not Live Free Recovery. Live Free Recovery has a burden of proof and they have not met all the necessary criteria. She submitted Exhibit 6 to the Recording Secretary.

There were no further questions from the public.

The Board agreed that, before the next meeting, the Applicant must: (1) Talk to the Sewer Department about alternative sewer arrangements, and (2) Get a letter from the Water Department.

**MOTION: VICE CHAIRMAN HEBERT MOVED TO CONTINUE CASE 22-09-Z HEARING TO JANUARY 23, 2022. SECONDED BY MEMBER PARADIS.
UNANIMOUSLY APPROVED.**

Chairman Kudrick announced that the January 23, 2022 meeting will be at 7:00 pm in the Pembroke Academy auditorium.

He thanked everyone for their courtesy and wished everyone a Merry Christmas and a Happy New Year.

IV. Approval of Minutes – November 28, 2022

**MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE NOVEMBER 28, 2022 MINUTES WITH ANY AND ALL AMENDMENTS AS WRITTEN. SECONDED BY ALTERNATE MEMBER MINER.
UNANIMOUSLY APPROVED.**

With regard to Case 22-11-Z, Chairman Kudrick asked Mr. Bacon to verify whether the 90-day timeline begins to run from the time that the application is filed or if it is from the time that the case is opened at a meeting.

Chairman Kudrick said, with regard to limiting each speaker’s time to 5 minutes, he asked Mr. Bacon to confirm with Town Counsel that it was legal to do so since it was not in the zoning rules and regulations. Attorney Bernie Law, who specializes in zoning and planning law, said that the Chairman can limit the time and it does not have to be noted in the Town rules and regulations but it must be fair to everyone.

Mr. Bacon said that the Board does not have to set a time for each audience member. The overall discussion can be limited to a set time.

VI. Adjournment

**MOTION: VICE CHAIRMAN HEBERT MOVED TO ADJOURN THE MEETING.
SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

The meeting adjourned at 7:55 pm.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary