

PEMBROKE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
September 27, 2021
(DRAFT)

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

ALTERNATES PRESENT: Blakely Miner III, Wendy Chase

EXCUSED: Robert Bourque

STAFF PRESENT: Paul Bacon, Code Enforcement Officer

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

Roll call was taken by the Recording Secretary.

PUBLIC HEARINGS:

Case 21-18-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, H Rear Setback and G Side Setback**. The applicant, Paul Malo of 203 Dearborn Rd., is requesting a variance to leave his already constructed shed which is 9' from the rear setback where 15' is required, and 6' from the side setback where 15' is required. The property is located at 203 Dearborn Rd., Map 266 Lot 91, in the R-1A district, and is owned by the applicant.

Applicant: Paul Malo
203 Dearborn Road
Pembroke, NH 03275

Property Owner(s): Paul and Linda Malo

Property Address: 203 Dearborn Road
Pembroke, NH 03275
Tax Map VE, Lot 266-091 in the R-1A

Included in the Member Packets: Tax map; assessing card

Present: Paul and Linda Malo

Chairman Kudrick said that the abutters list was previously reviewed.

The Recording Secretary read the case aloud.

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.

As requested by Chairman Kudrick, the Applicant read the application aloud and stated that he constructed the shed to have a place to do woodworking. He is retired and is presently working in his basement. It creates dust which is not good for the furnace and electrical panel box. He said that he needs the space to work comfortably and store his tools.

Please give a detailed description of your proposal below.

14' x 28' with shed roof on 8-10" sona-tubes with concrete with back wall 7' in height and front wall 10' in height.

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

This will not be contrary to any public interest. It is not in the way of any accesses. It is located behind the house. Does not interfere with anyone's way of life. It is only for my retirement dream hobby. Two of the abutters helped with the construction and contributed windows at no cost.

2. The spirit of the ordinance is observed.

Many of the abutters have garages and houses that are right on the property lines or two feet from the line. I feel that I will just fit in with the others.

3. Substantial justice is done.

No one will be harmed by my shed but by not granting the variance, I will be limited in the activities that would keep me active and healthy. You have the support of two abutters. No work is to be done on Sundays and late evenings. Respect for others is paramount.

4. The values of surrounding properties are not diminished.

My property value will increase which in turn will raise the value of theirs.

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.

One hardship is that this lot is smaller than the others. I enjoy woodworking but not in my basement. I don't get access to all my tools. This shed will give me that, with pleasure and efficiency at 73. This shed is for my hobby which will keep me hopefully healthy and fit for many more years.

(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.

I've been trying to do this in my small and inadequate basement for the past 8 years. The lack of space is just frustrating and a chore to use my equipment. Working on the floor is not the same as on a bench.

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

Member Carlucci read aloud Note 5, Page 44, §143-21:

5) Within the R1, B1, and B2 Districts only, a dwelling or accessory building need not be set back a distance greater than the average set-backs of dwellings or accessory buildings on the lots adjacent to either side.
[Amended 3-10-2009 Town Meeting by Amendment No. 2]

Chairman Kudrick said that Mr. Malo should have come to the Town prior to building the structure.

Mr. Malo said that he woke up one morning and decided to finally build the shed without giving it much thought.

Chairman Kudrick said that his concern was with the shed roof because it pitches toward the neighbor which will allow roof water to flow onto the neighbor's property. He said that placing water onto someone else's property is not allowed.

Mr. Malo said that he has bark mulch between the shed and the property line and that the mulch has not washed onto the neighbor's land during the rainstorms. He said that if there was excess water, the mulch would have washed below the fence onto the neighbor's land. Chairman Kudrick agreed.

Member Carlucci asked the Code Enforcement Officer if there was a process where an abutter could give written permission to allow water to run onto their property.

Chairman Kudrick said that he did not think that it would be allowed because a neighbor could change within a few months. It is very important that the water not go onto a neighbor's property.

Member Carlucci asked if the applicant pulled a permit or had any inspections done by the Town.

Mr. Malo said no.

Chairman Kudrick asked if he did all the wiring himself.

Mr. Malo said yes, that he had done quite a bit of it in his lifetime – he even wired an entire house.

Vice Chairman Hebert asked what type of fence was on the side of the property with the 7' dimension?

Mr. Malo said that it was a chain-linked fence.

Vice Chairman Hebert asked if there was anything on the back side or the other side.

Mr. Malo said that his neighbor has all of his obsolete equipment stored there i.e. old lawn motors, roofing shingles, etc.

No one from the public spoke in favor or in opposition of the applicant.

The Board had no further questions. The Applicant had no other comments.

Member Glisson summarized the case as follows:

Case 21-18-Z is a request for a **Variance under Article V Dimensional and Density Regulations, §143-21, H Rear Setback and G Side Setback**: Mr. Malo read through the criteria, and explained that he uses the shed for hobby work – woodworking and that it is a safer place to work than his basement. No one spoke in favor or against the variance. Mr. Carlucci referenced the setback criteria on Page 44, Note 5 of §143-21.

Chairman Kudrick stated concerns on how the roof is pitched and how the roof water should not go onto the neighbor's land. Mr. Malo said that the bark mulch at the property line has not moved.

Member Carlucci asked the Code Enforcement Officer if the abutter could give permission for water to flow on their land and Chairman Kudrick said no, that an abutter could not give permission for water to flow onto their property.

Mr. Malo said that no permits or inspections from the Town were made.

Vice Chairman Hebert asked how the property was physically divided. Mr. Malo said by a chain-linked fence.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the applicant or the audience.

Chairman Kudrick officially closed the hearing at 7:10 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that he drove by the property and it is a very tight lot. He said that the shed was a nice building and that the applicant intends on removing one of the sheds at the rear of the property.

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

Chairman Kudrick said that he did not think that it would be.

Mr. Carlucci said that he did not think he had enough information without the Code Enforcement Officer looking at the structure with regard to its construction and dimensions.

Chairman Kudrick said that the shed will have to be inspected and should be part of the Motion. It will have to meet all town and state requirements and if he does not meet these requirements, the Applicant will have to make all repairs to make it legal.

Member Carlucci said that he would not want to make a premature judgment without the Town's Code Enforcement Officer looking at it.

Mr. Bacon said that he took a cursory look at the shed and it looked well done. He said that Mr. Malo is a carpenter and knows what he is doing. He said that the lot is very small and the dimensions of the building is 14' x 28'. Mr. Bacon said that, without thoroughly going over it, it looks good to him.

Member Glisson asked if the removal of one of the sheds on the lot was going to be a condition of the Motion.

Chairman Kudrick said yes.

2. The spirit of the ordinance is observed.

Chairman Kudrick said that he has to refer to Note 5 in the ordinance. It is a tight lot.

3. Substantial justice is done.

Chairman Kudrick said that if the shed is well built and everything is up to code, Mr. Malo will be making the property safer rather than having excessive sawdust in the basement which could cause a fire.

4. Property values are not diminished.

Chairman Kudrick said that they have no facts that indicate that property values will be diminished.

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.

Chairman Kudrick said that the hardship is that Mr. Malo owns a very small lot.

Vice Chairman Hebert said that the whole area around him is very tight. All surrounding house lots are very small.

(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.

Vice Chairman Hebert said that this is in reference to **Case 21-18-Z** – an application for a variance having been presented to the Board for consideration. A variance is required because the proposed construction is located closer to the property line than what is allowed by code.

MOTION: Vice Chairman Hebert moved to approve the application (**Case 21-18-Z - A request for a Variance under Article V Dimensional and Density Regulations, §143-21, H Rear Setback and G Side Setback**), as presented with the following conditions: (1) The

applicant must follow all state and local regulations; (2) The applicant must submit a completed building permit along with fee associated with construction. The permit application should include a scaled site plan identifying all structures, driveways presently on the property, and distances to lot lines, as well as a floor plan and elevations; (3) The applicant must ensure that any roof runoff does not discharge onto the neighbor's property. (4) The applicant must coordinate with the Code Enforcement Officer for a site inspection. The purpose of that inspection is to verify that any water discharge related to the new shed has been adequately diverted or retained onto the applicant's property, that the distances to the property line are as presented on his plan indicating a 6' distance on the side setback and a 9' distance on the rear setback and that the shed, that he mentioned would be removed, has indeed been removed. Seconded by Member Carlucci.

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

MOTION TO APPROVE THE APPLICATION (CASE 21-18-Z - A REQUEST FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, H REAR SETBACK AND G SIDE SETBACK), AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) THE APPLICANT MUST SUBMIT A COMPLETED BUILDING PERMIT ALONG WITH FEE ASSOCIATED WITH CONSTRUCTION. THE PERMIT APPLICATION SHOULD INCLUDE A SCALED SITE PLAN IDENTIFYING ALL STRUCTURES, DRIVEWAYS PRESENTLY ON THE PROPERTY, AND DISTANCES TO LOT LINES, AS WELL AS A FLOOR PLAN AND ELEVATIONS; (3) THE APPLICANT MUST ENSURE THAT ANY ROOF RUNOFF DOES NOT DISCHARGE ONTO THE NEIGHBOR'S PROPERTY. (4) THE APPLICANT MUST COORDINATE WITH THE CODE ENFORCEMENT OFFICER FOR A SITE INSPECTION. THE PURPOSE OF THAT INSPECTION IS TO VERIFY THAT ANY WATER DISCHARGE RELATED TO THE NEW SHED HAS BEEN ADEQUATELY DIVERTED OR RETAINED ONTO THE APPLICANT'S PROPERTY, THAT THE DISTANCES TO THE PROPERTY LINE ARE AS PRESENTED ON HIS PLAN INDICATING A 6' DISTANCE ON THE SIDE SETBACK AND A 9' DISTANCE ON THE REAR SETBACK AND THAT THE SHED, THAT HE MENTIONED WOULD BE REMOVED, HAS INDEED BEEN REMOVED PASSED ON A 5-0 VOTE.

Case 21-19-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, G Side Setback**. The applicant, Kimberly Stewart, of 503 Ashley Dr., is requesting a variance to leave her already placed shed, which is 5' from the side setback where 15' is required. The property is located at 503 Ashley Dr., Map 563, Lot 40-10, in the R-1C district, and is owned by the applicant.

Applicant: Kimberly and Jeffrey Stewart
503 Ashley Drive
Pembroke, NH 03275

Property Owner(s): Kimberly and Jeffrey Stewart

Property Address: 503 Ashley Drive
Pembroke, NH 03275
Tax Map 563, Lot 40 in the R-1C District

Included in the Member Packets: Nothing

Present: Kimberly Stewart

Chairman Kudrick called the meeting to order at 7:17 p.m.

The Recording Secretary read the case aloud.

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.

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

Ms. Stewart said that she purchased a shed in May 2019 and it was constructed on site in September 2019.

She said that it was her understanding that the shed had to be 15' from the road not from the side of the abutting neighbor.

Please give a detailed description of your proposal below.

We have a shed on our property that we are requesting to leave in its current location. The shed has been in place since September 2019.

They have not had any variances since property was purchased in 2018.

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

The shed is set back from the road. It is next to the house with the same color siding and shutters. The shed is maintained and clean.

2. The spirit of the ordinance is observed.

Reed's Ferry Sheds constructed the shed on the property in September 2019. The company noted the shed needed to be set back from the road 15 feet to be within the specifications of the Town.

3. Substantial justice is done.

The shed does not cause a nuisance to the Town or surrounding neighbors. Its placement does not pose a safety risk or viewing issue for any abutting properties. The shed does not devalue the house or any surrounding properties. This shed does not devalue the Town of Pembroke.

4. The values of surrounding properties are not diminished.

The cost of moving the shed and the stone underneath it far outweighs any Town benefit of moving this shed. There will be nothing gained or lost for the Town of Pembroke or abutters of this property to correct this violation.

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.

In order to move the shed to another place on the property, it would be of substantial cost to the homeowner. The resources, time, labor, and money to move the shed far outweighs any improvement or benefit to the Town of Pembroke or abutters to the 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.

The sole purpose of this shed is for children's bikes and outdoor play activities. It serves to help this family declutter the garage.

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

Chairman Kudrick asked if there was power going to the shed.

Ms. Stewart said no.

Chairman Kudrick said that the shed roof goes in the opposite direction of the property line, so that water will not shed on someone else's property.

The applicant said that there is a line of trees between the end of the shed and the 5' setback to the neighbor's property.

Vice Chairman Hebert asked how close the nearest structure on the neighbor's property was from the back of the shed.

Ms. Stewart said approximately 15 ft.

There were no further comments from the Board or the public.

Member Glisson summarized the case as follows:

This is an application for a Variance under Article V Dimensional and Density Regulations, §143-21, G Side Setback.

The applicant, Kimberly Stewart, read through the criteria. She stated that the shed was bought and constructed in 2019 and thought that it was suppose to be 15' from the road.

No one spoke in favor or against the application.

Chairman Kudrick asked about electricity in the shed, at which the applicant replied that there was no electricity to the shed.

Chairman Kudrick stated that the slope of the shed roof was away from the property line, therefore, runoff is not an issue.

The applicant stated that there are trees between the two properties.

There were no questions or comments from the applicant, the Board, or the public.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:23 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that he drove by the house and the shed was nice looking. It matches the house. He could see the property line (post).

He stated that it would have been nice if the applicant had contacted the Town first to make sure that the shed was put in the proper place.

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

Member Carlucci said that he agreed and the roof water sheds correctly.

2. The spirit of the ordinance is observed.

Member Carlucci said that the shed does not provide overcrowding of the land and it provides a secluded backyard.

3. Substantial justice is done.

Chairman Kudrick said that there does not seem to be a problem where the shed is located.

4. Property values are not diminished.

Chairman Kudrick said that nothing was brought to the attention of the Board to show that property values would be diminished.

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

Chairman Kudrick said that the only hardship would be in moving the shed. No abutters had any problem with the shed location. To move it over another 10 ft. would be closer to the house and would be harder to get the bikes, etc. into it because of the ramp.

(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.

(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.

Vice Chairman Hebert said that this is in reference to **Case 21-19-Z** application for a variance having been presented to the Board for consideration. A variance is necessary because the structure is located closer to the property lines than what is allowed by code.

MOTION: Vice Chairman Hebert moved to approve the application (**Case 21-19-Z A request for a Variance under Article V Dimensional and Density Regulations, §143-21, G Side Setback**), as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) The Applicant must submit a completed building permit along with the fees associated for construction. The building permit must include a scaled site plan identifying all structures that are presently on the property and distances to lot lines, a floor plan, and building elevations; (3) The Applicant must coordinate with the Code Enforcement Officer for a site inspection. The purpose of the inspection is to verify that distances to the property lines are as presented, indicating a 5' distance to the side lot line. Seconded by Member Carlucci.

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

MOTION TO APPROVE THE APPLICATION (CASE 21-19-Z A REQUEST FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, G SIDE SETBACK), AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) THE APPLICANT MUST SUBMIT A COMPLETED BUILDING PERMIT ALONG WITH THE FEES ASSOCIATED FOR CONSTRUCTION. THE BUILDING PERMIT MUST INCLUDE A SCALED SITE PLAN IDENTIFYING ALL STRUCTURES THAT ARE PRESENTLY ON THE PROPERTY AND DISTANCES TO LOT LINES, A FLOOR PLAN, AND BUILDING ELEVATIONS; (3) THE APPLICANT MUST COORDINATE WITH THE CODE ENFORCEMENT OFFICER FOR A SITE INSPECTION. THE PURPOSE OF THE INSPECTION IS TO VERIFY THAT DISTANCES TO THE PROPERTY LINES ARE AS PRESENTED, INDICATING A 5' DISTANCE TO THE SIDE LOT LINE PASSED ON A 5-0 VOTE.

Chairman Kudrick said that, because the attorney for Case 21-14-Z was waiting for their engineer to attend the meeting, the Board would proceed with Case 21-20-Z.

Case 21-20-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, G Side Setback**. The applicant, Nicole J. Daniels, of 9 Pleasant St., is requesting a variance to complete her partially constructed shed, which is 2' from the side setback where 15' is required. The property is located at 9 Pleasant St., Map VW, Lot 17, in the B-1 District, and is owned by the applicant.

Applicant: Nicole J. Daniels
9 Pleasant Street
Pembroke, NH 03275

Property Owner(s): Nicole J. Daniels

Property Address: 9 Pleasant Street
Pembroke, NH 03275
Tax Map 4-20-187 Lot VW-17 in the B-1 district

Included in the Member Packets: Tax map; assessing card; list of abutters

Present: Nicole J. Daniels and Michael Garcia.

Chairman Kudrick called the meeting to order at 7:40 pm.

The Recording Secretary read the case aloud.

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.

Ms. Daniels read the application responses:

Please give a detailed description of your proposal below.

Storage shed for their motorcycle and miscellaneous items such as snowblower, generator, grill, etc.

She said that the gas and oil for the above items are presently stored in the basement and would prefer them in the shed.

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

The shed will not interfere with the public's interest. The location of the shed is populated by similar structures and will be located behind the home.

2. The spirit of the ordinance is observed.

The shed is more than 15 feet away from any dwelling.

3. Substantial justice is done.

All abutting neighbors have similar structures close or abutting property lines.

4. The values of surrounding properties are not diminished.

It will increase home values by having more storage space as like other surrounding homes in the area.

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.

The hardship will result in commercial rental of a storage unit to store motorcycle and misc. items.

(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.

Yes, without a variance I would not be able to have a shed on the property with the current laws in place for the property.

Chairman Kudrick said that the pictures of the property were on the computer.

Chairman Kudrick said that he saw the framework done and was concerned about water being dumped onto the abutter's property.

No one spoke in favor or in opposition to the application.

Mr. Garcia said that they could put a gutter on the shed to channel the water away from the abutter.

Ms. Daniels said that the abutter's garage has gutters that are full of trees so the water sheds on their property. She is willing to place gutters on her shed.

Chairman Kudrick said that the abutter's foundation is 2' away from the shed and that is where the water will shed. He said that by law, water cannot be put on someone else's property.

Member Glisson pointed out that there is a retaining wall which could degrade the structure. Chairman Kudrick agreed.

Ms. Daniels said that she would put gutters on the shed to redirect the water.

There were no further questions or comments in favor or in opposition of the case. The applicant had no comments.

Chairman Kudrick asked if they were going to install electricity in the shed. Ms. Daniels said no.

Member Glisson summarized the case as follows:

Case 21-20-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, G Side Setback.**

The Applicant, Nicole Daniels, read through the criteria. Chairman Kudrick spoke to water running onto the abutting property. Applicant said that she would put gutters up. No one spoke in favor or against the application.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the applicant or the audience.

Chairman Kudrick officially closed the hearing at 7:46 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that all the lots downtown are very tight and some of the houses take up 80% of the lot.

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

Member Carlucci said that the Board could make a condition on the water within the motion.

2. The spirit of the ordinance is observed.

Member Carlucci pointed out Note 5, page 44 of §143-21 which gives relief to the B area.

3. Substantial justice is done.

Chairman Kudrick said that most of the neighbors in the area have similar sheds on their land and similar situations.

4. Property values are not diminished.

Chairman Kudrick said that there is no official information on how it would affect the property values.

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

Chairman Kudrick said that the hardship is that it is a small lot. He said that the applicant is trying to get gasoline, and other materials out of their house and store them in a shed which is much better because it is a safety concern.

Vice Chairman Hebert said that this is in reference to **Case 21-20-Z** – an application for a variance having been presented to the Board for consideration. A variance is required because the proposed construction is located closer to the property line than what is allowed by code.

MOTION: Member Hebert moved to approve **Case 21-20-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, G Side Setback** as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) the applicant must submit a completed building permit along with the fees associated with the construction. The application must include a scaled sight plan identifying all structures that are presently on the property and distances to lot lines as well as a floor plan and elevations. (3) Applicant must ensure that roof runoff is not going onto the neighbor's property. (4) The applicant must coordinate with the Code Enforcement Officer for a site inspection. The purpose of that inspection is to verify that any roof runoff related to the shed has been adequately diverted or retained on the applicant's property and that the distances to the side property line are as presented, indicating a 2' setback. Seconded by Member Paradis.

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

MOTION TO APPROVE CASE 21-20-Z, A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, G SIDE SETBACK AS

PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) THE APPLICANT MUST SUBMIT A COMPLETED BUILDING PERMIT ALONG WITH THE FEES ASSOCIATED WITH THE CONSTRUCTION. THE APPLICATION MUST INCLUDE A SCALED SIGHT PLAN IDENTIFYING ALL STRUCTURES THAT ARE PRESENTLY ON THE PROPERTY AND DISTANCES TO LOT LINES AS WELL AS A FLOOR PLAN AND ELEVATIONS. (3) APPLICANT MUST ENSURE THAT ROOF RUNOFF IS NOT GOING ONTO THE NEIGHBOR'S PROPERTY. (4) THE APPLICANT MUST COORDINATE WITH THE CODE ENFORCEMENT OFFICER FOR A SITE INSPECTION. THE PURPOSE OF THAT INSPECTION IS TO VERIFY THAT ANY ROOF RUNOFF RELATED TO THE SHED HAS BEEN ADEQUATELY DIVERTED OR RETAINED ON THE APPLICANT'S PROPERTY AND THAT THE DISTANCES TO THE SIDE PROPERTY LINE ARE AS PRESENTED, INDICATING A 2' SETBACK PASSED ON A 5-0 VOTE.

Chairman Kudrick said that the Board will hear Case 21-15-Z because Attorney Panciocco (Case 21-14-Z) is still waiting for her site engineer to arrive.

Chairman Kudrick said that Case 21-15-Z is a continuation from the August 23, 2021 meeting.

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.

Present: Attorney Charles Cleary, Robert Maccormack, and Tim Peloquin of Promised Land Survey, LLC.

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.

The Recording Secretary read the following letters aloud:

1. Letter dated September 21, 2021 from Madyson and Spencer Murphy, 418 Nadine Road, Pembroke, NH

2. Letter dated September 22, 2021 from Julie and Robert Caruso, 209 5th Range Road, Pembroke, NH
3. Letter dated September 24, 2021 from Maegan and Robert Kennedy, 311 Academy Road, Pembroke, NH
4. Letter dated September 24, 2021 from Tammy Chartier and Mike Dupont, 309 Academy Road, Pembroke, NH
5. Letter from Paulette Malo, Operations Director, Pembroke Sewer Commission dated September 27, 2021 addressed to the Zoning Board of Adjustment regarding Sewer Capacity Update.
6. Letter from Jon D. Natti, dated August 17, 2021, addressed to the Town of Pembroke.
7. Letter from Rose Galligan, Pembroke Recreation Commission received September 3, 2021.
8. Email from Stephen Noble dated September 20, 2021, addressed to Town Hall regarding Questions about Zoning Board Case 21-16-Z.

Mr. Peloquin read a letter into the record from Rick Van de Poll of Ecosystem Management Consultants of New England, dated September 17, 2021 addressed to the Zoning Board of Adjustment regarding “The Greens at Pembroke Pines”.

Attorney Cleary summarized the application as follows: The overall goal of the application is to complete a plan to preserve the long-term viability of the golf course. Along with other steps to the plan, one is the construction of a new clubhouse. Another major goal is to provide much-needed housing.

He said that if the variance is approved, Mr. McCormack will proceed to the Planning Board and will begin construction of the clubhouse. He said that they are up against time and trying to make a decision that the clubhouse is going to go in and work the way they envisioned. Over the past couple of month, they received a special exception from the Board and submitted a great deal of evidence, both in presentation and in exhibit form which included a summary of all the benefits that the golf course offers to Pembroke which resulted in the Board of Selectmen’s willingness to amend the discretionary easement and allow the project to proceed.

Attorney Cleary said that a traffic presentation was performed by Mr. Steve Pernaw with his full report at the last meeting. There was also a presentation by Rick Van de Poll at the last meeting and a letter was recently read into the record. The letter cites the value of the conservation land donation (15.5 acres) and that the golf course itself has environmental and ecological benefits to Pembroke

He said that they also submitted some real estate letters that there would be no affect on the value of surrounding properties and that there is a demand for housing. During the last 3-1/2 months, they have accepted all constructive comments from the Board and other departments. They met with the Conservation Commission, had a site walk with the Fire Chief, and spoke with the Ambulance Department. Considering the housing demand, the land conservation, the tax revenue to the Town, recreational opportunities, employment opportunities, and keeping the golf

course open space, Attorney Cleary said that their basic summary is that there is substantial public benefits to the granting of the variance that they have before the Board.

At the last meeting, Attorney Cleary said that the Board was prepared to vote on the application and a member raised a question of whether the project could be considered as having Town sewer or septic. The discussion was saved for this meeting. Since then, they have received the Sewer Commission's letter stating that the EPA and new permit will come out within 3-4 months. Attorney Cleary said that he also called EPA and that Michael Cobb told him that public comment is closed on the permit, the permit is fully drafted, and will be issued within 3-4 months.

Attorney Cleary said that the Variance is different from the Special Exception. The Special Exception had a requirement that the Board address the sewer. In his opinion, the variance has nothing to do with sewer. The variance is a request to grant a dimensional variance for 65 units on a 15.5 acre parcel. A variance is needed whether with septic or sewer. He said that this is now a sewer project and it is just a matter of time. Their intention has always been to hook up to sewer. They will commit to sewer for this project.

Chairman Kudrick reiterated that they will commit to sewer on the project.

Attorney Cleary said "absolutely" and that all the evidence presented to the Board meets the 5 criteria.

Chairman Kudrick said that now, that they have a letter from the Pembroke Sewer Commission that confirms that sometime next year the project will have sewer, the original density question is now a moot point.

Mr. Peloquin addressed the questions in Mr. Noble's email: (1) the plan has been on record, along with an exhibit showing a layout of the 65 units. He said that there might be some reconfiguration with engineering because they are reengineering them at the present time in preparation for the Planning Board. He said that they are not increasing the 15.5 acres or the unit count. He said that Mr. Noble can go to the Planning Board next to see the plan if the ZBA approves the variance. (2) With regard to utilities, they will be extending the water to Woodlawn Ridge Road. They will extend the water line to install a hydrant at the corner of the road coming out of one of the secondary accesses. There will be a hydrant and water available should the Town consider continuing the water line on that road in the future. (3) With regard to sewer, now that this is open to sewer, they will have the ability to extend their sewer or give the opportunity for that community to tie in upstream at some point. These things will be flushed out at the Planning Board. (4) With regard to traffic, Mr. Pernaw prepared a report and they are extending the side pavement that will create a right-hand turn lane at the intersection. NHDOT is not interested in a light or a turning lane so the applicant can only do what is in the Town's right-of-way at Whittemore Road.

Mr. Maccormack said that they have also committed to installing a sidewalk along Whittemore Road and a curbing system. They have been working with NHDES to try and resolve the issue of the water that is now sheeting onto Whittemore Road and onto the 9th hole. He said that they are very close to NHDES allowing them to make the modifications necessary to benefit both the road and the 9th hole. In order to do that, the applicant would put a granite curb down the entire right side in order to channel the water that comes down the road.

With regard to natural gas, Mr. Maccormack has contacted the gas company and the project will be on gas. He said that when there is hi-density gas usage, it is more profitable for the gas company to put more footage of gas line. He said that he anticipates that the gas company would continue the line down that road but that the homeowners would have to request it in order for the gas company to look into it.

Chairman Kudrick clarified for the Board, that the Zoning Board does not have anything to do with roads, sidewalks, water, sewer, and gas. Those items are the responsibility of the Planning Board. He said that he would like to suggest to the Planning Board to consider a sewer easement for future sewer installation since the project already has water to Woodlawn Road.

No one spoke in favor or in opposition to the application.

Attorney Cleary wanted to clarify that the ZBA has always been good about modifications from the Planning Board. In order to get ahead of the curve, they started a site plan and took all the Board's comments into account. The plan that will go to the Planning Board will have those changes on it such as the Fire Chief's request for more off-street parking, the entrance for the Department of Public Works and the Traffic Engineer's request. The land and units will be the same. They also adjusted a few unit locations to keep as much of the buildings out of the wetland buffers.

There were no questions by the Board.

Member Glisson summarized the case as follows:

Case 21-15-Z, Variance under Article V Dimensional and Density Regulations, §143-21 is a continuation. Letters were read into record. Mr. Peloquin read a letter from the Environmental consultant. Attorney Cleary summarized the case to date. Attorney Cleary referenced the sewer permit letter stating that Pembroke Pines will hook up to the sewer system which has been their intention. Mr. Peloquin addressed questions from an abutter raised in a letter stating that they hope to extend sewer and water, and hope to create a right-hand turning lane to minimize traffic issues. Mr. Maccormack said that he plans to put in a sidewalk and to modify the curb to deal with water runoff. Several letters spoke in favor. No one spoke against. Mr. Maccormack also addressed the gas question. Attorney Cleary clarified that the site plan is being modified to take into

consideration those suggestions from the ZBA, the Fire Department, and Public Works.

Chairman Kudrick asked the applicant if there was anything else that they would like to say. Attorney Cleary said no. The Board had no further questions for the applicant.

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. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 8:30 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that the largest problem the Board had pertained to the sewer and now that question was answered.

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

Member Carlucci said that the project will improve the public recreational facility that exists and will not alter the character of the area.

2. The spirit of the ordinance is observed.

Chairman Kudrick said that the applicant has an odd situation because of the golf course. The Applicant owns 168 acres of land and is only taking 15.5 acres for the project, therefore, Chairman Kudrick said that, in his opinion, the ordinance is being observed.

3. Substantial justice is done.

Member Carlucci said that it is consolidating housing which is not producing urban sprawl. It is providing recreation, meeting facilities, and conservation land, all available to the public.

4. Property values are not diminished.

Chairman Kudrick said that the Applicant presented information confirming that the value of the real estate market continues to increase. He also submitted letter that spoke of how nice the community looks around the golf course which will only increase the property values in surrounding communities.

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.

Chairman Kudrick said that the hardship, in his opinion, is that the land is a golf course. The Applicant is adding houses while continuing to keep the golf course open.

(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.

Vice Chairman Hebert said that this is in reference to **Case 21-15-Z** an application for a variance having been presented to the Board for consideration. A variance is necessary because of the density of the project.

MOTION: Member Hebert moved to approve **Case 21-15-Z, a Variance under Article V Dimensional and Density Regulations, §143-21** as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) Construction to adhere to the submitted plans except to the extent that such plans are reasonably modified through the Planning Board review process with the plans being approved by the Planning Board being the final plans. Seconded by Member Carlucci.

Chairman Kudrick said that he would like to see an easement for sewer to get to Woodlawn Road.

Vice Chairman Hebert said that an easement would be the Planning Board’s responsibility.

Vice Chairman Hebert said that it is in the neighborhood’s best interest to reach out to the sewer and water departments to let them know that there is interest in connecting and that their investment would be returned on.

Alternate Member Miner suggested that a note be made to the Town Planner and Mr. Bacon asking them to suggest it the Planning Board.

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

MOTION TO APPROVE CASE 21-15-Z, A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21 AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO ADHERE TO THE SUBMITTED PLANS EXCEPT TO THE EXTENT THAT SUCH PLANS ARE REASONABLY MODIFIED THROUGH THE PLANNING BOARD REVIEW PROCESS WITH THE PLANS BEING APPROVED BY THE PLANNING BOARD BEING THE FINAL PLANS PASSED ON A 5-0 VOTE.

Chairman Kudrick said that Case 21-14-Z is a continuation from the August 23, 2021 meeting.

Case 21-14-Z A request has been made for a **Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3.** The applicant, Panciocco Law LLC, One Club Acre Lane, Bedford, NH 03110, is requesting a Special Exception to construct six townhouse units. A Special Exception is required under §143-19, residential use #3. The property is located at 11-13 Kimball St., Map VE, Lot 132-1 in the B1 Business - Residential Zoning District and is owned by Kimball Street LLC, 27 Park Lane, Hooksett, NH, 03106.

Present: Patricia Panciocco, Esq. and Scott R. Frankiewicz, LLS of NH Land Consultants

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 Panciocco said that, at the last meeting, they had come to the conclusion that most of the issues had been addressed. The outstanding items were: (1) The number of accidents there had been as a public safety issue on Kimball Street because of traffic and concerns about parking that was raised by abutters. (2) A letter submitted to the Board about concerns relative to site distance representing that they would never get a driveway permit. (3) There was a concern about drainage running to other properties. (4) There was a question about an existing well on the property. (5) There were also allegations made about the parking ordinance.

With regard to the parking ordinance, Attorney Panciocco said that there are restrictions in the ordinance such as from 9:00-2:00 on trash pickup day, and there are winter snow emergency regulations that say that no cars are allowed on the street for snow plowing. She pointed out that those regulations also apply to Kimball Street. She said that there is also one property on the street where there is a parking restriction in front of the home due to a need for handicapped access and loading. The parking regulations apply to Kimball Street as well as everywhere else in Town.

Attorney Panciocco said that all their parking meets the criteria in the ordinance and is on the Applicant's property in front of the units. There is no on-street parking being proposed with this development.

She reminded the Board that the Applicant needs to have a determination by the Board as to whether the development should abide by B1 or B2 regulations. She said that they meet both regulations but the Board needs to decide which they would like the Applicant to go by.

Mr. Frankiewicz of NH Land Consultants said that they submitted a plan, surveyed the entire lot, met with the Department of Public Works and the Code Enforcement Officer on the site, and also had Stephen Pernaw draft a memo pertaining to the sight distance. He said that Mr. Pernaw agreed with what NH Land Consultants' submitted, namely that there is sufficient 200 ft. sight distance in either direction. Mr. Frankiewicz explained that the way they determine sight distance is to go back 10 ft. from the edge of the travel way and measure upward 3.75 ft. and then go out 200 ft. either way off the center line and measure upward 3.75 ft. (which is the profile seen if someone is sitting in their car and looking in either direction). The other location that was formerly proposed was down further. The one that they are proposing is at the peak of Kimball Street. He said that they have sufficient sight distance as required by the Town with the plan before the Board.

With regard to drainage, Mr. Frankiewicz said that they have not done a full drainage study yet because the project is not at the planning stage. He said that there is a lot of area in the back that they can use for a drainage system. They will come up with something that meets the Town and State's standards.

They found no easements and no drainage pipes across the property. He said that there is one pipe shown on the GIS that parallels the property from a catch basin on Kimball Street down to Church Street. One of the department heads (either VJ from Public Works or the Code Enforcement Officer) on the site walk said that they were aware of an old clay pipe that ran down Kimball Street but does not come onto the Applicant's property. The pipe crosses 3-4 properties but it is entirely on abutting properties.

Mr. Frankiewicz said that one old fieldstone well was found on the property. It is approximately 4 ft. in diameter with an 8 inch cover on it. They pried the cover off and discovered a 4-5 ft. deep well which he thought was used in the past.

With regard to wetlands on the site, Mr. Frankiewicz said that Luke Hurley, a wetland scientist from Gove Environmental Services, Inc. examined the site and determined that "no wetlands were identified on site." A letter from Mr. Hurley was submitted.

Mr. Frankiewicz said that there was also discussion pertaining to suitability of a leachfield. He said that he has been a septic designer since 1995 and that he dug test pits on the site. He reported that there is good soil on the land. He said that there are some ledge croppings here and

there up toward the Kimball Street area, but as you get back into the property, there are some boulders and loamy/ sandy soil. He dug 2 6-foot test pits and did not hit any ledge. A preliminary design was sent to the Town.

Chairman Kudrick said that they received a letter from the Pembroke Sewer Commission stating that the project will be able to tie into the Town sewer after 2022.

Attorney Panciocco said that she wrote a letter to the Fire Department and the Police Department. She did not hear from the Fire Chief but the Police Department said that for 5 years there have been no reported accidents on Kimball Street. The Police Department letter and data was submitted to the Board.

Member Glisson asked why the submittals from Attorney Panciocco were only received today.

Attorney Panciocco said that she likes to keep all submittals together and turn them in together. She was not aware that there was a deadline.

Member Glisson said that the Board consists of all working professionals and if paperwork is submitted the same day as the meeting, the material is not able to be properly reviewed. She said that it is unfair to expect a volunteer Board to examine the materials at or just prior to the meeting.

Chairman Kudrick said that the Board will address this problem.

The Recording Secretary read aloud the following letters: (1) Letter from Mary Ann Ricciotti of the Pembroke Police Department addressed to Patricia Panciocco dated August 31, 2021 regarding Kimball Street, Pembroke, NH; and (2) Letter from Luke Hurley of Gove Environmental Services, Inc. addressed to Dan Cotnoir of BMT Construction, dated September 21, 2021.

No one spoke in favor of the case.

Gerry Fleury, 21 Kimball Street, said that he communicated with the Town on September 13, 2021 asking if there were published details on any variations of the original submission. He said that he did not even get the courtesy of a reply. He said that the plan still does not comply with Chapter 133 regarding solid waste disposal. He said that a six-unit complex does not qualify for trash pickup and there is no dumpster pad shown on the site plan.

Mr. Fleury said that he visited the site and saw where the driveway was proposed. He said that he disagrees with the idea that there is 200 ft. of clear viewing at that location. He said that the position of the lot is so steep, that the parking area adjacent to the house will require a driver to go up a grade which will be too difficult to safely exit because of the knoll. He predicted that when snow is on the ground, it will be necessary to take a run in order to get up the knoll.

Mr. Fleury said that he also asked the Town if there were any amendments and whether they were open for public viewing. He said that out of respect for the process, he is asking that there be another continuation until the information can be made public and have adequate time to review the detailed plan and offer rebuttal.

Theresa Phair, 179 Main Street, said that there is a lot of rock and ledge, especially where the driveway will be installed. She owns a 200 year old home. She was concerned about the damage that will occur during the drilling and blasting stage. She said that the damage could affect property values.

Sarah Hallock, 15 Kimball Street, said that she lives to the right of the project site. She was concerned about the blasting and how it would affect the foundation of the surrounding homes. Her home was built in the 1800s.

Ms. Hallock was also concerned of visibility when exiting the site. Even at her house, she has a blind driveway going South on Kimball Street.

With regard to on-street parking, Ms. Hallock said that there was a significant change made on Kimball Street within the last 6 months. The “no parking” area was extended to both sides of the street from the intersections and includes the project site and Ms. Hallock’s home.

Earl Phair, 179 Main Street, asked if the project would be tied into the drainage that runs down Kimball Street. He did not recall any wetland issues mentioned at the last meetings but did recall that the owner of the rental property on Church Street had drainage issues in his basements from the project site. He asked if, when the septic system is installed, if the water issue will become worse.

Chairman Kudrick responded that the Applicant will not have a septic system. They will tie into Town Sewer as per the recent letter from the Pembroke Sewer Department.

Mr. Phair said that in the past, he was told that nothing more than a two-family home could be built on the lot.

Gerry Fleury said that there is a tile line that is approximately 100 years old that runs from Kimball Street, across lots and ties into Church Street. This was confirmed by the Public Works Department because they had to put dye in the line to establish where the pipe came out. He said that the old Town maps show a brook which originated between Lots 97 and 98. The brook was discontinued and a commercial catch basin was placed in the back yard between Lots 97 and 98 and crosses under Kimball Street at Lot 147 and at that point, the water level is down about 6 ft. He asked where the water will go, other than under other properties, when it runs off a multi-roof structure and a parking lot since there is such a narrow setback. He said that if they had to tie into the line, there are no below-ground right-of-ways to that line because it flows under Lots 147 and 132 and intersects between Lots 135 and 136 on Church Street. He said that water

should be a concern on this property. There may be sufficient drainage at the base of the property but the top is ledge.

He also said that the handicapped parking sign on Kimball Street is no longer needed because the structure burned, so the code reference could be removed from the ordinance.

Attorney Panciocco said that she got her parking information from the Town Code and that, if something happened recently and the Town did not update the code, she would not know about it.

With regard to permits being refused by the Town, she said that she did not think that anyone applied for a permit. They may have conferred with a Town official but an applicant has to do their own homework if someone is looking to explore a project like this, just as this applicant has.

Mr. Frankiewicz said that a dumpster location is shown on the site plan and will be designed for review with the Planning Board.

With regard to blasting, Mr. Frankiewicz said that there are regulations that protect abutters.

Mr. Frankiewicz said that all parking will be on site.

Mr. Frankiewicz said that they were told on the site walk with the Code Enforcement Officer and the Department of Public Works, that they will not be allowed to tie into the clay pipe going from Kimball Street to Church Street. It is old and brittle and it should not be disturbed. Drainage will be designed to meet all regulations and will be situated on the lower part of the site. In his opinion, the property works good for drainage because it will all flow to the lower part of the property.

Mr. Fleury asked when and where the information will be made available. He said that he wrote to Ms. Cronin indicating that he was interested in reviewing any site plan modifications. He said that he was willing to come to Town Hall if it was not going to be posted on the Town website. The information should be made available.

Chairman Kudrick said that he would pass it on.

Member Glisson asked for the acreage of the property.

Attorney Panciocco said that it was 1.219 acres, with 147 ft. of frontage.

Chairman Kudrick said that the housing will be lower than Kimball Street. He asked what the distance and angle would be from the parking area to the top.

Mr. Frankiewicz said that it will be approximately 4 ft. He said that there will have to be fill under the foundations for the walk-out units. They will gain 8 ft. and there will be a little fill in under that to raise it up. Since they do not want a steep driveway, they would want a 5% slope going down into the parking lot and sloping back up to make the site to pitch off either way. He said that the preliminary layout has the units at an elevation of 334 and the road at 334-1/2. They will be going 5% down and 2% up from the parking lot. It is within 3-5 ft. of the distant roadway.

Chairman Kudrick said that that information will be a Planning Board concern but he wanted to ask the question because it was brought up by some of the abutters.

Vice Chairman Hebert said that the Board has heard some planning-related issues on previous cases this evening but only from the standpoint that they were not going to be reviewed by the Planning Board. He said that that is why the Board was concerned with drainage. The ZBA does not usually address drainage issues but the Board did this evening because the cases were not going any further than the ZBA and the buildings were already constructed.

Chairman Kudrick said that the Board is approving a use for a particular zone.

Teresa Phair said that, at the last meeting, the applicant was going to find out if the ambulance and fire department was going to be able to get on the site.

Chairman Kudrick said that Attorney Panciocco notified the Fire Department but did not receive a response. He said that those items will be discussed at the Planning Board hearings.

Mr. Fleury said that under the Information of Freedom Act, the public has a right to see the information that is on file for this project. Who can he talk to and when can he see the information.

Mr. Bacon said that the website will be updated as soon as the hearing is completed. The August minutes will be posted once they are approved.

Mr. Fleury said that at the time of the original case, there were photographs and maps. To date they have not been revised.

Mr. Bacon asked Mr. Fleury to email him and he will try to find what he wants.

Attorney Panciocco said that she and Mr. Frankiewicz have addressed all the concerns of the abutters but many of the items mentioned are Planning Board and final design issues.

She said that, most times if there is going to be blasting, there is typically a pre-blast survey done of all the surrounding properties with photos to document the precondition of all other properties to protect other structures of any kind of adverse affect. She said that if it is found that

certain areas are particularly vulnerable to that type of activity, they take additional measures to protect the blast further by placing material over it to muffle it further.

Member Glisson summarized the case as follows:

Case 21-14-Z, a Special Exception under Article IV Use Regulations §143-19, Table of Use Regulations #3 is a continuation. Attorney Panciocco summarized the case to date. She responded to the trash pickup concern. She reported that all parking will be on their own property. Mr. Frankiewicz spoke to drainage observations done on the property, addressed that there is no wetlands on the property. Chairman Kudrick referenced the letter approving sewer in February 2022. Letters from the Police Department and wetland findings were read into the record. Member Miner clarified the Police Department letter. The abutters (Mr. Fleury, Ms. Hallock, Mr. and Mrs. Phair) all addressed concerns about visibility, weather, trash pickup, blasting and drilling as it relates to damage to their older homes. Ms. Hallock also spoke of the recent parking changes along Kimball Street and “no parking” signs on Kimball Street. Attorney Panciocco responded to the parking information saying that she got it from the Town Code. Mr. Frankiewicz spoke to concerns raised by abutters including drilling, drainage, and pipes. Member Glisson asked about the acreage. Chairman Kudrick asked about the parking construction. Mr. Frankiewicz answered. Member Miner clarified that the ZBA is looking at use for zoning. Mrs. Phair asked if the Fire Department was consulted. Chairman Kudrick said that they did not respond. An abutter asked about the grade of the road. Attorney Panciocco summarized the case and responses.

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

Chairman Kudrick asked if the applicant had anything further to say before he closed the hearing.

Attorney Panciocco said no, unless the Chairman would like her to review the points again.

Chairman Kudrick said no.

He announced that the hearing was officially closed at 9:19 p.m. and said that the Board will approve, deny or continue the deliberation. No comments will be taken from the audience.

ZONING BOARD MEMBER DELIBERATIONS:

- 1. Please describe how the requested use is essential or desirable to the public convenience or general welfare.**

Chairman Kudrick said that it is good to have housing in that area.

Member Carlucci said that it will support the local businesses with walking trade which is very important.

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.

Chairman Kudrick said that there are no six-unit homes in that area. There are four-unit buildings in the area but no six-unit building. He said that it is his opinion that six units are too many. There are a large number of vehicles coming out of the site which he is concerned about. They meet the setback but are very close to the setback lines. He recognized that it is a Planning Board issue, but he felt that it was a safety issue.

Member Carlucci pointed out that the Board received information that there is safe sight distance.

Vice Chairman Hebert asked if there would be significantly less of a hazard if it was a four-unit vs. a six-unit. He said that a multi-unit in that district is an allowed use. He said that the Applicant is here for a Special Exception not a variance, and even by the Master Plan, that is what they envisioned that area to be comprised of which was based on what is already there.

Vice Chairman Hebert continued by saying that the Zoning Board is merely looking at the use. The Planning Board will determine if six units is too many.

Chairman Kudrick said that he thought that determining the number of units is the pervue of the Zoning Board.

Alternate Member Miner referred to §143-19 Table of Uses. He asked what the difference is between B1 and B2 since the Board will have to determine which district this project should be considered.

Member Carlucci said that B1 is business/residential area and B2 central business.

The Board decided that the project district should be classified as B1.

Alternate Member Miner pointed out that the multi-family dwelling use is defined as more than 2 dwelling units but “not to exceed 6 dwelling units.”

Member Glisson agreed that since it is a small lot, six units would be overuse.

Alternate Member Miner said that the map from the first meeting showed a number of two and three-family dwellings and one lot that consists of 19 units.

Chairman Kudrick said that there are a number of buildings on one lot which creates the 19 units, but each building is no more than 4 units.

Member Carlucci pointed out that the Pembroke Wellness (Dr. Kaitz's office) building consists of has 6 dwelling units and a medical office in the building at the corner of Church and Glass Streets.

Member Glisson said that she drove by the site and said that the road was narrow and had a steep slope.

Member Carlucci said that he is surprised that, even considering the sight distance coming out of Millard Street, there have not been accidents for 5 years.

Alternate Member Miner said that there is no parking on Kimball Street. He said that Mr. Pernaw is a traffic consultant who is willing to put his stamp on his report and be held liable if his findings are not true.

Chairman Kudrick said that the report is true if someone is standing at the property line and on the street. He questioned if there would be visibility if someone was further back in a car.

Alternate Member Miner said that the study was done standing 3.75 ft. above the property line and looking 200 ft. in either direction. He pointed out that the same criteria would be used if they did a study on Nadine Drive.

Member Carlucci said that, according to the report, at the speed limit, it would take 155 ft. to stop (not 200 ft.) so they built in a little bit more. He said he could not imagine anyone going up Kimball Street at 30 mph.

Chairman Kudrick said that it is a planning issue.

Vice Chairman Hebert said that the density of 6 units vs. 4 units is not what is on the table right now. It is the use.

Member Glisson said that the Board asked for the traffic information and the Board was not given it until today which, in her opinion, was inappropriate and inconsiderate.

Alternate Member Miner said that he agreed but the Board has no rule that that it is not allowed.

Vice Chairman Hebert said that the case before the Board is to approve a multi-family dwelling of 6 units. The ordinance states that the Board can approve a multi-family dwelling up to 6 units.

He said that the Planning Board can determine whether or not 6 units is appropriate. They may decrease the number of units. The Board is not looking at density. The Board should not be even questioning the number of units because it is in the regulations, the master plan, and is what they envisioned that area to be -- a multi-family type of area.

Vice Chairman Hebert also pointed out that the Technical Review Committee will voice their opinions as far as access to the back area and whether emergency vehicles could get on the premises in all types of weather, etc.

Member Carlucci said that there may be alternatives that the Planning Board will want such as sprinklers.

Vice Chairman Hebert said that everything that the abutters have brought to light is vital but, unfortunately, the Zoning Board's hands are tied because its responsibility is to only look at the use.

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.

Vice Chairman Hebert said that the project is in the B1 district, is an allowed use, and is encouraged in the Master Plan. It is an appropriate spot for the project.

4. Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.

Chairman Kudrick read aloud the letter from Coldwell Banker Realty which states that the condominium units will not diminish neighboring property values.

5. Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.

Member Carlucci said that the Board received two reports – one from the Police Department indicating that there have not been any accidents in the last 5 years and one from a traffic expert indicating that there is adequate sight distance.

6. Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.

Chairman Kudrick said that they show the parking spots, boundaries, water and sewer. Anything more than that, such as drainage, will be taken care of by the Planning Board.

Vice Chairman Hebert said that the Planning Board will hold the Applicant to task to prevent sheet drainage going to abutting properties because there will be a full blown drainage plan reviewed by the Town's engineer.

7. Please show that there are no valid objections from abutting property owners based on demonstrable facts.

Chairman Kudrick said that there are abutters in opposition to the project. They are concerned about blasting, traffic coming out onto Kimball Street, etc. but those issues are not things that the Zoning Board can handle. They are Planning Board issues.

8. Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.

Chairman Kudrick said that there is a letter from the Pembroke Water Works stating that the project has Town water available. A letter from the Sewer Department states that the project can tie into the Town sewer system by 2022.

Vice Chairman Hebert said that the initial letter from the Sewer Department granting them the waiver stated that they required them to connect to Town sewer by February 2022.

9. If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system.

Chairman Kudrick said that this question was already addressed.

Chairman Kudrick said that it is his opinion that 6 units are too many for the lot.

Vice Chairman Hebert said that he understood Chairman Kudrick's point, but that the Board was only concerned with the use applied to the lot.

Vice Chairman Hebert said, in reference to Case 21-24-Z a request for a Special Exception having been brought before the Board for consideration, a Special Exception is required for multi-family dwellings of up to 6 units.

MOTION: Vice Chairman Hebert moved to approve **Case 21-14-Z** A request for a **Special Exception under Article IV Use Regulations §143-19, Table of Use Regulations #3** as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) Construction to comply with the plans presented except to the extent that such plans are reasonably modified through the Planning Board review process with the plans

approved by the Planning Board being the final plans; and (3) Any further correspondence related to this property, be advised that the property shall be listed as a B1 property. Seconded by Member Paradis.

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

MOTION TO APPROVE CASE 21-14-Z A REQUEST FOR A SPECIAL EXCEPTION UNDER ARTICLE IV USE REGULATIONS §143-19, TABLE OF USE REGULATIONS #3 AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO COMPLY WITH THE PLANS PRESENTED EXCEPT TO THE EXTENT THAT SUCH PLANS ARE REASONABLY MODIFIED THROUGH THE PLANNING BOARD REVIEW PROCESS WITH THE PLANS APPROVED BY THE PLANNING BOARD BEING THE FINAL PLANS; AND (3) ANY FURTHER CORRESPONDENCE RELATED TO THIS PROPERTY, BE ADVISED THAT THE PROPERTY SHALL BE LISTED AS A B1 PROPERTY PASSED ON A 5-0 VOTE.

Chairman Kudrick advised the residents to attend the Planning Board meetings. He said that the abutters will be notified by the Planning Board.

IV. Approval of Minutes – August 23, 2021

MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF AUGUST 23, 2021 AS AMENDED. SECONDED BY ALTERNATE MEMBER MINER. UNANIMOUSLY APPROVED.

V. Other Business / Correspondence

Mr. Bacon stated that the Planning Director will no longer be coming to the ZBA meetings but the Board can request that Ms. Cronin attend in order to discuss her research on soliciting comments from department heads.

Member Glisson said that she received the additional information from one of the applicants at 6:45 pm and that it is unreasonable to expect that the material can be adequately reviewed in time for the meeting. She said that it is important to receive the material earlier than the day of the meeting. The Board agreed.

Chairman Kudrick suggested that no information from the applicants be allowed to be presented to the Board after the member packets have been prepared and distributed. Chairman Kudrick asked Mr. Bacon to check into whether it would be legal to create a deadline for submittals, and how it can be done.

Vice Chairman Hebert said that applicants should be aware that any submittal after the deadline will not be accepted.

Mr. Bacon said that he would do so and that it would be easy for him to let the applicants know the final date of submission for information.

VI. Adjournment

MOTION: Vice Chairman Hebert moved to adjourn. Seconded by Member Blakely.
Unanimously approved.

Meeting adjourned at 9:52 p.m.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary