

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
(ADOPTED)
February 27, 2023**

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

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

EXCUSED: Natalie Glisson

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 Bourque to vote in place of Member Glisson.

Case 23-01-Z A request has been made for a Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units. The applicant, William Byrne, of 336 Pembroke Hill Rd., is requesting a Special Exception to construct an ADU. A Special Exception is required under § 143-18.1. The property is located at 336 Pembroke Hill Rd., Map 264, Lot 80, in the R-3D Rural/Agricultural-Residential district, and is owned by the applicant.

Applicant: William Byrne

Property Owner(s): William Byrne

Property Address: 336 Pembroke Hill Road
Tax Map 264, Lot 80 in the R-3 Rural/Agricultural-Residential District.

Included in the Member Packets: Assessing card, list of abutters, Unity Homes floor plan, aerial view of property.

Present: William Byrne

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.

As requested by Chairman Kudrick, the Applicant presented his case and read the application aloud.

Mr. Byrne said that he has lived at the stated address for 25 years and has 3 daughters. The reason he is asking for the Special Exception for an ADU is because he looked at options of subdividing his property but did not feel that it was the best use of the property because of the way that the drainage runs from the lot. He said that he worked at meeting the area requirements but found that he needed an 800-1200 ft. access road that Merrill Construction estimated at approximately \$300,000. He considered not paving the road, but feedback from Carolyn of the Town Planning Department, was that the Planning Board would be hesitant to release that type of requirement.

He said that he was looking at developing a subdivision in order to financially help his oldest daughter and her family to be independent. He also wanted to be closer to his grandchildren. They sold their home in Keene and are living at Mount St. Mary's condominiums. He said that, with the subdivision, he hoped to give them the equity of the property "to float a loan."

His youngest daughter also has a son and, when she returns to New Hampshire, he would also like to help her with housing.

He said that presently his middle daughter is independent.

Mr. Byrne said that his home is a 1920 cape. Any addition to the house would change the look of the cape and require him to remove one or more of the 100-year old maple trees, which he would not want to do.

He intends to work with Bensonwoods of Walpole, NH to build a house. He marked the detached house on the aerial tax map. He said he would eventually like to put in a subdivision but does not have plans to do so at this time. He wants to build a larger home than the ADU requirements. He said he could build a barn that was double the size of the intended house without any zoning issues.

Mr. Byrne said that he could run electricity to the house off of his home and could also do the same with the well. Because of the low supply of water in the main house, he has always wanted to put in a second well so he would plan to do that and run both houses off the new well and the original well.

With regard to the septic system, he said it would not be feasible to run piping 200-300 ft. from the current septic to the new home.

He said that there is no ledge on the site of the potential home, therefore building a house where he has indicated would not be problematic. Most of the year, the majority of the house would not be seen from the road or neighbors.

Chairman Kudrick asked how far the new house would be from the existing home.

Mr. Byrne said 250 ft.

Mr. Bacon lent Mr. Byrne a copy of the application so he could read it aloud:

Please give a detailed description of your proposal below. To build a house for my daughter, Lindsay Byrne-O'Hara, her husband, Ryan, and their young daughters, Maeve and Juniper. The house design proposed is an ultra-energy efficient Nano 2024 D2 by Unity Homes of Walpole, NH (see also attached floor plan).

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** Lindsay and Ryan are working hard to raise their two young daughters. Having sold their home in Keene to be closer to family, houses in the current market are out of reach. Lindsay is in nursing school and Ryan recently started as Director of Pembroke Library. They rent a condominium in Hooksett for \$2070/month. I have been considering subdividing my property to make available property to build a home and give them some starting equity. I would assist with construction financing, however, it looks like the Planning Board is generally hesitant to provide an exception for a Class C road without pavement. A budgetary estimate I received was approximately \$300,000 for a paved Class C access road. This special exception use would provide some financial relief in the short term. I would also be able to use it in my retirement in 10 years as the first floor could be used for all my needs.
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 location of the house will be approximately 250 feet from the nearest neighbor's house; Lauren Mayville. Trees provide a visual buffer in all directions.
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 proposed site is primarily level, with some gentle dips and rises. It is at the height of the land with good drainage in multiple directions. The house will be on the edge of a 2-3 acre field that has been brought back to agricultural use over the past two decades. Plans are for raspberry and blueberry production along with 75-100 varieties of apple trees historically grown in the northeast for craft cider production. My retirement plans include working this land with my kids and grandkids involvement.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** I believe the value of property in the district will be enhanced by this use. Agricultural use of the land will keep open spaces open and maintain a mix of fields and woodland. The house will be understated with white cedar shakes sourced in

Corinth, ME from Dow's Eastern White Cedar Shingles & Shakes. The house will be built by Unity Homes of Walpole, NH and include thick super-insulated walls and triple glazed windows. The upfront cost is significantly higher than traditional builds, but the reduced environmental impact of much reduced energy needs for heating and cooling will be realized over the life of the building. Property value and town tax revenue will be increased also.

5. Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer. It is anticipated that at most two adults and two children will live in this house and with them the traffic of two motor vehicles. This is insignificant when compared to the increased traffic from the San-Ken Homes development at the Old Robinson Homestead just up the street.

6. Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. (See attached AxiGIS hardcopy for proposed location of building; penciled in approximate location.) Access will be by a dirt driveway off the existing driveway. Power will be run from the existing house. Water will be by a new well that will also be used for gardens, fruit trees, and bushes in that area and connected to the water system of the existing house which currently takes water from a 60 foot deep artesian well. Although it never runs dry in the driest part of the year, it has always provided inadequate water flow for a three-bedroom house. A new septic system will be designed for this proposed two-bedroom house as an upsized three bedroom capacity.

7. Please show that there are no valid objections from abutting property owners based on demonstrable facts. All setbacks for house, driveway, well and septic system will be satisfied.

8. Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State. A new well drilled to a similar depth of nearby wells is to be installed. A new septic system will be designed and installed meeting all current state and town requirements. (See also answer to question 6.)

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. No

No one spoke in favor of the case.

In opposition of the case, the following occurred:

Chairman Kudrick asked the Recording Secretary to read aloud a letter from Diane Donaghey Junet to the Zoning Board of Adjustment dated January 17, 2023.

Susan Donaghey Seider, 359 Third Range Road, said that she owns land with her sisters. They are abutters. She said that she sympathizes with Mr. Byrne because the cost of creating a subdivision is extremely expensive and difficult. She is concerned about the precedent. The Planning Board works hard to make certain rules to keep the Town's character and she would be

worried that if the Town allowed houses to pop-up in people's yards that it may lead to other issues. She and her sisters think about that with their family land. They are going to try hard to respect everything that is set out, despite the fact that it can be costly.

Rebuttal by the applicant and those in favor of the case:

Mr. Byrne said that paying for a \$300,000 road is not possible for him. The Town is less and less affordable for anyone other than well-established people. If that is the kind of community that the Town is looking for, then it should enforce all the rules. He said that the Town's regulations would allow him to build a structure multiple times larger to house animals but not people.

His other option would be to take the proposed building and follow the code by connecting it to his house and have a cape with a disjointed addition 30 feet from the road, not a top-quality home 250 ft. back. The house is exactly where it would be if he did a subdivision. He asked how putting a road on the property and placing the house in the exact spot decreases the character of the community. He said that it makes it a less affordable community.

Mr. Byrne insinuated that Ms. Jumet was an attorney and added that it would be naïve to think that the Donaghey property would not be developed. He said that if they are not considering developing, they should hand it over to the Town now.

Rebuttal by the opposition:

Cathy Cruson, Pembroke Hill Road, said that her sister, Ms. Jumet, is a retired secretary.

Mr. Byrne said that his son-in-law looked up the location that Ms. Jumet lives and it is not a low-rent district so he assumed that only a lawyer could afford to live in that area.

Ms. Cruson said that it looks to her like Mr. Byrne's property is appropriate for a subdivision when considering all the waivers and changes that he wishes to make. It belongs under subdivision. She said that it would not need to be an 800 ft. driveway. He has enough frontage to put a driveway in.

Mr. Byrne said that a minor subdivision would take the 9 acres and he would get 2 lots out of it - one of which he would live on.

Ms. Cruson asked the Chairman if the property has 9 acres.

Chairman Kudrick said yes.

She asked what the frontage is.

Mr. Byrne said approximately 400 ft.

Ms. Cruson said that, in her opinion, that easily falls under a subdivision.

Mr. Byrne said that it falls under a minor subdivision. The road would have to be placed where the drainage of the property runs. He said that there is an old apple orchard there which would be the other lot. The water runs downhill along the west side of the property into the wooded area. When he considered a subdivision, he found that the road would go through the apple orchard, bear right, and the houses would be placed where the water does not collect.

There were no other comments from the opposition.

Alternate Member Bourque asked how Mr. Byrne figured that a separate house was an ADU when an ADU is described as being attached to a residence.

Mr. Byrne said that that is why he is asking for a variance to that rule.

Alternate Member Bourque said that there are quite a few different requirements for an ADU – both by the Town and the State. A separate detached ADU is not one of them.

Mr. Byrne said that he did not know that. He asked if it had ever been allowed.

Alternate Member Bourque said that, according to the State, the municipality can, if they want, allow detached ADUs but Pembroke has not put that into zoning at this time. They require it to be attached, per §143-18.1 (B), to a single-family dwelling unit – not a town house, duplex, multi-family dwelling, etc. Mr. Byrne has a separate residence but wants to build a separate detached dwelling unit.

Chairman Kudrick said, according to §143-18.1, an ADU is allowed as long as he follows the regulations from A-H.

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

Chairman Kudrick summarized **Case 23-01-Z** as follows: The Applicant has 3 daughters and is looking to subdivide his property for his family. The cost of the road was approximately \$300,000. The cost of the road was why he began looking at another option. He spoke with the Town Planner and was given the impression that it would be hard to put a subdivision on that site because of the paving cost of the road. The reason he is doing this is to help one daughter but, in the future, it would be for the rest of his family. The existing house is 1600 sq.ft. He did not want to put an attached ADU onto the existing house because it would change its character. The power will come from the existing house, the water will come from the existing well and a new well. He was going to install a new septic system. The house is 250 ft. from the original house. He read all 9 conditions into the record. There was a letter of opposition. Two other people spoke in opposition of the case. Those in opposition understand what Mr. Byrne is

attempting to do but they would like to keep the land the way it is. They think it will change the character of the area.

Mr. Byrne said that he would use 2 wells for both units – the existing well and a new well.

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 7:38 p.m.

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.

Alternate Member Miner said that the Board should keep in mind that this is just for the special exception for the ADU and not tied to the other cases.

Chairman Kudrick said that an ADU is to help the young and the old and it is desirable to have it.

Vice Chairman Hebert said that the Town encourages families to be able to take care of older family members. Strictly looking at an ADU use, he said that it is a good thing and desirable and attractive to the Town.

Member Carlucci, Member Paradis, and Alternate Members Chase and Bourque all agreed that the ADU as defined in A-H of the Town ordinance is in the public's best interest and general welfare.

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 because an ADU is an attached unit, it is just going to be a 750 sq. ft. building added onto the existing building and won't change the character of the adjoining unit.

Vice Chairman Hebert said that an ADU is incidental to the existing use and is not something that will stand out.

Members Carlucci and Paradis, and Alternate Members Chase and Bourque agreed that the ADU is incidental and subordinate to the primary residence. The site would be appropriate for an ADU and is allowed by right.

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 the ADU is allowed throughout the Town.

Member Carlucci said that it would be an appropriate location if it met the criteria that the Town has in its zoning ordinance.

Member Paradis and Alternate Member Chase agreed.

Alternate Member Bourque said that it is allowed in all zones that permit single family homes.

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 nobody has brought evidence that property values will be reduced. All agreed.

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 would be only 2 additional vehicles which is nothing more than what is presently there.

Alternate Member Miner said that there would be just as much traffic as when kids were living at home.

All members agreed.

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

Chairman Kudrick said that Mr. Byrne would have to look at the existing septic system. It would have to meet all regulations and be approved by the State to make sure that the existing septic system could handle it. He said that Mr. Byrne talked about putting in a well for additional water and will run power from the existing house. All members agreed.

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

Chairman Kudrick said that the opposition was looking at where Mr. Byrne was going to put the detached unit which is against Town rules. His understanding was that the abutters had no problem with the ADU if it was attached to the existing home. All members agreed.

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

Chairman Kudrick said that the Applicant just has to meet the requirements of the State for the septic system. All members agreed.

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 said that the Board has a very narrow scope – allowing an ADU per the Town’s special exception regulations and are not talking about the other criteria.

Chairman Kudrick agreed. He stated that Mr. Byrne is asking to build an ADU for his daughter on his property following the conditions of the Town’s regulations from A-H.

Vice Chairman Hebert said, in reference to **Case 23-01-Z (Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units)**, a request for a special exception having been presented to the Board for consideration to construct an ADU. A special exception is required under §143-18.1 of the Town of Pembroke Zoning Regulations.

MOTION: Vice Chairman Hebert moved to grant **Case 23-01-Z**, a special exception to construct an ADU as defined in the NH Planning and Land Use Guide, RSA 674:71, 674:72, and 674:73 as well as §143-18.1 A-H of the Town of Pembroke Zoning Regulations. The condition for the approval is that the applicant must follow all State and local codes. Seconded by Member Carlucci.

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

MOTION TO GRANT CASE 23-01-Z, A SPECIAL EXCEPTION TO CONSTRUCT AN ADU AS DEFINED IN THE NH PLANNING AND LAND USE GUIDE, RSA 674:71, 674:72, AND 674:73 AS WELL AS §143-18.1 A-H OF THE TOWN OF PEMBROKE ZONING REGULATIONS. THE CONDITION FOR THE APPROVAL IS THAT THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL CODES PASSED ON A 5-0 VOTE.

Case 23-02-Z A request has been made for a Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units “B”. The applicant, William Byrne, of 336 Pembroke Hill Rd., is requesting a Variance to construct an ADU which will be detached from the single-family dwelling, where ADU’s that are attached or within, only, are allowed. The property is located at 336 Pembroke Hill Rd., Map 264, Lot 80, in the R-3D Rural/Agricultural-Residential district, and is owned by the applicant.

Applicant: William Byrne
336 Pembroke Hill Road

Property Owner(s): William Byrne

Property Address: 336 Pembroke Hill Road
Tax Map 264, Lot 80 R-3D Rural/Agricultural-Residential District.

Included in the Member Packets: Unity Homes Nano 2024 floor plan and aerial map.

Present: William Byrne

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

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

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

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

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

Please give a detailed description of your proposal below. Allow a stand-alone accessory dwelling instead of one that is within or attached to the single-family dwelling.

1. **The variance will not be contrary to the public interest.** Additional traffic would be from two adult drivers; significantly less than will be generated by the San-Ken Homes old Robinson Homestead development just up the road. The location of the new building will be approximately 250 feet from the nearest neighbor's home.
2. **The spirit of the ordinance is observed.** Although the standalone home is slightly larger – 965 square feet than the 750 square feet listed in the ordinance, even 750 square feet would distort the proportions of the 1920's cape design of the main house if built as an attachment. The proposed building would barely be visible from any vantage point off the property and blend with the scale and density of development in the area.
3. **Substantial justice is done.** I had been working on a major subdivision application for this property; into four lots. One for the immediate need of my oldest daughter Lindsay Byrne-

O'hora, her husband Ryan and their two young daughters; the other two lots were in case my other two daughters wanted to build a home in the future. I had planned to finance the construction and give them the lot as starting equity to secure a mortgage financing for the new home. Although I can meet lot frontage requirements with a new road approximately 750 feet-1,000 feet in length and the site distance requirements for the access road, I have gotten feedback that it is unlikely that the Planning Board would give an exemption to the pavement of the required Class C road to allow a dirt road. A recent budgetary estimate for the Class C road from FL Merrill Construction, Inc. of Loudon was "around \$300,000." Approval of the variance request would allow me to build them a home to use at a more reasonable rent than the \$2,070 they currently pay while Lindsay finished her nursing program at Keene State and the economy and housing market improves. My other daughters might use it similarly in the future and I could use it to live independently when I retire in 10 years; everything needed is on the first floor.

4. **The values of surrounding properties are not diminished.** The quality of this home construction will exceed any house in the area. Bensonwood has a reputation for high quality ultra-energy efficient designs. Unity Homes – a division of Bensonwood – is their attempt to control cost by offering a more standard design while maintaining the energy efficiency. The building scale and material will blend well with the landscape.

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.** I did not investigate a minor subdivision of my property because the lot subdivided off for my daughter, Lindsay, would have been in the least desirable area of the property for building where almost all the rain and snow melt drains. I spent a great deal of time working through the requirements of a major subdivision that would have divided the property into 4 lots; one for the existing house by Pembroke Hill Road and the other three for each of my three daughters in the back half of the property accessed by a new road. A draft plan met minimum sight distances, minimum lot frontage, and minimum lot size. The new road per code would need to be Class C construction. A budgetary quote I received from FL Merrill Construction, Inc. in Loudon was approximately \$300,000. The major part of that cost for me would be the pavement requirement and I heard the Planning Board is generally hesitant to provide an exception to the paving requirement. That single cost would have consumed the major part of the equity I have in the entire property; land and house included. The intent of that major subdivision was to build on one lot, as soon as possible, for my daughter Lindsay and her family, with no plan to build on the other two lots, unless my other two daughters – Alexandra and/or Julia – expressed an interest. I have now decided to submit a "special exception" application as the quickest way to meet my Lindsay's immediate family needs and located the house in the area I had planned for one of the houses in my draft major subdivision application. This would keep a major subdivision as an available option in the future in the event the cost calculus became more favorable for the project.

As mentioned previously, my plan is to build an ultra-energy efficient Nano 2024 D2 design by Unity Homes of Walpole, NH. It will be a small house by today's standards, that blends with the landscape by scale, building materials, and uses a tiny fraction of the energy typical houses use to heat and cool. I believe this is the best use of my property that I have lived on for the last 25+ years and am committed to improving because (1) It meets family needs for an affordable house; affordable because I'm subsidizing it, (2) I want to be as much a part of my children's lives as possible and help provide the support I remember needing when I started my family here in 1995, (3) it will not ruin the scale and character of the 1920 cape design of the existing house by an addition, and it will not disturb the 100+ year old sugar maple trees that are around the house.

(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. N/A

No one spoke in favor of the case.

Chairman Kudrick said that, with the Board's permission, he would forgo reading aloud the letter from Diane Donaghey Jumet which was previously read into the record at Case 23-01-Z. The Board agreed to refer to the first case if they had questions about the Jumet letter.

In opposition to the case:

Cathy Cruson, Pembroke Hill Road, said that she is on the Planning Board and she has no objection at all of Mr. Byrne having homes on his property for his family. She objects to it being done in the manner presented. There are many people who own multiple acres in the Pembroke Hill Road area that would love to put "tiny houses" or an ADU on their property. If it is attached to Mr. Byrne's home, it follows the Town regulations. Once it is separate, it does not follow the Pembroke Zoning regulations. Once it is separate and has its own well and septic system, it definitely does not follow the rules. She said that she thinks that the Board would be setting a difficult precedent. Mr. Byrne has the acreage and she thought it would be wonderful if his children lived on his property, and is able to do it through a subdivision. She would like to see him go through subdivision first and, if that fails, come back to the ZBA.

Chairman Kudrick said that he can always come back with a new application for a variance.

Rebuttal:

Mr. Byrne said that it did not make sense that he is able to put multiple buildings on his property, and exceed the size of the building, place it close to the house or anywhere on the property and, yet, cannot have family members legally live in it. He said that he spent over \$1,000 on this application which is the straight-forward way of doing it. He is already 90% certain from

feedback that he will be required to pave a Class C road which the budgetary estimate was \$300,000 (\$250/linear foot if they do not have to do a lot of clearing). He said that he is not willing to take multiple months and at least \$1,000 more in application fees to do something that is not feasible for his family.

Rebuttal:

Cathy Cruson, Pembroke Hill Road, said that her understanding is that Mr. Byrne can put a driveway off Pembroke Hill Road and it would not have to be according to Pembroke road standards.

Mr. Byrne said that if he was able to make lots for his children, he was going to make a covenant that it would stay in the family. He said that a minor subdivision would freeze the property as it is and he would not be able to do anything with it in the future.

Chairman Kudrick said that the ZBA has no control over roads. It is a Planning Board issue.

Mr. Byrne said that it would cost him \$10,000 for surveying for a road.

Alternate Member Bourque said that he is also a Planning Board member and suggested that he check with the Planning Department to see if a driveway is a private driveway or private road. He did not recall if a private road had to be paved. He thought that the only part that had to be paved was the 25 ft. apron between the gravel and the Town road so that the cars do not break up the edge of the Town road.

He said that one suggestion would be to put in a subdivision, break off one lot for his oldest daughter and put in a driveway to Pembroke Hill Road. He said Mr. Byrne could also continue that, at some point, and make it a private road that may not have to be paved. He again suggested that Mr. Byrne speak with the Planning Director or the Roads Committee. He noted that the Town has plenty of gravel driveways in town.

Mr. Byrne asked if a driveway could be any distance from a house.

Chairman Kudrick said that that would be a Planning Board issue.

Mr. Bacon said that if the driveway is over 200 ft. long, the house would have to be sprinklered per the National Safety Code.

There were no other comments from the public.

Chairman Kudrick summarized **Case #23-02-Z** as follows: This is a variance to construct an ADU that would be detached from the single family dwelling. It will be 250 ft. away from the exiting home. The Applicant read through the 5 variance conditions. He is doing this to help his daughters but the cost of creating a road stopped the subdivision that he was originally planning. He considered a minor subdivision but the cost was also too high. He does not want to cut down

the 100-year old maple trees near his house in order to attach the ADU to his existing home. Some people have an issue with a detached ADU in that location because he is not following the Town regulations. Mr. Byrne stated that he could build a barn and other buildings on his property but they could not be a dwelling unit. The Board suggested that he could look at installing a private road or subdividing his property and putting in a long driveway.

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.

Mr. Byrne asked if he subdivided his lot, would he be able to give a right-of-way across the other lot.

Chairman Kudrick said that that would be a Planning Board question.

Chairman Kudrick officially closed the hearing at 8:17 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that he would address Items #1 and #2 simultaneously.

- 1. The variance will not be contrary to the public interest.**
- 2. The spirit of the ordinance is observed.**

Chairman Kudrick said that when the ADU ordinance was created, it was because there were many people who wanted to care for family members and wanted to build a unit. Originally it was called an “in-law apartment” that was either attached to the existing house or in the existing house. §143:18.1 A-H of the Town Code is set up that way. The spirit of the ordinance is not met because the house will be 250 ft. away from the existing home. The ordinance was set up to be in the house, attached to the house, or right next to the house but not 250 ft. away. Chairman Kudrick said that he did not believe that it is in the public interest or spirit of the ordinance.

Vice Chairman Hebert agreed and had nothing to add.

Alternate Member Miner said that the proposed structure is being referred to as a house - not an ADU. He said that this is essentially adding a second home to the property. The Town’s ordinance was designed to bring in family members and to create an in-law space.

Alternate Member Bourque said that the state noted that if a municipality wanted to allow detached ADUs, it could, but Pembroke does not allow detached units based on §143-18.1.

Chairman Kudrick said that the Board can allow single family detached units but not 250 ft. away from the existing house. It is allowed by a variance but, because of other conditions, it has to be as close as possible to the original house. 250 ft. away is not as close as possible to the original house. This, in his opinion, would be a separate house.

Member Carlucci stated that he did not think that the spirit of the ordinance is observed by having a house detached with no frontage on a Class V road. Notes A-H is clear as far as an ADU being attached. This house would have a separate septic and well, which goes against Note G. It does not follow the spirit of the ordinance.

Alternate Member Chase said that it feels like a house and not an ADU.

Member Paradis and Alternate Member Bourque agreed.

3. Substantial justice is done.

Chairman Kudrick said that it is not an ADU.

Member Carlucci said that the applicant has other options in that area such as a two-family residence or an attached ADU. All members agreed.

4. Property values are not diminished.

Chairman Kudrick said that no evidence of diminished property values was brought to the Board's attention. The Board agreed.

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

Chairman Kudrick said that there is no hardship. Mr. Byrne has the ability to build an ADU that is attached to the existing house. The land does not prevent him from doing so.

Alternate Member Miner said that financial burden does not classify hardship.

Chairman Kudrick said that according to Pembroke's Code, it must be a physical hardship such as ledge on the property, slopes, embankment, and design of the property's layout. All members agreed.

(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.

Chairman Kudrick concluded by saying that the Applicant is looking to build a detached unit (an ADU) that would be situated over 250 ft. from the existing home. All 5 criteria must be approved by the Board in order to pass.

Vice Chairman Hebert said that, in reference to **Case 23-02-Z**, an application for a variance to construct a detached ADU having been presented to the Board for consideration. Detached ADUs are not allowed by Code.

MOTION: Vice Chairman Hebert moved to deny the application (**Case 23-02-Z A for a Variance under Article IV Use Regulations §143-18.1 Accessory Dwelling Units “B”**) as presented. The reason for denial is, upon reviewing the application and deliberating as a Board, the Board determined that the Applicant failed to satisfy the necessary criteria for a variance – specifically Item 1 (the variance would be contrary to the public interest), Item 2 (the spirit of the ordinance is not observed), and Item 5 (there are no special conditions that would create a hardship on the property that would distinguish it from other properties in the area). Seconded by Member Carlucci.

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

MOTION TO DENY THE APPLICATION (CASE 23-02-Z A FOR A VARIANCE UNDER ARTICLE IV USE REGULATIONS §143-18.1 ACCESSORY DWELLING UNITS “B”) AS PRESENTED. THE REASON FOR DENIAL IS, UPON REVIEWING THE APPLICATION AND DELIBERATING AS A BOARD, THE BOARD DETERMINED THAT THE APPLICANT FAILED TO SATISFY THE NECESSARY CRITERIA FOR A VARIANCE – SPECIFICALLY ITEM 1 (THE VARIANCE WOULD BE CONTRARY TO THE PUBLIC INTEREST), ITEM 2 (THE SPIRIT OF THE ORDINANCE IS NOT OBSERVED), AND ITEM 5 (THERE ARE NO SPECIAL CONDITIONS THAT WOULD CREATE A HARDSHIP ON THE PROPERTY THAT WOULD DISTINGUISH IT FROM OTHER PROPERTIES IN THE AREA) PASSED ON A 5-0 VOTE.

Case 23-03-Z A request has been made for a Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units “A”. The applicant, William Byrne, of 336 Pembroke Hill Rd., is requesting a Variance to construct a 965 sq. ft. ADU where 750 sq. ft. is allowed. The

property is located at 336 Pembroke Hill Rd., Map 264, Lot 80, in the R-3D Rural/Agricultural-Residential district, and is owned by the applicant.

Applicant: William Byrne

Property Owner(s): William Byrne

Property Address: 336 Pembroke Hill Road
Tax Map 264, Lot 80 in the R-3 Rural/Agricultural-Residential District.

Included in the Member Packets: Unity Homes floor plan, aerial view of property.

Present: William Byrne

Chairman Kudrick called the meeting to order at 8:28 p.m.

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

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.

Mr. Byrne said that he needs approval on all the cases and, since the Board has denied the last case, he wondered if he should go forward with the other cases.

Chairman Kudrick said that the decision rests with the Applicant.

Mr. Byrne said that if 250 ft. is too far, how far is “not too far” for a detached building.

Chairman Kudrick said that that case was just denied.

Mr. Byrne asked what distance would be acceptable. He said that he was looking for guidance, otherwise he would have to submit another \$1,000 application to potentially be denied again.

Chairman Kudrick said that the Board can only look at what is presented which was an ADU that would be 250 ft. away from the existing home. The ADUs that have been approved by the Board in the past were attached or next door and separated by a breezeway.

Mr. Byrne asked if those ADUs were on a 9-acre lot and still chose to be next door.

Chairman Kudrick said that the Board has seen ADU cases that are on very large lots and have attached them to the house and followed §143-18.1 A-H.

Mr. Byrne said that if the Board told him that the ADU had to be 30 ft. away, he would make it 30 ft. away from the existing home.

Mr. Bacon said that the Board has to consider what is brought before them, they cannot prescribe what will work. They have to take each proposal on its own merits.

Mr. Byrne said that he spoke with the Planner about the pavement and now is thinking that the information he received may not be correct. He asked how he could go about the process without feedback on what he has to do.

Chairman Kudrick reiterated that each case is decided on its own merits. If Mr. Byrne does not want the next 2 cases to be heard, it is his decision.

Mr. Byrne said that he paid the money so he might as well go through the process.

Mr. Byrne said again that he was disappointed with the process.

He pointed out that the answers to Case 23-03-Z are identical to the previous ones.

Chairman Kudrick said that if Mr. Byrne wants to announce that he was not going to read aloud the answers to each criteria and ask the Board to refer to previous cases, he can do so.

Mr. Byrne said that he is unfortunate enough to have so many neighbors which added hundreds of dollars to his notifications and now will be at odds with his neighbors about balancing his time with his property. He said that the Board has him in a position where he does not care so much about the nature and the layout of the property.

Mr. Byrne said that it is not fair. He was told that the Board would consider a detached building and received no guidance on how far detached it had to be. He said he would understand if the Board said that they never allowed them. He also said that he would modify his plan to the exact footage if the Board told him what the footage should be.

Chairman Kudrick reiterated that Mr. Byrne submitted an application and that is what the Board has to go by.

Member Carlucci asked if anyone at Town Hall introduced Mr. Byrne to §143-18.1 which includes the square footage of an ADU?

Mr. Byrne said yes.

Mr. Bacon said yes. Mr. Byrne knew about it.

Mr. Byrne said that he has the sense that the Board will reject multiple points of the next cases and is disappointed that he spent \$1,000 of his family's money. He said that he would dice the property up in whatever way is most efficient for his needs and not give two hoots about the "lawyer" behind him - the two sisters. He said that he said "lawyer" on purpose so they "can snicker all they want".

Chairman Kudrick stopped him and said that this Board insists on keeping the hearings civil.

Mr. Byrne said that it is not civil anymore.

Chairman Kudrick said that the Board insists on keeping things civil at the hearings because that is the way that this Board runs their meetings.

Mr. Byrne said that he would keep things civil at the meeting but not outside of the meeting. He said that he would withdraw the balance of this case.

Ms. Seidner said that she hoped that she and her sister are not being threatened because she felt threatened and she has to walk out of the meeting afterwards.

Chairman Kudrick said that he insists on keeping everything calm and polite to everyone. If Ms. Seider would like someone to walk out with her, it would be arranged.

He continued to say that he has had cases with over 250 people and never had any trouble and does not expect to have trouble with Mr. Byrne or anyone else. He spoke specifically to Mr. Byrne and told him that he will be civil. He brought the cases to the Board and they reviewed them. If he wants to pull a case, that is his decision. The Board cannot make that decision for him.

Mr. Byrne said that he wanted to pull the case. He said that he is frustrated that the case has been denied and that the Board reserves the latitude to reject the case even if he comes back and says that he will place the house 25 ft. or 10 ft. from the existing house.

Alternate Member Bourque advised Mr. Byrne to speak with a civil engineer/surveyor, such as Tim Bernier, who has done a lot of property work in Town, and knows Pembroke's rules and regulations and see what can be done before spending a lot of money.

Chairman Kudrick said that the Applicant would like to pull Case 23-03-Z and 23-04-Z (**Case 23-4-Z A request has been made for a Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units "G"**). Mr. Byrne said that Chairman Kudrick was correct.

Ms. Cruson said that she hoped that Mr. Byrne understood that they would like his daughters to live on his property and would love to have them build on the hill. They have no animosity and no negative feelings about it. It is the process that they would like followed.

Chairman Kudrick recessed the meeting at 8:39 pm.

Chairman Kudrick called the meeting back to order at 8:49 pm.

Case 23-05-Z A request has been made for a **Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units**. The applicant, Blakely & Danielle Miner, of 402 Nadine Rd., is requesting a **Special Exception** to construct an ADU. A **Special Exception** is required under **§ 143-18.1**. The property is located at 402 Nadine Rd., Map 565, Lot 81-15, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Blakely and Danielle Miner

Property Owner(s): Blakely and Danielle Miner

Property Address: 402 Nadine Road
Tax Map 565, Lot 81-15 in the R-1-A Medium Density-Residential District.

Included in the Member Packets: Abutters List Report, Floor Plan, Pembroke Sewer Commission letter dated January 18, 2023.

Present: Blakely Vernon Miner III.

Chairman Kudrick called the meeting to order at 8:51 p.m.

The Reporting Secretary read the case aloud.

Alternate Member Miner recused himself.

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

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

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

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

Please give a detailed description of your proposal below. We are requesting a special exception for a 630 sq. ft. ADU above our garage.

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** The ADU will allow additional living space. One that its current use will be my father moving into which will bring him back to the Town of Pembroke and allow him to be closer to family.
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.** There is no evidence to show that this additional space will impair the integrity or character of the neighborhood. If anything, it will improve it.
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 ADU will be using the space above a garage that otherwise would be used as storage or a great room.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** There is no evidence to show a drop in value. The opposite is more likely.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** As a single bedroom ADU there will be no greater vehicle traffic than the neighborhood already sees.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Electrical service, town water, and town sewer will be connected to the existing residential structure.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** I have not seen 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 and sewer will be attached to the current residential structure and I have a letter from the Town Sewer Commission stating that we have capacity.
9. **If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system.** Yes

Those in favor:

Blakely Vernon Miner IV, 402 Nadine Road, said that he is in favor of this because he would like his Pepere to live next to us.

Blakely Miner, Jr., 199 Victorian Way, Manchester, NH, said that he would like to be closer to his family and watch his grandson grow up. His son has provided an opportunity for him to do so and hopes that the Board accepts his offer.

No one spoke in opposition to the Case.

There were no questions from the Board.

There was no rebuttal from those in favor or opposed to the case.

The Recording Secretary read the January 18, 2023 letter from the Pembroke Sewer Commission to the Zoning Board of Adjustment.

The Applicant said that, with regard to the ADU plan that he presented to the Sewer Commission, it has a single bedroom, kitchen, bathroom, and living space. The additional non-living storage space will be above the garage.

He said that the initial plan for the garage was for him. It had garage space downstairs and storage space upstairs. After the foundation was installed, his father brought up the point of perhaps living with them, so they took the opportunity to make a plan for an ADU. The non-storage living space has no access to the ADU component. It will have a separate exterior door and will be storage for the Applicant. There will be a door into the storage space and a door into the ADU living space.

There were no questions from the Board.

Chairman Kudrick summarized **Case 23-05-Z** follows: The Applicant has requested to build a 630 sq. ft. ADU for his father. He has read all 9 conditions of the Special Exception. A letter from the Sewer Commission was read into the record that stated that the Applicant has capacity for one bedroom only. There were 2 family members that spoke in favor of the application. There is a storage area that will not be part of the ADU. It is solely for the homeowner's use and not for the ADU.

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

Chairman Kudrick officially closed the hearing at 9:01 p.m.

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.**

Chairman Kudrick said that this is why the ADU was established -- to help the family. All members agreed.

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 will not change anything in the area. All Board members agreed.

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 that it is in an appropriate location. All Board members agreed.

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 evidence that property values will diminish. All Board members agreed.

Vice Chairman Hebert said that new construction will not decrease the value.

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 only be 1 extra vehicle traveling on White Sands Road.

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

Chairman Kudrick said that he will have the electric, water, and sewer connected to the primary residential unit. All members agreed.

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

Chairman Kudrick said that no one spoke against the project. All members agreed.

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 he is on Town water and sewer. All members agreed.

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

Alternate Member Bourque said that the ADU is allowed by right.

Chairman Kudrick summarized **Case 23-05-Z** as follows: The Applicant is looking to build a 630 sq. ft. ADU for his father. A letter from the Pembroke Sewer Commission confirmed that he has sewer available. Two people spoke in favor of the application. No one spoke in opposition to the application. There is a storage area that will not be part of the ADU.

Vice Chairman Hebert said that this is, in reference to **Case 23-05-Z**, a request for a special exception having been presented to the Board for consideration to construct an ADU. A special exception is required under §143:18.1 of the Zoning Regulations.

MOTION: Vice Chairman Hebert moved to grant a special exception (**Case 23-05-Z**) to construct an ADU as defined in NH Planning and Land Use Regulations - RSA 674:41, RSA 674:42, RSA 674:43 as well as §143-18.1 of the Town of Pembroke Zoning Regulations. The condition of approval is that the Applicant must follow all State and local regulations. Seconded by Member Paradis.

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

MOTION TO GRANT A SPECIAL EXCEPTION (CASE 23-05-Z) TO CONSTRUCT AN ADU AS DEFINED IN NH PLANNING AND LAND USE REGULATIONS - RSA 674:41, RSA 674:42, RSA 674:43 AS WELL AS §143-18.1 OF THE TOWN OF PEMBROKE ZONING REGULATIONS. THE CONDITION OF APPROVAL IS THAT THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS PASSED ON A 5-0 VOTE.

Case 23-06-Z A request has been made for a **Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units “B”**. The applicant, Blakely & Danielle Miner, of 402 Nadine Rd., is requesting a **Variance** to construct an ADU over a new garage which is detached from the single-family dwelling, where ADU’s that are attached or within, only, are allowed. The property is located at 402 Nadine Rd., Map 565, Lot 81-15, in the R-1A Medium Density-Residential district, and is owned by the applicant.

Applicant: Blakely and Danielle Miner

Property Owner(s): Blakely and Danielle Miner

Property Address: 402 Nadine Road

Tax Map 565, Lot 81-15 in the R-1-A Medium Density-Residential District.

Included in the Member Packets: Floor Plan

Present: Blakely Vernon Miner, III

Chairman Kudrick called the meeting to order at 9:08 p.m.

The Reporting Secretary read the case aloud.

Alternate Member Miner recused himself.

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

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

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

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

Please give a detailed description of your proposal below. We are seeking a variance to add an ADU to the space above our detached garage.

1. **The variance will not be contrary to the public interest.** By allowing us to place an ADU in a detached structure where the layout and topography of the property would not allow us to attach the structure would not harm the public interest. This variance would not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public.
2. **The spirit of the ordinance is observed.** By allowing us to place an ADU in a detached structure where the layout and topography of the property would not allow us to attach the structure would be within the spirit of the ordinance.
3. **Substantial justice is done.** Yes, substantial justice will be done.
4. **The values of surrounding properties are not diminished.** There is no evidence to show a drop in value. The opposite is more likely.

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 restriction we have on the property is the grade of the lot. There is a large slope behind the house that restricted access to attach a garage in that location. Its other restriction was the original builders chosen location and orientation of the house itself as what we believe was the “show house” of that community does not allow a garage on the existing driveway side due to setbacks and property lines.

(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. As this was the feasible location for the structure we were not able to attach it to the house.

Mr. Miner said that as they began planning to build a garage, previous to deciding to add an ADU, they looked into attaching it to the Nadine Road side of the house where the present driveway exists. He believes that his house was the “show house” of the Donna Drive development. The house is situated facing Bow Lane, which restricts the left hand boundary. The house is too close to the front and side boundary to add a garage. Behind the house, the property slopes down to White Sands Road to the sewer pump station. He said that the only location that would meet easements and setbacks was to come off White Sands Road and build the garage into the hill. Placing the building any closer to the house would not work because of the layout of the property. There is approximately 30 ft. between the house and garage.

It was suggested that Mr. Miner use the white board to outline the property and explain where the garage is situated.

Mr. Miner explained that the foundation is presently in. He said the ADU was an afterthought during the construction. The garage has a 12 ft. ceiling and is roughly 4-5 ft. below the first floor level of the house. The ADU would be on top of the 12 ft. ceiling and have an 8 ft. ceiling.

Chairman Kudrick stated that the Nadine Road side of the house is in the setback.

Mr. Miner said yes and there is a fire hydrant there.

Blakely Vernon Miner, Jr., 199 Victorian Way, Manchester, NH said that, in order for Mr. Miner to put the ADU on the right side of the house, he would have to move the existing driveway.

Mr. Miner said that the top of White Sands Road is a steep downgrade to the Town Pump Station. Up to a certain point of White Sands Road there is road access, but then the grade becomes very steep.

Mr. Miner also said that where he already placed the garage foundation, he met all the setbacks - about 40 ft. from the road and 20 ft. from the rear line.

Chairman Kudrick asked if Mr. Miner had pushed the garage as far as it could go.

Mr. Miner said that yes. He did not want to get any closer and risk degrading his house foundation.

Member Carlucci said that he visited the site and the garage is placed in the only location possible.

Alternate Member Chase asked if Mr. Miner had an existing garage.

Mr. Miner said that the existing house never had a garage. He presently has a foundation for a garage. He also has an approved driveway permit off of White Sands Road. There are no neighbors on White Sands Road. There will be 2 exits from the ADU.

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

Chairman Kudrick summarized **Case 23-06-Z** as follows: The Applicant is asking for a variance for a detached ADU above a garage foundation that is already built. He has hardship of the property because of setbacks, the slope of the land, and the way that the house was built on the lot. The house was not situated square on the property. Mr. Miner believes that the house was considered the “show house” and was built so that it could be the first thing seen from Bow Lane when entering the subdivision. It is the only house that Chairman Kudrick knows of in the project that is built kitty-cornered. All other homes are built square to the road. He has 2 safety accesses planned to the ADU. The garage is approximately 30 ft. from the house. Because of the land and the setbacks, the only place on the lot is what Mr. Miner has presented.

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.

Alternate Member Bourque asked if he considered some way of attaching the garage ADU to the house.

Mr. Miner said that they considered ways to do so, but, because of the elevation differences, it would create a very strange structure. Because the ADU was an afterthought to the garage, not a great deal of thought put into the idea.

Chairman Kudrick officially closed the hearing at 9:28 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that the Applicant is looking to build an ADU on top of an existing garage foundation which is detached from the house.

Chairman Kudrick said that he would address Items #1 and #2 simultaneously.

- 1. The variance will not be contrary to the public interest.**
- 2. The spirit of the ordinance is observed.**

Chairman Kudrick said that he would discuss Questions 1 and 2 together. It is an ADU for a family member. It is allowed, but it will not be contrary to the public interest and is in the spirit of the ordinance.

Chairman Kudrick said that §143-18.1 reads: “. . . *one ADU shall be permitted in all zones that allow single Family Detached Dwelling Units by special exception* . . .” Chairman Kudrick interpreted the statement to mean that a person is allowed one detached dwelling unit as an ADU.

Alternate Member Bourque said that he interprets the quote to mean that an ADU shall be permitted in all zones that allow single family homes – meaning that it is not attached to a multi-family unit. Therefore, all one-family homes are permitted to have one attached ADU by special exception. It does not mean that a detached ADU is allowed. It merely says that the original residence has to be in an approved zone that allows a single stand-alone dwelling unit.

Mr. Bacon agreed with Alternate Member Bourque’s interpretation. A “single family detached dwelling unit” just means a house. It has nothing to do with the detached quality of the ADU. The particular verbiage - “single family detached dwelling unit” - is what they are calling a single family home.

Alternate Member Bourque said that an ADU cannot be attached to a duplex, or a multi-family unit (2 or more). In a single stand-alone house, one ADU is allowed.

Mr. Bacon said that the word “detached” is simply used in the definition to describe the principal building -- the house -- on the lot. He said that the detached ADU requires a variance and Mr. Miner clearly has a hardship when looking at the land.

Alternate Member Bourque said that the State allows detached ADUs, but the Town did not adopt detached ADUs in its ordinance.

Vice Chairman Hebert said that the purpose of a variance is to allow for something that is not typically allowed in the Town's ordinance such as putting something into a setback or too close to a road. Although it is clearly not allowed by Town Code, the Zoning Board can grant a special exception or variance because of a hardship or specific site conditions that will limit what he can do with the property he has.

Alternate Member Chase said that that is the rationale that was used with another case that was before the Board.

Vice Chairman Hebert said that the Board does not set precedent but looks at every case independently. This is case is a perfect example of site conditions that will restrict him and dictate approximately where to put a structure.

Chairman Kudrick said that Mr. Miner cannot do anything without a variance to the rule.

Member Carlucci said that he agreed with the relief. He certainly has a hardship of the lot.

Chairman Kudrick said that the spirit of the ordinance is observed because of the layout of the property.

3. Substantial justice is done.

Member Carlucci said that substantial justice would be done by granting the variance. Vice Chairman Hebert agreed and that it will provide him with a way to utilize his property and is the most efficient use of it. All members agreed.

4. Property values are not diminished.

Chairman Kudrick said that no evidence has been presented that showed that property values would be diminished. All members agreed.

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

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

Chairman Kudrick said that he has a hardship of the property because of the setbacks, the slopes, and the way that the house was built on the lot. All members agreed.

Vice Chairman Hebert said that a corner lot dictates further setbacks which further compounds the problem. All members 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, in reference to **Case 23-06-Z**, a request for a variance having been presented to the Board for consideration to construct a detached ADU. Detached ADUs are typically not allowed by code. The Applicant is seeking relief from Item B in the criteria as outlined in §143-18.1.

MOTION: Vice Chairman Hebert moved to approve the application (**Case 23-06-Z**) as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) Construction to be carried out in accordance with the submitted plans indicating only 1 bedroom; (3) Prior to obtaining a Certificate Of Occupancy, the applicant must complete and pay for any and all necessary payments for sewer and water service related to the ADU; and (4) The non-living storage space must remain as such. Seconded by Member Paradis.

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

MOTION TO APPROVE THE APPLICATION (CASE 23-06-Z) AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO BE CARRIED OUT IN ACCORDANCE WITH THE SUBMITTED PLANS INDICATING ONLY 1 BEDROOM; (3) PRIOR TO OBTAINING A CERTIFICATE OF OCCUPANCY, THE APPLICANT MUST COMPLETE AND PAY FOR ANY AND ALL NECESSARY PAYMENTS FOR SEWER AND WATER SERVICE RELATED TO THE ADU; AND (4) THE NON-LIVING STORAGE SPACE MUST REMAIN AS SUCH PASSED ON A 5-0 VOTE.

IV. Approval of Minutes – January 23, 2023

MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE JANUARY 23, 2023 MINUTES AS AMENDED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

Chairman Kudrick announced that there was a house bill that was going to allow anyone with a single family unit to build 4 units on a property. The bill was defeated.

He also said that the Concord Monitor reported that, in Dover, they are building 44 units that will be 360 sq. ft. “cottages” on 4 acres of land. They will be rented for approximately \$1,100/mo.

Chairman Kudrick said that Pembroke does not presently have any regulations preventing “cottages”. He suggested having a non-work session with the Town attorney, Town Planner, and Chairman of the Planning Board to discuss it.

Vice Chairman Hebert said that the Boards would have to define what a “cottage” is.

Mr. Bacon said that Dover created a separate zoning district.

VI. Adjournment

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

The meeting adjourned at 9:46 pm.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary