

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
June 22, 2015

Pending 6-23-2015

MEMBERS PRESENT: William Bonney, Chair; Vice Chair; Tom Hebert, Dana Carlucci

ALTERNATES PRESENT: Mark Johansen

EXCUSED: Bruce Kudrick, Paul Paradis

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

Chairman Bonney called the meeting to order at 7:02 p.m. Mark Johansen was designated to vote for Paul Paradis.

PUBLIC HEARING

Case #15-06-Z

Applicant: Hillside Baptist Church
547 Pembroke Street
Pembroke, NH 03275

Property Owner(s): Hillside Baptist Church
547 Pembroke Street
Pembroke, NH 03275

Property Address: 547 Pembroke Street
Pembroke, NH 03275
Tax Map 563, Lot 22-2 located in the LO Limited Office and AD
Architectural Design Zoning Districts.

Case 15-06-Z The applicant, Hillside Baptist Church 547 Pembroke Street Pembroke, NH is appealing the Code Enforcement Officer's decision to deny an (EMC) electronic message center sign to replace an existing sign at 547 Pembroke Street. The property is located at 547 Pembroke Street, Map 563 Lot 22-2 in the LO Limited Office and AD Architectural Design Zoning Districts.

Mr. Everett Hodge confirmed that all abutters were notified. Chairman Bonney opened the public hearing at 7:03.

The clerk read a letter dated May 27, 2015 to Everett Hodge from Attorney Michael Tierney, Wadleigh, Starr & Peters PLLC, 95 Market Street, Manchester NH representing Hillside Baptist Church in connection with the Church's application for an electronic message sign at 547 Pembroke Street. Attorney Tierney stated he is out of state the week of June 22, 2015 and he respectfully requests that the ZBA schedule the public hearing for these applications for the Pembroke ZBA's July 27, 2015 meeting.

MOTION: Mark Johansen moved to move the hearing date for Hillside Baptist Church Case #15-06-Z to the ZBA meeting on July 27, 2015 as requested by the applicant through their representative Attorney Tierney. Dana Carlucci seconded.

VOTE: BILL - YES TOM - YES
MARK - YES DANA- YES

MOTION TO DELAY THE PUBLIC HEARING FOR CASE #15-06-Z TO JULY 27, 2015 AS REQUESTED BY APPLICANT PASSED 4-0.

PUBLIC HEARING

Case #15-07-Z

Applicant: Hillside Baptist Church
547 Pembroke Street
Pembroke, NH 03275

Property Owner(s): Hillside Baptist Church
547 Pembroke Street
Pembroke, NH 03275

Property Address: 547 Pembroke Street
Pembroke, NH 03275
Tax Map 563, Lot 22-2 located in the LO Limited Office and AD
Architectural Design Zoning Districts.

Case 15-07-Z A request has been made for a **Variance** under *Article VIII, Signs § 143-63, Special conditions for specific types of signs X Electronic Changing Signs*. The applicant, Hillside Baptist Church 547 Pembroke Street Pembroke, NH is requesting a Variance to install an (EMC) electronic message center at 547 Pembroke Street to replace an existing sign. A Variance is required because based on Table 143-62 Dimensional Table of Signs this type of sign is not allowed in the LO Zoning District. The property is owned by Hillside Baptist Church, 547 Pembroke Street, Pembroke, NH 03275. The property is located at 547 Pembroke Street Map 563 Lot 22-2, in the LO Limited Office and AD Architectural Design Zoning Districts.

The clerk read a letter dated May 27, 2015 to Everett Hodge from Attorney Michael Tierney, Wadleigh, Starr & Peters PLLC, 95 Market Street, Manchester NH representing Hillside Baptist Church in connection with the Church's application for an electronic message sign at 547 Pembroke Street. Attorney Tierney stated he is out of state the week of June 22, 2015 and he respectfully requests that the ZBA schedule the public hearing for these applications for the Pembroke ZBA's July 27, 2015 meeting.

MOTION: Mark Johansen moved to move the hearing date for Hillside Baptist Church Case #15-07-Z to the ZBA meeting on July 27, 2015 as requested by the applicant through their representative Attorney Tierney. Tom Hebert seconded.

VOTE: BILL - YES TOM - YES
MARK - YES DANA- YES

MOTION TO DELAY THE PUBLIC HEARING FOR CASE #15-07-Z TO JULY 27, 2015 AS REQUESTED BY APPLICANT PASSED 4-0.

PUBLIC HEARING

Case #15-08-Z

Applicant: Larry D Wurster Enterprise Development, LLC
236 Fourth Range Road
Pembroke, NH 03275

Property Owner(s): Larry D Wurster Enterprise Development, LLC
236 Fourth Range Road
Pembroke, NH 03275

Property Address: 210 Fifth Range Road
Pembroke, NH 03275

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Tax Map 939, Lot 63-2, located in the R-3D Rural Agricultural-Residential Zoning District.

Case 15-08-Z A request has been made for a **Variance** under Article IV, Use Regulations § 143-21 Table of Dimensional and Density Regulations. The applicant, Larry D. Wurster-Enterprise Development, LLC 236 Fourth Range Road Pembroke, NH is requesting a Variance to create a **“back lot”** as part of a 3 lot sub-division per §205-37 A thru C of the Pembroke Sub-Division Regulations. The property is owned by Larry D. Wurster Enterprises, LLC. The property is located at 214-232 Fifth Range Road Map 939 Lot 63-2, 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 7:05 p.m.

There were 3 regular members and 1 alternate member present. Therefore, there was not a full five-member board present for this hearing. Chairman Bonney explained that if we hear your case this evening and it is denied, the applicant cannot appeal due to the fact that there are only four Board members present on the Zoning Board of Adjustment to hear the case. Larry Wurster, 236 Fourth Range Road stated that he agrees to go ahead with the hearing tonight with a 4-member Board.

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 tax map, assessment card and Subdivision Plan of Land dated May 20, 2015 prepared by Eric C. Mitchell & Associates, Inc. 106 So. River Road, Bedford, NH 03110 was included in the package.

Larry Wurster, 236 Fourth Range Road, owner/manager of Tax Map 963, Lot 63, 210 Fifth Range Road, Pembroke NH stated that he bought this property 12 years ago. It is a unique property in that it has frontage on both a Class V and Class VI road. He has rented the existing house for those 12 years as he lives close by at 236 Fourth Range Road. He would like to subdivide the house off on one lot, create a second residential lot and the remainder would be a non-buildable “back lot” as allowed by Planning Board regulations 205-37 sections A-C. The ZBA has no provision for subdividing a parcel that does not meet zoning requirements. Larry Wurster stated that at some future time, the road may open up beyond where the Class V road ends. However, extending the road will be difficult due to wetlands.

The proposal is for a 3-lot subdivision. The entire parcel is 10.77 acres. Minimum lot size in the R3D zoning district is 80,000 square feet. Proposed Lot 63 is 1.89 acres, 82,000 square feet with 200 feet frontage on a Class V road – Fifth Range Road. This is the lot with the existing house and well. The frontage is actually 106.75 feet plus 97.55 feet for a total of 204.3 feet frontage on a Class V road. Lot 63.1 is 1.85 acres 80,695 square feet with 200 feet frontage on a Class V road with nothing on the lot. These two lots are conforming lots. Lot 63-2 is 7.03 acres with 137 feet on a Class V road, 60 feet of which is paved. Lot 63.2 also had approximately 700 feet frontage on a Class VI road. To open up Fifth Range would be difficult. The wetland location is delineated by 3 dots and a dash. Larry Wurster stated he is a civil engineer by trade and sees problems permitting a road across wetlands.

Larry Wurster, Owner/Manager addressed the variance criteria:

Please give a detailed description of your proposal below:

The purpose of this land is to subdivide existing Tax Map 939, Lot 63, which is 10.77 acres, into 2 building lots and one back lot which is not for building purposes at this time. One of the proposed building lots has an existing single family house on it. The back lot proposed is allowed under PB -205-37 but is not provided under Zoning Board of Adjustment Regulations.

No prior Special Exception or Variance has been received on this property.

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

Per Planning Board Section 205-37 a back lot is allowed under regulations. These regulations are under the public interest.

2. The spirit of the ordinance is observed.

There are no provisions under the Zoning Board of Adjustment regulations for anything other than minimum dimensions. The plan clearly states that the back lot is a non-buildable lot.

3. Substantial justice is done. By granting a variance, this hole in the Zoning Board of Adjustment will allow the spirit of Planning Board Section 205-37 regulations. There are no provisions in the zoning regulations for lots created other than in conformance with zoning regulations. This parcel is unique in nature.

4. The values of surrounding properties are not diminished. No changes are being proposed for this back lot. The land will remain the same. The lot is non-buildable as stated on the proposed plan.

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.

This is a request for a variance for proposed lot 63-Z because it does not conform to Zoning Board of Adjustment regulations because it does not conform to Zoning Board dimensions. The proposed lot will be non-buildable as stated on the plan. The proposed lot will have less than 200 feet of frontage on a Class V road, with frontage of 137 feet on a Class V road, of which 60 feet of frontage is paved. Frontage of 700 feet exists on a Class VI road. Proposed lot 63-Z is 2.02 acres. The proposed lot will remain in the same use (non-buildable and wooded lot).

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. There are no provisions in the Zoning Board of Adjustment regulations for the creation of non-buildable lots, as there are in Planning Board regulations. Therefore, this Variance from the Zoning Board regulations is requested. The proposed back lot is non-buildable with no changes in use requested

Everett Hodge stated that the applicant would need to improve the road to Class V standards all the way to the end of his property. The large remainder lot is wasting a lot of space. A buyer cannot do anything with the third lot unless they annex it to another parcel. No variance or special exception has been obtained in the past on this lot.

Chairman Bonney stated that there are no provisions in the Zoning regulations for creating a lot without the required frontage. The Planning Board regulations section 205-37 has provisions to create a back lot if certain criteria are met: At least 60 feet frontage on a Class V road, access to a legal road and other requirements. Chairman Bonney read the entire section PB 205-37 so all were aware of the requirements. Again, this is a Planning Board regulation.

John Cronin, representing a group of abutters, stated that they take exception to characterizing the third lot as a back lot. A back lot must have enough room for a public right of way and eventually can be developed. It will be difficult for the applicant to establish that his property has special conditions and is unique because it has both Class V and Class VI road frontage. A lot of parcels in NH have this condition. Mr. Wurster was aware of the restrictions when he purchased the land. John Cronin stated that abutter concerns are drainage and septic, potential effects if the existing well fails, and future development on the back lot that is undefined. The drafters of the zoning ordinance put a heavy burden on the applicant to prove hardship and that there is no fair and substantial relationship between the ordinance provision and the specific application of that provision to his property. Adequate frontage has to do with access and safety. By Mr. Wurster's own testimony he bought the land knowing that he would need to improve a section of the road to fully utilize the parcel. It is a balancing test, and a second lot would give the owner value for his investment.

Michael Caraway, 165 Pembroke Hill Road, stated that before a back lot is created, it must be determined where the end of the Class V road is located. It is not clear where the Class V road ends and the Class VI road begins. Also, there are no stated future plans for the back lot. The owner has plenty of room to create more desirable shaped lots. Michael Caraway stated that on Lot 63-1, there is a gravel driveway to access Lot 63. Lot 63 has an existing well. If it fails, there would be no place to locate a replacement well on Lot 63 as draw. If the well fails and the house is abandoned, that would affect property values in the area. The lot is not reflective of others in the neighborhood and there is plenty of acreage to allow a well radius.

Donald Cavallaro, 6 Randon Road, Rye, NH, abutter, stated that reference note 1 on the plan says that a prior subdivision proposal was not recorded. As he recalled there was a Planning Board Meeting on February 20, 2000 and the plan presented was for a 5-lot subdivision of the same parcel. Shared driveways are allowed with a Special Use permit. There are other options. The applicant could build 2 nice conforming lots and approach the Conservation Commission for discussions on the remainder. Donald Cavallaro stated that this hearing at the ZBA may be premature, as the Planning Board may identify more variances that are needed. There is a requirement that there be 100 feet minimum between driveways. The wedge shaped lots are inconsistent with the area. Note #4 says the NH DES Subdivision approval is pending.

Andrew Nash, 213 Fifth Range Road, stated that the plan is lacking curb cuts, house locations, an easement to Lot 63 is counted in both lots' frontage. Andrew Nash stated that Map 939, Lot 63 is currently listed for sale without any mention of a subdivision pending.

Ann Whitebear, Borough Road, stated that this proposal came up at a Conservation Commission meeting. Why are the lots not 2-acres? Minimum lot size in R3D is 80,000 square feet. Where is the frontage of each lot? Ann Whitebear stated that the Conservation Commission has a general concern about attempts to use or extend the range roads. They are not in favor of such actions.

Robert Caruso, 209 Fifth Range Road, stated his property is directly across the street from this parcel and the existing house. He is glad to see the house is for sale after dealing with 12 years of renters. Why not create 2 five-acre lots with room to build a more desirable house? If the large back lot is unbuildable, why squeeze two crescent lots at the bottom? An impromptu survey of lot size in the area occurred. Nash has 6 acres, Drache has 10 acres, Caraway has 2 acres and Cavallaro has 105 acres.

Larry Wurster rebutted some of the comments. I am not going to change the existing house. It is a 24' x 56' ranch with a good well that has never been hydro fracked. The water in the area is hard water, but there is a good quantity of water. Where the Class V frontage ends is clear on the plan. Anyone with a concern will be back at the ZBA if future development occurs on Lot 63.2.

Mike Caraway, 165 Pembroke Hill Road, asked if the applicant is judging the end of the Class V road as the end of the Drache lot. Where does the Town view the end of the Class V road? This needs to be clarified before any subdivision takes place.

Everett Hodge stated that there has been conflicting information on Town roads, which roads are accepted, where they start and end. We have a cabinet full of road deeds upstairs that can be researched for road descriptions. Everett Hodge confirmed that on the assessor sheets, it shows the end of Class V at Drache's property line. There could be a transition to Class VI road. The paving may be on Class V or may be a turnaround area. Everett further noted that on the tax map, it reads in red that "CLASS V FIFTH RANGE ROAD goes 525 feet from the end of Dudley Hill Road to the end of Fifth Range Road."

John Cronin stated for the record that the Draches have 260 feet of frontage on Class V road. A variance approval on Map 939, Lot 63 would allow two barely conforming lots.

Chairman Bonney summarized the case. This is Case #15-08-Z, a request for a **Variance** under Article IV, Use Regulations § 143-21 Table of Dimensional and Density Regulations. The applicant, Larry D. Wurster-Enterprise Development, LLC 236 Fourth Range Road Pembroke, NH is requesting a Variance to create a "**back lot**" as part of a 3 lot sub-division per §205-37 A through C of the Pembroke Sub-Division Regulations. The property is owned by Larry D. Wurster Enterprises, LLC. The property is located at 214-232 Fifth Range Road Map 939 Lot 63-2, in the R-3D Rural Agricultural-Residential Zoning District.

Chairman Bonney stated that Mr. Wurster talked about the fact that he bought the property 12 years ago. He discussed wetlands on the plan adjacent to the proposed back lot. Map 939, Lot 63 has the existing house, 200 feet of frontage on Class V road, and is 80,000 square feet. Proposed Lot 63-1 is vacant, has 200 feet frontage on Class V road, and is 80,000 square feet. Lot 63-2 is 7.03 acres with 137 feet on Class V road and approximately 700 feet frontage on Class VI road. It was stated that improving the road to Class V would be quite an undertaking. The entire parcel is 10.77 acres. Creation of a back lot meeting specific requirements is allowed in **Planning Board Section 207-35 A-C**, which was read into the record in its entirety. There are no provisions in the ZBA regulations that relate to a back lot. The land was not proven to be unique compared to the land of abutters. Abutter concerns include future

development's impact on their wells and drainage. Usually a back lot is inaccessible and not on a potential Class V road. There may not be a clear delineation where Fifth Range Road changes from Class V to Class VI road. Proposed Map 939, Lot 63-1 provides another access to lot 63. Map 939, Lot 63 has an existing well near the road. It was stated that contamination of that well would diminish property values. It was stated that the size of the two proposed lots would diminish property values. There may be other ways to develop the back lot including shared driveways. On February 20, 2000 another subdivision plan for this same parcel was presented to the Planning Board and not recorded. The Conservation Commission is concerned with keeping access open to the range roads. Other lots in the area are Caruso- 4 acres, Nash – 6 acres, Drache – 10 and Cavallaro- 105 acres. There is an existing 24' x 56' ranch house and well on Map 939, Lot 63. It was stated that someday the back lot may be developed.

Michael Caraway, 165 Pembroke Hill Road, stated that without determining the length of the Class V road, Mr. Wurster's 60 feet of pavement on his back lot that conforms to PB 205-37 may actually be on Class VI road.

Mr. Wurster addressed the NHDES subdivision note, stating that the State of NH expects \$300 for each buildable lot created from a subdivision. This has no bearing on keeping the range roads accessible.

There being no further comment, Chairman Bonney closed the public hearing at 8:25 p.m.

Deliberations: Chairman Bonney asked how this case came to be directed to ZBA. At the Technical Review Committee meeting on June 3, 2015, Matt Monihan, Acting Town Planner, said the proposal had to come to ZBA for a variance on lot frontage. The section controlling back lots is Planning Board 205-37 and is not in ZBA regulations. Dana Carlucci agreed it was strange that the applicant was sent to ZBA. Mark Johansen stated that a lot of abutter concerns – drainage, runoff, curb cuts and driveway location are Planning Board issues. Are the Planning Board regulations in the purview of the Zoning Board of Adjustment? Dana Carlucci stated that the Planning Board needs to verify that the criterion of PB205-37 is met to create a back lot. The proposed subdivision has potential to impact abutters. Zoning Board members discussed whether they were negatively affecting the public interest with a plan that shoehorns two conforming new lots in a corner. Would this diminish property values? There was no testimony from an appraiser that smaller lots would diminish property values. It depends what is built upon the lots.

The ZBA members discussed the Variance criteria.

- 1) The variance will not be contrary to the public interest.
The proposed back lot follows PB 207-35 and meets the size required for the district.
- 2) The spirit of the ordinance is observed.
A variance would allow the applicant to have another legal lot.
- 3) Substantial justice is done.
Applicant was aware of need to improve road to develop lot when he purchased the land.
- 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

Hardship of the land was not proven. There are some 2-acre lots in the area, along with larger lots. Abutters could choose to buy the remainder lot. The lot is somewhat unique as the end of Class V road. It is critical to verify where the Class V road ends and Class VI begins. Everett Hodge discussed a 26 foot discrepancy. The tax map states in red that "CLASS V FIFTH RANGE ROAD goes 525 feet from

the end of Dudley Hill Road to the end of Fifth Range Road.” The first lot from Dudley Hill has 344 feet frontage, the next lot has 207 feet which is 551 feet, not 525 feet even before the Nash property. This 26 foot discrepancy needs to be explained. There is a need to verify that 60 feet access on a legal street Class V or better exists or proposed Lot 63-2 does NOT MEET PB 207-35. Without verification of where the Class V road ends, the ZBA cannot make an informed decision. There is a possibility that Lot 63-2 does not have 60 feet frontage on a Class V road. Tom Hebert stated that the tax map states that Fifth Range Road Class V ends 525 feet from the end of Dudley Hill Road. Where exactly is the end of Dudley Hill Road? Was it reconfigured? There would need to be a survey of the road. The burden of proof is on the applicant. The ZBA agreed they could not make a decision tonight when the numbers for frontage on a Class V road do not add up.

MOTION: Dana Carlucci moved to continue Case #15-08-Z Larry Wurster/LDW Enterprise Development, LLC to the ZBA meeting on July 27, 2015 pending verification of adequate Class V road frontage at 214-232 Fifth Range Road, as determined by the Code Enforcement Officer based on Town records. Tom Hebert seconded.

VOTE: BILL - YES TOM - YES
MARK - YES DANA- YES

MOTION TO CONTINUE CASE #15-08-Z TO JULY 27, 2015 PENDING INFORMATION STATED IN MOTION PASSED 4-0.

MINUTES OF PREVIOUS MEETINGS

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

VOTE: DANA - YES TOM - YES
MARK - YES BILL - YES

MINUTES OF MAY 26, 2015 APPROVED AS AMENDED ON A 4-0 VOTE.

OTHER

Expiration date on variances – Everett Hodge noted that an applicant is coming to the July 27, 2015 ZBA meeting to request reinstatement of his variance. State RSA provides that approved variances expire in two years. Applicants are generally unaware of this date.

After discussion, Chairman Bonney asked that the Code Enforcement Officer include the expiration date for variances on the Notice of Decision. Chairman Bonney will also address the expiration date when variances are approved.

OLD BUSINESS

NEXT MEETING

Date of next ZBA meeting – Everett Hodge noted the next ZBA meeting would be on **Monday, July 27, 2015 at 7:00 p.m.**

ADJOURN **Motion:** Mark Johansen moved to adjourn. Tom Hebert seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:55 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary