

**MINUTES**  
**PEMBROKE ZONING BOARD OF ADJUSTMENT**  
**April 23, 2018**                      **Approved 5-29-2018**

**MEMBERS PRESENT:** Bruce Kudrick, Chair; Tom Hebert, Vice Chair; Dana Carlucci

**ALTERNATES PRESENT:** Robert Bourque, Alternate/Planning Board Representative

**EXCUSED:** Paul Paradis

**STAFF PRESENT:** Dana Pendergast, Code Enforcement Officer; Susan Gifford, Recording Secretary

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

The clerk took the roll call.

Chairman Kudrick explained that there were 3 regular members and one alternate member present. However, Bob Bourque is an alternate member attending his first ZBA meeting. Therefore Mr. Bourque could not be designated to vote on this Motion for rehearing as he was not present for the previous public hearings on the matter. A quorum of members is present.

This is a public meeting, however it is not a public hearing and no public testimony may be taken.

Chairman Kudrick stated that in response to a previous, separate 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**. This was done at the February 26, 2018 Zoning Board of Adjustment meeting.

**February 26, 2018 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**

Chairman Kudrick stated that only Section 143-68 F will be considered tonight.

A letter dated March 28, 2018 from Charles Cleary, Esq., attorney for applicant Keystone Pembroke, LLC, objects to the Motion for rehearing.

**Motion for rehearing**

Request for rehearing of the February 26, 2018 decision of the Town Of Pembroke Zoning Board Of Adjustment to find that Keystone Pembroke LLC met the criteria under Zoning Ordinance Article IX Overlay Districts, Section 143-68 Aquifer Conservation District section F, Special Exceptions, related to Case 16-01-Z Special Exception to allow multi-family housing under Article IV use Regulations, 143-19 Table of Use Regulations #3. as requested by Amy Manzelli and Chad Turmelle.

Chairman Kudrick stated that Manzelli and Turmelle argue:

1. Information requested under the Right to Know law was not received timely; and
2. The Findings of Fact made by the Pembroke Zoning Board of Adjustment on February 26, 2018 are not supported by the evidence.

With regard to the Right to Know request, Everett Hodge, Code Enforcement Officer, confirmed that all of the information requested was provided to the Portland Maine office address provided by the requestor in a timely manner.

With regard to the Findings of Fact, certain evidence was submitted which was more than sufficient to support the ZBA decision:

Opinion of Health Officer, Town of Pembroke, dated January 23, 2018 regarding 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.

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.

Pembroke Water Works letter of February 26, 2018 confirms that capacity is available for the 75 proposed units, and, this project is deemed to have no impact to the quality or quantity of water supplied by the Pembroke Water Works.

Pembroke Sewer Commission email dated February 28, 2018, from Paulette Malo confirms that the treatment plan has approximately 40,000 gpd of additional capacity. All units will be connected to public water and sewer.

The Planning Board has confirmed that single family dwellings and two family dwellings are completely exempt 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.

The proposed 4-plex residential use is identical to the residential use of single and two family homes. As the proposed use is residential, it complies with all other applicable section of Zoning Ordinance Section 143-68.

The Board reviewed the Findings of Fact made on February 26, 2018 and the evidence presented.

Tom Hebert noted that the Board received evidence from the Health Officer, a wetlands scientist, Conservation Commission, Pembroke Water Department, Pembroke Sewer Commission and the Planning Board.

Dana Carlucci noted the information requested under Right to Know was provided in a timely manner.

After review and discussion Chairman Kudrick stated that he did not believe the Zoning Board of Adjustment made an incorrect decision, and no new evidence was presented that warrants a rehearing.

**MOTION:** After deliberating the Right-to-Know response and the findings of fact from the February 26, 2018 ZBA decision, Tom Hebert moved to deny the Request for rehearing as requested by Amy Manzelli and Chad Turmelle as no significant new evidence was presented that would warrant a rehearing. Dana Carlucci seconded.

**VOTE:** TOM – YES BRUCE – YES DANA- YES  
MOTION FOR REHEARING DENIED A 3-0 VOTE.

**Other – Consideration of electronic agenda packet**

Initial discussion occurred on benefits and drawbacks of using electronic agenda packet items versus hard copy paper packets. It was discussed that the town would save money on copying, paper, postage and staff time. Eventually, applicants could also file their applications electronically. The agents for applicant could bring their presentation on a thumb drive or computer and show it to the audience and board members on a monitor. Presenters could zoom in and out and use aerial photography. Plans may be difficult to view as electronic documents. Large paper plans are still needed for the Planner and Code Enforcement Officer to review. Zoning Board of Adjustment members considered this item at their April 23, 2018 meeting and may be willing to try electronic documents on a trial basis. Many towns have adopted electronic submittal and review of documents. This discussion will continue at the May 29, 2018 meeting.

**MINUTES OF PREVIOUS MEETINGS**

**MOTION:** Tom Hebert moved to approve the minutes of March 26, 2018 as amended. Dana Carlucci seconded.

**VOTE:** TOM – YES BRUCE – YES DANA- YES  
MINUTES OF MARCH 26, 2018 APPROVED AS AMENDED ON A 3-0 VOTE.

**NEXT MEETING**

**Date of next ZBA meeting** – Chairman Kudrick noted the next ZBA meeting would be on **TUESDAY, May 29, 2018 at 7:00 p.m. due to Memorial Day observed on May 28.**

**ADJOURN** **Motion:** Dana Carlucci moved to adjourn. Tom Hebert seconded. Vote was unanimous in favor of motion. Meeting adjourned at 7:41 p.m.

Respectfully submitted,  
Susan P. Gifford  
Recording Secretary