

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

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

ALTERNATES PRESENT: Robert Bourque, Blakely Miner III, Wendy Chase

EXCUSED: Bruce Kudrick, Chairman,

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

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

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Roll call was taken by Alternate Member Chase.

PUBLIC HEARINGS:

Acting Chairman Hebert said that the first case was a continuation.

Alternate Member Chase read the first case into the record.

Case 21-16-Z A request has been made for a **Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3**. The applicant, Keystone Pembroke LLC, 17 Bridge St., #203, Billerica MA 01821 is requesting a Special Exception to construct 65 dwelling units: 3 single family houses, 2 two unit buildings, 1 four unit building, and 9 six unit buildings. A Special Exception is required under §143-19, residential use #3. The property is located at 42 Whittemore Rd., Map 634, Lot 23 in the LO Limited Office District and is owned by the applicant.

Applicant: Keystone Pembroke, LLC
17 Bridge Street #203
Billerica, MA 01821

Property Owner(s): Pembroke Golf, LLC

Property Address: Whittemore Road
Pembroke, NH 03275
Tax Map 634 Lot 23 in the in the LO Limited Office District

Included in Member Packets: Email to Carolyn Cronin from Laura Spector-Morgan dated July 5, 2021; Email to Robert Maccormack, Charles F. Cleary, pat@panciocolaw.com dated July 9, 2021; Email to Charles F. Cleary; pat@panciocolaw.com from Carolyn Cronin dated

July 15, 2021; Conceptual Septic Overview Plan for The Greens at Pembroke Pines Phase II; Email to Robert Maccormack, Jeffrey Merritt; Tim Peloquin, Charles Cleary from Carolyn Cronin dated July 20, 2021; Letter to Zoning Board of Adjustment from Pembroke Sewer Commission dated July 20, 2021,

Present: Attorney Charles Cleary, Robert Maccormack, and Jeffrey Merritt of Granite Engineering

Acting Chairman Hebert appointed Alternate Member Miner to vote in place of Chairman Kudrick.

Acting Chairman Hebert 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's decision is based on the facts presented by the applicant. If any of the presented facts are found to be different from what was presented, the Board reserves the right to reconsider its approval.

Acting Chairman Hebert asked the applicant to continue with its presentation.

Attorney Cleary presented for the applicant. He said that this was a continuation of their proposal which is broader than the development itself. It is to ensure the long-term viability of the Pembroke Pines Golf Course. At the last meeting, there were concerns and questions about sewer availability. Since then, at the request of the Board and with Ms. Cronin's help, the Town received opinions from its counsel with respect to approving conditions to approval and that the applicant could proceed with an alternative septic plan while waiting for the Town's sewer issue to be resolved.

Attorney Cleary said that he spoke to the Sewer Commission and the Board should have received a copy of the July 20, 2021 letter. He said that the Commission and Paulette Malo is using September 1, 2022 as a target date for when the Applicant will have to tie into sewer if available. He said that the September 1, 2022 date matches his office's conversation with the EPA office in Boston. They have begun writing the permit for the Suncook Wastewater facility and the estimate is within a year. With the Sewer Commission's letter available, Attorney Cleary said that he would proceed on that basis with the Special Exception.

He said that this proposal was very similar to the one complete across Whittemore Drive which also required a Special Exception. The number of units and configuration are slightly different.

This proposal is within the golf course itself and is tucked where the existing driving range is located.

Attorney Cleary addressed the Special Exception criteria:

Please give a detailed description of your proposal below: Three (3) single family houses, two (2) 2-unit buildings, one (1) 4-Unit building and none (9) 6-unit buildings on a lot within a golf course setting on a private road off Whittemore Road, containing a total of sixty (65) dwelling units. This proposal is considered Phase 2 of The Greens of Pembroke Pines and will be substantially similar to Phase 1.

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** Additional housing units are essential and desirable to the public convenience and general welfare of the Town of Pembroke. Persons who work in or near Pembroke need a reasonable place to live and employers need housing for their employees in order to maintain their business. New housing brings to Pembroke people with talents, ideas, and resources for Pembroke's future. Town government and volunteer boards in Pembroke are often in need of new staff or members to serve the public. The State of New Hampshire has specifically asked communities to assist in providing housing given the extreme demand for it in southern New Hampshire. The average rental unit in the greater Concord area is approximately 75 years old; these luxury rental units will be very desirable to the public convenience. Furthermore, the Applicant is donating to the Town of Pembroke 15 acres of land in conservation to be annexed to the existing White Sands Conservation Area. This donation, along with land previously donated by Keystone Pembroke, LLC, will allow the extension of the proposed railtrail running up to Concord, a very important amenity to the residents of New Hampshire.

Attorney Cleary said that there is a serious shortfall of housing in New Hampshire, as raised by the state and federal government. The proposed housing is new, modern, and code-compliant.

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.** The proposed use of residential development containing 65 units will fit within the character of the district and residential use is not detrimental to the health, morals or general welfare of a community, rather it is its lifeblood. This area is primarily a golf course but has always had residential dwelling units within it and bordering it on the east. Additionally, the development is being designed to protect the environment to a great extent. The first phase of the Greens at Pembroke Pines, a 75-unit residential development, is now complete and has not impaired the integrity or character of the district. This proposal will be substantially similar to the first phase of the Greens at Pembroke Pines and will offer quality housing units in a beautifully landscaped setting.

Attorney Cleary said that this proposal is to utilize part of the golf course for residential units. There will be no damage to the character of the overall area. It will stay an 18-hole golf course and a general residential area.

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.** The specific site selected for this development is ideal for housing units. It offers a golf course setting while not interfering with the 18-hole golf course. The housing will be surrounded by green space and the only uses existing in the immediate area are golf course and residential dwellings. Residential uses and the game of golf are very compatible and exist in harmony in many communities. An additional benefit to this site is that it will result in the razing of an old golf clubhouse that is well past its time, and which allows all golf course parking to be relocated to an area which is out of sight of the existing neighborhood and Whittemore Road. The result of this project will be a small-landscaped neighborhood tucked within fairways and greens of the existing golf course.

Attorney Cleary said that residential housing always goes hand-in-hand with golf courses. There is a great deal of open space and the landscaping flows from the golf course to the residential community. The added benefit is that this will allow the old clubhouse to go away. This project helps fund the completion of the new clubhouse which Mr. Maccormack feels is essential to upgrade the golf course and keep it viable through the tough competition from surrounding golf courses, some of which are municipally-funded. There is also a parking lot adjacent to the existing clubhouse that will be moved out of site of the existing neighborhood of Whittemore Road.

4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** The Applicant has no factual evidence that the property values in the LO Zoning District will be adversely affected by the residential development proposal. The construction and completion of the nearby Phase 1 of the Greens at Pembroke Pines did not result in any decreased property values; in fact property values increased from the date the project was designed through the date of its completion. New quality construction of compatible structures, with well-designed landscaping, tends to increase surrounding property values.

Attorney Cleary said that there is no evidence that general property values will decrease.

5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** There will be no undue traffic, nuisance or unreasonable hazard from this residential development proposal. This project will have the supervision and input of the Pembroke Planning Board to make sure that traffic-related concerns are addressed and the Applicant has retained an experienced traffic consultant to ensure that all traffic scenarios are addressed. In the Phase 1 development on the south side of Whittemore, no nuisance or unreasonably hazard was expected or resulted from the residential development and the same will occur under this proposal.

Attorney Cleary said that the Applicant has hired Steve Pernaw, Traffic Consultant. He has done initial trip generations for this project and has found that an incremental increase which is of no

concern. He read aloud from Mr. Pernaw's email: "I expect the incremental impacts to be minimal in terms of traffic operations at US 3/Whittemore." Attorney Cleary said that he believes that there will not be any undue traffic problem, hazard, or nuisance. He said that it is a well-built, well-established condominium-formed neighborhood community that will work quite nicely in the proposed area.

6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** The Applicant intends properly constructed internal private roads to serve these dwelling units, such roads to be maintained and snowplowed by the Applicant. All trash collection will be private to the community. As the Phase 1 development, on site drainage and landscaping will be fully designed and properly installed. There will be both a garage and a driveway for each unit.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** The Applicant has not received and is not aware of any objections from abutting property owners.

Attorney Cleary said that this is a continued hearing and there were no objections at the first meeting. There were no objections until 5 pm this evening. He said that it is odd that the objection arrived just before the hearing. He said that the Applicant has a history with this person who is not an abutter. They do not think that she understands the overall plan and what else would need to be done. In their opinion, there are no valid objections to this hearing.

8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** The proposed development will be connected to public water and sewer. The applicant is aware that there may be some delay in obtaining full sewer capacity for these units and is prepared to wait for such capacity. The Applicant maintained a good working relationship with Pembroke Water Works and the Pembroke Sewer Commission on the Phase 1 development and is prepared to do so again.

Attorney Cleary said that they are fully intending to connect to the public sewer system when it is available which they hope will be within a year. The Applicant continues to stay in contact with the Sewer Commission. In order to follow the guidelines laid out by Town Counsel and approval by the waiver from the Sewer Commission, the Applicant showed a septic field that will work for the project. Their plan is to make that happen if needed but it is not expected to be needed. It was merely to keep the project moving forward. There are a few issues concerning the location of the field which they will be happy to address if the Board has any questions. It is their intention to connect to the public sewer system.

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.** As this residential development contains multi-family dwellings, it will be served by public water and sewer service.

Attorney Cleary said that with the Special Exception comes the findings of facts that they are in the Aquifer Protection Zone. There are certain requirements that the Board needs to agree are met. Section 68 of the ordinance is about oils and hazardous waste and things that should not happen in the aquifer. Both residential housing and septic systems that are state-approved and properly designed are both permitted by that ordinance. He said that the Zoning Board received letters from the Health Officer, Ms. Cronin for the Planning Board, and the Pembroke Water Works. He said that the Conservation Commission took the proposal up at their meeting but to date, Attorney Cleary has not received any objections or comments. He said that no one has a problem with the residential use on the aquifer protection zone.

Member Carlucci asked if there were any restrictions from previous Town boards or committees on the piece of property that the buildings are being proposed?

Attorney Cleary said that there was. The golf course was encumbered by a discretionary easement that did not allow building on the golf course. They met with the Board of Selectmen three months' ago and laid out the plan and told them how they needed to do something for the longevity of the golf course and the Board of Selectmen agreed on this particular parcel presently before the Zoning Board. They will lift the discretionary easement if the Boards' approve it for residential housing. He said that that is the only restriction that they are aware of.

Member Carlucci asked Ms. Cronin if there were copies of that conversation that the Zoning Board could review.

Ms. Cronin said that she would get the minutes for that meeting.

Alternate Member Bourque asked how many lots the Applicant plans to have.

Attorney Cleary said that there will be only one lot with 62 housing units on it and one lot containing 3 residential houses. He said that this Phase II project will be very similar to Phase I.

Alternate Member Bourque asked why they are not proposing a conventional subdivision.

Attorney Cleary said that the condominium statute allows it and it worked before and provided for a flexible design.

Mr. Maccormack said that the reason they chose the design and brought it to the Board was because they have a golf course that is doing very well but its long-term viability is not ensured. He said that there are a lot of changes occurring in the golf industry. Beaver Meadows and the Derryfield Golf Courses which are owned and subsidized by the communities, make it difficult for Pembroke Pines to compete.

Mr. Maccormack said that the reason they are not doing a conventional subdivision is because they would have to close down. He said that if this plan does not happen, the Front 9 will close, they will go to a conventional subdivision, and will build approximately 82 single family homes

which they have already designed a conceptual plan. He said that he is asking for the Board's consideration on this because this will ensure the long term of the golf course. By moving the clubhouse to the new location, they will have to invest approximately \$2 million. By expending that amount of money, Mr. Maccormack said that it shows their long-term plan for the golf course. They are hoping to be able to fund some of the cost for the clubhouse because the golf course cannot afford \$2 million. They will subsidize it by selling the land from the golf course to his development company. He said that the reason he chose this path was because it allowed them to get the funding needed to move the clubhouse, it ensured the long-term viability of the golf course, which is a benefit to him, the Town, and the area, and it will not be disruptive to any of the ongoing running of the golf course as it stands. They will not close any holes. Construction will affect the area of the old swimming pool, the driving range and the large portion of land at the center of the property that is not currently being used and the existing clubhouse will be razed and will become part of the project.

Alternate Member Bourque said that the project looks like an open space development.

Mr. Maccormack said that if they had their choice, they would have gone for an open space development. The Town is not offering an open space development, therefore, they are going for the variances in order to achieve a similar outcome.

Alternate Member Bourque asked if Mr. Pernaw's opinion was that the traffic would be minimal even though they are doubling the amount of housing.

Attorney Cleary said that Mr. Pernaw told him that "I expect the incremental impacts be minimal in terms of traffic operations."

Alternate Member Bourque asked if Phase I was completed.

Mr. Maccormack said that Phase I is completely open and full.

Alternate Member Bourque asked when Nadine Drive would be opened.

Mr. Maccormack said that it will open when the Town accepts it. It has been paved. He said that the bounds were installed last week. The Town Engineer has to come back for inspection and they hope to bring it to the Board of Selectmen in August or September.

Member Carlucci asked Ms. Cronin if the Technical Review Committee (TRC) had input on this project.

Ms. Cronin said no. The applicant had not filed with the Planning Board yet. She said that it would only go to TRC if a Planning Board application was submitted. There have been no department comments other than from the aquifer comments.

She said that the Zoning Board can request comments from the various departments.

Acting Chairman Hebert asked the Applicant to speak on what they anticipate their process to be as far as the clubhouse. Will the clubhouse be removed first or would they begin construction at the far end of the property and work toward the clubhouse.

Mr. Maccormack said that the first thing they have to figure out is how to fund the new clubhouse and that is why they are before the Zoning Board. If they get approval, they will start the process with the clubhouse because once they get through the Zoning Board, he said that he was very confident that they would get approval from the Planning Board. They would start constructing the clubhouse next door. They have already made a pledge that they would allow, as a condition of approval, that the new clubhouse had to be up and functioning before getting occupancy permits for the new residential units in order to ensure that that is really their intention of what they are trying to do.

He continued to say that first they would build the clubhouse next door. They would complete the infrastructure for the parking lot, detention ponds, and the other things that go along with that construction. Upon approval, they would begin to put in the infrastructure (the road, sewer, water, gas, and all the utilities) and they would leave the clubhouse up during that process. He expects move into the new clubhouse by June 1, 2022. He said that, at that point, they would not have any units going up for occupancy. He would estimate that, if they received approval for this project in September, the first unit would be moving in September/October 2022. As soon as they move in, they would raze the old clubhouse because in that area there are 2 buildings that are being built. The road will go through the existing parking lot for the new subdivision.

There were no comments or questions from the Board.

Acting Chairman Hebert asked if there was anyone wishing to speak in opposition to the application.

Amy Manzelli introduced herself as an attorney of BCM Environmental & Land Law with offices in Concord, Keene, and Portland Maine. She said she was attending the meeting on behalf of herself and her husband, Chad Turmelle. She said that she submitted a letter tonight and apologized for her late submission.

She lives on 418 Ross Road, which is in the Donna Drive residential subdivision. Ms. Manzelli said that she had concerns with the Special Exception and Variance applications.

With regard to the Special Exception application, Ms. Manzelli said that it lacked site-specific information. The application was not supported by the studies that would typically accompany this type of application. She said that under New Hampshire law, the applicant has the burden of proving all the special exception criteria which, in her opinion, the applicant has not met.

She said that Steve Pernaw is a wonderful traffic engineer who has told her, in the past, that there is always an engineering solution to a project. She said that she requested a copy of the application with all the supporting material and has not received a copy of a traffic study.

Ms. Manzelli said that the applicant's position is that it is hard to anticipate what properties would have their values adversely impacted. She felt that it was pretty easy to determine what properties would be impacted. It is all the properties whose owner would be stuck for an extra long time at Whittemore Road, Bow Lane, and Donna Drive trying to get onto Route 3 because of the extra traffic in the area caused by the extra residential units. She said that that is what happened as a result of Phase I and she suspects will be the same with Phase II. "Extra houses means extra traffic."

She questioned whether there was truly a need for housing in the area. She said that she has not seen, in the application package, a site-specific analysis that would give the Board evidence that justifies the need for housing and, therefore, this project.

Ms. Manzelli experienced a certain amount of nuisance from volume and vibration from the Phase I construction. She anticipates that she will experience the same with Phase II.

She said that she appealed some of the decisions and was victorious in some of them but not ultimately overturning the decisions. One of the things that she was victorious in was that the Court declared that she and her husband have standing to raise concerns even though they are not abutters.

With regard to water and sewer, Ms. Manzelli asked that the Acting Chairman: (1) Summarize what Town Counsel has outlined of what would be acceptable in terms of conditions of approval and alternate plans; (2) Give a brief recitation of the waiver that was provided by the Sewer Commission; and (3) Clarify a revised plan set that was submitted that shows a contingency plan septic field.

Ms. Manzelli asked on clarification on whether a residential development on public sewer could have more houses in comparison to being on a septic system. She asked how the contingency plan of a septic system relates to a special exception request and the variance request.

She thanked the Board for their concern and asked that they deny the special exception.

Acting Chairman Hebert asked Ms. Manzelli to read aloud her letter to the Pembroke Zoning Board of Adjustment dated July 26, 2021 into the record. She did so, up to the point where it addressed the variance.

At the request of Acting Chairman Hebert, the Recording Secretary read into the record the letter to the Zoning Board of Adjustment dated July 20, 2021 from the Sewer Commission.

Acting Chairman Hebert addressed what transpired between Town Counsel and the Board on conditional approval, by saying that the Board had discussions with Laura Spector-Morgan and reviewed the Town's current policy to approve, deny, or continue an application as it is presented. The first thing needed for approval is for the applicant to satisfy all 9 conditions. If they cannot satisfy the 9 conditions, it would be denied. If the Board were to continue a meeting, it would be for additional information that was not provided at the time of the original application. He said that the Board does not grant conditional approval. The Board is very literal and the Board said such in the meeting. Simply: If the applicant meets the conditions, they will receive their approval. If they do not meet the conditions, they will not receive approval.

He continued to say that, historically, that has been the Board's practice and which has served them very well. It provides the applicant with a yes or no answer and the Board does not delay or prolong anything and prevent an appeal to a denial. The attorney said the Board was within their rights to do such and have acted properly in the past.

With regard to rebuttal by the applicant, Attorney Cleary submitted the traffic information from Steve Pernaw. He said that they have a history with Ms. Manzelli. He said that although there are a lot of technical objections to the applications there is not much that can be pointed out that is different from what is permitted by right. It is difficult to show evidence of why more than 3 units combined changes things from a 3-unit building. The real issue is that the residential use is not a standard residential use. He said that the idea that it is "extra housing" sounds a little like "we were here first and everyone else is not allowed to come in." That is not the applicant's interpretation of what the State of New Hampshire or Pembroke needs. He said that one does not have to look very far to find that New Hampshire needs additional housing. Attorney Cleary said that Phase I Green's project rented out in a matter of days. There is a huge demand for housing, as pointed out on the news and in publications.

With regard to nuisances or hazards, every project has to go through construction and, therefore, noise. He said that if Ms. Manzelli had her way, nothing would ever be built. This is not a valid objection and a special exception asks for "valid objections."

Attorney Cleary said that he would look into the issue of standing. He said that with Phase I, Ms. Manzelli lived closer to the project but now she is further away from this project. He said that they did not know, until tonight, that she objected to the project.

He also said that he did not understand her comment that solving the Sewer Commission sewer issue was impossible. He said that, based on his conversations, it is just a matter of time. It is not impossible.

Attorney Cleary said that if Ms. Manzelli understood the overall goal and paid more attention to the merits of the application vs. technical defects, the applicant could make progress for the benefit of everybody.

Mr. Maccormack said that he did not think that the person that is against this project is speaking for the Town. He said that looking at the audience, there is only one person complaining that lives 6/10th of a mile away from the proposed project. He also pointed out that he, personally, has not heard one complaint from a neighbor or abutter. He has only heard compliments about how the project has helped the area and the Town of Pembroke. They presently have a waiting list for Phase II of 55 people which speaks to the housing need.

He said that, in his opinion, the submission of the letter by the complainant at 5:40 pm was not a mistake, it was a strategy. He said that she is stalling and has done this many time before to their projects that have come before the Zoning Board and the Planning Board. In the past, she has used the fact that she is an attorney to intimidate the Boards. He noted that she said that she was coming before the Board as a private citizen and also acting for her husband yet she clearly states that she is from a particular law firm with offices in New Hampshire and Maine. She also gives the Board a 5-page letter on her law firm letterhead. There is a reason for her doing so. He asked that the Board not take what she has to say into consideration. He said that these are the same things that she has done over and over again.

Mr. Maccormack said that the last time they were in court, she won 1 item of three court cases and that item was on a technicality on whether the Board of Appeals acted appropriately. He said that they had to go back and it was unanimously approved at that time. The last words that the Superior Court Judge said to Ms. Manzelli at the last court case was “Attorney Manzelli, enough.” Mr. Maccormack said that that statement speaks for itself.

There was no rebuttal by anyone.

Alternate Member Bourque said that the lateness of Ms. Manzelli’s letter was noted and yet, the Board only received the traffic information 10 minutes ago. He said that the Board should have received the traffic information a long time ago.

There were no further questions from the Board.

Acting Chairman Hebert asked for clarification on the following: When Phase II has been completed and the clubhouse has been relocated, how does the applicant envision the traffic pattern from the golf operation. He said that he had a concern with crossing Whittemore Road, or going down Woodlawn Ridge Road because they are town roads and there will be golfers. He asked if the golfers would cross at the top of Woodlawn Ridge to get to the Back 9. He also asked Mr. Maccormack to speak to how it is now and how it will be in the future because he is concerns about the number of trips going across a town road.

Mr. Maccormack said that before they installed the new 18th hole, the traffic used to go across Woodlawn Road. It used to come from the old 18th hole, which is no longer being used, go across Woodlawn Road and through the site of the old swimming pool path. Now, with the new 18th hole, the path crosses down near the maintenance building which is on the dirt road going down towards the pit area. It does not cross any public road to go to the new 18th hole.

Now, every golfer starts at the old clubhouse, goes to the first hole adjacent to the clubhouse and plays the front 9. They do not have to impact any public roads. At the end of the 9th hole, they cross Whittemore Road (there is a cart path that goes directly across) and over to the 10th hole on the back side. They play the 9 holes and return through the same path to the clubhouse. The only place that the golfers cross the road is at Whittemore Road.

In the future, golfers will do the same thing except in reverse order. The clubhouse would move to the other side which would become the front 9. They would play that side and then cross Whittemore Road, play the back 9, and then would cross Whittemore Road again to get back to the clubhouse. The way it exists now and the way that it will exist in the future is the same except in reverse order.

Alternate Member Chase asked that, with regard to the trip generation summary, if the applicant had a report that would look at all of the Route 3 traffic and compare it to Phase I and Phase II.

Attorney Cleary said that he does not have that yet, but they could ask for it.

Alternate Member Chase said that it would help her understand the context of this data.

Alternate Member Bourque asked if he could predict the traffic pattern when school is in session since that will be the majority of the time.

Mr. Maccormack said that that report has already been completed by Steve Pernaw. They have done 3 traffic studies to this point. The 4th traffic study that Mr. Pernaw is now working on was done on the last week of school. He did it while the golf course was open and while school was open so that it would give a fundamental view of what is happening on Whittemore Road.

Mr. Maccormack said that they were told that NH DOT does not want anything being done to Route 3. Steve Pernaw believes that the extra traffic may warrant adding a right-hand turn lane on Whittemore Road so that a person could take a right-hand turn while a person waits to turn left onto Route 3.

He said that a prevailing concern of residents in the area, is the need for a sidewalk on Whittemore Road. The vehicles move quickly even though the police have made an effort to slow down the speed of the vehicles by using their radar. Mr. Maccormack said that they are looking at a plan with the right hand turn and a sidewalk from Route 3 connecting to the sidewalk of Phase 1 which will allow people to be off the road.

Acting Chairman Hebert asked if Mr. Pernaw had given any consideration to the potential impact on Bow Lane or Donna Drive once the Town has officially accepted the road and it is open. He said that Mr. Maccormack's project could get more traffic impact from Donna Drive/Bow Lane and Donna Drive/Bow Lane could get more impact from Mr. Maccormack's project.

He asked that Mr. Pernaw include a projection on anticipated trips generated because that seems to be a concern from residents in that area. Bow Lane is the only signaled intersection. Someone going north may think that it would be best to go to the light rather than waiting at Whittemore Road.

Alternate Member Bourque asked if Mr. Pernaw could give the Board a presentation.

Mr. Maccormack said that they are trying to bring this project through but since they do not know the likelihood of getting the variance, they are also trying to control their costs, but if the Board wants Mr. Pernaw to attend a meeting, they will make him available.

Acting Chairman Hebert asked the Board what they would like to see in order to make their best decision on what would be in the best interest of the Town.

Member Carlucci said that he would like to hear from some of the Town departments such as the Department of Public Works on the impact of the roads and the Police Department addressing the traffic reports. He said that he does not need a total Technical Review Committee meeting but it would be good to get more information from even members of the Planning Board to go over the density

Acting Chairman Hebert said that density is in the Zoning Board's wheelhouse. He said that the Board dictates the character of the neighborhood, whether it is in unison with the rest of the neighborhood. He said that the Zoning Board does not want to cross paths with the Planning Board. The Planning Board does not want to hear the case prior to when it is presented to them.

Member Carlucci said that he was not knowledgeable about slopes, wetlands, and buildable space. He wondered if something informal would be appropriate.

Ms. Cronin's recommendation was to NOT include the Planning Board in any of these applications. She said that they will look at their own responsibilities such as the site design and site layout, whereas the Zoning Board looks at uses and impacts.

Acting Chairman Hebert reviewed the items requested by the Board: (1) an expanded traffic study with more details as to trip generations when school is in session, (2) the impact on the Donna Drive neighborhood and the Whittemore Road developments once Nadine Drive is opened, and (3) Input from the Fire Department, Department of Public Works, Police Department, Tri-Town Ambulance.

He said that he would also like a response, in writing, from the Conservation Commission saying whether they do or do not have a problem with the project.

Acting Chairman Hebert said that they have a response from the Health Officer, Pembroke Water Works, and the Planning Department.

Alternate Member Miner asked what portion of Mr. Maccormack’s property was being given to conservation?

Mr. Maccormack said that their wetland scientist, on Phase I, documented what he felt was the highest impact area.

Mr. Merritt said that the 2-page plan lists “promised land”. The first sheet shows large scale of the area. 15.5 acres is hatched and abuts White Sands.

Mr. Maccormack said that the promised land abuts the Merrimack and Soucook Rivers and is flat, dry land. It is the water side of the pit area.

There were no further comments from the Board, applicant, or the audience.

Acting Chairman Hebert suggested continuing the meeting until such time as the Board receives the requested information.

Ms. Cronin reiterated that she will get comments from the Department of Public Works, Police Department, Fire Department, Tri-Town Ambulance, and the Conservation Commission. The Board also would like a traffic presentation by Mr. Pernaw and additional traffic data to reflect (1) an assumption that Nadine Road will be open as a thruway and (2) reflecting school year traffic numbers (trips generated while school is in session).

MOTION: Acting Chairman Hebert moved to continue **Case 21-16-Z for a Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3** to the August 23, 2021 meeting. Seconded by Alternate Member Bourque.

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

MOTION TO CONTINUE Case 21-16-Z FOR A SPECIAL EXCEPTION UNDER ARTICLE IV USE REGULATIONS, § 143-19 TABLE OF USE REGULATIONS #3 TO THE AUGUST 23, 2021 MEETING PASSED ON A 5-0 VOTE.

Acting Chairman Hebert said that if the applicant is unable to gather the data by August 23, 2021, to please submit a letter to continue the meeting to the Board’s September meeting. Since the case is continued, the abutters will not be notified and the meeting will not be published in the paper. He suggested that all interested parties refer to the Town’s website.

Acting Chairman Hebert recessed the meeting at 8:20 pm

Acting Chairman Hebert continued the meeting at 8:26 pm

Case 21-15-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21**. The applicant, Keystone Pembroke LLC, 17 Bridge St., #203, Billerica MA 01821, is requesting a variance to construct 65 dwelling units: 3 single family houses, 2 two unit buildings, 1 four unit building, and 9 six unit buildings. The property is located at 42 Whittemore Rd., Map 634, Lot 23 in the LO Limited Office District and is owned by the applicant.

Applicant: Keystone Pembroke LLC
17 Bridge Street, #203
Billerica, MA 01821

Property Owner(s): Pembroke Golf, LLC

Property Address: Whittemore Road
Pembroke, NH 03275
Tax Map 634 Lot 23 in the 23 in the LO Limited Office District.

Included in Member Packets: Authorization dated June 3, 2021; Tax Map, Assessing Card, List of Abutters; Variance Overview Exhibit dated June 3, 2021 by Promised Land Survey, LLC.

Present: Attorney Charles Cleary, Robert Maccormack, and Jeffrey Merritt of Granite Engineering

Alternate Member Chase read the case.

Acting Chairman Hebert asked Alternate Member Miner to vote in place of Chairman Kudrick.

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.

Attorney Cleary, speaking for the Applicant, said that the proposal is for residential development on the golf course and for the benefit of the golf course. The variance is for an increase in the density. There is a minimum lot area in the ordinance. They believe that this is the right number of units to make the plan work. They will be putting a number of housing units on a 15.5-acre parcel of land which is surrounded by 75 acres on Lot 23 and 160 acres of the entire golf course. He said that there is actually open space built within their proposal which makes it a little unusual and justifies the extra housing units.

He said that the proposal allows the golf course to continue to ensure the long-term standing and viability of the golf course. “All the rest of the acreage will not be built if this particular proposal goes forward.” Mr. Cleary said.

Attorney Cleary read the application aloud:

Please give a detailed description of your proposal below. Three (3) single family houses, two (2) 2-Unit buildings, one (1) 4-unit building and nine (9) 6-unit buildings on a lot within a golf course setting on a private road off Whittemore Road, containing a total of sixty-five (65) dwelling units. This proposal is considered Phase II of The Greens of Pembroke Pines and will be substantially similar to Phase I.

1. **The variance will not be contrary to the public interest.** The variance will not be contrary to the public interest which is to permit a reasonable density of housing units and avoid overcrowding of neighborhoods. The proposed development is planned on a 15.5 acre parcel of land on which 50 units is permitted by right. However, the land is surrounded by open green fairways and the construction of 15 additional units will have no adverse impact to the neighborhood, which is unique given it is surrounded by a golf course. The continuation of the open space golf course in and of itself reduces the overall housing density in the Town of Pembroke. As a result of folding the housing units into some available acreage on the golf course, the development will have an open and natural attribute to it, not an overly dense situation. And a supply of quality housing units is important to the Town of Pembroke, especially new rental units when the available supply is made up largely of 75 year old units. This proposal allows the character of the area to remain golf course and residential use and does not negatively impact public safety or welfare. Furthermore, as part of this development proposal, the Applicant is donating 15 acres into the White Sands Conservation Area for the benefit of all Pembroke residents, including making a railtrail connection possible. Considering the layout, design and conservation aspects of the proposal as a whole, as well as the extreme housing shortage in southern New Hampshire, granting the variance to allow 15 additional units is not against the public interest.

Attorney Cleary said that they believe that the project meets the character of the area. The golf course has existed since 1961. There are residential dwellings all around the golf course and work well. The Town will also get the donation of the conservation land which expands the White Sands’ area.

2. **The spirit of the ordinance is observed.** The Applicant’s proposal is consistent with the spirit of the Pembroke Zoning Ordinance governing minimum lot area where it seeks to balance a reasonable number of housing units with maintenance of adequate light and air and prevention of over-crowding of land. The location of the project, surrounded by pond, fairways and greens, supports a small increase in housing units on 15.5 acres of land. Unlike other land, no additional housing units, or structures of any type, are expected to be constructed on the adjoining golf course. Additionally, the proposal contains two separate commitments from the Applicant which further the spirit and overall purposes of the Zoning Ordinance. First, the principle of the proposal is the long-term success of the Pembroke

Pines golf course which is open to the public for a variety of outdoor activities. Second, the Applicant commits to donating 15 acres of land along the Soucook River to the Town of Pembroke, to further expand the Town's White Sands Conservation Area and a planned railtrail. Therefore, granting this specific limited variance observes the spirit of the Pembroke Zoning Ordinance.

Attorney Cleary said that the Pembroke Zoning Ordinance wants to limit density on certain tracts of land. He said that by designing the project as they have and placing it in a wide-open green area, it will have the feel of not being as dense as a conventional development proposal. They feel that they meet the spirit of the ordinance. He said that if they wanted to build as many units as they could, the golf course would disappear. They are trying to make 2 uses work by having the golf course stay for a long time and this project supporting it.

3. **Substantial justice is done.** Substantial justice will be done by granting this variance as both the Applicant and Town of Pembroke mutually benefit from this development proposal. The Applicant's principal, Bob Maccormack, seeks to continue the viability of the golf course given the substantial investment he has made into it as well as to share his passion for golf with the public. However, the golf course also permits Pembroke residents with a place to walk, cross country ski, and snowshoe for recreation. The donation of conservation land is an important element of the proposal, which land is an important ecological area for the Town. This development proposal is also consistent with the existing uses of the area, which have been both a golf course and residential housing for many decades. This proposal provides much needed (and newer, code compliant) housing capacity to the Town of Pembroke (and the State of New Hampshire), which will bring new talents, ideas and contributors to the community. This is accomplished by a variance from the minimum lot area provision of the Pembroke Zoning Ordinance to allow 15 additional dwelling units.
4. **The values of surrounding properties are not diminished.** The values of surrounding properties are not diminished by this proposal. As was found in the first phase of the Greens at Pembroke Pines housing development, now completed on the southerly side of Whittemore Drive, new quality housing construction in a well-planned project will increase rather than decrease surrounding property values. However, this particular development is completely enveloped by the Pembroke Pines golf course and has no direct third-party abutters. This development is planned for 15.5 acres of land on an existing golf course containing more than 160 acres. The golf course will continue to be an amenity to the Town of Pembroke residents and to the people in the new development. The applicant intends to obtain Site Plan approval from the Pembroke Planning Board and make this development as successful as the first phase. Given its design, intended quality of construction and isolated location, there will be no diminution of surrounding property values.

Although evidence has been requested as to whether values of the surrounding properties would diminish, there will be an isolated pocket of housing surrounded by 165 acres. He said that it is common sense that no values of surrounding properties could possibly be reduced. He said that

it does not track logic that a multi-million dollar development that is landscaped beautifully and well-planned, could reduce property values.

Attorney Cleary said that they will go before the Planning Board if they get approval from the Zoning Board, and they will add any desires or goals that they have for the project and it should be as successful as the first phase.

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.** Denial of this variance application would result in unnecessary hardship to the Applicant as an underlying goal of the proposal is to fund improvements to the Pembroke Pines Golf Course, including construction of a new clubhouse, for its long term viability. Golf courses are difficult investments when operated on their own given limitations such as weather, competition, large scale maintenance and most recently, virus pandemic. However, a golf course, unique from other property in its large and open land acreage, can be efficiently combined with housing uses to its long-term benefit. Keeping the large and open land area of a golf course benefits the Town of Pembroke as well, aesthetically, environmentally, recreationally and economically. The hardship of operating and maintaining golf course property is alleviated by the specifics of the Applicant’s development plan, namely building sufficient units to permit re-investment in the golf course, including a modern clubhouse open to the public, for its long-term future.

Attorney Cleary said that they understand that it is important to have density requirements but to make this project and the entire plan work, from the clubhouse through to the long-term viability of the golf course, and this development, they need a certain number of units. The plans have been completed, they fit and it works. The end result is housing on essentially 160 acres.

From 8 pm to 5 am daily, the golf course is empty and from November to March the golf course is empty. Therefore, it is the perfect open space situation that will not be found anywhere else in Pembroke. Attorney Cleary said that it is unusual and site specific and they think that that clearly justifies some additional density.

Attorney Cleary said that the proposed use is permitted by special exception and they feel it is a reasonable use. Residential use is a reasonable use.

(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.

Alternate Member Chase asked Attorney Cleary how many units the project would have if they were not applying for a special exception for the 15.5 acres.

Attorney Cleary said that in order to make it fit on the golf course and not impact the golf course, they designated 15.5 acres.

Mr. Maccormack said that under right, per the density requirements, they would have 50 units. They are asking for an additional 15 units, including the 3 single-family homes.

Alternate Member Bourque asked if those lots were being subdivided.

Mr. Maccormack said that the 3 house lots are going to be part of the condo but they are going to have their own lots, so if, in the future, they wanted to sell them, they could do so.

Ms. Manzelli spoke in opposition. She read aloud the remainder of her July 26, 2021 letter beginning on page 2 and pertaining to the variance.

She also said that if she was on the Board, she would be tempted to approve the variance application because of the message with which it is packaged. The applicant needs a yes on the variance and special exception applications in order to provide funding for the clubhouse and it needs the clubhouse to provide the long-term viability of the overall golf course. She asked the Board to keep in mind that what that leaves out is that denying the variance based on the legal analysis that she provided and the Board's own analysis of the application packet does not mean that there will be no housing. It means no housing consistent with dimensional and density requirements. It could be 50 if it is on Town sewer and a little less if it is on a private septic system. It could be 50 if they applied for an additional variance and then went onto a private septic system and received the variance. She said that the important thing is that denying the variance does not mean denying housing.

Ms. Manzelli said that Attorney Cleary mentioned that the New Hampshire courts have decided that residential uses in the context of the unnecessary hardship prong of the variance analysis automatically equals reasonable. Her position is that a more accurate statement of the law would be that a residential use can be reasonable but it depends on the facts and circumstances of the case. The Applicant has to prove that it is reasonable, and they have not proven that. If it were definitely reasonable, the Applicant would not have to apply for a variance. In this case, the use is not residential or non-residential. The use is residential at a density greater than what is permitted by right.

There were no questions from the Board.

With regard to the rebuttal, Attorney Cleary said that if you do not appreciate the proposal, as a whole, or take the golf course into account, or what they are trying to do, then it might seem very technical. To the Applicant, the proposal before the Board makes sense for the Town and the Applicant and there are a lot of benefits. He said that Ms. Manzelli said that it might be great for Pembroke but that that is not enough if it does not meet the technical requirements. He said that

that has always been the difference between her view and theirs. They are looking at a bigger picture. The property is very special and different from any other property in Pembroke. It is an 18-hole golf course that has been around for a long time and he said that this is just 15.5 acres of it that they are trying to utilize to make things last. He said that they think that there is a gain to the general public and that the variance is supported by their arguments and they ask that the Board consider granting it.

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

Member Carlucci said that there are a number of questions that need to be answered and, therefore, would like to continue this hearing to the August meeting.

Alternate Member Miner said that he would want the Conservation Commission to clarify that they understand that additional land from Phase II will be added to the land previously donated from Phase I. He would also like their comments on the present application.

Attorney Cleary said that the first granting of conservation land from Phase I has been deeded and recorded. That transaction is final. The Phase II conservation land donation is a separate donation.

Alternate Member Bourque pointed out that, on Sheets 2 and 3, there are roads and driveways in the buffer areas of the wetlands. He said that there is not suppose to be anything in the buffer areas. The 50 ft. buffer area was increased 2 years ago from 20 ft. There are 2 places where roadways are in the buffer area on Sheet 2 and there are 2 places where roadways and driveways are in the buffer areas on Sheet 3.

Ms. Cronin said that that is a no-disturb buffer which was changed 2 years go.

Mr. Merritt said that they will take a look at it.

Member Glisson said that the variance could not be approved as is. They would have to make changes first.

Member Paradis pointed out that if anything is changed on the plan, it would be important to advise the Zoning Board.

Acting Chairman Hebert said that yes, if there is anything significant that has changed, the Applicant would have to return to the Board.

He also said that, to Member Glisson's point, asking for the plan to be denser, is different from the special exception criteria. He said that he feels that there is some overlap with regard to morals and general welfare to the Town – such as creating a traffic situation which is a very pertinent piece to this puzzle, not only from the special exception side but also from the variance side. It is very important to understand how traffic will be entering and exiting and how it will be impacting abutters since the Board has not heard anything from abutters. He said that,

personally, he does not feel comfortable making a decision that may impact the Town as a whole without having that information.

Member Glisson agreed. She said that the traffic information that the Board is looking for would be different than the special exception. What would the traffic amount be for 50 units in comparison to what it would be for 65 units. What is the impact of those additional 15 units.

Attorney Cleary said he understood what Member Glisson is requested.

Alternate Member Chase asked if there were any other housing developments in Pembroke that were approved with variances for this type of density adjustment.

Ms. Cronin said that she would research it.

Acting Chairman Hebert said that the Applicant's Phase I development would have fallen under an open space regulation by nature of the concept. The density would have been increased.

Alternate Member Chase said she would like to be aware of only those projects that received a variance.

Acting Chairman Hebert said that they cannot use that information as a basis for making a decision because they have to take every case on its own merits. The Board does not set precedents because every case is individual and has its own uniqueness. He said that it would have to be within this ordinance of when it was adopted because ordinances change.

MOTION: Member Carlucci moved to continue **Case 21-15-Z A request for a Variance under Article V Dimensional and Density Regulations, §143-21** until the August 23, 2021 meeting. Seconded by Member Paradis.

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

MOTION TO CONTINUE CASE 21-15-Z A REQUEST FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21 UNTIL THE AUGUST 23, 2021 MEETING PASSED ON A 5-0 VOTE.

IV. Approval of Minutes – June 28, 2021

MOTION: MEMBER CARLUCCI MOVED TO APPROVE THE MINUTES OF JUNE 28, 2021 AS PRESENTED. SECONDED BY ALTERNATE MEMBER MINER. UNANIMOUSLY APPROVED.

V. Other Business / Correspondence

Acting Chairman Hebert read into the minutes, a letter from Bruce Kudrick of 217 Dearborn Road, Pembroke, NH dated July 22, 2021 (see attached).

Acting Chairman Hebert asked the Board to think about the context of the letter and make notes of their thoughts for the next meeting. He said that the process with the Technical Review Committee (TRC) is difficult because a meeting with TRC does not occur until an application has been presented to the Planning Board. Without making it a formal TRC meeting, he suggested that one option would be to request that when the Planner or Building Inspector sees a project like this, they would tell the Applicant that they need to talk to Town Departments such as Police Department, Fire Department, etc. because, more than likely, they will be asked to provide information from them.

He said that anyone going through the process should know that these things will eventually be requested of them. They may not want to spend the money, but more money will be spent having their team come back for repeated meetings. If the Board had input from all Town Departments the applicant may only require 2 meetings instead of 6 meetings.

Ms. Cronin asked if the Board would like her to look how other towns handle a similar process. She would also check with Town Counsel and make sure that there are no problems associated with doing this.

Alternate Member Miner asked that a copy of Bruce Kudrick's letter be emailed to all Board members.

Acting Chairman Hebert said that he would look for the language from OEP that clarified how past bad decisions do not set a precedents and how to avoid going down the same path.

VI. Adjournment

MOTION: Alternate Member Bourque moved to adjourn. Seconded by Member Carlucci. Unanimously approved.

Meeting adjourned at 9:15 p.m.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary