

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
February 26, 2018 APPROVED 3-26-2018

MEMBERS PRESENT: Bruce Kudrick, Chair; Tom Hebert, Vice Chair; Dana Carlucci, Paul Paradis, Ann Bond

ALTERNATES PRESENT:

EXCUSED:

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

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

Case #18-01-Z

Applicant: Keystone Pembroke LLC
 17 Bridge Street
 Billerica, MA 01821

Property Owner(s): Keystone Pembroke LLC
 17 Bridge Street
 Billerica, MA 01821

Property Address: 31-39 Whittemore Road
 Pembroke, NH 03275
 Tax Map (634) Lot (1), in the R-3D Rural Agricultural-Residential
 Zoning District.

Case 18-01-Z A (remand of Case 16-07-Z): Pursuant to a December 18, 2017 Order of the Merrimack County Superior Court, the zoning board will consider whether an application for a previously granted **Special Exception** to allow multi-family housing under **Article IV Use Regulations, §143-19 Table of Use Regulations #3** also satisfies the criteria set forth in **Zoning Ordinance Article IX Overlay Districts, Section 143-68 Aquifer Conservation (AC) District section F, Special Exceptions**. The applicant is Keystone Pembroke, LLC, located at 17 Bridge Street, Billerica, MA 01821. This action is related to **Case 16-07-Z for a Special Exception** issued on January 23, 2017. 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

Keystone Pembroke, LLC provided a notarized authorization dated January 23, 2018 for Charles Cleary, Esq. and Wadleigh, Starr & Peters, P.L.L.S., Manchester, NH to represent the applicant. Charles Cleary, Bob MacDonald, Tim Peloquin, LLS and Rick Van de Poll were present at this hearing.

The clerk took the roll call and all Zoning Board of Adjustment members were present.

Chairman Kudrick opened the public hearing at 7:04 p.m. There were 5 regular members and no alternate members present. Therefore, there was a full five-member board present for this hearing. Chairman Kudrick explained the rules of the hearing. Anyone who wishes to speak will give their name, address and interest in the case. All questions are directed to me, the Chair.

Copies of Request for Findings of Fact under Zoning Ordinance Section 143-68F dated January 25, 2018, regarding Case @16-07-Z, Tax map 634 Lot 1, Whittemore Drive, Pembroke, NH were provided in agenda packet.

The Recording Secretary read three letters into the minutes:

1. An email dated January 16, 2018 to Everett Hodge and Timothy Peloquin, copy Charles Cleary and Bob MacCormack, from Ammy Heiser, Chairperson of Conservation Commission stating a

site walk was taken on December 2, 201. Minor wetland impact was observed totaling approximately 500 square feet. An Environmental Impact Assessment dated November 7, 2017, performed by Rick Van de Poll, Certified Wetlands Scientist, stated the project will have limited impact on surface waters, soils and wildlife which will be more than offset by the permanent protection of the 33 acre conservation area along the Merrimack River. The Pembroke Conservation Commission feels that the aquifer impacts should be minimal if the project is built with full connection to public water and sewer, and all storm water is treated and infiltrated in accordance with State and Federal regulations.

2. Opinion of Health Officer, Town of Pembroke, dated January 23, 2018 was read into the record. I have reviewed the subdivision proposed by Pembroke Pines and the effect it will have on the underlying Aquifer Conservation District (AC). As Health Officer, I believe this subdivision is in accordance with our ordinance related to aquifer protection. Sincerely, Doctor Vincent Greco, Health Officer, Town of Pembroke NH.
3. Letter dated February 26, 2018 from Pembroke Water Works to Pembroke Zoning Board of Adjustment restating capacity is available for the 75 proposed units, and after consideration, this project is deemed to have no impact to the quality or quantity of water supplied by the Pembroke Water Works.

Charles Cleary, Esq. explained that on January 23, 2017, the Zoning Board of Adjustment issued a Special Exception to Keystone Pembroke, LLC under Zoning Ordinance Section 143-19 to permit 19 4-plex residential housing buildings in the R1 Zoning District. In response to an appeal by a small number of abutters, the Merrimack County Superior Court ruled that the Zoning Board of Adjustment acted reasonably on all points except that it should have addressed the requirements of Section 143-68 F. Past practice allowed the Pembroke Planning Board to pick up the role of considering Aquifer Conservation Special Exceptions. Paulette Malo, Pembroke Sewer Commission has stated that all units will be connected to town sewer as sufficient hookups were available. This project will be entirely on sewer. Chairman Kudrick requested that the applicant provide a letter from the Sewer Commission validating this statement to the Zoning Board of Adjustment. Paulette Malo also confirmed that there would be no wastewater discharge. Section 143-68F prohibits commercial hazardous waste, auto repair shops, storage of petroleum, etc. As a residential use, Mr. Cleary stated that the proposal meets all the criteria for an Aquifer Conservation Special Exception.

Charles Cleary, Esq. addressed the **Zoning Ordinance Article IX Overlay Districts, Section 143-68 Aquifer Conservation (AC) District section F, Special Exceptions** requirements:

- 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. *The goal of the Aquifer Conservation District is to regulate land uses which would contribute polluted waters to designated aquifers. The applicant's proposed use is for residential use; the only reason the ZBA needs to conduct this review is that the residents will live in 4-plex dwellings rather than single family or two family dwellings. As evidenced by the exception (Note that single family dwellings and two family dwellings are completely exempts from review under the Aquifer Conservation District – 143-68F; Pembroke having determined that single and two family residential uses will not adversely affect underlying aquifers.) residential uses so not adversely impact groundwater by directly contributing to pollution or increasing susceptibility to potential pollutants. While the applicant proposes connecting all residential units to public sewer, properly designated leach fields also do not adversely affect groundwater, as the water is purified through percolation. See Rules and Fact Sheets of NH Department of Environmental Services, Subsurface Bureau. In terms of the lack of*

any potential pollution to the aquifer, the proposed 4-plex residential use is identical to the residential use of single and two family homes.

- 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. This residential use will not cause a significant reduction to the capacity of the aquifer as all units will be connected to public water and the Pembroke Water Works has determined that an adequate water supply is available for this project.*
- 3) *The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this section. As previously mentioned, it is the applicant's intent to connect all units to public sewer; however to the extent septic systems are installed for certain units, this type of wastewater is permitted to be discharged in the Aquifer Conservation District. See 143-68D(3).*
- 4) *The proposed use complies with all other applicable sections of this section. As the proposed use is residential, it complies with all other applicable section of Zoning Ordinance Section 143-68.*

Everett Hodge stated that he met with the Planning Board and the board agreed to put an exception in Section 143-68 (F) that exempts residential uses from item F. There was a public hearing on November 14, 2017 and the change is in effect, and in the warrant article, before the voters at Pembroke Town Meeting in March 2018.

Amy Manzelli, Donna Drive neighborhood, stated that the court order noted that the application as presented was not an open space development. Despite diligent efforts to obtain the information that was emailed to her Portland Maine office today by Everett Hodge, in response to an email request received today, Ms. Manzelli did not have time to review the material. Ms. Manzelli requested that the Zoning Board of Adjustment consider continuing the case before making a decision. Ms. Manzelli submitted a three page letter dated February 26, 2018 in opposition to the Aquifer Special Exception for Keystone Pembroke, LLC. The Aquifer Protection overlay district is designed to protect the aquifer from any harm. This board has issued a condition of approval that is in conflict with the representation that the Sewer Commission has sewer hookup available for all units. The Superior Court order to Allenstown states Pembroke may not allow any sewer hookups. I have not had a chance to analyze the application.

Chairman Kudrick noted that the Sewer Commission issues between Pembroke and Allenstown go back 20 years. Some of the units were going to be on sewer. The applicant's intent was to put all units on sewer. The Sewer Commission is in charge of determining the number and size of hookups. That is why I requested a letter confirming that the Sewer Commission can take all 75 units on sewer.

Charles Cleary, Esq. provided rebuttal by applicant. The court actually said that open space development is permitted by right, and it does not need to have ZBA approval. Number 2, tonight's hearing was properly noticed. Of the 19 4-plexes proposed, 8 were connecting to sewer and 11 would be stubbed for sewer until such time as sewer is available. Charles Cleary stated I will forward written confirmation from the Sewer Commission on the number of hookups available for the project.

Chairman Kudrick asked if we need Rick Van de Poll to explain septic system traits. The board did not see a need. Bob Mac Cormack asked that Rick Van de Poll, Certified Wetland Scientist, from Sandwich NH be allowed a brief time to speak.

Rick Van de Poll, Sandwich NH stated that if a septic system is designed and built to State guidelines, there will be no compromise to the water system.

Rick Mulcahy, 17 Melissa Drive, stated he was confused by additional discussion of septic when the Conservation Commission letter recommended full connection to town water and sewer.

Chairman Kudrick clarified that the proposed units will be totally on town sewer and meet Conservation Commission guidelines.

Dana Carlucci summarized the case. This is **Case 18-01-Z, a (remand of Case 16-07-Z)**: Pursuant to a December 18, 2017 Order of the Merrimack County Superior Court, the zoning board will consider whether an application for a previously granted **Special Exception** to allow multi-family housing under **Article IV Use Regulations, §143-19 Table of Use Regulations #3** also satisfies the criteria set forth in **Zoning Ordinance Article IX Overlay Districts, Section 143-68 Aquifer Conservation (AC) District section F, Special Exceptions**

Dana Carlucci stated that the Zoning Board will consider a Special Exception, specifically to Section 143-68 (F) per December 18, 2017 per recommendation by John Eissinger Jr., Presiding Justice, State of NH Judicial Branch, Superior Court. Letters from Ammy Heiser, Chair, Conservation Commission; Dr. Vincent Greco, Health Officer; Matthew Gagne, Superintendent, Pembroke Water Works; regarding 143-68 were read into the minutes. Charles Cleary, Esq. stated the following: This case was granted a Special Exception previously, but not for section 143-68. Pembroke Sewer Commission told the applicant that there is sewer available for the entire project. Pembroke Water Works determined adequate water supply is available. No wastewater will be discharged on site. At this time, section 143-68 deals with more commercial uses. Chairman Kudrick requested that Pembroke Sewer Commission send a letter to the Zoning Board of Adjustment validating what Mr. Cleary stated. Mr. Hodge stated that he discussed omitting residential development from 143-68 with the Planning Board and they agreed to change the ordinance to exempt residential use from Section 143-68 and submitted a warrant article. Ms. Manzelli requested a continuance due to lack of time to review information sent to her by Everett Hodge, Pembroke Code Enforcement Officer. Ms. Manzelli stated sewer hookups may not be available. Chairman Kudrick explained that Sewer Commission is the authority for sewer hookup. Mr. Cleary stated it was always the applicant's intent to hook up to town sewer. Rick Van de Poll stated that the nature of the law that requires septic has the expectation that septic water will be returned to the aquifer in a safe manner. Ms. Manzelli was surprised at the way that she received information was noticed. All of the units in this project will be on town sewer per the Sewer Commission.

There being no further comment, Chairman Kudrick closed the public hearing at 7:40 p.m.

Chairman Kudrick asked if Board members felt they had enough information to make a decision. Dana Carlucci stated that everyone had a chance to review the information prior to this meeting. Ann Bond stated that, at prior meetings, we had a concern that some of the multiplex units would be on town sewer and others may not have a hookup available at this time. We do not have written confirmation that 75 hookups are available from Pembroke Sewer Commission.

Chairman Kudrick noted that we state at every meeting that if the facts are not correct as given to us, within 30 days we can ask for a rehearing of any case. Tom Hebert stated we are not looking at a new application. We are reviewing what was stated at the last meeting. Chairman Kudrick stated we are not going to continue Case #18-01-Z. There is a proposed change in the ordinance from the Planning Board exempting residential use from Section 143-68 (F). As with all proposed changes, once it is proposed and posted to town warrant, it becomes the rule to follow until the vote. The voters will decide this issue in

March 2018. Ann Bond read the article from the Town report. A public hearing on the proposed change was held November 14, 2017. Once noticed, the ordinance must be followed as presented. Residential use has been taken out of Section 143-68 Aquifer Conservation.

Deliberations: ZBA members discussed findings of fact under the Special Exception Article IV Section 143-68F criteria.

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. **Agreed**, *in the ordinance change on the Town warrant, residential use is completely exempt from review under the Aquifer Conservation District – 143-68. All of the proposed units will be on town sewer.*
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. **Agreed**, *all units will be connected to public water and the Pembroke Water Works has determined that an adequate water supply is available for this project and submitted a letter.*
3. The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this section. **Agreed**, *it is the applicant's intent to connect all units to public sewer; however to the extent septic systems are installed for certain units, this type of wastewater is permitted to be discharged in the Aquifer Conservation District. See 143-68D(3).*
4. The proposed use complies with all other applicable sections of this section. **Agreed**, *as the proposed use is residential, it complies with all other applicable section of Zoning Ordinance Section 143-68.*

MOTION: Tom Hebert moved to accept the submitted reports regarding Case #18-01-Z from the Town of Pembroke's Conservation Commission; the Town of Pembroke's Health officer, Dr. Vincent Greco; and the Pembroke Water Works. The reports satisfied the requirements set forth under **Article IX Overlay Districts Aquifer Conservation District, Section 143-68 Aquifer Conservation (AC) District section F, Special Exception.** Dana Carlucci seconded.

VOTE: PAUL - YES TOM – YES BRUCE – YES
DANA- YES ANN - YES

MOTION TO APPROVE AQUIFER CONSERVATION SPECIAL EXCEPTION PASSED ON A 5-0 VOTE.

Case #18-02-Z

Applicant: Richard and Jeannine Berube
450 Seventh Range Road
Pembroke, NH 03275

Property Owner(s): Richard and Jeannine Berube
450 Seventh Range Road
Pembroke, NH 03275

Property Address: 450 Seventh Range Road
Pembroke, NH 03275

Tax Map 937) Lot (26) in the R-3 Rural/Agricultural-Residential Zoning District.

Case 18-02-Z A request has been made for a **Variance** under **Article V Dimensional and Density Regulations**, §143-21**Table of Dimensional and Density Regulations Note #3**. The applicants, Richard and Jeannie Berube, 450 Seventh Range Road, Pembroke, NH, 03275 are proposing a 2 lot subdivision for lot 937-26. A **Variance** is needed from the required 200 foot frontage on a Class V or better maintained street for the proposed new 36.6 acre lot. The property is located at 450 Seventh Range Road, Map (937) Lot (26) in the R-3 Rural/Agricultural-Residential Zoning District.

The clerk took the roll call and all Zoning Board of Adjustment members were present.

Chairman Kudrick opened the public hearing at 7:55 p.m. There were 5 regular members and no alternate members present. Therefore, there was a full five-member board present for this hearing. Chairman Kudrick explained the rules of the hearing. Anyone who wishes to speak will give their name, address and interest in the case. All questions are directed to me, the Chair.

The assessing card and a Boundary Plat, Minor Subdivision Plat and topography report prepared January 31, 2018 by Edward Haggett/Benjamin Brewster Haggett, 508 North Pembroke Road, Pembroke NH were included in the agenda packet.

Webb Stout, LLS, surveyor of record, Canterbury NH addressed the Variance criteria:

1. **The variance will not be contrary to the public interest.** The variance is not contrary to the public interest with the access or driveway being a common driveway located on a Class V town maintained road.
2. **The spirit of the ordinance is observed.** The spirit of the ordinance is observed due to Seventh Range Road being upgraded to a Class V road for approximately 1500 feet at a substantial cost to Richard and Jeannine Berube. Thirteen hundred feet of the upgrade is along properties not owned by Richard or Jeannine Berube.
3. **Substantial justice is done.** Substantial justice will be done in that Richard and Jeannine Berube would be able to give a parcel of land to one of their children without a substantial amount of upfront money incurred by either family member.
4. **The values of surrounding properties are not diminished.** The values of the surrounding properties have increased due to the upgrade of Seventh Range Road to a town maintained Class V road.
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 enforcement of the ordinance would result in an unnecessary hardship due to a substantial investment by Richard and Jeannine Berube to assist one of their children in building a home next to their home. The remaining frontage on the larger parcel exceeds the minimum requirement.

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.

Please give a detailed description of your proposal below:

We propose to subdivide one residential lot on Seventh Range Road with 200 feet of road frontage on a town maintained Class V road, leaving the remaining road frontage of 680 feet +/- on a Class VI non town maintained road. This remaining frontage lot has an existing single family residence.

The applicant would like to subdivide a parcel of land so a child can build a house next to their home. The new lot would have 200 feet of frontage and the remaining lot of 36.6 acres would not have frontage, but would share the common driveway. The applicant, at great personal expense, has upgraded 1,500 feet of Class VI road to Class V, 1,300 feet of which is along property not owned by the applicant.

The driveway location would not move due to wetlands. A common driveway is proposed.

Chairman Kudrick stated, if this were to be approved, I would like to see documents that specify who maintains the driveway to avoid any future abutter issues.

Webb Stout stated that restrictions and cross easements will be included on each deed. The driveway is approximately 1,000 feet. The easement will be 40 feet wide to allow for drainage and clearing along edges. The entire 200 feet of frontage would be for the new house. The existing house will have no frontage.

Richard Berube, 450 Seventh Range Road, stated we are a close family. This is a safe area for children and grandchildren to play and grow up. The driveway is wide with gravel sides.

Dana Carlucci asked what it would take to add another 200 feet of frontage. Mr. Berube stated it cost approximately \$250,000 to upgrade the first part of the road and would likely cost another \$50,000 to \$75,000 to upgrade another 200 feet from Class VI to Class V road. This includes engineering costs. Asphalt is cheap. The gravel and drainage improvements were most costly. It would be a lot of money to build 200 feet more road that would not be used. After a period of non-use, trees and grass would grow up through the asphalt on the unused road section.

Chairman Kudrick stated he is concerned about developing a non-conforming lot. Have you considered reducing the size of the proposed lot? Webb Stout said we only have 200 feet on the Class V portion of the road. If we split the frontage, both lots would be non-conforming. Chairman Kudrick said that makes total sense. We as a board are just trying to see if there is any other way to accomplish an acceptable subdivision. Bringing the road to rough gravel would be a Planning Board issue. Mr. Berube said there would still be engineering costs, town engineer and my engineer.

Chairman Kudrick said I understand what you are saying, but we have regulations and RSA's we must abide by. Can you add onto the existing house and perhaps, create a duplex residence? Mr. Berube said that would not be possible. I am scheduled for the upcoming Planning Board meeting tomorrow.

Dana Carlucci stated he would like to have Planning Board input. What if the frontage were reduced on both lots? There used to be an option of a Class VI road waiver, but the Town of Pembroke did away with that some years ago.

Chairman Kudrick suggested that the Zoning Board of Adjustment continue this hearing until next month. We are trying to work with the applicant and a continuance would give him time to talk with as many town boards as possible to discuss alternatives and modify the subdivision plan.

Dana Carlucci summarized the case. This is **Case 18-02-Z**, a request for a **Variance** under **Article V Dimensional and Density Regulations**, §143-21 **Table of Dimensional and Density Regulations Note #3**. The applicants, Richard and Jeannie Berube, 450 Seventh Range Road, Pembroke, NH, 03275 are proposing a 2 lot subdivision for lot 937-26. A **Variance** is needed from the required 200 foot frontage on a Class V or better maintained street for the proposed new 36.6 acre lot. The property is located at 450 Seventh Range Road, Map (937) Lot (26) in the R-3 Rural/Agricultural-Residential Zoning District. Webb Stout, Licensed Land Surveyor, presented for the applicant. The applicant is asking that a lot be subdivided on a Class VI road. The common driveway would not move from its existing location. The case will be continued to March 26, 2018 to allow the applicant time to meet with town departments and explore alternative ways to accomplish a subdivision.

There being no further comment, Chairman Kudrick closed the public hearing at 8:10 p.m.

MOTION: Tom Hebert moved to continue the public hearing for **Case 18-02-Z**, a request for a **Variance** under **Article V Dimensional and Density Regulations**, §143-21 **Table of Dimensional and Density Regulations Note #3**, to MARCH 26, 2018 for the following reason:

1. To allow the applicant time to modify the subdivision plan and to gather input from the Planning Board.

Ann Bond seconded.

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

MOTION TO CONTINUE PUBLIC HEARING TO MARCH 26, 2018 PASSED ON A 5-0 VOTE.

Chairman Kudrick noted that the continued hearing would not be renoticed to abutters. Interested parties should check the Zoning Board of Adjustment minutes and agendas online for more information.

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of January 29, 2018 as amended. Dana Carlucci seconded.

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

MINUTES OF JANUARY 29, 2018 APPROVED AS AMENDED ON A 5-0 VOTE.

NEXT MEETING

Date of next ZBA meeting – Chairman Kudrick noted the next ZBA meeting would be on **Monday, March 26, 2018 at 7:00 p.m.**

ADJOURN **Motion:** Tom Hebert moved to adjourn. Ann Bond seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Susan P. Gifford, Recording Secretary