

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
August 24, 2015

Pending 8-28-2015

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

ALTERNATES PRESENT: Mark Johansen, William Faith, Mark Simard

EXCUSED:

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

Chairman Bonney called the meeting to order at 7:02 p.m.

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

Continuation of Case 15-08-Z from July 27, 2015. 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), in the R-3D Rural Agricultural-Residential Zoning District.

On June 22, 2015 Case #15-08-Z Larry Wurster/LDW Enterprise Development, LLC was continued 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.

Mr. Everett Hodge confirmed that all abutters were notified.

Chairman Bonney opened the public hearing at 7:03 p.m.

There were 5 regular members and 3 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 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., copy of DRAFT July 28, 2015

Planning Board minutes, July 9, 2015 letter from Partners LLC, New Boston NH were included in the agenda packet.

In a letter dated August 7, 2015 from Larry Wurster to the Town of Pembroke Zoning Board of Adjustment, Larry Wurster stated he would like to withdraw his original application Case#15-08-Z.

MOTION: Bruce Kudrick moved to approve the written request from Larry Wurster to withdraw his **Variance** request **Case #15-08-Z**. Tom Hebert seconded.

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

MOTION TO WITHDRAW CASE #15-08-0Z AS REQUESTED BY APPLICANT APPROVED ON A 5-0 VOTE.

PUBLIC HEARING

Case #15-09-Z

Applicant: Matthew Allgeyer
PO Box 176
Suncook, NH 03275

Property Owner(s): Matthew Allgeyer
PO Box 176
Suncook, NH 03275

Property Address: 16 Kimball Street
Pembroke, NH 03275
Tax Map VE, Lot 107 located in the B-1 Business/Residential and AC
Aquifer Conservation Zoning Districts.

Continuation of Case 15-09-Z from July 27, 2015 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, Matthew B. Allgeyer is requesting a 30 foot reduction from the required 80 foot road frontage on Kimball Street. A Variance is required because the existing "lot of record" does not have the required 80 foot road frontage on Kimball Street as required by § 143-103 Lot of record part C. The property is owned by Matthew B. Allgeyer; P O Box 176, Suncook, N. H. 03275. The property is located at 16 Kimball Street, Map (VE) Lot (107) in the B-1 Business / Residential and AC Aquifer Conservation Zoning Districts.

Mr. Everett Hodge confirmed that all abutters were notified.

Chairman Bonney opened the public hearing at 7:05 p.m.

There were 5 regular members and 3 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.

The tax card, Boundary Survey dated 3/14/2007 prepared by Richard D. Bartlett and Associates, and Notice of Decision Case @13-10-Z approving a Variance for 30 feet reduction of frontage at 16 Kimball Street, Map VE, Lot 107 in Pembroke NH, Notice of Decision, and a copy of the Planning Board Denial

of Driveway Permit Appeal (overturning the DPW Director's decision to deny the application for a driveway permit) was passed on June 25, 2013 were included in the agenda packet.

Matt Allgeyer stated that he has owned the lot since the mid 1990's. The lot is a lot of record and has been for 60-80 years, at least since 1921. The lot has not been mowed in a year. No activity took place on the lot and a Variance approved on May 21, 2013 ran out /expired on May 21, 2014 due to inactivity on the lot. Matt Allgeyer stated he was at this meeting for a technicality. Currently, the town is repaving the road and water and sewer lines are being added to Kimball Street.

The lot was established in 1921. Zoning was recently changed allowing a building on a lot of record if 2 of 4 setbacks are met. The Planning Board issued a driveway permit with three conditions in June 2013, which expired June 2014. Everett Hodge confirmed that DPW issued a new driveway permit on June 14, 2015 good for five years until June 14, 2020. The only condition is that the driveway has to be located on the most southern portion of the lot to give the greatest sight distance.

Matt Allgeyer addressed the variance criteria:

Please give a detailed description of your proposal below:

This is an application requesting the renewal of an expired variance that was approved by the Pembroke ZBA on May 21, 2013. The original variance request was because this lot has 50 feet of frontage where 80 feet of frontage is required by zoning regulations. It was a 'lot of record' prior to zoning. No additional work has been done to this address since the Pembroke ZBA approved a variance for this lot on May 21, 2013.

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

This address and lot was established in 1921 and has been on the tax rolls ever since.

2. The spirit of the ordinance is observed.

The lot size is a consistent theme on this road. The frontage is a consistent width for this road.

3. Substantial justice is done. This lot was originally an existing lot size for the time. The Zoning regulations have changed.

4. The values of surrounding properties are not diminished. The new building will add to the tax base for Pembroke and should increase the value of the abutting property.

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.

All services to support a building exist at the street- water, sewer, electricity, natural gas.

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.

Gerard Fleury, 21 Kimball Street, spoke in opposition to the Variance. He stated that the application is contrary to public interest because the ordinance exists to regulate use of property and abutters have not been given details of planned development. The spirit of the ordinance is not met because on March 14, 2006 the town voted on section 143-21. Prior to the change in zoning, Mr. Allgeyer sold 18 Kimball Street, which he also owned, and decided to retain the smaller lot at 16 Kimball Street. My property has the same 50 foot frontage, but my home was built 100 years ago. There were no cars or snow removal difficulties then. Substantial justice is not done because the applicant was granted a variance and driveway permit on May 21, 2013. Both of these expired May 21, 2014 due to inactivity on the lot. Mr. Fleury provided a photo of himself standing on an 8 foot snow pile last winter.

Courtney/Jason Wells, 18 Kimball Street, stated she is concerned about the structural integrity of her house. Her house was built in 1957 and is the youngest house on the street. Courtney is concerned about drainage pattern disruption. She has had no water problems during the six years she has lived here. Second, there is no way to know what the roofline drain off will be. Third, the land would have to be graded with heavy equipment and may affect her property. In the past, foundations were hand laid. Fourth, snow storage would result in snow up against her foundation.

Sheena Lesniewski, 19 Kimball Street, agrees with the issues Courtney listed, especially the difficulty of snow removal and storage.

Matt Allgeyer stated that there is a simple solution to abutter concerns. The lot is for sale. One or more abutters could purchase the lot. Matt has been taxed on a buildable lot for years.

Courtney Wells, 18 Kimball Street, said the lot has been for sale for five years. She spoke to a realtor who said the lot is overpriced. She will offer \$5,000 cash tomorrow morning when the banks open to purchase the lot.

Gerard Fleury stated he has lived on Kimball Street 41 years. The history of the lot is that it was once part of a subdivided farm.

Chairman Bonney summarized the case. This is **Case 15-09-Z**, a request for a **Variance** under Article V **Dimensional and Density Regulations**, § 143-21 **Table of Dimensional and Density Regulations**. The applicant, Matthew B. Allgeyer is requesting a 30 foot reduction from the required 80 foot road frontage on Kimball Street. A Variance is required because the existing "lot of record" does not have the required 80 foot road frontage on Kimball Street as required by § 143-103 Lot of record part C. The property is owned by Matthew B. Allgeyer; PO Box 176, Suncook, N. H. 03275. The property is located at 16 Kimball Street, Map (VE) Lot (107) in the B-1 Business / Residential and AC Aquifer Conservation Zoning Districts. The property is a lot of record since 1921. Matt Allgeyer purchased the lot in the mid 1990's. A previous variance approved for the lot ran out May 21, 2014 because the variance was not acted upon within a year. Current zoning allows lots of record to be built on if they meet 2 of 4 setbacks. A new driveway permit was issued that is good until June 2020. Abutters talked about frontage of 50 feet not being enough, drainage concerns, and snow removal and storage issues. An abutter with a home built in 1957 is concerned about the effect of heavy machinery on her property. She is also concerned that the driveway at 16 Kimball will be 15 feet from her foundation. No building design has been proposed at this time. It was stated that any of the abutters could buy the lot. When you live on a hill, water can head for your foundation.

Dana Carlucci asked Paulette Malo to describe the drainage on Kimball Street. Paulette stated that all new drainage and catch basins are being added to Kimball Street. Gerard Fleury confirmed that there are

also 2 existing storm drains. Everett Hodge noted that it does not say “buildable lot” on the tax card. It just says “land” on the tax card, and there is a .50 adjustment for size. Bruce Kudrick is concerned that a new driveway permit was issued in 2015 when the Planning Board approved a conditional driveway permit June 7, 2013 and the applicant failed to satisfy the conditions imposed by the Planning Board within a 12 month period. This negated the conditional approval.

Everett Hodge found a letter dated December 26, 2002 letter from Peter Rowell, former Code Enforcement Officer, in the file. It states that Plan #13982 prepared by Richard Bartlett and Associates for this lot does not have “applicable frontage.” In order to build a structure, a lot of record must conform to today’s requirement for frontage. On page 158 of the zoning regulations, Section 1143-103 it states that a lot of record must have applicable frontage on a Class V or better road. Everett Hodge explained that the intent, as interpreted by Legal Counsel in the past, was that the frontage must be on a Class V road, but not that a lot of record must meet current frontage requirements.

There being no further comment, Chairman Bonney closed the public hearing at 7:55 p.m.

Deliberations: Bruce Kudrick noted that the property is a lot of record and is a buildable lot. Chairman Bonney advised that if the Board denies a Variance, it could be considered a taking. Driveway permit appeals go to the Planning Board. A recent inspection by the DPW Director found that the proposed driveway meets Section 143-103. Paul Paradis noted that a new driveway permit good for 5 years was issued June 14, 2015. Mark Johansen suggested that a condition of approval be added that stipulates drainage will not affect any building or abutter property. Drainage can be directed to perimeter drains and on to the storm drain. Tom Hebert stated that any runoff from the roof or driveway can sheet drain to abutters. There is no way to know what direction the roof line of a future structure would be. The stipulation should be that the new owner constructs drainage for the new house so that it does not impact abutter’s property. Paulette Malo advised that the Town is stubbing all properties for drainage during reconstruction of roads.

ZBA members discussed the Variance criteria.

- 1) The variance will not be contrary to the public interest. The reduced frontage is contrary to public interest; however, the lot complies with buildable lot and lot of record requirements.
- 2) Substantial justice is done. The lot has been taxed as a building lot.
- 3) The spirit of the ordinance is observed. With conditions, the new structure will address abutter’s concerns.
- 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 lot is small in size and was established in 1921 prior to zoning.

MOTION: Bruce Kudrick moved to APPROVE a request for a **Variance** under Article V **Dimensional and Density Regulations**, § 143-21 **Table of Dimensional and Density Regulations**. The applicant, Matthew B. Allgeyer, Case #15-09-Z, is requesting a 30 foot reduction from the required 80 foot road frontage on Kimball Street. A Variance is required because the existing “lot of record” does not have the required 80 foot road frontage on Kimball Street as required by § 143-103 Lot of record part C. The property is owned by Matthew B. Allgeyer; PO Box 176, Suncook, N. H. 03275. The property is located at 16 Kimball Street, Map (VE) Lot (107) in the B-1 Business / Residential and AC Aquifer Conservation Zoning Districts with the following conditions:

1. Must follow all Planning Board conditions of the July 1, 2013 Notice of Decision.
2. Public Works Director must approve location of “Hidden Driveway” sign on Kimball Street.

3. Because of poor site distance, the driveway must be located 5 feet from the southern property boundary.
4. Prior to the start of construction, the Town Engineer must approved a drainage plan to insure abutting properties and Kimball Street will not be impacted by additional water runoff from 16 Kimball Street.
5. Must follow all Town and State regulations.

Tom Hebert seconded.

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

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

PUBLIC HEARING

Case #15-10-Z

Applicant: Pembroke Sewer Commission
4 Union Street
Pembroke, NH 03275

Property Owner(s): John Jr. and Lisa Mudge
12 Broadway Apt #2
Pembroke, NH 03275

Property Address: 12-14 Broadway Apt #2
Pembroke, NH 03275
Tax Map VW Lot 8 located in the B-1A Business / Residential and the
AC Aquifer Conservation Zoning Districts.

Case 15-10-Z The applicant, Pembroke Sewer Commission, 4 Union Street, Pembroke, NH is appealing the Code Enforcement Officer's issuance of a Building Permit for third floor renovations at 12 Broadway Apartment #2. The property is owned by John Jr. and Lisa Mudge 12 Broadway Apartment #2. The Property is located at 12-14 Broadway Map VW Lot 8 in the B-1A Business / Residential and the AC Aquifer Conservation Zoning Districts.

Mr. Everett Hodge confirmed that all abutters were notified.

Chairman Bonney opened the public hearing at 8:15 p.m.

There were 5 regular members and 3 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.

Copy of building permit issued 6/4/15 from 12 Broadway St Apt, 2 for \$2500 work to "Renovate 3rd floor finished space into a bedroom for the 2nd floor apartment. The owner will also install a new 6 foot by 6 foot closet. No additional bedroom is created as existing 2nd floor bedroom will be converted to a living room and new entrance to 3rd floor.

Appeal application states "Please state the decision that you would like reviewed: Building permit issued for 3rd floor bedroom. The 3rd floor is completely separate from the 2nd floor apartment.

A copy of a certified letter dated June 25, 2015 was provided from the Town of Pembroke Sewer Commission authorizing Paulette Malo to represent the Commission in our absence should this occur, in reference to the Administrative Decision of the Code Enforcement Officer to issue a building permit for the property located at 12-14 Broadway. A request to waive the filing fees of \$340 was sent to the Board of Selectmen on June 25, 2015 and denied by the Board of Selectmen on July 6, 2015. A copy of the tax card was included in the agenda packet.

Paulette Malo, Operations Manager, Pembroke Sewer Commission, became aware that Everett Hodge issued a building permit at 12 Broadway on June 5, 2015. There is a common stairway that goes up to the second and third floors. Paulette Malo read an email dated July 1, 2015 from Everett Hodge informing John and Lisa Mudge that no additional work was to be done on the 3rd floor renovation until after a hearing was held on the appeal. The owners confirmed that the second floor will be walled off and there will be a new entrance to Apartment #2. Everett Hodge will monitor the renovation.

Paulette Malo stated another concern she had was that the Town sign off sheet for building permits was not being utilized. The sign off sheet should routinely be used for renovations and demolitions so that Water and Sewer can monitor units. Chairman Bonney responded that as a result of this hearing, there will never be a rental unit on the third floor of 12 Broadway.

Jack Mudge stated that he and his wife Lisa Mudge live at 12 Broadway. Jack Mudge provided pictures of the project showing the wall framed out on the second floor. This house is known as the Piper House at the corner of Broadway and Pleasant Streets. Mr. Mudge stated that we were going to put the wall up last fall, but wanted to wait until all the necessary sheetrock was brought up to the third floor via the stairs. The stairway will be walled off at the second floor and a new entrance door put in either straight or off to the right. The last four steps will have bannister and railing. You can see from the photos that framing is in place. We fully intend to put a wall in at the second floor. Currently there are 4 units in the building, each approximately 900 square feet. This is our residence and we have owned the property for 13 years.

Lisa Mudge, 12 Broadway, stated that the intent of the renovation is to maximize the square footage of living space for our family. We have no intention of adding a fifth unit to our property. The third floor bedroom renovation will give us 1,400 square feet. The second floor living space is 950 square feet. There are three antiquated rooms on the third floor. The master bedroom will be 500 square feet.

Paulette Malo, Operations Manager, Pembroke Sewer Commission, asked for clarification that only one bedroom was being built upstairs on the third floor. Lisa Mudge stated that one of the other small bedrooms was for a daughter coming home from college and one room is currently being used for storage, but she hopes to use it as an office someday for her appraising business. They have discussed proper egress with Everett Hodge. Lisa Mudge stated they have not applied for a plumbing permit, but would like to at a later time. Having a bathroom on each level adds value to a home. Lisa Mudge confirmed that there is no bathroom on the third floor now.

Chairman Bonney summarized the case. The applicant, Pembroke Sewer Commission, 4 Union Street, Pembroke, NH is appealing the Code Enforcement Officer's issuance of a Building Permit for third floor renovations at 12 Broadway Apartment #2. The property is owned by John Jr. and Lisa Mudge 12 Broadway Apartment #2. The Property is located at 12-14 Broadway Map VW Lot 8 in the B-1A Business / Residential and the AC Aquifer Conservation Zoning Districts. The intent of the appeal was to clarify the extent of the renovation and be certain that the bedroom would not become a 5th unit in the building. Currently there are three rental units and one owner occupied unit. There will be a new wall

blocking the second floor staircase and adding a new entrance. Paulette Malo stated that the Code Enforcement Officer may not have used the building permit sign off sheet, which would have been very helpful to Water and Sewer departments. Concerns could have been addressed with the property owner at the time of application. John and Lisa Mudge confirmed that the newly renovated bedroom is for the use of the owner's family. There are three rooms on the third floor, one with no closet being used as storage, one with small old style closets and one renovated 500 square foot master suite. The owner may apply for a plumbing permit down the road.

There being no further comment, Chairman Bonney closed the public hearing at 8:35 p.m.

Deliberations: Dana Carlucci noted that the intent of the appeal by the Pembroke Sewer Commission was to make certain that 5 units were not created at 12 Broadway where 4 units currently exist.

MOTION: Bruce Kudrick moved to **uphold** the Code Enforcement Officer's issuance of a Building Permit for 12 Broadway Apartment 2 with the following condition:

1. No additional dwelling unit to be added to the 3rd floor at 12-14 Broadway.

The property is owned by John Jr. and Lisa Mudge 12 Broadway Apartment #2. The Property is located at 12-14 Broadway Map VW Lot 8 in the B-1A Business / Residential and the AC Aquifer Conservation Zoning Districts.

Tom Hebert seconded.

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

MOTION TO UPHOLD CODE ENFORCEMENT OFFICER'S ISSUANCE OF BUILDING PERMIT WITH CONDITION PASSED ON A 5-0 VOTE.

Chairman Bonney noted that the agenda was very full tonight. The Zoning Board of Adjustment stops consideration at 10:00 p.m. If a case cannot be heard or completed, it will be continued to the next meeting. Abutters will not be renoticed. They can follow the case in the ZBA minutes.

PUBLIC HEARING

Case #15-11-Z

Applicant:

Next Level Church
PO Box 736
Somersworth, NH 03878

Property Owner(s):

79 Sheep Davis Road LLC
210 Pine Street
Manchester, NH 03103

Property Address:

79 Sheep Davis Road
Pembroke, NH 03275
Tax Map (561) Lot (6) in the C-1A Commercial/Light Industrial and the AC Aquifer Conservation

Case 15-11-Z A request has been made for a **Variance** from Article V §143-19 Table of Use Regulations. The applicant, Next Level Church, P. O. Box 736, Somersworth, N. H. 03878, is

requesting permission to operate a church at 79 Sheep Davis Road in the C-1 Zoning District. A Variance is required because Article V §143-19 Table of Use Regulations prohibits the operation of a church in the C-1 Zoning District. The property is owned by 79 Sheep Davis Road, 241 Pine Street, Manchester, N. H. 03103. The property is located at 79 Sheep Davis Road Map (561) Lot (6) in the C-1A Commercial/Light Industrial and the AC Aquifer Conservation Zoning Districts.

Mr. Everett Hodge confirmed that all abutters were notified.

Chairman Bonney opened the public hearing at 8:45 p.m.

There were 5 regular members and 3 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.

A notarized letter dated August 3, 2015 from Peter Morgan, Owner/Seller of 79 Sheep Davis Road authorized Next Level Church to apply for any and all zoning relief needed in regards to this property. Copies of the assessor map and tax card were included in the agenda packet.

Pastor Daniel King, Operations Pastor, Next Level Church, and Broker Dave Garvey were present on behalf of Next Level Church. Pastor King stated that the Next Level Church started about 7 years ago in the Dover/Somersworth NH area. They currently rent the Mill Brook School in Concord NH on Sunday for church services since March 2015. The church has multiple other locations. This building with 55-60 parking spaces would be perfect for the size of the Concord NH congregation.

Pastor Daniel King, Operations Pastor, Next Level Church addressed the variance criteria:

Please give a detailed description of your proposal below:

Next Level Church began in the Seacoast of NH in 2008 with just 12 people and has quickly grown to a church with 6 locations across 3 states. In March 2015, we opened our Concord NH location at the Mill Brook School and have seen a great response and growth there, leading us to begin looking for permanent properties nearby. We are excited to have found a perfect property for our needs at 79 Sheep Davis Road, Pembroke, NH.

We propose to use the existing building and parking lot as a church with the primary use being weekend services. Our plan is to utilize the existing structure and parking lot as they now exist for our purposes. We will be renovating the interior of the building into an “auditorium space” for weekend church services, kid’s rooms for during church services, a large lobby, and some small gathering places/offices for use during the week. We will be improving the exterior of the building through adjustments like repairing granite curb and damaged pavement, upgrading the landscaping and improving the entrance. The exterior modifications will be extremely minor in nature. We have included with this application photos of our larger facility in Somersworth NH which opened in 2013 as reference to the general style and level of excellence we bring to improvements of property.

As the ZBA is aware, a number of other churches have previously applied for and were granted variances for nearby properties. We look forward to adding to the already great community here in Pembroke NH.

Variances were previously granted for this property in Case #07-11-Z Use Variance for Adult Daycare May 2, 2007 and Case #11-74 approved 7-16-1974 for an office building with reduced rear setback.

Pastor King addressed the variance criteria:

1. **The variance will not be contrary to the public interest.** The space would be occupied by uses that are non-conflicting with nearby uses. The owner of this property will be able to sell their land and building for current maximum value, the church will benefit by being able to have a permanent facility in a desirable location that fits their needs perfectly, and the public will benefit by having a church in the Town which will serve the community. We will create a beautiful, well maintained facility on a busy road. What the church is gaining by using this space is costing the public and the town nothing and in fact also provides benefit to them. The zoning ordinance is generally to protect a given area of the city from containing multiple conflicting uses within it. Church use will primarily occur at different times than surrounding businesses.
2. **The spirit of the ordinance is observed.** Zoning ordinances are developed to protect the character of the existing built environments from noxious and non-conforming uses while selectively promoting complementary uses.
3. **Substantial justice is done.** The owner of this property will be able to sell their land for its current maximum value, the church will benefit by being able to have a permanent facility in a desirable location that fits their needs perfectly, and the public will benefit by having a church in the city that will serve the community, give back, bring customers to local businesses and create a beautiful, well maintained facility on a busy road that adds to the overall appearance of the town and enhances property values. What the church is gaining by using this space is costing the public and the town nothing, and in fact also provides benefit to them.
4. **The values of surrounding properties are not diminished.** The subject property is currently in a state that is relatively outdated, not in active use, and not being aggressively maintained. In addition, the property as it exists today does not fit well with the character of the area. This stretch of Route 106 has many modern and updated buildings which reflect the nature of this area as a primary commercial corridor of the town. This hurts property values. Filling this space with an occupant who will improve the building's appearance and value, and keep it occupied and maintained in an appealing manner will increase surrounding values. This specific use will bring even more people to the area at normally off-peak times to benefit surrounding businesses. A 'church use' is less noxious and damaging to surrounding properties than nearly any other CI use.
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.**

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.

The space would be occupied by uses that are non-conflicting with nearby uses, in particular with land other churches already own. Churches are in fact minimally harmful at worst and explicitly beneficial at best to other C1 uses. There are in fact very few types of permitted C1 uses who would find this lot size, layout and existing building appealing, which is why the property is currently sitting vacant. Having the church buy the property provides the most possible value to the current owner as well.

Pastor King stated that the majority of use would be off peak hours on the weekend. The pastor may use an office or meet with church goers during the week. The building has sat vacant for two and a half years since NH Community Council closed their programs. It was bought at auction and is now for sale.

Chairman Bonney stated that the C1 Commercial/Light Industrial zone along Route 106 is set aside as a commercial area where town water and sewer are available. The town relies on these properties to pay taxes. Chairman Bonney disagreed with the statement that the town is not hurt by a church use in this location. This is hurting the town by not being able to have a tax paying business there. The church should seriously consider a payment in lieu of taxes. Pastor King noted that Next Level Church has a great relationship with its neighbors in other locations.

Dana Carlucci asked if the church had looked at other locations. Pastor King stated that they looked at dozens of properties in Concord NH and Pembroke NH. This property has high ceilings, parking for a minimum 55-60 cars and access to a main road. The largest church facility is in Somersworth, where there are 220 parking spaces. The average attendance at Mill Brook School in Concord is 130-140 people,

Diane Schuett, 533 Pembroke Street, speaking on behalf of Pembroke taxpayers, stated that approval of this variance takes a commercial property off the tax rolls. This is contrary to the spirit of the ordinance. If approved, the Board should pursue payment in lieu of taxes.

Dana Carlucci asked for clarification of the sewer project. Paulette Malo, Operations Manager, Pembroke Sewer Commission, stated that the project was approved in 1994, and constructed in 1995 with a 15 year bond at a cost of 3.2 million dollars. The bond has been repaid.

Pastor King stated that loss of taxes is not a valid reason to deny a church use. There are 12-14 bathroom stalls and showers in the existing building. The Next Level Church will have far less impact on water and sewer than the adult daycare previously housed here.

Chairman Bonney summarized the case. **Case 15-11-Z** A request has been made for a **Variance** from Article V §143-19 Table of Use Regulations. The applicant, Next Level Church, P. O. Box 736, Somersworth, N. H. 03878, is requesting permission to operate a church at 79 Sheep Davis Road in the C-1 Zoning District. A Variance is required because Article V §143-19 Table of Use Regulations prohibits the operation of a church in the C-1 Zoning District. The property is owned by 79 Sheep Davis Road, 241 Pine Street, Manchester, N. H. 03103. The property is located at 79 Sheep Davis Road Map (561) Lot (6) in the C-1A Commercial/Light Industrial and the AC Aquifer Conservation Zoning Districts. Next Level Church started about 7 years ago and their largest facility is in Somersworth, NH with 220 parking spaces. Since March 2015 the church has been renting Mill Brook

School in Concord NH for weekend services. About 120-130 people attend these services. There are 55-60 parking spaces at the Sheep Davis Road property which would allow 316 person building capacity based on parking. The church would never approach that number of people at one time, and would offer multiple services. The church would change the entryway and enhance the landscaping. If the church located in the C1 zone, they would probably not pay taxes. They would make use of police and fire services and should consider a payment in lieu of taxes. The building has been vacant for 2 and half years, has high ceilings and has access to a main road. Next Level Church looked at dozens of other potential locations in both Concord and Pembroke before choosing this location as the best fit for their church. The church would be taking commercial property off the tax rolls but would use less water and sewer than the prior use.

There being no further comment, Chairman Bonney closed the public hearing at 9:05 p.m.

Deliberations: ZBA members discussed the Variance criteria. Dana Carlucci stated that we are a town of planned development. With 13,000 acres available in town, only 1,056 acres are in the CI Commercial/Light Industrial District. The Town already has the burden of the National Guard property and other non-profits in the Commercial District. There is 5,700 acres of undeveloped land in Pembroke. It is hard to believe there is not another place in town to locate a church. The town is throwing away hundreds of thousands of dollars by not abiding by the Master Plan. Citizens are not in favor of locating churches in the commercial district. There is ample land in the B1, B2, R1, and R3 districts that would welcome a church. The Town of Pembroke's commercial area is small. The town is trying to offset property taxes with business tax. Dana Carlucci encourages all applicants to read the Pembroke Master Plan before coming before the Zoning Board of Adjustment.

Bruce Kudrick stated that the town spent 3.2 million dollars in 1995 to build sewer and protect the aquifer. Citizens voted to make this investment to bring commercial growth to the town. Dana Carlucci stated that as a town, we have the right to plan our development. Chairman Bonney stated that if we go against a religious use, the Town would likely lose should the case go to Superior Court. The town already has the Presbyterian Church and the United Church of Christ offices in the C1 zoning district. The Board of Selectmen told the United Church of Christ that any rental income they may receive is not exempt from taxes. Bruce Kudrick does not agree with some provisions of the Federal law RLUIPA. It was other states, not New Hampshire or New England, that were not welcoming churches.

- 1) The variance will not be contrary to the public interest. Disagree, that the town spent 3.2 million dollars in 1995 to build sewer and protect the aquifer. Citizens voted to make this investment to bring commercial growth to the town in the C1 District.
- 2) The spirit of the ordinance is observed. Disagree, the proposal does not fit with the Pembroke Master Plan
- 3) Substantial justice is done. Disagree; there is ample land in the B1, B2, R1, and R3 districts that would welcome a church. The Town of Pembroke's commercial area is small.
- 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. No hardship shown.

The Board discussed that it would be doing a disservice to the town if we deny the Variance for a church to locate in the C1 Commercial Zone and a legal suit ensued, costing the town legal fees. If an application did not meet three of the five criteria for a variance, that would usually lead to a vote to deny a variance.

MOTION: Bruce Kudrick moved to continue Case #15-12-Z to TUESDAY September 22, 2015 for the following reason:

1. The Board wants to obtain legal interpretation of (RLUIPA) before rendering a decision. Dana Carlucci seconded.

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

MOTION TO CONTINUE CASE #15-12-Z TO SEPTEMBER 22, 2015 TO OBTAIN A LEGAL INTERPRETATION OF (RLUIPA) PASSED ON A 5-0 VOTE.

PUBLIC HEARING

Case #15-12-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
Tax Map 939, Lot 63-2, located in the R-3D Rural Agricultural-Residential Zoning District.

Case 15-12-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, LDW- Enterprise Development, LLC is requesting a 140 foot reduction from the 200 foot frontage requirement on the Class V portion of Fifth Range Road. A Variance is required because proposed lot 63-2 has only 60 feet of frontage on the Class V portion of Fifth Range Road. The property is owned by Larry D. Wurster Enterprise Land Development, 236 Fourth Range Road, Pembroke, N. H. 03275. The property is located 214-232 Fifth Range Road, Map (939) Lot (63), 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 9:35 p.m.

There were 5 regular members and 3 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.

Mr. Everett Hodge confirmed that all abutters were notified.

Chairman Bonney opened the public hearing at 9:36 p.m.

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., copy of DRAFT July 28, 2015

Planning Board minutes, July 9, 2015 letter from Partners LLC, New Boston NH were included in the agenda packet.

Larry Wurster provided revised plans because the Town of Pembroke wants a turnaround installed at the end of the Class V section of Fifth Range Road. The Request for a Variance for Lot 63-2 on Map 939 is for a lot with a minimum frontage of 60 feet on a Class V Road. This proposed lot has 6.96 acres of land and 752 feet of frontage on a Class VI Road. No Variance was ever applied for this Lot 62, and clearly a building permit was not issued.

As the Planning Board DRAFT minutes of the meeting on July 28, 2015 show, the members of the Planning Board were not certain how to count the additional leg of the T-Turnaround and the definition of contiguous lot frontage. The applicant states on the plan that the right-of-way for the T-Turnaround will be deeded to the Town. There is no mention that it is temporary in the Planning Board minutes. The Fifth Range Road, if extended, can only be extended on one direction, which is along the 752' of frontage on the Class VI Road along the proposed Lot 63-2. It appears that the Planning Board would like input from the ZBA on this point of continuous lot frontage.

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 3 building lots. One of the proposed building lots (Map 939, Lot 63) has an existing single family house on it. The proposed Lot 63 would retain the existing septic and on-site well. If approved, the other two building lots (Lot 63-1 and Lot 63-2) would be available for new single family home construction. Proposed Lot 63.2 is the lot which would require a variance for frontage with a minimum of 60 feet of frontage on a Class V Road.

Larry Wurster maintains that his contiguous frontage on proposed lot 939-63-2 is 217 feet. The town's tax map shows the dividing line of Class V and Class VI road at the property line of Map 939 Lot 62 and Map 939 Lot 65 across the road. The turnaround requested by the town adds 138 feet along the street lot, and measures 217 feet along the right-of-way. The lot specifics are:

939-63	204.3 feet frontage	1.89 acres	81,600 sf buildable area	Existing house
939-63-1	200 feet frontage	1.85 acres	76,590 sf buildable area	
939-63-2	60 feet min frontage	6.96 acres	286,507 sf buildable area	

No variance was applied for on Lot 62 Drache lot. The turnaround is on Class V road. Mr. Wurster will pave 10 feet from the dividing line of Class V and Class VI road. No structure exists on Lot 65.

Is the perimeter of the hammerhead frontage? How many feet is Mr. Wurster proposing to pave? Larry Wurster stated he is planning to pave 60-70 feet which would give him 138 feet straight line frontage along the proposed right-of-way to be deeded to the Town. Everett Hodge referred to the minutes of the July 28, 2015 Planning Board meeting that show a unanimous vote that the perimeter of the hammerhead should not be considered as lot frontage. There is 60 feet of frontage on the paved portion of Fifth Range Road. Town tax maps and other records show the division between Class V and Class VI road at the property line between Drache and Cavallaro. The road is a jeep road beyond the pavement and is not maintained by the town.

MOTION: Bruce Kudrick moved to continue Case #15-12-Z to TUESDAY September 22, 2015 for the following reasons:

1. Additional information is requested on the total length of the Class V portion of fifth Range Road.
2. Do to the lateness of the hour, sufficient time could not be given to this case.

Tom Hebert Carlucci seconded.

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

MOTION TO CONTINUE CASE #15-12-Z TO SEPTEMBER 22, 2015 TO OBTAIN ADDITIONAL INFORMATION PASSED ON A 5-0 VOTE.

REQUEST FOR REHEARING CASE #15-06-Z AND 15-07-Z

Hillside Baptist Church 547 Pembroke Street Pembroke, NH is requesting a rehearing of cases 15-06-Z and 15-07-Z. The property is located at 547 Pembroke Street, Map 563 Lot 22-2 in the LO Limited Office and AD Architectural Design Zoning Districts.

MOTION: Per RSA 677:3 II, Bruce Kudrick moved to suspend the order or decision complained of pending further consideration until the regular scheduled meeting on October 26, 2015.

Dana Carlucci seconded.

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

MOTION TO SUSPEND DECISION ON REHEARING REQUEST TO OCTOBER 26, 2015
PENDING FURTHER CONSIDERATION PASSED ON A 5-0 VOTE.

MINUTES OF PREVIOUS MEETINGS

MOTION: Bruce Kudrick moved to approve the minutes of July 27, 2015 as amended. Dana Carlucci seconded.

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

MINUTES OF JULY 27, 2015 APPROVED AS AMENDED ON A 5-0 VOTE.

OTHER

New Zoning Board of Adjustment Members – The Zoning Board of Adjustment welcomed new ZBA Alternate William Faith and welcomed back returning ZBA Alternate Mark Simard at the 8/24/15 ZBA meeting.

OLD BUSINESS

NEXT MEETING

Date of next ZBA meeting – Everett Hodge noted the next ZBA meeting would be on **Tuesday, September 22, 2015 (due to vacation) 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 10:05 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary