

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
February 23, 2015 Pending 2-25-2015

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

ALTERNATES PRESENT: Bob Montmarquet, Mark Johansen

EXCUSED:

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary

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

PUBLIC HEARING

Case #15-02-Z

Applicant: Stephen and Patricia Fowler
 443 N. Pembroke Road
 Pembroke, NH 03275

Property Owner(s): Stephen and Patricia Fowler
 443 N. Pembroke Road
 Pembroke, NH 03275

Property Address: 523 N. Pembroke Road
 Pembroke, NH 03275
 Tax Map 935, Lot 12 located in the R3D Rural/Agricultural –
 Residential Zoning District.

Case 15-02-Z A request for a **Variance** per **Notice of Decision dated April 14, 2005 Condition #4** which states, **‘Variance runs with land and buildings as one unit, any change in land volume or exterior building appearance requires another variance from the Zoning Board’**. The applicant, Stephen Fowler, is requesting permission to sub-divide the existing 45 acre lot into (1) 12-acre lot and (1) 33-acre lot. The property is owned by Stephen and Patricia Fowler. The property is located at 523 N. Pembroke Road, Map 935, Lot 12 in the R-3D Rural Agricultural-Residential Zoning District.

Mr. Everett Hodge confirmed that all abutters were notified.

Chairman Bonney opened the public hearing at 7:03.

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.

Copies of assessment cards, tax map, prior ZBA Variance Notice of Decision dated April 14, 2005 and a copy of the minutes from ZBA meeting of April 13, 2005 were included in the packet. A large and small Proposed Subdivision Plan and Existing Parcel Plan dated 1/19/2015 were provided with the application.

We are requesting a variance per the Notice of Decision dated April 14, 2005, Case #05-06-Z, condition #4. We would like to subdivide the existing 45 acre lot located at 523 N. Pembroke Road, Map 935, Lot 12. We are proposing to subdivide out 12 acres to create a new lot to build a single family residence. No changes would be made to the remaining 33 acres of the existing lot or independent living facility.

Joe and Stephanie Micucci, daughter and son-in-law of the property owners, plan to set their house back from the road. It will more than meet the setbacks. A single family home is a permitted use in the R-3D zoning district. The home is needed for their growing family. The home will not change the operation of the independent living facility. The plan provided to the Board is a conceptual plan. The detail will be more accurate once they are able to get a survey of the land and a septic design. Stephanie Micucci stated that the lot has 261 feet of road frontage where 200 feet is required. The driveway will be 500-600 feet. The driveway location is approximate. Condition #4 was in the 2005 variance so that development would not impact the surrounding properties. Creating a lot for one single family home abides by the condition. The front setback is 60 feet. The east side has 75-100 feet where 30 feet setback is required. The west side setback has 200-250 feet where 30 feet is required. The rear setback has 900 feet where 60 feet is required. Bruce Kudrick asked that all parties (property owners, future property owners and the Code Enforcement Officer) update the setback figures on the conceptual plan, and sign and date the changes on the plan. Mark Johansen asked if there were any water issues or identified wetlands in the area of the proposed lot. There are not any known wetlands.

Stephanie Micucci addressed the variance criteria:

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

We are proposing to build a new home in an area with other homes. We would only clear enough trees to build the home and driveway, leaving the remainder of the property in as much of its natural state as possible.

2. The spirit of the ordinance is observed.

We are proposing to build a single family residence, which is a permitted use in the R-3D Residential zoning district. The proposed building would be located at a reasonable distance from neighboring buildings and abiding by the required setbacks.

3. Substantial justice is done. The variance would allow the lot to be subdivided in order to build a new single family residence.

4. The values of surrounding properties are not diminished. Although the new home would be set back from the road, it would have good curb appeal and add character to the surrounding homes and landscape.

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:** the purpose of condition #4 in the Notice of Decision is to prohibit a large subdivision or land development that would increase the number of residents on the lot by a substantial amount. We are only proposing a single family residence for one family.

- ii. The proposed use is reasonable.** The proposed use is reasonable because a single family dwelling is permitted in this zoning 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.

Chairman Bonney summarized the case. **Case 15-02-Z** is a request for a **Variance** per **notice of decision dated April 14, 2005 Condition #4** which states, **‘Variance runs with land and buildings as one unit, any change in land volume or exterior building appearance requires another variance from the Zoning Board’**. The applicant, Stephen Fowler, is requesting permission to sub-divide the existing 45 acre lot into (1) 12-acre lot and (1) 33-acre lot. The property is owned by Stephen and Patricia Fowler. The property is located at 523 N Pembroke Road, Map 935, Lot 12 in the R-3D Rural/Agricultural-Residential Zoning District. The appeal abides by condition #4 because the purpose of condition 4 is to ensure a lot of houses are not built on the lot. Stephanie and Joseph Micucci, daughter and son-in-law of the owners, are currently residing in the family home at 443 N. Pembroke Road and plan to build a single family residence on the 12 acre lot for their growing family. The home will have curb appeal and will enhance the neighborhood. The siting of the driveway will be determined after a survey and septic plan are completed. The owners will clear enough trees to build the home and driveway, and leave the rest of the property in as much of its natural state as possible. The house will be set back from the road and fit in with neighboring properties. The road frontage is 261 feet where 200 feet is required. The front setback is 500-600 feet where 60 feet is required. The east side setback is 75-100 feet where 30 feet is required. The west side setback is 200-250 feet where 30 feet is required. The rear setback is 900 feet where 60 feet is required. It was clarified that a 12 acre lot was adequate size to allocate 2 acres for the home and leave 10 acres in current use.

There being no further comment, Chairman Bonney closed the public hearing at 7:29 p.m.

Deliberations: For the ZBA members who were not on the Board in 20005, Bruce Kudrick clarified that the proposed single family home fits all the conditions of the variance. The Zoning Board of Adjustment at the time said that any change to the property must come back to the ZBA. Paul Paradis asked, by taking 12 acres from the original 45 acre parcel, does condition #4 apply only to the remaining 33 acres. Yes, that is why there is a request to take 12 acres out of the parcel for a single family home. Bruce Kudrick reiterated that the Code Enforcement Officer, current property owners and future property owners must change the front, rear and side setbacks on the plan, sign and date the changes. ZBA members discussed the Variance criteria.

- 1) The variance is not contrary to the public interest. The proposal meets the conditions of the original variance.
- 2) The spirit of the ordinance is observed. A single family home is an allowed use in the R-3D zoning district.
- 3) Substantial justice is done. Agree, applicant can subdivide a 12 acre lot to build a single family home.
- 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 proposed single family home abides by condition #4 of the April 13, 2005 Variance.

MOTION: Bruce Kudrick moved to **APPROVE with the following conditions a Variance per notice of decision dated April 14, 2005 Condition #4 which states, ‘Variance runs with land and buildings as one unit, any change in land volume or exterior building appearance requires another variance from the Zoning Board’.** The applicant, Stephen Fowler, is requesting permission to sub-divide the existing 45 acre lot into (1) 12-acre lot to build a single family home and (1) 33-acre lot. The property is owned by Stephen and Patricia Fowler. The property is located at 523 N Pembroke Road, Map 935, Lot 12 in the R-3D Rural/Agricultural-Residential Zoning District

1. Must follow the submitted site plan.
2. Variance runs with land and buildings as one unit; any change in land volume or exterior building appearance requires another Variance from the Zoning Board.
3. Must follow all State and Town of Pembroke rules and regulations.

Dana Carlucci seconded.

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

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of January 26, 2015 as amended. Dana Carlucci seconded.

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

MINUTES OF JANUARY 26, 2015 APPROVED AS AMENDED ON A 5-0 VOTE.

OTHER

Sound Study Summary – Everett Hodge provided ZBA members with a copy of the Sound Study Summary, including Sound Attenuation Measures submitted by Clean Energy following readings at five different locations around the Clean Energy facility on Pembroke Street. Everett Hodge received the report on February 20, 2015.

OLD BUSINESS

NEXT MEETING

Date of next ZBA meeting – Everett Hodge noted the next ZBA meeting would be on **Monday, March 23, 2015 at 7:00 p.m.**

ADJOURN **Motion:** Tom Hebert moved to adjourn. Dana Carlucci seconded. Vote was unanimous in favor of motion. Meeting adjourned at 7:45 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary