ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
April 24, 2023
(ADOPTED)

MEMBERS PRESENT: Bruce Kudrick, Chairman; Thomas Hebert, Vice Chairman; Dana Carlucci, Natalie Glisson, and Paul Paradis
ALTERNATES PRESENT: Robert Bourque, Wendy Chase, Blakely Miner III
STAFF PRESENT: Jocelyn Carlucci, Recording Secretary and Paul Bacon, Code Enforcement Officer

The Recording Secretary took the roll call.

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

Case 23-07-Z A request has been made for a **Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units,** The applicant, Zack Ernst (RPL Construction), of 326 Pembroke Street, is requesting a **Special Exception** to construct an ADU. A **Special Exception** is required under **§ 143-18.1.** The property is located at 935 Borough Rd., Pembroke NH 03275, Map 258, Lot 5 in the R-3D Rural/Agricultural - Residential District and is owned by Todd and Susan Van Zandt of 935 Borough Rd. Pembroke NH.

Applicant:	RPL Construction/Susan and Todd Van Zandt 326 Pembroke Street Pembroke, NH 03275
Property Owner(s):	Todd and Susan Van Zandt 935 Borough Road Pembroke, NH 03275
Property Address:	935 Borough Road Pembroke, NH 03275 Tax Map 258, Lot 5 in the R-3D Rural/Agricultural-Residential Zoning District.

Included in the Member Packets: ZBA Fee Schedule Worksheet, Abutters List Report, overhead view of site, Assessing Card, authorization letter from Susan Van Zandt authorizing Zack Ernst to represent the Owners.

Present: Zack Ernst of RPL Construction

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 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. Ernst said that his sister-in-law has a 30' x 50' structure at the end of the driveway which consists of a two-car garage, with its own septic and dug well. They are interested in putting an Accessory Dwelling Unit (ADU) within the garage structure for their 73 year old father. They plan to upgrade the electrical and remodel the inside to accommodate a 720 sq. ft. unit. The building presently has an office and a bathroom.

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

Please give a detailed description of your proposal below: Proposing to take a portion of 30' x 50' existing 2-car garage and create an ADU for elderly family member. Existing building currently has own town approved septic and utilities.

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** The proposed ADU would bring more value to properties surrounding and does not affect 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.** The ADU will not alter the current structures that exist. It is just an interior remodel. Existing structure currently has town approved septic installed.

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 structure already exists. By having the ADU, it allows an elderly family member to live close to family. This would not affect surrounding properties.

4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** By adding an ADU and updating the exterior, this will potentially add value to surrounding properties.

5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No, it will be an elderly man living there with one vehicle.

6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** ADU has its own septic pumped regularly. ADU also has its own utilities and water. They will upgrade utilities to meet current codes and a dug well.

7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** Letters have been sent by property owner.

Mr. Ernst said that his sister-in-law has not received any negative feedback from the neighbors.

8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** Building has town approved 1,000 gal. septic and own well. They want to give it its own electric.

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

No one spoke in favor or in opposition of the application. There was no rebuttal by the applicant or those in favor of the application.

Chairman Kudrick said that, at this time, the Board is only approving an ADU.

Alternate Member Miner asked if the power was fed from the house.

Mr. Ernst said that he believed it is. It has its own panel.

Mr. Bacon asked if there was a meter on the building.

Mr. Ernst said that the meter is on the road side of the building which would indicate that it has its own service.

There were no further questions by the Board.

Chairman Kudrick summarized **Case 23-07-Z** A request for a **Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units.** 935 Borough Rd., Pembroke NH 03275, Map 258, Lot 5 in the R-3D Rural/Agricultural - Residential District. He said that the applicant would like to build an ADU in an existing building. According to Pembroke's regulations, an ADU is allowed in that District and he meets RSA 674:27. He will have to go for a variance which is the next case. This case merely determines that he can place an ADU on this parcel of land.

Member Carlucci said that, in reference to Question No. 6, would Chairman Kudrick consider separate sewer, water and electric as appropriate facilities because in the Town's ordinance, an ADU must share the electric, water, and sewer with the primary dwelling unit.

Chairman Kudrick said that those items pertain to the third case that the applicant is applying for.

Chairman Kudrick stated that the Board will decide all cases within 30 days. 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 approve, deny or continue the deliberation. No comments will be taken from the audience.

This hearing is officially closed at 7:15 p.m.

The Board agreed that it would not be necessary to go through deliberations because the ordinance allows an ADU on a piece of property. This is just to grant permission to have an ADU.

This is in reference to Case 23-07-Z, a request for a Special Exception having been presented to the Board for consideration. A Special Exception is required by Town regulations to construct an ADU.

MOTION: Tom Hebert moved to approve **Case 23-07-Z,** A request for a **Special Exception under Article IV Use Regulations §143-18.1 Accessory Dwelling Units,** to construct an ADU as defined in NH Planning and Land Use regulations RSA 674:71, RSA 674:72, and §143-18.1 of the Town of Pembroke Zoning Regulations with the following condition: (1) Must follow all state and local regulations. Seconded by Member Carlucci

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

MOTION TO APPROVE CASE 23-07-Z, A REQUEST FOR A SPECIAL EXCEPTION UNDER ARTICLE IV USE REGULATIONS §143-18.1 ACCESSORY DWELLING UNITS, TO CONSTRUCT AN ADU AS DEFINED IN NH PLANNING AND LAND USE REGULATIONS RSA 674:71, RSA 674:72, AND §143-18.1 OF THE TOWN OF PEMBROKE ZONING REGULATIONS WITH THE FOLLOWING CONDITION: (1) MUST FOLLOW ALL STATE AND LOCAL REGULATIONS PASSED ON A 5-0 VOTE.

Case 23-08-Z A request has been made for a **Variance under Article IV Use Regulations, §143-18.1, Accessory Dwelling Units "B"**. The applicant, Zack Ernst (RPL Construction), of 326 Pembroke Street, Pembroke NH 03275 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 935 Borough Rd., Pembroke NH 03275, Map 258, Lot 5 in the R-3D Rural/Agricultural - Residential District and is owned by Todd and Susan Van Zandt of 935 Borough Rd. Pembroke NH.

Applicant:	RPL Construction/Susan and Todd Van Zandt 326 Pembroke Street Pembroke, NH 03275
Property Owner(s):	Todd and Susan Van Zandt 935 Borough Road Pembroke, NH 03275
Property Address:	935 Borough Road Pembroke, NH 03275 Tax Map 258, Lot 5 in the R-3D Rural/Agricultural-Residential Zoning District.

Included in the Member Packets: ZBA Fee Schedule Worksheet

Present: Zack Ernst of RPL Construction

The Reporting Secretary read the case aloud.

Chairman Kudrick opened the public hearing at 7:19 p.m.

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 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.

Please give a detailed description of your proposal below:
Proposing to build an in-law apartment unit in the back half of the already existing 30' x 50' 2-car garage. The garage was built on the property in roughly 1998. The garage sits at the bottom of the driveway while the house sits roughly 1300' up the hill.

1. **The variance will not be contrary to the public interest.** Due to the structure being built already, we would be remodeling the inside of the building to house a family member. Additionally the cosmetics would be upgraded, improving the neighborhood.

2. **The spirit of the ordinance is observed.** The variance would not affect the public. The proposed ADU follows all other sections of the ordinance except we would have it detached from the primary residence.

3. **Substantial justice is done.** The variance causes no harm to the rights of the general public. Once complete, the ADU has no impact on neighbors.

4. **The values of surrounding properties are not diminished.** If anything, finishing the proposed ADU will improve the condition of the property and could potentially increase the value of surrounding homes.

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 purpose of the ordinance provision and the specific application of that provision to the property; and ii. The proposed use is a reasonable one.

Said property is set furthest from the road than others on road. It is the only property with an outbuilding that has its own well and septic system. The building would be remodeled for Mr. Ernst's father.

(B) If the criteria in subparagraph (A) are not established, an 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 a reasonable use of it.

Chairman Kudrick said that the building has its own power, septic, and well.

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

Alternate Member Miner asked if there was a floor plan layout of how much space they were going to use.

Mr. Ernst said that the ADU portion would be 28' x 25' and the front half of the building will remain a two-stall garage.

Chairman Kudrick summarized **Case 23-08-Z** a variance to construct an ADU which will be detached from a single-family dwelling at 935 Borough Road, Map 258, Lot 5 in the R-3D Rural/Agricultural-Residential Zoning District. The existing building is 30' x 50' which they would like to build a 28' x 25' ADU within the building for an older family member.

Alternate Member Bourque asked Mr. Bacon if it was legal to have automobiles in a living area? The back half of the building would be a living area and the front would be used to store automobiles.

Mr. Bacon said that he thought it would be legal. He doubted that it would be any different than having an ADU over a garage. He said that it probably would need to have fire code drywall and a 20 minute fire door.

There were no other questions by the Board or the Applicant.

Chairman Kudrick announced that the Board will decide all cases within 30 days. 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 approve, deny or continue the deliberation. No comments will be taken from the audience.

Mr. Ernst said that he would build everything to code.

Chairman Kudrick officially closed the hearing at 7:27 p.m.

Deliberations: ZBA members discussed the Variance criteria.

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

Member Carlucci said that ADUs were intended to be attached to a single family dwelling unit as a subordinate use to the principal use. He felt that it would be against our ordinance but, as far as the public interest, he was not sure.

Alternate Member Chase did not feel that it was contrary to the public interest because the structure already exists.

Members Glisson and Paradis, Vice Chairman Hebert, Chairman Kudrick, and Alternate Member Miner agreed with Alternate Member Chase.

Alternate Member Bourque agreed with Member Carlucci.

2. The spirit of the ordinance is observed.

Alternate Member Chase said that it does not rise to the spirit of the ordinance because the spirit of the ordinance is for the ADU to be attached and this is a detached request.

Member Glisson said that having a detached ADU sets a precedent that she did not think would be helpful and is against the ordinance.

Vice Chairman Hebert agreed with Member Glisson -- it does not carry the spirit of the ordinance and goes against what the regulations specifically say. He said that it is not a good idea to start allowing those to happen.

Chairman Kudrick said that the ordinance was set up (RSA 674:72) to help out family members (mother and/or father to be living with a family member to help them out or children that need the help from a family member) and that is why they were attached. Some ADUs may be a little away from the main structure (for example if there was a garage or a breezeway between them so the ADU was still attached to the main structure) but this is approximately 1600' away, which is a large distance. He said that he had an in-law apartment in his house where an older family member lived. If that person fell down, they heard it. In a situation like the one being presented, if something happened to this person, no one would know about it. In his opinion, this was not what the ordinance was set up for. Making an ADU in an existing building would be fine as long as the building was attached to the primary residence. Approximately 1600' away is a long way away and he said that older people eventually need quite a bit of care and its important to be right there. That is the spirit of the ordinance and the intent of the RSA - to help out and keep the senior citizens at home with other family members. He said that he knows of a few ADUs that were attached and when the elderly resident fell, they heard it from the main house and were able to respond quickly. If someone falls 1600' away, no one will hear it. It is a safety issue. It is not the spirit of the ordinance.

Member Glisson said that one issue that she struggles with is that once the Board approves it, the Board cannot say that the property owner must have a certain person living there. They could have anyone living there.

Chairman Kudrick said that she was correct. It was originally intended for family members. When the ordinance first came out, the Planning Board had a real issue with it because it could be turned into an apartment in the future. At the time, many people were looking at placing an ADU in the garage because of the size of the structure. It was intended for older family members to go there and the younger family members to take care of them. He said that this detached unit is just too far away.

Member Carlucci agreed. He said that there are options. An ADU could be connected to the main dwelling unit. Pembroke's code allows a unit up to 750 sq. ft. but it has to be on the same sewer, water, and electric which the Board approved.

Chairman Kudrick said that the Board approved the applicant to put an ADU attached to his house.

Member Paradis said that he agreed because it is further away than normal.

Alternate Member Miner said that the Town has not adopted "detached" ADUs into their ordinance. The State RSA 674:73 talks about detached accessory dwelling units. While it does not meet the Town ordinance, the spirit is there with the RSAs. He said that, in the past, there have been variances on this subject but everything has had water, sewer, and power attached to the main residence. Because this is separate, he felt that it drew the line between the Town ordinance and this actually being a separate house.

Alternate Member Bourque said that he felt that the spirit of the ordinance is not observed because of the distance between the building and the main house and also because all the utilities are separate. The ordinance specifies that the utilities need to be from the main residence.

3. Substantial justice is done.

Alternate Member Bourque said he was not sure.

Alternate Member Miner said that, in the past the building was used for a plumbing business and there was more traffic and nuisance with the prior owner. He said that this use would be better than it previously was.

Member Paradis agreed with Alternate Member Miner.

Member Carlucci said that this building is not subordinate to the primary resident and the intended use. His answer would be no.

Chairman Kudrick said that the benefit for the applicant should not be outweighed by the harm to the general public. He said that he did not feel that it would harm the general public by using the building as an ADU.

Vice Chairman Hebert said that he agreed with Chairman Kudrick. He said that the applicant will benefit by being able to have an ADU in the building and it is not necessarily a harm (it is not physically harming the public), but he worries about setting a precedence. Even though he realized that the Board looks at every case individually, he still has a hard time with the concept of starting to create ADUs far from the main residence and allowing standalone separate dwelling units.

Member Glisson said that if the Board is just looking at this case, it meets the criteria. The benefit to the owner is satisfied.

Alternate Member Chase said that, in this case, she did not feel that it was creating a negative impact on the public so it is creating substantial justice.

4. Property values are not diminished.

The Board agreed that the ADU would not cause property values to diminish.

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 purpose 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, an 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 a reasonable use of it.

Chairman Kudrick said that there is no unnecessary hardship because the applicant has the right to build an ADU attached to his house which the Board already approved. The applicant has other options.

Alternate Member Bourque agreed and said that there are other options available. The detached ADU is not reasonable.

Alternate Member Miner agreed with Alternate Member Bourque.

Member Paradis said that the building was initially built because it was easier to deliver products to the structure at the bottom of the hill near the road than to drive up the steep driveway to the main house.

Member Carlucci said that the applicant has other options such as attaching the ADU to the main house. He said that there is no hardship.

Vice Chairman Hebert agreed with Member Carlucci.

Member Glisson said that in order for hardship to be satisfied, the applicant has to prove that there is a special condition on the property (hardship of the property itself) and he has not addressed it in his application. If the applicant were to appeal the decision and come back to the Board, that would be something that he would have to prove.

Member Chase said that the Board does not have any information on why the applicant could not create an attached ADU.

Chairman Kudrick resummarized the case. The main issue is the spirit of the ordinance and a number of Board members had a problem with it because the ordinance talks about an attached unit and taking care of family members that are next door, not over 1200' away. With regard to hardship, the applicant has the ability to attach it to the house.

Vice Chairman Hebert said that this is in reference to **Case 23-08-Z,** a request for a variance having been presented to the Board for consideration. A variance is required because detached ADUs are not allowed.

MOTION: With regard to **Case 23-08-Z,** a request for a **Variance under Article IV Use Regulations §143-18.1 Accessory Dwelling Units "B",** Vice Chairman Hebert moved to deny the application as presented**.** The reason for denial is: (1) No. 2 – the spirit of the ordinance would not be observed; (2) No. 5 – the applicant has not proven a hardship; and (3) this property is not unique in its features and there are other options available to pursue an ADU. Seconded by Dana Carlucci.

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

WITH REGARD TO CASE 23-08-Z, A REQUEST FOR A VARIANCE UNDER ARTICLE IV USE REGULATIONS §143-18.1 ACCESSORY DWELLING UNITS "B", VICE CHAIRMAN HEBERT MOVED TO DENY THE APPLICATION AS PRESENTED. THE REASON FOR DENIAL IS: (1) NO. 2 – THE SPIRIT OF THE ORDINANCE WOULD NOT BE OBSERVED; (2) NO. 5 – THE APPLICANT HAS NOT PROVEN A HARDSHIP; AND (3) THIS PROPERTY IS NOT UNIQUE IN ITS FEATURES AND THERE ARE OTHER OPTIONS AVAILABLE TO PURSUE AN ADU. THE MOTION PASSED ON A 5-0 VOTE.

Case 23-09-Z A request has been made for a **Variance under Article IV Use Regulations, §143-18.1, Accessory Dwelling Units "G"**. The applicant, Zack Ernst (RPL Construction), of 326 Pembroke Street, Pembroke NH 03275 is requesting a **Variance** to allow a separate septic system and well for the ADU where only one electric, water and sewer system, serving both units, is allowed. The property is located 935 Borough Rd., Map 258, Lot 5 in the R-3D Rural/Agricultural - Residential District and is owned by Todd and Susan Van Zandt of 935 Borough Rd. Pembroke NH.

Applicant:	RPL Construction/Susan and Todd Van Zandt 326 Pembroke Street Pembroke, NH 03275
Property Owner(s):	Todd and Susan Van Zandt 935 Borough Road Pembroke, NH 03275
Property Address:	935 Borough Road Pembroke, NH 03275 Tax Map 258, Lot 5 in the R-3D Rural/Agricultural-Residential Zoning District.

Included in the Member Packets: ZBA Fee Schedule Worksheet

Present: Zack Ernst of RPL Construction

Chairman Kudrick asked Mr. Ernst if he wanted to pursue this case. Mr. Ernst said no.

VI. Approval of Minutes – February 27, 2023

MOTION: Vice Chairman Hebert moved to approve the February 27, 2023 minutes as amended. Seconded by Member Paradis. Unanimously approved.

V. Other Business /Correspondence - None

Chairman Kudrick announced that there will be a short workshop following this meeting.

VI. Adjournment: Motion: Alternate Member Bourque moved to adjourn. Member Carlucci seconded. Unanimously approved.

Meeting adjourned at 7:55 p.m.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary