

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
March 26, 2018    Approved April 23, 2018**

**MEMBERS PRESENT:** Bruce Kudrick, Chairman; Tom Hebert, Vice Chairman; Dana Carlucci; Paul Paradis

**ALTERNATES PRESENT:**

**EXCUSED:**

**STAFF PRESENT:** Everett Hodge, Code Enforcement Officer; Dana Pendergast, In-Coming Code Enforcement Officer; Jocelyn Carlucci, Recording Secretary

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

The Secretary took the roll call.

Chairman Kudrick announced that Member Paradis, having been an alternate for many years, will be sworn in as a permanent member once the paperwork is completed. Member Paradis will vote tonight since the Board only has three permanent members.

Chairman Kudrick also noted that Ann Bond resigned her seat as a member of the ZBA since her appointment to the Board of Selectmen.

He also announced that because the Board has only four members, all applicants will be advised that they can ask not to be heard. If the applicant chooses to be heard, the four member board cannot be used as grounds for rehearing.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak. All people wishing to speak must give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider the approval.

**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.

**Continuation of Case 18-02-Z** from February 26, 2018. 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 secretary read into the minutes:

1. Letter dated March 8, 2018 to the Chairperson and Members of the Zoning Board from F. Webster Stout LLS #693 regarding Berube Variance – 7<sup>th</sup> Range Road
2. Memo received March 8, 2018 to the ZBA from Everett Hodge, Code Enforcement Officer, regarding TRC Meeting.

Mr. Hodge said that Mr. Berube could not attend the April 3, 2018 Board of Selectmen's Meeting because the meeting was canceled since there was not a quorum. He did attend the March 19, 2018 Board of Selectmen's meeting.

Chairman Kudrick explained that **Case 18-02-Z** was continued and that the applicant has removed his application from the ZBA, therefore, there will be no discussion on the case.

**MOTION: VICE CHAIRMAN HEBERT MOVED TO OFFICIALLY CLOSE CASE 18-02-Z. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

**Case #18-03-Z**

Applicant:	Peter Satterfield and Marie Straiton 708 Cross Country Road Pembroke, NH 03275
Property Owner(s):	708 Cross Country Road Pembroke, NH 03275
Property Address:	708 Cross Country Road Pembroke, NH 03275 Tax Map 935, Lot 38 in the R-3D Rural/Agricultural-Residential Zoning District.

**Case 18-03-Z** a request has been made for a **Special Exception** under Article IV Use Regulations §143-18-1 **Accessory Dwelling Units**. The applicant, Peter Satterfield and Marie Straiton is requesting permission to convert a 625square foot space above an existing attached garage into an **Accessory Dwelling Unit (ADU)**. A **Special Exception** is required for an **ADU** in the R-3D Zoning District. The property is owned by Peter Satterfield and Marie Straiton. The property is located at 708 Cross Country Road Map (935) Lot (38) in the R-3D Rural / Agricultural-Residential Zoning District.

Present: Peter Satterfield and Marie Straiton

The secretary read the abutters list into the minutes.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak. All people wishing to speak must give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider the approval.

Chairman Kudrick asked the applicant and his representative to come forward. He explained that the Board has only four members and that the applicant has the option of not being heard tonight and to continue the case to

another time when there are five members. He explained that if the case does not go the way the applicant hoped, the four member board will not be grounds for a rehearing.

The applicant agreed to be heard tonight.

Peter Satterfield read aloud the Special Exception Application criteria into the minutes:

They are requesting a Special Exception from Article III, Section 143-18.1.

**Description of Proposal:** We would like to change the use of a space in our home formerly known as “mantown” into an ADU for a family member to live in. This adjoining space to our 3-bedroom house is less than 625 square feet, has a separate exit to the outside by means of interior stairs as well as an interior door to our space. The water and sewer are connected to our well and septic system and we have plenty of parking spaces to accommodate an extra vehicle. Heat is also provided by the same boiler through forced hot water system and some electric panel.

**Has this property received a Special Exception or Variance in the past?** Yes, in November 2015 concerning a kitchen addition that was added. We have a driveway that is close to our house that goes out to the Hagget property in the rear and is close so we needed a variance for that.

**If “YES”, please provide copies of past Zoning Board of Adjustment Notices of Decision.** See notice of decision concerning kitchen expansion on the main house.

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** As you know there is a shortage of single occupancy housing. This helps with that shortage in a way that does not impair the integrity of this zone or cause a nuisance to the neighborhood. Only older adult occupancy by a family member.
2. **Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare.** This space is perfect for an ADU. To look at it, you wouldn’t even know that it was being used in a different way from a single family private residence, therefore having no impact on zoning or detriment to the general welfare.
3. **Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.** This is space that is already easily accessible to the main house but because of its proximity offers a natural separation for privacy to both parties.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** From the outside of the house, this ADU just looks like any other “room over the garage.” Because someone will be living in the space it will be maintained better and keep the property more valuable.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No. This proposed ADU is a space that is just being repurposed from an adult TV/game room to a single occupancy older adult ADU.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** This space is already being heated by the present forced hot water system. This ADU has water and sewer that is part of the main house’s well and septic system. (There is already a bathroom in the space.) Parking is already there and snow removal is already provided as it is part of the main driveway.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** I have spoken with abutting property owners and they don’t have a problem

with and wouldn't even know the difference if the family member was living in the main house or the ADU.

8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** The septic system is rated for a four-bedroom house and we only use one bedroom presently. The well is an artesian well with a great water supply. (He added that the information is in the packet which shows the septic being rated for a four-bedroom home.)
9. **If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system?** N/A. This is not for multi-family use and we do not use Town water and sewerage system.

Member Carlucci asked if the 2003 septic system verification was the most recent. Mr. Hodge and Mr. Satterfield said yes. Mr. Hodge said that it was a four-bedroom septic system and the property is listed as a three-bedroom house.

No one spoke in favor of the case. No one spoke in opposition of the case. There was no rebuttal for or against the case.

Member Carlucci asked if there was adequate parking. Mr. Satterfield said that they have parking for approximately 15 cars in front of the house. They have an asphalt driveway that will accommodate 15 cars so it will not be a problem. Mr. Satterfield said that he does not own 15 cars.

**Member Carlucci summarized Case 18-03-Z, Special Exception for an ADU:** The case is brought by Peter Satterfield and Marie Straiton who read the application into the minutes. The ADU is an existing space (room over the garage). There is parking for 15 vehicles and the septic system design is for a four-bedroom.

Chairman Kudrick announced that the Board will decide all cases within 30 days. Notice of decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. This hearing is officially closed (7:20 pm). The Board will approve, deny or continue the deliberation. No comments will be taken from the audience.

Chairman Kudrick said that this is an allowed use by the Town Ordinance and that it fits the new ordinance passed at Town Meeting. 750 sq. ft. is the allowable ADU square footage.

The Board discussed the 9 criteria:

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** Chairman Kudrick said that it is by the Town's regulations and is a good thing to have for older parents and other family members.
2. **Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare.** Member Carlucci said that this is an existing space. It maintains esthetic continuity with the present dwelling unit. Chairman Kudrick said that the applicant is not doing anything outside of the unit. All changes will be made inside the unit.
3. **Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.** Chairman Kudrick said that it is allowed by the ordinance.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** Chairman Kudrick said that there is no factual evidence that the property value will be affected by such use. From outside of the building, nothing will change and it will be additional taxable property.

5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** Chairman Kudrick said that, at the most, there will be one other car. Vice Chairman Hebert said that it is only Mr. Satterfield and his wife presently living on the premises.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Chairman Kudrick said that the unit presently has a heating system, electricity, septic, and a well. Everything is there to take care of the ADU. Member Carlucci asked if the 2003 septic system had to be reviewed. Chairman Kudrick said no because with only two people presently using the system at 80-100 gal. per person per day, and the system is designed for a four-bedroom home (600 gal. per day), the system is more than adequate.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** Chairman Kudrick noted that no one objected to the application.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** Chairman Kudrick said that the applicant has an artesian well and a septic system; therefore, there are no issues.
9. **If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system?** Chairman Kudrick said that it is not a multi-family unit. It is a single-family house with a use that is approved by the Town.

Member Carlucci said that he would like to entertain a condition that the owner be the primary resident. The Board agreed.

**MOTION: VICE CHAIRMAN HEBERT MOVED THAT CASE NO. 18-03-Z, APPLICATION FOR SPECIAL EXCEPTION TO CONSTRUCT AN ACCESSORY DWELLING UNIT, HAVING BEEN PRESENTED FOR CONSIDERATION TO THE BOARD BY PETER SATTERFIELD AND MARIE STRAITON BE ACCEPTED AS PRESENTED WITH THE FOLLOWING CONDITIONS OF APPROVAL:**

- (1) THAT CONSTRUCTION WILL BE COMPLETED IN ACCORDANCE WITH SUBMITTED PLANS;**
  - (2) MUST FOLLOW ALL STATE AND LOCAL REGULATIONS;**
  - (3) THE OWNER WILL MAINTAIN RESIDENCY IN ONE OF THE UNITS.**
- SECONDED BY MEMBER PARADIS. UNANIMOUSLY APPROVED.**

**Case #18-04-Z**

Applicant:	Gallo Realty Group 34 Rundlett Hill Road, Suite 4 Bedford, NH 03110-5824
Property Owner(s):	Potential Properties Corp. 34 Rundlett Hill Road, Suite 4 Bedford, NH 03110-5824.
Property Address:	109 Wilkins Avenue Pembroke, NH 03275 Tax Map 266, Lot 117 in the R-1 Medium Density-Residential, B-1 Business / Residential and the AC Aquifer Conversation Zoning Districts

**Case 18-04-Z** A request has been made for a **Special Exception** under **Article IV Use Regulations**, §143-19 **Table of Use Regulations #3**. The applicant, Gallo Realty Group, 34 Rundlett Hill Road Suite 4, Bedford, NH

03110-5824 is requesting a **Special Exception** to construct (2) 6 unit townhouses. A **Special Exception** is required under §143-19 **Table of Use Regulations #3** in the R-1 and B-1 Zoning Districts. The property is owned by Potential Properties Corp. 34 Rundlett Hill Road Suite 4, Bedford, NH 03110-5824. The property is located at 109 Wilkins Avenue, Map (266) Lot (117) in the R-1 Medium Density-Residential, B-1 Business / Residential and the AC Aquifer Conversation Zoning Districts.

The secretary read the abutters list into the minutes.

Present: Matt Peterson of Hillside Design; and Mike Galo

Chairman Kudrick stated that the Board has only four members and that the applicant has the option of not being heard tonight and to continue the case until such time as there are five voting members. He explained that if the case does not go the way the applicant hoped, the four member board will not be grounds for rehearing.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak. All people wishing to speak must give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider the approval.

Mr. Peterson said that the existing parcel is Tax Map 266, Lot 117. The Planning Board was presented with the plan in 2014 for a two-lot subdivision to remove the white house at the corner of Wilkins and Buck Streets. The parcel also has a back access easement to Smith Road. In 2014 a wetlands study, topography map, and soil analysis were done. After meeting with the Planner and Mr. Hodge, the applicant decided to come to the ZBA for a special exception. They have not gone through a full site plan review.

Mr. Peterson continued to say that they are requesting a special exception from Article IV Use Regulations, Section 143-19. He showed the Board a preliminary architectural rendering of the units consisting of a garage under a two-story dwelling. The downhill sides will have decks/patios with walkout basements. He said that with wetland at the top and access in the back, it would make sense to place the unit in the location noted on the rendering. They have access off of Wilkins Avenue. Town water and sewer will be run from Buck Street. Mr. Peterson said that he has not met with the water and sewer departments.

Mr. Peterson read aloud the application criteria along with his answers:

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** The applicant believes that this request to permit 12 townhouses via a special exception which is allowed for this district would be a desirable use considering that the Town of Pembroke allows this use in the current zone. Also based on current inventory in Town, the applicant believes that this type of use is needed in Town and as such would be essential to the public convenience or general welfare.
2. **Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare.** As stated above, the applicant believes that because this use is allowed via a special exception would suggest that the project will not impair the integrity or character of the district or adjoining zones. The applicant believes that the project will not have any detrimental effect to health, morals or general welfare based on the type of use the applicant is proposing.
3. **Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.** As stated above and in future comments the applicant is asking for a special exception to allow a use that is allowed in the district

via the special exception which we feel makes this site an appropriate location for the proposed use. Also, the site has access to Town water and Town sewer which the applicant also feels makes this site an appropriate location too.

4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** In the past construction of a new building in an allowed zoning has not affected the surrounding property values and in fact in most cases has raised the surrounding values due to the new construction and new landscaping around a new development. See existing enclosed pictures.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** The applicant believes that this project Will NOT (no) have any undue traffic nuisances or unreasonable hazards due to a proposed 12-unit development. The anticipated morning rush hour and evening rush hour numbers are expected to be around 5.28 trips in the morning between 7 and 9 a.m. and 6.24 trips in the evening peak hours between 4 and 6 p.m., which the applicant does not believe would create a traffic nuisance. As for unreasonable hazard the applicant believes that by having Town Water and Sewer we have eliminated a potential underground hazard as well.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** If the Zoning Board of Adjustment grants this special exception the project will then begin the site permitting process at which time the proposed development will meet the Towns development requirements for construction. This development will have adequate power, water supply, sewer, access to and from the parcel, and all development facilities associated with a 12-unit townhouse development.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** The applicant is not aware of any valid objections to this project at the current time. The project will be accessed via a current Town roadway and it will be serviced by Town water and sewer, so no impact to ground water via a well or septic. The project will comply with required buffer setbacks and will leave the majority of the parcel in open space, see conceptual layout.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** If the Zoning Board of Adjustment grants this special exception the project will be serviced via Town Water and Town Sewer.
9. **If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system.** If the Zoning Board of Adjustment grants this special exception for 12 townhouse units the project will be serviced via Town Water and Sewer.

The Secretary read the following letters into the minutes:

1. Memo from Paulette Malo of the Pembroke Sewer Commission, dated March 14, 2018 to Everett Hodge regarding 109 Wilkins Avenue.
2. Memo from Christine Addington Secretary of the Pembroke Public Works, dated February 28, 2018 to Everett Hodge regarding Wilkins Avenue subdivision
3. Memo from Matt Gagne of the Pembroke Water Works, dated February 28, 2018, to Everett Hodge regarding Wilkins Avenue.
4. Memo from Matt Gagne of the Pembroke Water Works, dated March 16, 2018, to Everett Hodge regarding Wilkins Avenue.

There were no comments from the public on this case.

Chairman Kudrick said that because this project does not currently have sewer capacity, he would like to continue the case until such time that they have met with the Sewer Department. The applicant agreed.

**MOTION: VICE CHAIRMAN HEBERT MOVED TO CONTINUE CASE 18-04-Z TO TUESDAY, MAY 29, 2018 IN ORDER TO ALLOW THE APPLICANT TO MEET WITH THE PEMBROKE SEWER COMMISSION TO ENSURE THAT ADEQUATE SEWER CAPACITY IS AVAILABLE. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

Chairman Kudrick said that abutters will not be renoticed.

**CASE 18-05-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 18-05-Z** A request has been made to amend a **Special Exception** under **Article IV Use Regulations, §143-19 Table of Use Regulations #3**. The applicant, Charles Cleary, 95 Market Street, Manchester, NH 03101, is requesting an amendment to a **Special Exception** to modify conditions #3 and #4 of a **Notice of Decision** issued on January 27, 2017. The applicant requests that Special Exception Condition #3, second Sentence, be released so that a permanent locked gate is not required, with the understanding that the Planning Board will likely require other traffic calming devices and that Special Exception Condition #4, first Sentence, be released and modified to read "Must adhere to the submitted plans except to the extent such plans are reasonably modified through the Planning Board subdivision review process, with the plans approved by the Planning Board being the final plans". The property is owned by Pembroke Golf, LLC 17 Bridge Street, Billerica, MA 01821. The property is located at 31-39 Whittemore Road, Map (634) Lot (1) in the R-1 Medium Density-Residential and the AC Aquifer Conservation Zoning Districts.

**Present:** Timothy Peloquin of Promised Land Survey, LLC; Robert MacCormack of Keystone Pembroke, LLC; Charles Cleary, Esquire

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present their case; (2) Those in favor of the application will speak; (3) Those opposed will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak. All people wishing to speak must give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider the approval.

Chairman Kudrick stated that the Board has only four members and that the applicant has the option of not being heard tonight and to continue the case until such time as there are five voting members. He explained that if the case does not go the way the applicant hoped, the four member board will not be grounds for rehearing.

Attorney Cleary said that they would like to proceed.

The secretary read the abutters list into the minutes.



Attorney Cleary clarified that the applicant for this particular property is Keystone Pembroke, LLC not Pembroke Golf.

Attorney Cleary said that in 2017, the ZBA issued a special exception to the applicant with a plan showing 19 4-plex residential buildings in the R-1 Zoning District. It was for the multi-family use under the Town's ordinance. There was then a motion rehearing and a lawsuit by abutters led by an attorney. The case came back that the Board acted properly with one exception. It wanted the Board to correct the aquifer conservation criteria which was done on February 26, 2018. Attorney Cleary said that everything is now in order under the Special Exception.

Initially when the Board granted the Special Exception, there were 5 conditions of approval. Attorney Cleary said that the applicant is asking that two of the conditions be modified. The reason for the request was because after meeting with the ZBA and receiving the approval, the applicant went through a considerable process at the Planning Board level dealing with abutter issues, Planning Board issues, Town Department issues, and hence the project has moved only a little bit, as one would expect.

With regard to Condition No. 3, Attorney Cleary said that the first sentence was okay. The second sentence reading: "A permanent locked gate will be installed for only emergency access to Nadine Road."

He continued to say that, at last month's Planning Board meeting this issue was discussed. They heard from Public Works, Fire, Ambulance, the Roads Committee, a number of abutters and the Town Engineer. Attorney Cleary said that the overall consensus from the Town's safety officials was that it would be unwise to permanently block a public road as was suggested in this case.

Taking into consideration the decision of the ZBA and the safety officials, traffic-calming devices were discussed. Although the Planning Board did not make any decisions, he thought that the consensus was that there were better ways to address the abutters' concerns other than a permanent gate. He said that the applicant is asking that the ZBA modify the second sentence to release it with the understanding that the Planning Board has the right and power to require the applicant to install traffic calming devices.

Chairman Kudrick said that when the plan was first presented to the ZBA on January 23, 2017, the plans showed a gate access. He continued to say that in every condominium project that he ever dealt with, it was his understanding that everything inside is owned by the condominium association -- the roads, the houses, the land. The only thing that the people own is what is within the four walls of the homes. With that in mind, Chairman Kudrick said that he understood that Par Drive was a private road and not a town road. He could not find anything in the minutes or anything in what was presented that indicated that Par Drive was a town road. The ZBA cannot legally close a town road, but they could close a private road.

He continued to say that the Board was also being sensitive to the concerns of the area residents who did not want the extra traffic going through their development.

Chairman Kudrick said that no other members of the ZBA recalled that Par Drive was to be a Town road.

Attorney Cleary said that it was always planned to be a public road. There were many issues and commotion at the early meetings and there could have been a misunderstanding. He said that a private condominium project can be served by a public road and that was the intent.

Mr. Kudrick reiterated that the reason gating the road was added as a condition was because private roads can be gated.

Mr. MacCormack said that his understanding was that the road that goes to the right is a dead-end road. The town did not want that to be public road because they would not be able to get the trash truck up and down the road. The town asked them to make it a common driveway.

He continued to say that, seemingly from the public safety point of view of the Police and Fire Departments, the Public Works, and the ambulance service, it did not seem to make a difference whether the road was public or private regarding the gate issue. They said that the Fire Department and the Public Works would not allow the gate to block off the road because of plowing purposes, safety and for GPS-type situations. For example, if an ambulance had a GPS coordinate that sent them down Whittemore Road rather than Bow Lane and they could not get through, that would cause issues. He said that between the applicant and the Planning Board it has not been established what the road will be.

He said that the issue is that there are two jurisdictions. The Planning Board would like to make the final determination after talking to the Town Engineer and the life safety officials. The decision tonight is only to relinquish the control from the ZBA to the Planning Board on the one issue so that there can continue to be public hearings. There cannot be two decisions. The ZBA cannot have a decision different from the Planning Board. For that reason, Mr. MacCormack said that he is asking to have the decision brought over to the Planning Board so they can discuss it in the review process and have a public hearing. There can only be one jurisdiction.

Chairman Kudrick said that he does not like misleading abutters. He said that the Board assumed that Par Drive was a private road and they understood the abutters' concerns. He reiterated that the applicant would like the Planning Board to make the final decision. Mr. MacCormack said yes.

Attorney Cleary said that it took the Planning Board some time to get a handle on this situation.

Mr. Hodge asked where the applicant was in the Planning Board process.

Attorney Cleary said that he thought they were near the end. They have had 5 hearings.

No one in favor of the case spoke.

In opposition, Mark Cioffi, 453 Micol Road, said that he opposed the removal of the gate. He said that many of the abutters were not informed of the Planning Board meetings and that the ZBA meeting was the only meeting that they received a notice on. He said that he cannot assume that the Planning Board will come up with a traffic calming solution, and therefore, does not feel that a condition can be removed assuming that the Planning Board will come up with a solution agreeable to the residents. He asked if the life safety officials were on record as saying that they would want access through Nadine Drive to Whittemore Road.

Member Carlucci said "Yes, at the last Planning Board meeting."

Mr. Cioffi said that the road in question is now overgrown which has created a barrier for cars but they continue to see snowmobiles, and four-wheelers. Since he lives at the corner, it would be a challenge for him to accept additional traffic. He said that residents of Donna Drive and Woodlawn would travel to Bow Lane to the Route 3 light. He said that there will be a lot of traffic without a physical barrier between Par Drive and Nadine Road. He also said that there are no sidewalks in his subdivision.

Rick Mulcahy, 17 Melissa Drive, said that the intent of the ZBA at the time that the gate was required was to listen to the abutters and their concerns about traffic. He said that leaving it up to the Planning Board may be a mistake. He asked if it was possible that in lieu of a gate, that it be for "Official Use Only". This would limit it to only ambulances, fire, police, and plow trucks. There would not be an increase in traffic.

Beth Vacco, 440 Nadine Drive, said that another public road would increase town expenditures relating to plowing, and road maintenance. The additional traffic would deteriorate the quality of the neighborhood.

Virginia Landry, 54 Bow Lane, pointed out that when the traffic light was installed at Bow Lane, it increased the traffic dramatically. She said that Bow Lane is very narrow and has many children and walkers.

Mark Cioffi, 453 Micol Road, asked if all the abutters are supposed to be notified in the process.

Chairman Kudrick said that all abutters are supposed to be notified of the original hearing.

Attorney Cleary said that the Planning Board has the list of notification labels. Many of the abutters attended the meetings repeatedly. He said that the only explanation is that the case was continued repeatedly and the abutters were not sent notices every time.

Mr. MacCormack said that there has been extensive research on the traffic. Two traffic studies were done (one in January when the golf course is not open and one in August when the golf course is open) with numerous possibilities such as “with a gate” or “without a gate”. Because one of the neighbors questioned that the traffic studies were biased, the Planning Board asked for an independent traffic study by the Town Engineer. The study agreed 100% with what the original studies showed. He suggested that if anyone had any question, they should go to the Planning Board meeting tomorrow night and discuss it with the Planning Board because the studies have been extensively discussed.

Mr. MacCormack said that when Nadine Road was installed it was always intended to go to Whittemore Road but was never finished. It was also supposed to be a public road. He said that he supported the gate but was told by the Planning Board that they will not allow a gate. He said that he was also in favor of putting in “No Thru Way” signs in both directions where Nadine Road ends so that traffic from his development would use Whittemore Road and the Nadine/Donna Drive development traffic would use their normal route. Unfortunately, there cannot be two different jurisdictions and that issue must be resolved before going forward.

Attorney Cleary said that the issue was brought to a head by the Department Heads who were adamant that safety would be greatly diminished if there was a gate.

Attorney Cleary said that Condition No. 4, to the Special Exception application stated: “Must adhere to the submitted plans representing 19 four-plex housing units.” In this case, the applicant went to the ZBA early in the process because they needed the special exception to proceed. Because of the Planning Board’s very thorough review, there have been modifications to the plans. There are now 18 four-plex housing units plus 3 single-family units. From a practical standpoint, Attorney Cleary said that that condition ties their hands and makes everything that the Planning Board is doing difficult to accomplish.

Member Paradis pointed out that the last plan that the ZBA has is dated January 23, 2017.

Attorney Cleary said that the use has not changed.

Mr. MacCormack said that the modification came because some of the people on Whittemore Road said that they were afraid that the dynamics of their neighborhood would change with a four-family home on Whittemore Road. Therefore, Mr. MacCormack agreed to remove one four-family unit on Whittemore Road (bringing it from 19 to 18 four-plexes) and in its place build three single-family house lots to continue the integrity of the neighborhood.

Mr. Hodge said that he and the Planner were concerned about the change in the number of units, but the Town Attorney said that because it went from 19 to 18, it had no effect on the Special Exception and they would not have to reapply for the 18 units. Also, because the single family homes are allowed by right, the applicant does not have to revisit the application.

Chairman Kudrick apologized to the applicant and the homeowners and explained that the Board took the information that they received on January 23, 2017 as Par Drive being a private road and, after listening to the homeowners, they put in the gated access. He also said that the Board has not received any new plans as far as the three houses on Whittemore Road rather than a four-plex.

He also explained that the ZBA does not have the authority to block a Town right-of-way. As a condominium with a private road, the ZBA can gate the road and that is why he, as the Chairman, backed it.

All other changes that have been made were done after the ZBA approval and the ZBA was never aware of the meetings with other Town Departments. No one has ever approached him until a few weeks ago at the Planning Board workshop meeting. He apologized for giving the applicant and the public misinformation. All decisions were made based on the information that they received the night of their hearing.

Attorney Cleary said that the applicant's requested change is that they "must adhere to the submitted plans except to the extent such plans are reasonably modified through the Planning Board subdivision review process, with the plans approved by the Planning Board being the final plans." This will allow the Planning Board to do its work. The Planning Board cannot allow a modification of those plans to the extent that it would undo the ZBA's special exception. Both Boards have to act in concert.

Rick Mulcahy, 17 Melissa Drive, asked who owned the land where the gate was originally going to be placed.

Attorney Cleary said that the Town owns up to the property line and Mr. MacCormack owns the property on the other side of the line.

Chairman Kudrick said that the Planning Board would have to make the signage determination and not the ZBA.

Mr. MacCormack said that the Planning Board process determines what the final plans will consist of and, once voted on, the specific plan must be adhered to. He assumed that the plan would eventually stipulate a condition regarding the road signage.

**Member Carlucci summarized Case 18-05-Z:** The Secretary read the Abutter's List. The applicant went through the history of meetings passed at this point. Chairman Kudrick discussed the original perception by the ZBA (the road was private and gate access was on the original plan). Mark Cioffi spoke about wanting to keep the gate because of traffic. Rick Mulcahy spoke about the traffic and possibility of signs. There were concerns about safety. Mr. MacCormack spoke about the traffic studies that have been done, and that Nadine was always intended to go through. Mr. MacCormack supports the gate. People were encouraged to go to the Planning Board meeting. Note 4 of the ZBA conditions was asked to be removed. Changes that occurred were to have one less 4-plex unit and to add 3 single-family residences. Mr. Hodge stated that the single family homes were permitted by right. Chairman Kudrick apologized for the ZBA misunderstanding about whether the road was public or private. We now have recent information from various departments about safety issues associated with the gate.

Chairman Kudrick closed the public hearing at 8:42 p.m.

Chairman Kudrick announced that the Board will decide all cases within 30 days. Notice of decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. This

hearing is officially closed (8:42 pm). The Board will approve, deny or continue the deliberation. No comments will be taken from the audience.

Chairman Kudrick said that the Board will discuss: (1) Condition #3 – Nadine Road will be blocked during construction process to prevent construction vehicles from traveling onto Nadine Drive; (2) a permanent locked gate will be installed to allow only emergency access to Nadine Drive; and (3) Condition #4 to read: “Must adhere to the submitted plans except to the extent such plans are reasonably modified through the Planning Board subdivision review process, with the plans approved by the Planning Board being the final plans.”

**MOTION: VICE CHAIRMAN HEBERT, IN REFERENCE TO CASE NO. 18-05-Z, MOVED TO AMEND CONDITION NO. 3 AS PRESENTED (NADINE ROAD WILL BE BLOCKED DURING CONSTRUCTION PROCESS TO PREVENT CONSTRUCTION VEHICLES FROM TRAVELING ONTO NADINE DRIVE) AND THAT THE PERMANENT GATE NOT BE REQUIRED. SECONDED BY MEMBER CARLUCCI.**

**Discussion:** Chairman Kudrick said that he would not want the construction equipment using Nadine Drive because it could damage the existing roads in that area. All the construction equipment should use Whittemore Road.

Vice Chairman Hebert said that by not allowing construction vehicles to use Nadine Drive, it would minimize the applicant’s liability. If trucks are exiting through Whittemore and Donna Drive, the potentially damage to town roads would be greater. The applicant would have to bond the repairs that may be necessary due to the applicant’s construction project. It is better to have fewer roads affected.

**THE MOTION WAS UNANIMOUSLY APPROVED.**

**MOTION: VICE CHAIRMAN HEBERT, IN REFERENCE TO CASE NO. 18-05-Z, MOVED TO MODIFY SPECIAL EXCEPTION NO. 4 AS FOLLOWS: “MUST ADHERE TO THE SUBMITTED PLANS EXCEPT TO THE EXTENT SUCH PLANS ARE REASONABLY MODIFIED THROUGH THE PLANNING BOARD SUBDIVISION REVIEW PROCESS, WITH THE PLANS APPROVED BY THE PLANNING BOARD BEING THE FINAL PLANS.” SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

#### **IV Approval of previous meeting minutes- February 26, 2018**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE FEBRUARY 26, 2018 MEETING MINUTES AS AMENDED. SECONDED BY MEMBER PARADIS. UNANIMOUSLY APPROVED.**

#### **V New Business**

Mr. Hodge welcomed Dana Pendergast as the new Code Enforcement Officer.

Mr. Hodge also distributed the Saturday, April 28, 2018 training application. All those interested in attending should contact Mr. Pendergast.

Mr. Hodge said that Rules of Procedures 9.8, Motions for Rehearing, should be changed to read: If the Board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.”

**Old Business:**

Mr. Hodge reported that the cost to date for the Hillside Baptist Church case is \$170,000. There has been no decision.

**New Members:**

Robin Lounsbury and Rick Frederickson expressed an interest in becoming alternate members of the ZBA.

Chairman Kudrick thanked Mr. Hodge for his service to the ZBA.

**VI Adjournment**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO ADJOURN THE MEETING. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

The meeting was adjourned at 8:59 pm.

Jocelyn Carlucci, Recording Secretary