

**MINUTES  
PEMBROKE ZONING BOARD OF ADJUSTMENT**

**February 22, 2016**

**Pending 2-25-2016**

**MEMBERS PRESENT:** William Bonney, Chair; Bruce Kudrick, Vice Chair; Tom Hebert, Dana Carlucci, Paul Paradis

**ALTERNATES PRESENT:** William Faith, Mark Simard

**EXCUSED:** Mark Johansen

**STAFF PRESENT:** Stephanie Verdile, Town Planner; Susan Gifford, Recording Secretary

Chairman Bonney called the meeting to order at 7:02 p.m. Due to the number of interested parties, this meeting was held at the Pembroke Academy auditorium. Estimated 100+ people were in attendance.

Stephanie Verdile, Town Planner, noted that the owner of John's Wrecker Service had asked for time for his agent to arrive for his presentation at the meeting.

**MOTION:** Bruce Kudrick moved to postpone cases 16-01-Z, 16-02-Z and 16-03-Z to later in the evening as requested by the applicant. Dana Carlucci seconded.

**VOTE:**           BILL   - YES           TOM   - YES           BRUCE - YES  
                  PAUL   - YES           DANA- YES

**MOTION TO POSTPONE CASES AS REQUESTED PASSED ON A 5-0 VOTE.**

Chairman Bonney explained that the evening's agenda included 5 cases, three of which were for John's Wrecker Service. The other two cases were Cerieillo's garage and Keystone Pembroke LLC. The Zoning Board of Adjustment meeting ends at 10:00 p.m. In order to get to all cases, Chairman Bonney asked that everyone who provides testimony keep their comments succinct and not repeat what was already stated.

**Case #16-04-Z**

Applicant:                   Anthony Ceriello  
                                  64 Lena Lane  
                                  Epsom, NH

Property Owner(s):       Anthony and Teresa Ceriello  
                                  64 Lena Lane  
                                  Epsom, NH

Property Address:       638 Borough Road  
                                  Pembroke, NH 03275  
                                  Tax Map (561) Lot (79-5) in the R3 Rural/Agricultural-Residential  
                                  Zoning District.

**Case 16-04-Z** A request has been made for a **Variance** under **Article V Dimensional and Density Regulations, §143-21 Table of Dimensional and Density Regulations**. The applicant, Anthony & Teresa Ceriello, 64 Lena Lane, Epsom, NH 03234 is requesting a **Variance** to construct a 22 ft. x 24 ft. garage 23 feet from the side property boundary. A **Variance** is required because the required side set back in the R-3 Zoning District is 30 feet. The property is owned by Anthony & Teresa Ceriello. The property is located at 638 Borough Road, Map (561) Lot (79-5) in the R-3 Rural / Agricultural-Residential Zoning District.

Stephanie Verdile confirmed that all abutters were notified.

Chairman Bonney opened the public hearing at 7:05.

There were 5 regular members and 2 alternate members present. Therefore, there was a full five-member board present for this hearing. Chairman Bonney explained the rules of the hearing. The Board makes its decision based upon the facts presented by the applicant. If any of these facts are subsequently found to be different, the Board reserves the right to revisit its decision.

Tax cards and a Plot Plan drawn January 15, 2016 by Ernest Jeffrey LLS, Hoyt Street, Merrimack NH 03054 were included in the agenda packet.

Anthony Ceriello addressed the variance criteria:

Please give a detailed description of your proposal below:

We are requesting relief from the current side yard setback to allow for the installation of (1) 22' x 24' one story garage on a 2-acre lot. The garage will be on the right hand side of the porch, and a roof will be added to bridge the porch. The closest point of the garage will be 23 feet from the side property line where 30 feet is required.

1. **The variance will not be contrary to the public interest.** The garage is intended for personal use and vehicle storage.
2. **The spirit of the ordinance is observed.** The lot is 2 acres so there would be no overcrowding on the lot.
3. **Substantial justice is done.** This variance would allow the owner to build a garage and use his property consistent with the zoning ordinance.
4. **The values of surrounding properties are not diminished.** No, and the values of surrounding properties would increase with the addition of this garage.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
  - 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 because:**
  - ii. **The proposed use is reasonable.**

The proposed location is the most logical location for the intended use by unit "A."

**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 make a reasonable use of it.**  
This is the only location for a garage for unit "A" due to the location of the duplex on the lot.

In response to Bruce Kudrick's question, Anthony Ceriello bought the duplex as is, with the duplex not centered on the lot. Chairman Bonney asked why Anthony Ceriello could not eliminate the porch to

construct the garage. Anthony Ceriello stated that they would lose the side entrance, one of only two entrances. The only entrance would be through the garage. Dana Carlucci asked how far the nearest abutter's structure is to the property line on the right. The garage is 30 feet down the driveway and the abutter's structure is 200 feet from the lot line. The frontage is 200.54 feet for the 2-acre lot.

Chairman Bonney summarized the case. **Case 16-04-Z** is a request for a **Variance** under **Article V Dimensional and Density Regulations**, §143-21 **Table of Dimensional and Density Regulations**. The applicant, Anthony & Theresa Ceriello, 64 Lena Lane, Epsom, NH 03234 is requesting a **Variance** to construct a 22 ft. x 24 ft. garage 23 feet from the side property boundary. A **Variance** is required because the required side set back in the R-3 Zoning District is 30 feet. The property is owned by Anthony & Teresa Ceriello. The property is located at 638 Borough Road, Map (561) Lot (79-5) in the R-3 Rural / Agricultural-Residential Zoning District.

Anthony Ceriello wants to build a garage attached to the porch 24' deep and 22' wide. The garage will be at least 23 feet from the neighbor's side property line. The rear of the garage has more space to the side setback.

There being no further comment, Chairman Bonney closed the public hearing at 7:17 p.m.

**Deliberations:** ZBA members discussed the Variance criteria. Bruce Kudrick

- 1) The variance will not be contrary to the public interest. There will be no overcrowding.
- 2) The spirit of the ordinance is observed. There is at least 23 feet to the side setback.
- 3) Substantial justice is done. The owner will be able to construct a garage for personal use.
- 4) Property values are not diminished. No testimony that property values would be diminished was provided.
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The site is the only location available for a garage.

**MOTION:** Bruce Kudrick moved to APPROVE **Case 16-04-Z** for a **Variance** under **Article V Dimensional and Density Regulations**, §143-21 **Table of Dimensional and Density Regulations** to construct a 22 ft. x 24 ft. garage 23 feet from the side property boundary where 30 feet is required. A **Variance** is required because the required side set back in the R-3 Zoning District is 30 feet. The property is located at 638 Borough Road, Map (561) Lot (79-5) in the R-3 Rural / Agricultural-Residential Zoning District with the following conditions:

1. Must follow all State and local rules and regulations.

Paul Paradis seconded.

**VOTE:** BILL - YES TOM - YES BRUCE - YES  
PAUL - YES DANA- YES

**MOTION TO APPROVE VARIANCE WITH CONDITIONS PASSED ON A 5-0 VOTE.**

**Cases #16-01-Z, #16-02-Z and #16-03-Z**

Applicant: John's Wrecker Service  
PO Box 293  
Concord, NH 03301

Property Owner(s): D'Pergo Realty Investments LLC  
PO Box 293  
Concord, NH 03301

Property Address: 107 Sheep Davis Road  
Pembroke, NH 03275  
Tax Map (561) Lot (35) in the C-1 Commercial/Light Industrial and the  
AC Aquifer Conservation Zoning Districts

**Case 16-01-Z** a request has been made for a **Special Exception** under Article IV **Use Regulations §143-19 Table of use regulations Wholesale, Transportation, and Industrial #9**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302 is requesting permission to store vehicles and related equipment at 107 Sheep Davis Road. A **Special Exception** is required for **open storage of equipment** in the C-I Zoning District. The property is owned by D'Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning Districts. Stephanie Verdile confirmed that all abutters were notified.

**Case 16-02-Z** a request has been made for a **Special Exception** under Article IV **Use Regulations §143-19 Table of use regulations Retail and service #11**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302, is requesting permission to repair automobiles at 107 Sheep Davis Road. A **Special Exception** is required for **repair of automobiles** in the C-I Zoning District. The property is owned by D'Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning Districts. Copies of tax cards and a Change of Use Plat dated December 2015 prepared by Richard D. Bartlett and Associates, 214 No. State Street, Concord NH were included in the agenda packet.

**Case 16-03-Z** a request has been made for a **Special Exception** under Article IX **Overlay Districts §143-68 Aquifer Conservation (AC) District F**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302, Inc. is requesting permission to repair automobiles in the **Aquifer Conservation (AC) District**. **Automotive service and repair shops** in the **Aquifer Conservation (AC) District** are a permitted use with a **Special Exception**. The property is owned by D'Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning Districts.

On January 25, 2016, the Zoning Board of Adjustment determined that proposed change of use requested by John's Wrecker Service for Special Exceptions 16-01-Z, 16-02-Z and 16-03-Z, was, per RSA 36:54, a Development of Regional Impact for the following reasons:

- 1.The location of the proposed use is within Concord's and Pembroke's Wellhead protection area.
- 2.The location is located in the AC Aquifer Conservation District which could affect Concord's and Pembroke's water supply.

Therefore, the applicant was directed to hire a Hydrogeologist approved by the Town of Pembroke Water Department to determine how the use will affect the aquifer and report back to the Town of Pembroke Zoning Board of Adjustment, the City of Concord, the Pembroke Water Works and the applicant. The public hearing was continued to February 22, 2016 pending receipt of the report.

**Chairman Bonney opened the public hearing for Cases 16-01-Z, 16-02-Z and 16-03-Z at 7:20 p.m.**

There were 5 regular members and 2 alternate member present. Therefore, there was a full five-member board present for this hearing. Chairman Bonney explained the rules of the hearing. The Board makes

its decision based upon the facts presented by the applicant. If any of these facts are subsequently found to be different, the Board reserves the right to revisit its decision.

Mark Sargent of Richard D. Bartlett and Associates apologized for being late to this hearing. John's Wrecker Service is scheduled to be the Planning Board agenda February 23, 2016. Mark Sargent introduced John Depergalis, owner; Jim Stein, legal counsel for John's Wrecker Service, and Jim Vernon, Hydrogeologist at Nobis Engineering. John would like to move his wrecker service from 12 Integra Drive, Concord NH to the former Epoch Homes site at 107 Sheep Davis Road in Pembroke NH. The lot is 11.04 acres and has 144.22 feet of frontage. There is an existing drive off Sheep Davis Road. There are several buildings on site. There is a paved apron, two large gravel lots, and the parcel is surrounded 95% by a 6 foot high chain link fence. John plans to complete the fence. He will utilize the large building closest to Route 106 as an office and dispatch center. The 34,000 sf building will be used to house tow trucks. There is a paved area to the south that will be used to store towed vehicles. There are three smaller buildings, 1,120 square feet, 3,100 square feet and 4,475 square feet. The 4,475 sf building in the rear will be used for a secondary use, to maintain and repair 53' trailers. Five small wood frame buildings will be demolished.

John Depergalis explained that when vehicles are towed from an accident scene, some fluids remain at the crash scene. Vehicles towed from accidents are placed inside the facility, drained of any fluids leaking and then placed outside. John Depergalis has been operating over 30 years doing the same thing, 25 years at the 12 Integra Drive site. His home address is 35 Coronado Drive, Chichester NH.

Jim Vernon, Hydrogeologist, Nobis Engineering, addressed Emery & Garrets report to Pembroke Water Works, City of Concord NH and the Board. Jim provided copies of his review dated February 22, 2016. His report has two main points. Best Management Practices are necessary and are already in use at John's Wrecker Service as NH DES sets forth. He also agrees that a monitoring well should be installed between the facility on Sheep Davis Road and the wells and monitored twice a year for at least five years. John's Wrecker Service has undergone Phase I Environmental Assessment and was clean. John Depergalis values protecting the water and it is important to him. Chairman Bonney thanked Jim Vernon for his report and stated we will review this report in great detail.

Mark Sargent discussed installing floor drains in the 34,000 square foot building with oil and water separators. Applicant agrees. Applicant is connected to town water supply and agrees to connect to town sewer. Applicant utilizes two double wall containment structures holding 275 gallons each. One is for antifreeze and the other is for petroleum products. Clean Harbor pumps them out and removes the hazardous waste as appropriate. Applicant agrees to install a monitoring well and monitor it twice a year for five years. Pembroke Water Works recommends monitoring beyond 5 years. Jim Vernon stated applicant agrees. If tests are good, monitoring could be reduced to once a year after the 5 years.

The clerk read a letter dated February 19, 2016 from Pembroke Water Works stating that they had reviewed the application for John's Wrecker Service and the letter submitted by Emery and Garrett Groundwater. Their main comments were:

At this time we are recommending that the applicant install a test well on the property and pay for the testing of the well as recommended by Emery and Garrett. In addition to the testing of the well the Pembroke Water Works requests the right to sample and or require the sampling of this well after the five years recommended if we deem necessary. In the event the samples indicate any potential negative impact to the aquifer or could potentially migrate to any aquifer any additional studies and all remediation deemed necessary will be borne by the owner of the property. We also request the right to inspect this

location for Best Management Practices whenever and however often this Department deems necessary. It is also the recommendation of this Department that the applicant connects to the Sewer System and installs floor drains connected to a proper Oil and water separator as discussed during TRC. We recommend that all buildings being listed as maintenance buildings be connected to this system. Thank you for your attention to this matter and allowing the input from this Department.

The clerk read a letter dated February 10, 2016 from Central NH Regional Planning Commission, (CNHRPC), 28 Commercial Street, Concord NH into their record. Their main comments were:

CNHRPC concurs with all of the comments and findings of Matthew Gagne, Superintendent, Pembroke Water Works' letter dated January 22, 2016. The Planning Board should follow all of the letter's recommendations including requiring that the applicant engage the Pembroke Water Works Hydrogeologist to conduct a study to identify mitigation recommendations.

CNHRPC concurs with all of the comments and findings of the Town's Engineer, KV Partners LLC, dated January 5, 2016. The Planning Board should require that the applicant comply with all of Mr. Vignale's findings and recommendations in the letter, especially numbers one, four and five.

The clerk read a letter dated February 22, 2016 from Nancy Larson, City Planner, City of Concord, 41 Green Street, Concord NH. At a meeting of the Concord Planning Board on February 17, 2016, their main concerns were: Best Management Practices and site inspections to reduce the risk of contamination, proper storage of vehicles, connecting the building to sanitary sewer, measures to ensure outside storage of vehicles will not result in contamination of the aquifer, Motor Vehicle Removal and Inspection Checklist provided by NH DES completed for each vehicle, plans to address contamination if it does occur, floor drains capped or plugged and explain "Metal Pit."

The clerk read a letter dated February 16, 2016 from Emery & Garrett Groundwater Investigations, LLC, 56 Main Street, Meredith NH, summarizing the main points of their report submitted to Pembroke Water Works and City of Concord.

Chairman of the Pembroke Water Commission stated that we have all heard the concerns in the letters read into the record. Water is very precious and we must protect our asset as best as possible. If this project is approved it must follow all Best Management Practices to the letter. There are no aquifer concerns at present.

Nancy Larson, City Planner, City of Concord, stated that she has been with City of Concord for two years and is not aware of any complaints regarding the 12 Integra Drive site of John's Wrecker Service. Craig Walker, Zoning, has no comment on the proposal and has not mentioned any complaints. The City of Concord does, however, share all of the same concerns mentioned above.

Bruce Kudrick asked if the location of the new monitoring well is on the plan. John stated it was not on the plan yet but one report mentions the NW corner of the 34,000 square foot building as a possible location. Bruce asked Pembroke Public Works if they agree that is the best location. Chris Culbertson, Water Works, stated that the exact location should be reviewed and approved by Emery & Garrett. Bruce asked how fast saturation would occur if any contamination reached the soil. Chris Culbertson stated saturation would occur very quickly because of the type of soils. When JBI Helicopter was located near there, they had bleach pits. Bill Faith stated he is concerned about vehicles stored on the gravel lot because stratified sand filters the water. Chris Culbertson agreed and stated he would hate to not be able to drink the water. There is no water treatment plant and only a small amount of treatment available.

Dana Carlucci asked if there were contamination of three wells, what action would be taken and what would the cost be?

Chris Culbertson, Pembroke Water Works, stated that monitoring provides trends. State and Federal Government set minimum thresholds of chemicals. If the testing indicates the water exceeds thresholds, the Town of Pembroke would possibly have to build a water treatment plant at a large cost. Bruce Kudrick stated that the plan shows trailers/campers parked on the south side on gravel. Bruce asked Pembroke Water Works representatives if parking on pavement would be preferable. At the rate that water and potential contaminants move through water in that area, Chris Culbertson stated impervious paving would be preferable.

Nancy Larson, 3 Oakmont Circle, Concord NH, City of Concord Planner, asked if City of Concord could be involved in the location of the monitoring well. John Stein, legal counsel to John's Wrecker Service, stated that both hydro geologists, Emery and Garrett and Nobis Engineering focus on the importance of a monitoring well. John has a firm ready to put in a new well within weeks. John will hook up to Pembroke sewer. John is looking at a Zamboni vacuum type vehicle to clean the paved area in the buildings by sucking up fluids. This is safer than using floor drains. John Stein stated he has served as legal counsel for 32 years that John's Wrecker Service has been in business, 25 years at Integra Drive, Concord NH. John D. is very environmentally conscious and takes care of a lot of fluid at the accident site before towing the vehicle. He is very cognizant of his obligations. He uses Clean Harbors environmental firm. He has a good track record and lives next door to Pembroke. There will be fewer vehicles on the site than when Epoch Homes was at full operation with over a hundred employees.

Peter Zaponis, 414 Deerpath Lane, asked if any assessment of current contamination has been performed and what is the schedule. Chris Culbertson, Pembroke Water Works said site specific work has not been done. Testing has been done on wells. Matt Gagne, Superintendent, Pembroke Water Works stated that the schedule for testing varies on detectable levels of contaminants. NH DES has shown detectable levels in the wells. This is separate from monitoring well testing.

Stephanie Verdile stated that the applicant has gone through Technical Review Committee with town department heads. The applicant has agreed to a walkthrough of the buildings, both at Integra Drive and at 107 Sheep Davis Road, with Pembroke Water and Sewer representatives. There has been a lot of communication between applicant and town staff on retrofitting the buildings. Dana Carlucci asked, based on the Emery & Garrett report letter of February 16, 2016 "the wrecker service may not be an allowable use with the Aquifer Protection District.

Mark Sargent addressed the Special Exception criteria for each application:

**Case #16-01-Z**

**Detailed description of proposal:**

The applicant proposes to relocate his business to the former Epoch Homes site which will require the outside storage of towed vehicles. The applicant also proposes to store campers, RV's, and tractor-trailer trailers, as well as equipment associated with his wrecker service.

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

John's Wrecker Service provides a needed service to both the general public and a number of municipalities. Repairs and maintenance of his vehicle fleet as well as towed vehicles is essential to his business.

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 repair and maintenance of vehicles will take place within the large building on the property.

3. **Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.**

The site has a 34,000 square foot building which will provide adequate space for the proposed uses and keep the repair and maintenance business contained.

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

The proposed uses of this property will have less impact than the prior use, and it will be contained within a large building.

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

No, the wrecker service and repair, and maintenance associated with the same, will generate less traffic than the prior use.

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

Being the former site of a modular home contractor, the property contains a number of large buildings, proper access to and from the property, as well as within the site, and appropriate water, sanitary sewer and drainage facilities.

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

We are not aware of any objections.

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

The site is serviced by municipal water and the applicant intends to tie into the municipal sanitary sewer.

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.

**Case #16-02-Z**

**Detailed description of proposal:**

The applicant proposes to relocate his business to the former Epoch Homes site. At this facility, service on company vehicles, as well as vehicles towed to the facility, will occur.

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

John's Wrecker Service provides a needed service to both the general public and municipalities. The outside storage of vehicles and equipment is an essential part of the business.

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 area proposed for outside storage is not generally visible from Route 106 or abutting properties. Additionally, the vehicles stored on-site will be drained of fluids.

**3. Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.**

The site has easy and direct access to major highways, which is essential to the applicant's business. Adjoining uses are similar and therefore, will not be adversely affected.

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

The proposed commercial use of the property will have less impact on the property than the prior use, and therefore, less impact on other properties in the district.

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

No, the wrecker service will generate less traffic than the prior use.

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

The existing model home will be utilized as an office, dispatch center and quarters for on-call drivers. The large building on the site will house the wrecker business vehicles and maintenance facility. The 4,475 square foot building at the rear of the property is large enough to house the proposed trailer repair business.

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

We are not aware of any objections.

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

The site is serviced by municipal water and the applicant will be tying into the municipal sanitary sewer.

**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.

**Case #16-03-Z**

**Detailed description of proposal:**

The applicant proposes to relocate his business to the former Epoch Homes site. Services will include repair and maintenance on company owned vehicles, as well as towed vehicles.

**Article IX, Section 143-68F**

1. The proposed use will not have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants. A number of safety precautions will be put in place to prevent any detrimental effect on the aquifer. These precautions include the installation of oil water separators, drainage of all fluids from damaged vehicles and the storage of those fluids in doubled wall storage tanks within a containment area.
2. The proposed use will not cause a significant reduction in the long-term volume of water

contained in the aquifer, or in the storage capacity of the aquifer. There is no additional impervious area proposed on site as part of this application. A majority of the site is vacant and the storm water associated with the impervious portion of the site is directed to a large detention area for aquifer recharge.

3. The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this section. No wastewater is proposed to be discharged on site, oil water separators will be provided within floor drains within the existing building and the wastewater from these will be discharged to the municipal sewer system.
4. The proposed use complies with all other applicable sections of this section. Outside storage and the repair of automobiles are the only proposed uses that require special exceptions. The other uses are permitted by right.

Chairman Bonney summarized the case. **Case 16-01-Z, Case 16-02-Z and 16-03-Z have been continued from January 25, 2016.** Three requests have been made for a **Special Exception**.

Under Article IV **Use Regulations §143-19 Table of use regulations Wholesale, Transportation, and Industrial #9**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302 is requesting permission to store vehicles and related equipment at 107 Sheep Davis Road. A **Special Exception** is required for **open storage of equipment** in the C-I Zoning District.

A **Special Exception** under Article IV **Use Regulations §143-19 Table of use regulations Retail and service #11**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302, is requesting permission to repair automobiles at 107 Sheep Davis Road. A **Special Exception** is required for **repair of automobiles** in the C-I Zoning District.

A **Special Exception** under Article IX **Overlay Districts §143-68 Aquifer Conservation (AC) District F**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302, Inc. is requesting permission to repair automobiles in the **Aquifer Conservation (AC) District**. **Automotive service and repair shops** in the **Aquifer Conservation (AC) District** are a permitted use with a **Special Exception**. The property is owned by D'Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning Districts.

The lot has 144.2 linear feet of frontage. It consists of 11.04 acres and contains several large buildings and two large gravel storage lots. 95% of the lot has 6 foot chain link fencing, and will be completely fenced. Five small wooden frame buildings on the property will be demolished. The 4,475 square foot building will be used to repair commercial trailers. John's Wrecker Service is currently operating at 12 Integra Drive in Concord NH, where they have been located for 25 years. There is no knowledge of contaminants at the Integra Drive site. John does cleanup of fluids at accident sites, and whatever fluids remain are drained inside a building after the vehicle is towed. The facility will hook up to town sewer and is on town water. The applicant uses a double wall containment system for fluids. One 275 gallon container is used for antifreeze and one 275 gallon container is used for petroleum products. The containment tanks are suctioned from the top to drain them and they do not need to be handled. Applicant will install a floor drain with oil/water separator. The monitoring well will be tested forever. The City of Concord and Concord Regional Planning Commission comments have been taken into consideration. Best Management Practices for Junk Cars will be followed. Emery & Garrett recommends, and Pembroke Water Works along with City of Concord, will define where the monitoring well will be placed. It was discussed that with 175 vehicles on gravel, contaminants could leach much more quickly than on impervious pavement. Pembroke does not have a water treatment plant. It was discussed that

asphalt would be used on the gravel area. The applicant proposes using a Zamboni machine to suck up fluids. John's Wrecker Service has been in business 32 years, 25 of them in Concord NH. He has a good track record on environmental appreciation. If approved, there will be a walkthrough of Integra Drive and Sheep Davis Road with Pembroke Water and Sewer. Pembroke Water Works monitors John Deere triennially but it does not have a monitoring well. Case #16-01-Z is for open storage of equipment, Case #16-02-Z is for repair of automobiles and Case #16-03-Z is for auto service and repair shop.

There being no further comment, Chairman Bonney closed the public hearing at 8:32 p.m.

**Deliberations:** ZBA members discussed the Special Exception criteria.

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

John's Wrecker Service provides a needed service to both the general public and a number of municipalities. Repair and maintenance of his vehicle fleet as well as towed vehicles is essential to his business.

**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 repair and maintenance of vehicles will take place within the large building on the property.

**3. Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.**

The site has a 34,000 square foot building which will provide adequate space for the proposed uses and keep the repair and maintenance business contained.

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

The proposed uses of this property will have less impact than the prior use, and it will be contained within a large building.

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

No, the wrecker service and repair, and maintenance associated with the same, will generate less traffic than the prior use.

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

Being the former site of a modular home contractor, the property contains a number of large buildings, proper access to and from the property, as well as within the site, and appropriate water, sanitary sewer and drainage facilities.

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

We are not aware of any objections.

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

The site is serviced by municipal water and the applicant intends to tie into the municipal sanitary sewer.

**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.

Chairman Bonney stated that there is a possibility of hazard. The town is taking a chance on John's Wrecker Service and depending on them to maintain the excellent quality of Pembroke's drinking water. Board members discussed that, assuming Best Management Practices are used, all should be fine. Tom Hebert noted that the existing wrecker service location is closer to wells 2 and 3 and provides no control by Town of Pembroke on the wrecker service operations. The proposed new location is closer to well 6 but gives the Town of Pembroke more control over monitoring the operations for impact to the wells. It was noted that Pembroke would get contaminants before the City of Concord wells would get contaminated. Conditions of approval can allow Pembroke Water Works to inspect the property for Best Management Practices as often as they deem necessary. Chairman Bonney stated that Tom Hebert made an extremely cogent statement.

**MOTION:** Bruce Kudrick moved to APPROVE Case 16-01-Z, Case 16-02-Z and 16-03-Z with the following conditions:

**Case 16-01-Z** a request has been made for a **Special Exception** under Article IV **Use Regulations §143-19 Table of use regulations Wholesale, Transportation, and Industrial #9**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302 is requesting permission to store vehicles and related equipment at 107 Sheep Davis Road. A **Special Exception** is required for **open storage of equipment** in the C-I Zoning District. The property is owned by D'Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning Districts.

**Case 16-02-Z** a request has been made for a **Special Exception** under Article IV **Use Regulations §143-19 Table of use regulations Retail and service #11**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302, is requesting permission to repair automobiles at 107 Sheep Davis Road. A **Special Exception** is required for **repair of automobiles** in the C-I Zoning District. The property is owned by D'Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning Districts.

**Case 16-03-Z** a request has been made for a **Special Exception** under Article IX **Overlay Districts §143-68 Aquifer Conservation (AC) District F**. The applicant, John's Wrecker Service P O Box 293, Concord, N. H. 03302, Inc. is requesting permission to repair automobiles in the **Aquifer Conservation (AC) District**. **Automotive service and repair shops** in the **Aquifer Conservation (AC) District** are a permitted use with a **Special Exception**. The property is owned by D'Pergo Realty Investments, LLC, P O Box 293 Concord, N. H. 03302. The property is located at 107 Sheep Davis Road Map (561) Lot (35) in the C-1 Commercial / Light Industrial and the AC Aquifer Conservation Zoning Districts. Paul Paradis seconded.

1. A monitoring well will be located by Emery & Garrett with the approval of the City of Concord and the Pembroke Water Works.
2. This monitoring well must be installed and a test done before John's Towing Service before a Certificate of Occupancy is issued for the building

3. The monitoring well will be tested every six (6) months for the first five years. After that Pembroke Water Works will determine how often the tests must be done.
4. Pembroke Water Works may test at any time they determine it is necessary.
5. If additional monitoring wells are required, as determined by the Pembroke Water Works, John's Wrecker Service will be responsible for any and all costs related to the installation of the additional monitoring wells.
6. Owner will connect to Town Sewer.
7. All floor drains in the buildings must go pass through a gas and oil/water separator, size to be determined by the Pembroke Sewer Department.
8. All locations where vehicles are stored must be paved with impervious material.
9. Owner must follow NH Motor Vehicle Salvage Yard Environmental Compliance Manual and Best Management Practices at all times.
10. Must follow the site plan submitted to the Zoning Board of Adjustment at time of application.
11. Must follow all State, Federal, and Local regulations.
12. A walk through of all buildings and property must be conducted and approved by the Pembroke Water Works and the Pembroke Sewer Department before a Certificate of Occupancy is issued by the Code Enforcement Officer.

**VOTE:**            BILL - YES            TOM - YES            BRUCE - YES  
                      PAUL - YES            DANA- YES

MOTION TO APPROVE SPECIAL EXCEPTIONS WITH CONDITIONS PASSED ON A 5-0 VOTE.

**Case #16-05-Z**

Applicant:                    Bob McCormack  
                                      Keystone Pembroke LLC  
                                      17 Bridge St, Suite 103  
                                      Billerica, MA 01821

Property Owner(s):        Keystone Pembroke LLC  
                                      17 Bridge St, Suite 103  
                                      Billerica, MA 01821

Property Address:         31-39 Whittemore Drive  
                                      Pembroke, NH 03275  
                                      Tax Map (634) Lot (001) in the R1Medium Density-Residential and the  
                                      AC Aquifer Conservation Zoning Districts.

**Case 16-05-Z** A request has been made for a **Variance** under **Article IV Use Regulations**, §143-19 **Table of Use Regulations Residential #3**. The applicant, Keystone Pembroke, LLC 17 Bridge Street, Billerica, MA 01821 is requesting a **Variance** to construct multi-unit housing exceeding six units. A variance is required because the proposed use will exceed the six unit maximum allowed by Special Exception in the R-1 Zoning District. The property is owned by. Keystone Pembroke, LLC 17 Bridge Street, Billerica, MA 01821. The property is located at 31-39 Whittemore Road, Map (634) Lot (1) in the R-1 Medium Density-Residential and the AC Aquifer Conversation Zoning Districts.

Stephanie Verdile confirmed that all abutters were notified. The clerk took the roll call again and all were present except Mark Johansen, who is excused.

Chairman Bonney opened the public hearing at 8:50 p.m. Mark Simard recused himself from Case 16-05-Z. There were 5 regular members and 1 alternate member present. Therefore, there was a full five-member board present for this hearing. Chairman Bonney explained the rules of the hearing. The Board makes its decision based upon the facts presented by the applicant. If any of these facts are subsequently found to be different, the Board reserves the right to revisit its decision.

Tax cards, Tax Map, a letter dated February 4, 2016 from Timothy Peloquin LLS, Promised Land Survey, LLC, 230 Rockingham Road, Derry, NH 03038, copy of a WARRANTY DEED recorded 1/12/2016 transferring ownership from Riverwood commercial Properties, Inc., 4 Park Street, Concord, NH to Keystone Pembroke, LLC of Billerica MA and a Conceptual Site Plan Map 634 Lot 1 31-39 Whittemore Street, Pembroke, NH prepared February 5, 2016 by Promised Land Survey LLC for Keystone Pembroke LLC.

Timothy Peloquin addressed the variance criteria in the letter dated February 4, 2016 referenced above:

**Please give a detailed description of your proposal below:**

Our proposal is to build seven 24-unit buildings and one 18-unit building per attached conceptual site plan. Our intention is to build these buildings with the utmost of detail and in respect of the environment and surrounding properties. The abutter to the north (across Whittemore Drive) is the new owner of this parcel. As you may have seen, Mr. MacCormack, said owner, has gained great respect in maintaining and improving Pembroke Pines Country Club. His full intention is to make improvements to the subject parcel being considered for ZBA relief to further this cause.

1. **The variance will not be contrary to the public interest.** Apartment style housing is needed.
2. **The spirit of the ordinance is observed.** New residents would enjoy their new “home” in a pristine setting abutting a golf course.
3. **Substantial justice is done.** This proposal would provide affordability for new residents. They would be established in a pristine setting and in a relatively maintenance-free environment.
4. **The values of surrounding properties are not diminished.** The construction will exceed building code and abutters may appreciate the builder’s attention to details throughout the project.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
  - iii. **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 because:**
  - iv. **ii. The proposed use is reasonable.**

For the reasons identified, the type (Apartment housing greater than 6 units per building) is needed in this area and throughout New Hampshire. The most cost effective way to build something very well is in larger buildings, (i.e. 24 units and 18 units per building) as identified on the site plan attached.

**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 make a reasonable use of it.**

Timothy Peloquin thanked everyone present in the auditorium for their patience. Many of those in attendance indicated that they were here for Case #16-05-Z. Timothy is a Licensed Land Surveyor with Promised Land Survey, 230 Rockingham Road, Derry NH 03038. Bob McCormack, owner, Keystone Pembroke LLC, was present along with a golf course architect. Timothy Peloquin stated that Lot 634-1 was 94 acres and was known as the "Dodge lot." Bert Whittemore owned the property at one point. It has access and frontage on the Merrimack River. The proposed project is (7) 24-unit buildings and (1) 18-unit building for a total of 186 units. Density calculations yield that number. The units can be put in 6-unit buildings but there is a fiscal and environmental advantage to constructing larger buildings. If the variance is approved, the plan will go to Planning Board site review. Development happens, and is going to happen on this large tract of land. Bob McCormack stated that this will be an open space development on the upper land, with other land protected. It is environmentally sensitive and fiscally responsible. NH Housing Finance Authority has said that rental housing is needed in NH for 18-35 year olds and for 50+ downsizing from single family homes. Apartments may not be popular but the primary renter is age 35-50 and college graduates. The proposed buildings will have elevators, wide corridors, and will be accessible and adaptable so renters can age in place. Current rentals average 70 years old and typically don't allow aging in place. Timothy Peloquin stated there are other alternatives but at some point there will be development on this parcel. The proposed project would help Pembroke Pines make needed improvements to their golf course.

Timothy Peloquin stated that Mr. McCormack has done many projects in Massachusetts and New Hampshire over the last 34 years. His reputation for architectural detail is impeccable. He is someone who does construction right. A member of the board asked what the projected rental costs would be. Bob McCormack stated that we do not have those numbers yet. However, he said, based on the market price in Salem and Derry NH, a one bedroom would be \$1,200 per month and a two bedroom apartment would be \$1,600 a month.

Amy Manzelli, Esquire, of BCM Environmental & Land Law PLLC, speaking personally as a resident of 418 Ross Road in the Donna Drive development, said she and her husband moved into their house in 2006. Now they have two children and love the safe, walkable neighborhood. Amy provided a copy of her letter to all board members. Her two biggest concerns are:

- 1) This proposal is premature. It needs a Special Exception before a Variance is requested.
- 2) This proposal should be continued until a Special Exception is granted or at least until next month.

Amy Manzelli stated that her sister and brother in law live on Terrie Drive and all the area residents care a lot about their neighborhood. Maybe the town should consider owning some of the land in this parcel. Amy Manzelli had preliminary comments because she had no meaningful time to review the application. She was surprised to hear Mr. McCormack say it was an open space development tonight, because nothing in the Variance application mentions open space development. In Pembroke, a multi-family use is only allowed in the R1 District with a Special Exception. Then you need a variance for more than 6 units. The Special Exception criteria are different from the Variance criteria. All of the Special Exception criteria need to be proven. Traffic would be problematic for this application to satisfy. I am very happy to see the Boards taking care of our water resources. In addition to the regular Special Exception criteria, there are 4 additional criteria that must be met in the Aquifer Conservation District. Multi-family is not an allowed use until a Special Exception is applied for and approved. I urge the applicant to check with his legal counsel.

Amy Manzelli stated that the applicant completely fails to satisfy the variance criteria. How can a maintenance free environment equal substantial justice? What makes this affordable housing? What about environmental consequences and possible adverse impacts to vernal pools, wildlife and rivers? The R1 District is low to medium density residential development. As a zoning board, you possess a great deal of discretion. You are well within your rights to deny this application. I recognize your service to the community and appreciate that you are a volunteer board.

Amy Manzelli received a STANDING OVATION from those in attendance for several minutes.

Len Johnson, 454 Micol Road, thanked everyone for coming out tonight. He and his wife Vicky have lived in Pembroke since 1991. He is representing a lot of abutters in the Micol and Nadine /Donna Drive development and the Whittemore side. Their concerns are not development. This proposed project does not fit with the Master Plan. 186 units which may have 2 vehicles each, wetlands encroachment and opening up Nadine Drive to continue to Whittemore Road is concerning. I understand Route 3 is already congested and the traffic light at Bow Lane is needed for bus traffic. Our neighborhood is a great place to walk dogs and raise children. There are no sidewalks but it is safe to walk on the streets. Many residents have improved their homes. The increased traffic flow will crash our property values. Why does Bob McCormack want to build these apartment buildings? Who does it benefit? Homes are welcome. How much of the 94 acres will the housing occupy? Pembroke has met its affordable housing criteria. We don't want this development to happen.

John, 449 Micol Road, stated there will be negative effects like light pollution and Section 8 housing.

Laurie Watts, 47 Whittemore Road, direct abutter, stated that there will be a huge impact to schools. In 1979, when my parents built my house, this was a very tight community. 100 apartments could have two children each, adding possibly 200 children to the school system. The last major development was the Donna Drive neighborhood. Pembroke had to build a fourth school to accommodate those new residents.

Mark Fournier, 23 Whittemore Road, stated the current population of Pembroke is about 8,000 people. With 186 apartments housing up to 3 per apartment, this would be over 500 new residents, a 6% increase. There is no housing need. The proposal is self-serving.

Mark Hancock, 32 Melissa Drive, stated he lives at the corner of Nadine. If Nadine is extended, people will drive like they are on a racetrack, endangering dogs and kids on bikes.

Collette Osgood, Nadine Road, stated that she moved to her home because the area was safe. My neighborhood generates \$700,000 in property taxes every year.

Stephanie, Woodlawn Ridge Road, is opposed to building 186 units. In the summer, there is debris along Pembroke Pines. The litter and crime rates will rise.

Jeffrey Hanes, Woodlawn Ridge Road, is afraid that drugs and crime will increase with apartments. This is a money making project for the property owner.

George Palmer, Donna Drive, stated he has lived in his home for 30 years. The waste treatment facility in Allentown is currently filled to capacity. This project may not be able to obtain sewer connections.

Bruce Kudrick asked is a Sewer Commissioner here to address this issue? Paulette Malo, Operations Manager, Pembroke Sewer Department, stated that Pembroke is in litigation with Allenstown. Allenstown could stop us from using the treatment plant at any time.

Jim Boisvert, Pembroke Department of Public Works, has no comments at this time.

Jen Darby, 417 Terrie Drive, stated she has lived in her home 22 years. This proposal makes me sad. If this is approved, I will not want to keep my family home as a place to raise my future family.

Tim, 428 Nadine Drive, asked has the applicant approached the School Board. I teach and coach in town.

Timothy Peloquin thanked the residents who spoke. The comments are good. We appreciate the input. Section 8 housing is not in the cards. We are trying to be a good neighbor.

Bob McCormack said he would like to apologize to all present in the room. This proposal has caused a lot more turmoil than we expected. I bought Pembroke Pines golf course and became invested in the area. I don't apologize for being a developer. In Pembroke Pines, certain things need to be done for longevity, to help it become more youthful. The golf course was built in 1960. It has potential for good use of land. Attendees at an economic summit I recently attended, put on by the State of NH, stated NH is the #1 state with the oldest population in the country (not good) and #1 in educated youth leaving the state (also not good), which focused on bringing good jobs to NH. The average rental housing in NH is 70 years old. We need new rental housing. If this proposal is not a good fit, we are going to try to mold it differently. In closing, we do intend to do some type of development. We will go back to the drawing board and get something that fits. I had no idea there would be as much push back.

Dana Flanders, 25 Whittemore Road, stated that he would like any members of the Zoning Board of Adjustment who is a member of Pembroke Pines to abstain from voting on Case #16-05-Z.

Amy Manzelli, Esq., 418 Ross Road, stated that if any member of the Zoning Board of Adjustment has a conflict with this application, please keep in mind that participation in any way would render your vote null and void.

Chairman Bonney stated that he did not feel that being a member of Pembroke Pines Country Club would affect his vote on this project but understood that there could be a perception that it would. When I was Treasurer of Plausawa Valley Country Club, Bob McCormack did an exceptional job turning Pembroke Pines Country Club around and enhancing it. After I summarize the case, I will recuse myself.

William Faith also recused himself as a member of Pembroke Pines. Chairman Bonney stated we now have a 4 member board to make a decision.

Residents in the audience called for anyone who lives in the neighborhood to recuse themselves.

Chairman Bonney summarized the case. **Case 16-05-Z** is a request for a **Variance** under **Article IV Use Regulations**, §143-19 **Table of Use Regulations Residential #3**. The applicant, Keystone Pembroke, LLC 17 Bridge Street, Billerica, MA 01821 is requesting a **Variance** to construct multi-unit housing exceeding six units. A variance is required because the proposed use will exceed the six unit maximum allowed by Special Exception in the R-1 Zoning District. The property is owned by. Keystone Pembroke,

LLC 17 Bridge Street, Billerica, MA 01821. The property is located at 31-39 Whittemore Road, Map (634) Lot (1) in the R-1 Medium Density-Residential and the AC Aquifer Conversation Zoning Districts.

The buildings would be built on 94 acres purchased by Keystone Pembroke, LLC. The property has access and frontage on the Merrimack River. (7) 24-unit buildings and (1) 18-unit building are proposed where 6-unit buildings are allowed. Applicant is seeking relief from the 6-unit multi-family regulation. It was stated that new rental housing is need in New Hampshire. There would be elevators in the buildings. Mr. McCormack has done many projects over the last 34 years. The projected rental cost would be \$1,200 for a one-bedroom apartment and \$1,600 for a two-bedroom apartment. It was stated that a Special Exception is needed before the ZBA can vote on a variance application. Negative impacts on traffic, the environment, wildlife, schools and public services were discussed. It was stated that the project is contrary to public interest. It was stated that this application should be continued to the March 28, 2016 Zoning Board of Adjustment meeting. The proposal includes opening Nadine Drive to Whittemore Road and that this is a bad idea. It was stated that affordable housing could increase crime and the potential for using drugs. There would certainly be an impact on schools with 186 units. The status of the waste treatment facility in Allentown could impact the capacity of sewer connection for the project.

Paul Paradis recused himself from Case #16-05-Z. Chairman Bonney recused himself from Case #16-05-Z.

Vice Chairman Bruce Kudrick took charge of the meeting at 10:00 p.m. Bruce Kudrick explained that we now have a 3 member board to make a decision on Case #16-05-Z. There is not a full 5-member board present to act on this application. The applicant has the option to continue the hearing until such time as a 5 member board is available. However, even if the ZBA member who is excused were available, that would make a 4-member board. With a 4-member board, the decision must be a majority. With a 3-member board, the decision must be unanimous. If the applicant agrees to move forward with less than a 5-member board, the fact that there were less than five members is not grounds for a rehearing of the case.

Bob McCormack, owner, and Timothy Peloquin, LLS, agent for applicant both stated they wish to proceed tonight with a 3-member board.

There being no further comment, Vice Chairman Kudrick closed the public hearing at 10:08 p.m. Vice Chairman Kudrick stated that the board would deliberate and likely make a decision tonight. The public may stay but may not speak.

**Deliberations:** Vice Chairman Kudrick asked Dana Carlucci what the Master Plan stated about multi-family housing. Dana Carlucci stated that although the Master Plan is 12 years old (completed in 2004), at the time Pembroke had more than its fair share of affordable housing in the area. Affordable is defined as not spending more than 30% of one's income on housing cost. Dana Carlucci has not researched the amount of affordable housing currently. Vice Chairman Kudrick stated that most of the rental units in Pembroke are filled if that is an indication. Vice Chairman Kudrick spoke of a similar rental unit development that is always nearly full. The development is 8 buildings with 24 units in each building. The buildings are three stories high. Many young people are not interested in owning property right now. Vice Chairman Kudrick would like to see the plan for the entire parcel of 94 acres. Single family homes are allowed in the district and 2-family dwellings are permitted. I would have liked the developer to meet with the town to discuss options prior to submitting this application.

Dana Carlucci stated that 150 feet of frontage and a road on Nadine would be an indicator of how many single family homes could be built on the parcel. Tom Hebert agreed he would have liked more information on the ultimate build out. There are a large number of items not in front of us at this time. There is no input from town departments. We need feedback from fire, police, water, sewer, and public works. We cannot make a reasonable decision.

Stephanie Verdile, Town Planner, noted that multi-family applications would go to Planning Board site review, including Technical Review Committee, where details would be further discussed.

A member of the audience shouted out, why does she get to speak and we do not. Ms. Verdile explained that she is employed by the Town of Pembroke and that as Town Planner; her role is to advise the Zoning Board of Adjustment.

Vice Chairman Kudrick stated he would not allow any more outbursts. I will ask you to leave and there is a police officer out back to escort you.

Stephanie Verdile, Town Planner, advised the ZBA to focus on the Variance criteria and the merits of the application on the table.

ZBA members discussed the Variance criteria.

1. **The variance will not be contrary to the public interest.** Dana Carlucci stated that this proposal is contrary to the public interest because the Master Plan contradicts that apartment style housing is needed in Pembroke. Vice Chairman Kudrick stated that this proposal is contrary to the public interest because it opens up Nadine Road which is now a road with no outlet.
2. **The spirit of the ordinance is observed.** The proposal does not meet the spirit of the ordinance because the purpose of Section 143:3 is to prevent concentration of residential development in a small area.
3. **Substantial justice is done.** It is not clear that Pembroke needs more affordable housing at this time.
4. **The values of surrounding properties are not diminished.** No testimony that property values would be diminished was provided.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
  - v. **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 because:**
  - vi. **ii. The proposed use is reasonable.**

The property is usable. Single family and duplex housing is permitted in the R1 District.

**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 make a reasonable use of it.**

Vice Chairman Kudrick stated that all the criteria must be met to approve a Variance. Criteria #1 and #2 are not met. Dana Carlucci and Tom Hebert agree.

**MOTION:** Bruce Kudrick moved to DENY **Case 16-05-Z** for a **Variance** under **Article IV Use Regulations**, §143-19 **Table of Use Regulations Residential #3** for applicant, Keystone Pembroke, LLC 17 Bridge Street, Billerica, MA 01821 to construct (7) 24-unit buildings and (1) 18-unit building at 31-39 Whittemore Road, Map (634) Lot (1) in the R-1 Medium Density-Residential and the AC Aquifer Conversation Zoning Districts. A variance is required because the proposed use will exceed the six unit maximum allowed by Special Exception in the R-1 Zoning District.

The reason for denial is that the following variance criteria are not met:

1. **The variance will not be contrary to the public interest.** This proposal is contrary to the public interest because the Master Plan contradicts that apartment style housing is needed in Pembroke.
2. **The spirit of the ordinance is observed.** The proposal does not meet the spirit of the ordinance because the purpose of Section 143:3 is to prevent concentration of residential development in a small area.

Tom Hebert seconded.

**VOTE:** DANA - YES TOM - YES BRUCE - YES

MOTION TO DENY VARIANCE PASSED ON A 3-0 VOTE.

Paul Paradis, Mark Simard and William Faith returned to the Zoning Board of Adjustment at 10:20 p.m.

#### **MINUTES OF PREVIOUS MEETINGS**

**MOTION:** Bruce Kudrick moved to approve the minutes of January 25, 2016 as amended. Tom Hebert seconded.

**VOTE:** DANA - YES TOM - YES BRUCE - YES  
PAUL - YES

MINUTES OF JANUARY 25, 2016 APPROVED AS AMENDED ON A 4-0 VOTE.

#### **NEXT MEETING**

**Date of next ZBA meeting** – Stephanie Verdile noted the next ZBA meeting would be on **Monday, March 28, 2016 at 7:00 p.m.**

**ADJOURN** **Motion:** Vice Chairman Bruce Kudrick moved to adjourn. Tom Hebert seconded. Vote was unanimous in favor of motion. Meeting adjourned at 10:25 p.m.

Respectfully submitted,  
Susan P. Gifford  
Recording Secretary