

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
April 26, 2021
(ADOPTED)**

MEMBERS PRESENT: Bruce Kudrick, Chairman; Thomas Hebert, Vice Chairman; Dana Carlucci, Natalie Glisson, and Paul Paradis

ALTERNATES PRESENT: Blakely Miner III and Wendy Chase

EXCUSED: Alternate Member Robert Bourque

STAFF PRESENT: Carolyn Cronin, Town Planner and Paul Bacon, Code Enforcement Officer

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

Attendance/roll call was taken by Alternate Member Chase.

PUBLIC HEARINGS:

CASE #21-08-Z A request has been made for a Variance under Article V Dimensional and Density Regulations, §143-21, H. Rear Setback. The applicant, Muriel Riel of 447 Sixth Range Rd., is requesting a variance to construct an in-ground pool 30' from the rear setback where 60' is required. The property is located at 447 Sixth Range Rd., Map 260, Lot 5-1 in the R3 Rural/Agricultural - Residential Zoning District and is owned by the applicant.

Applicant: Muriel Riel
447 Sixth Range Road
Pembroke, NH 03275

Property Owner(s): Muriel and Brian Riel
447 Sixth Range Road
Pembroke, NH 03275

Property Address: 447 Sixth Range Road
Pembroke, NH 03275
Tax Map 260, Lot 5-1 in the R3 Rural/Agricultural - Residential Zoning District

Member Packet Contents: Tax map, assessing card, list of abutters, hand-drawn site plan, two Roman pool scaled drawings.

Present: Muriel Riel, Applicant.

Alternate Member Chase read aloud the abutters list.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application 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.

He stated that anyone wishing to speak must first 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 its approval.

Ms. Riel said that she lives at 447 Sixth Range Road, Pembroke, NH and would like to install a 20' x 40' in-ground swimming pool on the back side of her property. At the present time, the zoning requires a setback of 60 ft. and she would like a variance for a 30-ft. setback.

The Board had no questions or comments.

No one spoke in favor or in opposition of the variance.

As requested by Chairman Kudrick, the Applicant read the application aloud:

She stated that there is no other parcel of land on the property that is available to install the pool. (1) The right side yard, behind the garage, has large gardens, and a vineyard; (2) The front yard holds a wooded area, septic system and water pipes which water flows from the basement; (3) The house stands approximately 230 ft. from the town road with a wooded area on both sides of the driveway. Behind the wooded area is a hill and the vineyard and garden; (4) On the left side of the house contains another small garden and a fire pit. She also said that the property line on the left side of the house is too close; (5) The back yard and up the hill was cleared for the purpose of locating the pool. They removed the stumps and reseeded the area years ago in anticipation of having a pool. She said that the rear of the property is wooded.

Ms. Riel read the remainder of the application as follows:

1. **The variance will not be contrary to the public interest.** (1) The house is on a dead end street; (2) This specific area is not visible from the road and is secluded; (3) It is backed by a wooded lot which has no access; (4) The variance will not alter or diminish any public interest or anyone's property.
2. **The spirit of the ordinance is observed.** Absolutely! The spirit of the ordinance will definitely be observed. When granted, a change in the ordinance from 60 ft. to 30 ft. from the property line, would not alter any surrounding properties. There will be a 6 ft. fence erected for safety and privacy.
3. **Substantial justice is done.** Substantial justice will be done if permission is given/granted for the variance from 60 ft. to 30 ft. from the property line for the swimming pool installation. There is no other available piece of land that we can use to justify installation. It will give us our privacy and it will have a fence around it for safety.
4. **The values of surrounding properties are not diminished.** When this variance is granted, the surrounding properties should not see any diminishing values to their properties. As previously stated, the pool will not be visible to the street and there are woods on the back side of the property for privacy. It will be professionally done and all codes will be followed.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.** I have adequately sought out advice from professionals in measuring the property for the best place to install an in-ground swimming pool. The area chosen is the only *reasonable* and best place for installation. The house sits approximately 230 ft. from the street. The land in-between has a hill which contains the septic system, paved driveway, and piping underground for the basement, which makes it an *unreasonable* area for installation. The right side of the house has a small garden and not enough footage for installation. The back side of the garage houses large gardens that feed five families. We also donate some of the produce to a food bank. It has been there for fifteen years. We have put a lot of effort, hard work and money into it and it is definitely an *unreasonable* area. Above the garden, toward the back of the property, sits an orchard. The only option at this time is the area behind the house which abuts a wooded area. Installation of this swimming pool will not diminish surrounding properties in any way. It will provide us a place for enjoyment, safety, and allow the best use for this cleared property.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it. Granting the approval of this variance will allow optimal use of our property for healthy and recreational activity. This is not an unreasonable request. We, as a family, really appreciate your pro-active consideration to make this proposal a reality. May this variance be granted! Thank you.

Chairman Kudrick asked if the septic system was in the front of the house.

Ms. Riel said that the house is located on the left of the driveway with the septic system located to the left of the house, toward the property line. The well is behind the house.

There were no questions from the Board and no one spoke in favor or in opposition to the case.

Ms. Riel said that she has planned to install a pool for a very long time. Her husband has Alzheimer’s disease and loves to swim which is the reason that she would like to do this.

Member Glisson summarized the case as follows: **Case 21-08-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, H. Rear Setback.** The Applicant proposes to install a pool and is requesting a 30-ft. variance. The Applicant read through the criteria. No one spoke for or against the proposal. The only question by the Board was from Chairman Kudrick who asked for the location of the septic system on the property. The Applicant clarified the location.

Ms. Riel had no other comments.

Chairman Kudrick stated that the Board would decide the case within 30 days. The Notice of Decision would be posted for public inspection within 5 business days of the decision and would be sent to the applicant. Chairman Kudrick said that once the hearing is closed, the applicant will no longer be allowed to speak, even if she does not agree with what the Board is saying. The Applicant said that she understood.

Chairman Kudrick officially closed the hearing at 7:14 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that, based on the discussion, the chosen location is the only place possible for a pool.

1. **The variance will not be contrary to the public interest.** The Board agreed.
2. **The spirit of the ordinance is observed.** The Board agreed.
3. **Substantial justice is done.** The Board agreed.
4. **Property values are not diminished.** The Board agreed. Chairman Kudrick noted that no evidence of diminishing property values was presented.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Chairman Kudrick said that hardship would result because of the way that the property is used i.e. gardens, orchard, etc. which provides no other location for the pool.

MOTION: Member Hebert moved to approve **Case 21-08-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, H. Rear Setback** as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) construction must comply with the submitted plans that indicate that the pool will be no closer than 30 ft. from the rear property line; and (3) the Applicant must mark the location of the property line and the corner of the pool in the direction of the woods to ensure that the 30 ft. setback is observed in preparation for inspection by the Code Enforcement Officer. Seconded by Alternate Member Miner.

VOTE:	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO APPROVE CASE 21-08-Z, A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, H. REAR SETBACK AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION MUST COMPLY WITH THE SUBMITTED PLANS THAT INDICATE THAT THE POOL WILL BE NO CLOSER THAN 30 FT. FROM THE REAR PROPERTY LINE; AND (3) THE APPLICANT MUST MARK THE LOCATION OF THE PROPERTY LINE AND THE CORNER OF THE POOL IN THE DIRECTION OF THE WOODS TO ENSURE THAT THE 30 FT. SETBACK IS OBSERVED IN PREPARATION FOR INSPECTION BY THE CODE ENFORCEMENT OFFICER PASSED ON A 5-0 VOTE.

Chairman Kudrick instructed the Applicant to stake-out the property as instructed and to contact the Building Inspector since there will be wiring involved.

CASE 21-09-Z A request has been made for a Variance under Article IXA Soucook River Development (SR) District, §143-72.6 Permitted Uses. The applicant, Steven Voydatch of 55 Jewett Rd., Dunbarton, NH 03046, is requesting a variance to allow sand and gravel excavation as a primary use. The property is located at 612-644 Pembroke St., Map 634, Lot 47 in the Soucook River Development (SR) District and is owned by MNP Realty, LLC.

Applicant: Preeti Munjal, Member of MNP Realty, LLC
6 Steeple Court
Andover, MA 01810

Property Owner(s): MNP Realty, LLC
6 Steeple Court
Andover, MA 01810

Property Address: 612-644 Pembroke Street
Pembroke, NH 03275
Tax Map 634, Lot 47 in the Soucook River Development (SR) District

Included in Member Packets: Tax/Assessing card, aerial map, list of abutters, Application for a Variance dated April 18, 2021, Application for a Variance dated April 5, 2021 and letter from Preeti N. Munjal, Member, MNP Realty LLC dated April 15, 2021 granting permission to Steven Voydatch of Dunbarton Landclearing to represent him.

Present: Steven Voydatch of 55 Jewett Road, Dunbarton, NH 03046, representing the Applicant and J. P. Rivard of Rivard Trailer Sales, potential buyer.

Alternate Member Chase read the case and the list of Pembroke and Concord abutters.

Chairman Kudrick opened the hearing at 7:23 p.m.

Chairman Kudrick stated that the Applicant submitted two Variance Applications. One is dated 4/5/2021 and the second is dated 4/18/2021. He said that the application dated 4/18/2021 could not be used because the Applicant used the words “special exception/variance”. He explained that there can only be a Special Exception Application or a Variance Application and each contains a specific set of criteria. There is no Special Exception/Variance criteria. He instructed the Board to concentrate on the Variance Application dated 4/5/2021.

Chairman Kudrick said that the maps, list of abutters, letters, and other information submitted in the packet can be used.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application 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.

He stated that anyone wishing to speak must first 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 its approval.

Alternate Member Chase read the following letters aloud: (1) Pembroke Water Works dated April 23, 2021; and (2) Diane Benoit of The Hodges Companies dated April 26, 2021.

Mr. Voydatch apologized for the confusion with the applications. He said that he is a logger presently logging on said property. He presented an aerial-view map to the Board.

Mr. Voydatch said that the Applicant was presented with this property which was purported to be worth millions. Mr. Voydatch said that because of depth and numerous restrictions, the property cannot be built upon. The restricted use caused by the power company, the gas company, and the State roads result in 1/3 of the property as useful.

Mr. Voydatch said that one gas line is 500 ft. from the main road and the depth of a foundation would have to be 150-ft. high before a building could be built and be even with the road.

He said that, because of the power lines and the property beyond the power lines, all of the sand, which is a 150-ft. base, could be removed and not interfere with the quality of the water. He said that gravel and sand does not add to the aquifer that is underneath because the power lines take up a tremendous amount of the property. He said that the Town would gain tax money from the sale to the sand and gravel. At the present time, the Applicant is not able to sell the property because it is not set up to do anything with. J. P. Rivard of Rivard Trailer Sales is interested in buying the property if the Applicant can change the use. The asking price is \$1,300,000.

Mr. Voydatch said that because of the depth of the property and the water coming onto the land from the State road, there is no other way to sell the property. The result is that the Applicant is left with a million dollar house lot.

Mr. Voydatch continued to say that Kline Way consists primarily of truck traffic and that additional trucks from a gravel operation would not hinder traffic. There is an old road under the power lines that is now over-grown. There is no one near the lot to interfere with.

Mr. Voydatch said that if the Board does not approve the variance, the property cannot be built upon. Because of the gas lines and power lines, only one-third of the site is buildable. He continued to say that on Route 3, there is a 60 ft. banking that goes to the power lines which is all gravel and sand which would be useful material for the State and the Town. In his opinion, the revenue that the Town would receive from the sale of sand and gravel would be more beneficial than a piece of property that could not be sold or developed for years.

He said that it was his understanding that the State has all kinds of regulations which can be met because the property is high above the aquifer.

The Applicant read aloud the application criteria:

Please give a detailed description of your proposal below: Requesting variance for the use of my property at 612-644 Pembroke Street, Pembroke, NH 03275 (Route 3).

1. **The variance will not be contrary to the public interest.** The public would benefit from the taxes by using the gravel as a resource for money to come in.
2. **The spirit of the ordinance is observed.** Removing sand and gravel is a business. The public would benefit by the sale for public needs.
3. **Substantial justice is done.** For a business to be added to the edge of a road would be a tremendous foundation to where a business could be seen from Route 3.
4. **The values of surrounding properties are not diminished.** Because of the depth of the elevation of the operation of a sand and gravel pit, it would not be seen from Route 3 or any other road. There are no abutters around.

The Applicant requests a variance for the use of the property at 612-144 Pembroke Road, Pembroke. It is presently being logged by Mr. Voydatch. The gas company dropped the secondary gas line right down the middle of the property. In order to be seen from Route 3, a developer would have to start a building at 150 ft. up.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.** There is no access to the property off Route 3 or Kline Way. If access was permitted off Route 3, retail business would have to be set back 300 ft. to avoid gas lines.

Mr. Voydatch said that, in his opinion, in order to avoid the gas lines, a business would have to be set back closer to 500 ft. Most of the gas line is probably 4 ft. deep and supplies the City of Concord, so to come off from Route 3 and go across the power lines would be expensive.

He said that Mr. Rivard has been in business for a long time and is interested in buying the property if the Town would consider this application. He would go through the expense of hiring engineers to satisfy Pembroke Water Works.

Chairman Kudrick gave a history of the property. He said that there were 3 cornfields on this land that was previously owned by the Chickering family. For many years, the Town of Hooksett hauled bio-solids to the fields. Referring to the map, Chairman Kudrick said that, at that time, Hooksett gained access to the property through an old gate at the location of the dash-lines near Dunkin Donuts.

Although the Application indicates a hardship because there is no access to this property through Kline Way, Chairman Kudrick pointed out that there is indeed access through Kline Way.

Member Carlucci said that he took part in establishing the TIF (Tax Increment Finance) District which created Kline Way. He said that much of the preliminary work was done in 2000. TF Moran, Coldstream New Hampshire, and the Pembroke Planning Department was involved in having charettes on how to increase commercial development. The Town put up money to build the road and in return, the development in the District paid off the bond. There was a lot of work that went into providing an area for commercial development at this location. Unfortunately this particular piece is still vacant but the Town has had a lot of success with Associated Grocers of New England and other businesses.

Member Carlucci was concerned that if the property was stripped of sand and gravel, fill would have to be brought in when it begins to be developed. He did not think that it would be fair to all the people who have invested time and money into the TIF District, to not use the property as commercial development.

Member Carlucci acknowledged that the Tenneco gas line was lowered for Kline Way. Kline Way was to be the access to all of the properties in the Soucook River Development District. He said that they just do not have a buyer right now for commercial development.

Mr. Carlucci said that Pembroke Water Works does a good job at providing clean water. There is a pump station not far from the site. He is concerned that if filtration material is removed, it could create a problem with the Town's water supply.

Chairman Kudrick said that, at one time, there was a potential buyer for this property. The build-out was to occur in the lower sections of the land and the material on site was going to be used to reshape the land for buildings and ball fields. He said that there is approximately 132 acres and is the last major commercial piece of land in Pembroke.

Mr. Voydatch said that, although someone may have the best idea in the world, there is still only a very small portion of land that is not under some sort of restriction such as a gas line or power line. He added that behind those restrictive items there is just as much property in gravel and sand as there is in the front. He said that he was sure that the Applicant would not take every ounce of gravel out without it benefiting the front of the property. There is gravel behind the power lines that can benefit a good gravel operation. It would be advantageous to develop the front of the property as well, but the only way to do it successfully would be to remove the gravel and add it to the front of the site.

Chairman Kudrick said that the Town asked for additional information on the areas that the Applicant was planning to gravel out.

Mr. Voydatch said that the Applicant provided a list that was prepared a number of years ago of the different sections of land and the quality of the material in each section. He pointed to a 150 ft. face, on the map, where the power company cut a swath of land in order to drive down over it. The land

behind the power lines contains nothing but sand and gravel. The only place that the gas company felt was deep enough to allow Mr. Voydatch and a skidder to cross was “dead center and next to Kline Road.” The remainder of the land could not be crossed for fear that if the land was disturbed, it “could shut off the City of Concord.”

Mr. Voydatch pointed out the one access point from Kline Way that has a 30 ft. drop that would require a “tremendous amount of gravel” to turn onto the property. He indicated where the land is wet and swampy. He said that when Chairman Kudrick visited the area, it was taken care of and different. Now the area is all grown in with bushes and water has backed up into places that would have, at one time, been thought of as a good area for development.

Mr. Voydatch said that a friend guessed that there was approximately 10 million yards of material North of the power lines.

He said that he will not be removing any gravel from the Southern section of the power lines.

He also reiterated that the tax income that the Town would receive from the removal of 10 million yards of gravel would be very large.

Mr. Voydatch said that if the Board said that they would consider this project, he would be willing to go to the State to see if the project was feasible. He said that Mr. Rivard does not want to spend \$1,300,000 on this property if the Board is not in favor.

Member Carlucci said that the reason that there are 4 lanes coming into the Route 3/106 intersection, is because, when the project was initiated, the State of NH envisioned a through-road to link Route 89 and Route 3. Although no one knows if it will ever come to fruition, it was on the books and the 4 lanes became a requirement.

No one spoke in favor or in opposition of the case.

Mr. Voydatch did not have anything else to add.

With regard to the tax income on sand and gravel, Chairman Kudrick said that Pembroke has 2 gravel pits (Dick Kruger’s pit and Frank Merrill’s pit) which, according to the Town Tax Collector yields between \$1 and \$3,000 per year in sand/gravel tax. All the material from Kruger’s pit, does not remain in town.

Chairman Kudrick said that the aquifer is very important to Pembroke.

Although the Applicant states that there is no access to the property, the creation of Kline Way provides access to the property. Chairman Kudrick added that a gravel road could be built further into the site from Kline Way.

Chairman Kudrick said that he grew up near a gravel pit which began in 1946 and is now just a quarry. A gravel pit can leave the land very scarred which is something that the Board must consider. He asked Mr. Voydatch if he had a plan for reclaiming the land.

Mr. Voydatch said that he would like to do some test pits but does not dare to do anything until the Board tells him what the Board needs.

He reiterated that there is only a small piece of the lot that can be developed but would require millions of dollars to do so.

Chairman Kudrick said that the Board should continue this case and require the hydrogeological study to be done before the next hearing. He clarified that the study would have to be performed by Emery and Garrett, as instructed by the Pembroke Water Works.

Mr. Voydatch said that Mr. Rivard is considering storage sheds because they can go anywhere and would donate the rest of the portion of the land to the Town. Mr. Rivard is interested in the gravel.

Chairman Kudrick pointed out that even if approval is given by the Zoning Board, the Applicant would have to go before the Planning Board.

There were no further questions from the Board or audience members.

Member Glisson summarized the case: Case 21-09-Z A variance under Article IXA Soucook River Development (SR) District, §143-72.6 Permitted Uses was requested. The Applicant, Preeti Munjal, gave Steven Voydatch permission to speak on his behalf. Mr. Voydatch read through the criteria and explained the proposed use of the property as a sand and gravel excavation pit. Two letters were read into the minutes: one from Pembroke Water Works and one from The Hodges Companies. Mr. Voydatch explained the limitations to the property and land criteria. Chairman Kudrick and Member Carlucci discussed the history of the property, past use, and the Town's desire for commercial development on the property. Mr. Voydatch described how the gravel removal could benefit the Town and the property owner. Member Carlucci discussed how the State had a plan to link Route 3/106 to Route 89. No one spoke for or against the case. Chairman Kudrick discussed actual tax amounts that the Town receives from surrounding sand and gravel pits. Chairman Kudrick also emphasized that the aquifer is very important to the Town and how the Pembroke Water Works letter should be discussed in further detail. He also discussed how the owner does have access to the lot from Kline Way and how sand and gravel pits leave the land changed and asked Mr. Voydatch about land reclamation plans. Mr. Voydatch again referred to the land's limitations.

Chairman Kudrick clarified to Mr. Voydatch that the Pembroke Water Works requested a hydrogeological survey before the Board could make a decision and that it would need to continue the case until the results were submitted if the Applicant decided to go forward with the variance. Mr. Voydatch said that he would be willing to have the survey done.

Mr. Voydatch and the Board had no further comments.

Chairman Kudrick stated that the Board would decide the case within 30 days. The Notice of Decision would be posted for public inspection within 5 business days of the decision and would be sent to the Applicant. Chairman Kudrick said that once the hearing is closed, the Applicant will no longer be allowed to speak, even if he does not agree with what the Board is discussing. Mr. Voydatch said that he understood.

Chairman Kudrick officially closed the hearing at 8:11 p.m.

He said that the Board would approve, deny, or continue deliberations to a later date.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick reiterated that this is a large parcel of land that was set up by the Town and the Master Plan as commercial property. He said that he was on the property many times between 1990 and 2010 when he worked on the fields with George Richard's farm.

He pointed out that the site was set up by the Town as a part of the TIF District. He felt that it was possible to build on the site, but, in his opinion, if the gravel is removed, it could cause problems for a potential developer.

The affects to the aquifer are very concerning. Taking out the material would affect the aquifer. The nearby well previously mentioned, supplies the Town of Pembroke with water. A gravel operation could affect the ground water.

Chairman Kudrick stressed the importance of coming in with a detailed plan to show the Board what is going to be done such as how much material is going to be taken, how much will remain, and how the site will be contoured. No such information was provided to the Board. Chairman Kudrick said that mishandling the land can result in it becoming useless.

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

Chairman Kudrick said that, in his opinion, it is contrary to the public interest because it can affect the Town's water supply. He said that he would have liked to have seen a lot more information and a clear plan.

Vice Chairman Hebert said that there could also be a loss in value to the Town. There would be less gain from a sand and gravel operation compared to a commercial development. It definitely goes against public interest because the Town put money into the Kline Way infrastructure to make it more marketable and more useful. The Town clearly spoke when it voted to create Kline Way and make it a TIF commercial district. It was the Town's desire to have the land developed as commercial property.

2. The spirit of the ordinance is observed.

Chairman Kudrick said that he did not believe that the spirit of the ordinance was observed because it could harm the Town's water supply. Not enough information was presented to the board on the project. When an applicant comes before any board, it is important to give as much information as possible. He said that, as a Board member, he expects clear details from an applicant so that the Board can make an intelligent decision. The Board's decisions are based on the facts presented by the applicant.

Member Glisson said that The Hodges Companies listed many relevant questions.

Member Carlucci said that Zoning Ordinance §143-72.3F states "to permanently protect Pembroke's important natural resources such as the Soucook River corridor, adjacent floodplains, wetlands, aquifers, and other important uplands."

3. Substantial justice is done.

Chairman Kudrick said that the project goes against the Master Plan and what the Town wanted for commercial growth at the location.

4. Property values are not diminished.

Chairman Kudrick said that they cannot prove that surrounding properties will be diminished because no one has shown any evidence of such.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Chairman Kudrick said that the Applicant stated that there was hardship because there was no access from Route 3 or Kline Way. Chairman Kudrick said that although there is no access from Route 3, there is access through Kline Way which is why Kline Way was built. There is a hammerhead at that location. He does not believe that there is a hardship.

Member Miner said that there is no excessive hardship because there is road access.

Member Glisson said that she recalled, from the last zoning conference she attended, that when considering hardship it was important to focus solely on the specific site and to consider what would make it hard to develop. She said that she felt that Mr. Voydatch gave good information about the difficulty of the property because of the power lines and the gas line. With that being said, she would like to see more information stressing why the site cannot be developed as commercial property and what specific points make it too difficult to do so.

Chairman Kudrick said that the last applicant for this property was going to work with the power company and use the power lines as fields. They had a very specific plan.

Chairman Kudrick said that the Hodges Companies had some very good points, such as “Is this use appropriate for the neighborhood and anticipated development?” In Chairman Kudrick’s opinion, it is not an appropriate use without a development plan.

Member Hebert said that there has to be an ultimate buildout in mind before this case can go any further. The only plan, so far, has been to take the sand and gravel off the property. There are regulations from the State as far as reclaiming the property but it is not up to the Zoning Board to look for the answers. It is up to the Applicant to provide the Board with information on how the land will be left, even if the final outcome does not occur for 40 years. There must be forethought of the final build-out of the property.

Member Miner said that his impression was that the Applicant wanted the Board to tell them what he needed to do in order to satisfy the Board.

Member Hebert said that those type of questions should not be addressed to the Zoning Board because it is a judicial board. It is not up to the Board to discuss a reclamation plan. That is for the Planning Board to consider. Perhaps the Applicant should have approached the Planning Board side of this process first in order to receive guidance as to what would be needed.

Member Hebert said that it is not uncommon for a developer to approach the planning side of things on a conceptual basis first.

He said that a variance was presented to the Board for consideration. A variance is required because a sand and gravel excavation as a primary use is not allowed in the district.

Member Carlucci asked Planner Cronin what type of plans the Planning Board would require.

She said that they would ask for a site plan, an engineered plan showing existing topography, proposed topography, and a reclamation plan. They would also have to meet all the standards of the Town’s excavation regulations and State permits would be conditional upon Planning Board approval such as an Alteration of Terrain permit (AOT), and a wetlands permit. She said that they would likely need a Joint Use Agreement with Public Service of New Hampshire, a traffic study, and they would need communications with the gas company.

Member Hebert asked the Board if they would feel comfortable with just requiring an engineered plan or would they want to see everything that Carolyn mentioned in order to be able to adequately make a final decision. He said that he would not want to have the Applicant to go through the effort only to find that once he returns to the Zoning Board, the Board would then ask for a traffic study, etc.

Chairman Kudrick said that all the documents mentioned by Planner Cronin would be for the Planning Board. He would like to see a site plan with elevations clearly marked, location of the proposed roads and excavation areas.

MOTION: Motion to continue CASE 21-09-Z A request for a Variance under Article IXA Soucook River Development (SR) District, §143-72.6 Permitted Uses, to May 24, 2021 with the following conditions: (1) perform a hydrogeological study as required by Pembroke Water Works; (2) have an engineered site plan prepared depicting all current elevations and contours, final elevations and contours once mining is complete, and any future roadways. All conditions must be submitted no later than August 23, 2021. Seconded by Member Carlucci.

Chairman Kudrick said that if the Applicant does not have the conditions met by the May 24, 2021 meeting, the Applicant can submit a letter to the Zoning Board asking for a continuance to the June meeting and so on. All conditions must be met no later than the Zoning Board meeting of August 23, 2021.

Chairman Kudrick asked Planner Cronin to write a letter to the Applicant explaining how he will have to meet the deadlines and clarifying how to handle the continuances.

VOTE:	B. Kudrick – N	T. Hebert – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO CONTINUE CASE 21-09-Z A REQUEST FOR A VARIANCE UNDER ARTICLE IXA SOUCOOK RIVER DEVELOPMENT (SR) DISTRICT, §143-72.6 PERMITTED USES, TO MAY 24, 2021 WITH THE FOLLOWING CONDITIONS: (1) PERFORM A HYDROGEOLOGICAL STUDY AS REQUIRED BY PEMBROKE WATER WORKS; (2) HAVE AN ENGINEERED SITE PLAN PREPARED DEPICTING ALL CURRENT ELEVATIONS AND CONTOURS, FINAL ELEVATIONS AND CONTOURS ONCE MINING IS COMPLETE, AND ANY FUTURE ROADWAYS. ALL CONDITIONS MUST BE MET NO LATER THAN AUGUST 23, 2021. THE MOTION PASSED ON A 4-1 VOTE.

Case 21-10-Z A request has been made for a **Variance under Article IX Overlay Districts, §143-68, D. (8) Aquifer Conservation (AC) District Prohibited Uses**. The applicant, Steven Voydatch of 55 Jewett Rd., Dunbarton, NH 03046, is requesting a variance to allow sand and gravel excavation in the Aquifer Conservation (AC) District. The property is located at 612-644 Pembroke St., Map 634, Lot 7 in the Soucook River Development (SR) District and is owned by MNP Realty, LLC.

Chairman Kudrick stated that Case #21-10-Z will be continued until a decision is made on Case #21-09-Z.

Mr. Voydatch said that an engineer has been hired.

APPROVAL OF MINUTES – March 22, 2021

MOTION: VICE CHAIRMAN HEBERT MOVED TO ACCEPT THE MARCH 22, 2021 MINUTES AS AMENDED. SECONDED BY MEMBER MINER. UNANIMOUSLY APPROVED.

OTHER BUSINESS/CORRESPONDENCE

Chairman Kudrick said that Jocelyn Carlucci was hired as the Recording Secretary for the Zoning Board. She will take the minutes from home.

ADJOURNMENT

MOTION: CHAIRMAN KUDRICK MOVED TO ADJOURN THE MEETING. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

The meeting was adjourned at 8:47 p.m.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary