

**PEMBROKE ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**  
**October 25, 2021**  
**(ADOPTED)**

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

**ALTERNATES PRESENT:** Wendy Chase

**EXCUSED:** Natalie Glisson, Blakely Miner III, and 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.

Chairman Kudrick appointed Alternate Member Chase to vote in place of Member Glisson.

**PUBLIC HEARINGS:**

**Case 21-23-Z** A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, F, Front Setback**. The applicant, Peter Satterfield, of 708 Cross Country Rd., is requesting a variance to install a bulkhead, 50 feet from the front setback where 60 feet is required. The property is located at 708 Cross Country Rd., Map 935, Lot 38, in the R-3 Rural/Agricultural-Residential District, and is owned by the applicant.

**Applicant:** Peter Satterfield  
708 Cross Country Rd.  
Pembroke, NH 03275

**Property Owner(s):** Peter T. Satterfield and Marie L. Straiton

**Property Address:** 708 Cross Country Rd.  
Pembroke, NH 03275  
Tax Map 935, Lot 38 in the R-3 Rural/Agricultural-Residential District

**Included in the Member Packets:** Variance Application; Fee Schedule Worksheet; Abutters' List; Tax map; Assessing Card; Photo of house.

**Present:** Peter T. Satterfield and Marie L. Straiton

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.

Mr. Satterfield read the application responses:

**Please give a detailed description of your proposal below.**

We would like to add a bulkhead to the SW corner of our home, approximately 4' by 5'. Presently our basement is a dirt floor with about 5-1/2 ft. of headroom in 60% of it and crawl space in the other 40%. There is a lot of moisture that creates a mildew smell on the first floor as well as some mold and moisture. We would like to dig out some of the dirt and pour a concrete floor. Presently there is only 50 feet from the proposed location out to Cross Country Road where 60 feet is necessary for the newer setback requirement. Because of location of the septic and right-of-way for the neighbor's property and the crawl space in the basement, this is the only location that will work.

Received a Special Exception or Variance for a kitchen addition in June 1, 2015.

Mr. Satterfield distributed photos of the basement.

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

The location of the bulkhead is right next to an existing porch and will be barely visible to the public and won't be any closer to Cross Country Road than the existing house.

**2. The spirit of the ordinance is observed.**

As mentioned the bulkhead won't be any closer to the main road or any neighboring properties than the existing house already is.

**3. Substantial justice is done.**

An access will be created to our basement where we can deal with a water problem and avoid a potential health risk.

**4. The values of surrounding properties are not diminished.**

This bulkhead will have no impact on property values of any surrounding properties.

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.**

This 60-foot setback requirement did not exist when this house was built in 1773. The front of the house is only 50 feet from the road and this bulkhead won't be any closer than the house. As stated, the moisture coming from this dirt basement might be creating a health hazard for present and future occupants.

**(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.**

Because of the driveway on the East end of the house, the bulkhead cannot be located there. The North side of the house contains a crawl space and would not accept a bulkhead. The West side has a porch except for the spot where we would like to locate the bulkhead. Unfortunately there is only 50 feet to the road. The front of the house is too close and contains the septic system anyway.

In his opinion, Mr. Satterfield said that the location to construct the bulkhead is the only place that it could go.

Marie Straiton spoke in favor of the bulkhead.

No one spoke in opposition to the application.

There was no rebuttal from the Applicant.

There were no questions from the Board.

Alternate Member Chase summarized the case as follows:

Peter Satterfield of 708 Cross Country Road is requesting a variance under Article V Dimensional and Density Regulations to the Front Setback. He would like to install a bulkhead 50 ft. from the front setback where 60 ft. is required. They currently have a dirt basement and is experiencing moisture and mold. They would like to dig it out, install a bulkhead, pour

some concrete and possibly add spray insulation in the cellar. The home is 250 years old and sits 50 ft. from Cross Country Road. Once the project is complete, he will not be any closer to the road and barely visible to the public. The West side is the only side of the house that they can place the bulkhead due to a driveway and septic system.

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.

The Applicant had no further comments.

Chairman Kudrick officially closed the hearing at 7:09 pm.

#### **ZONING BOARD MEMBER DELIBERATIONS:**

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

Member Carlucci pointed out that the bulkhead will be even with the front of the house and will not be any different than it is now.

**2. The spirit of the ordinance is observed.**

Chairman Kudrick said that the bulkhead is not coming any closer to the road than the house presently is.

**3. Substantial justice is done.**

Chairman Kudrick said that the Board has seen many homes that were built without bulkheads, so this case is not unusual.

**4. Property values are not diminished.**

Chairman Kudrick said that adding the bulkhead will not affect the value of other properties.

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

Chairman Kudrick said that the home was built in 1773 and, at that time, the road was probably over 60 feet from the house. Since that time, the road has expanded and is now closer.

Vice Chairman Hebert said that in reference to **Case 21-23-Z** – an application for a variance having been presented to the Board for consideration, a variance is required because the construction is closer to the front setback than what is allowed by code.

**MOTION:** Member Hebert moved to approve **Case 21-23-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, F Front Setback** as presented with the following conditions: (1) The applicant must follow all state and local regulations; and (2) Construction to comply with the plans presented indicating that the bulkhead will be no closer than 50’ to the front property line. Seconded by Member Carlucci

**VOTE:**            B. Kudrick – Y            T. Hebert – Y            D. Carlucci – Y  
                      W. Chase – Y            P. Paradis – Y

**MOTION TO APPROVE CASE 21-23-Z, A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, F FRONT SETBACK AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; AND (2) CONSTRUCTION TO COMPLY WITH THE PLANS PRESENTED INDICATING THAT THE BULKHEAD WILL BE NO CLOSER THAN 50’ TO THE FRONT PROPERTY LINE PASSED ON A 5-0 VOTE.**

**Case 21-21-Z** A request has been made for a **Variance under Article IV Table of Use Regulations, §143-19, #3**. The applicant, William E. Evans, 194 Woodhill Hooksett Road, Bow, NH 03304, is requesting a variance to allow multi-family dwellings having greater than six dwelling units per building. The property is located at 225-229 Beacon Hill Rd., Map 563, Lot 15 in the R-1 Medium Density-Residential District and is owned by the applicant.

**Applicant:**                            William E. Evans, Trustee  
    194 Woodhill Hooksett Road  
    Bow, NH 03304

**Property Owner(s):**            William E. Evans and Mary Lou Evans Irrevocable Trusts

**Property Address:**            225-229 Beacon Hill Road  
    Pembroke, NH 03275  
    Tax Map 563, Lot 15 in the R-1 Medium Density-Residential District

**Included in the Member Packets:** Variance Application with attachment; Fee Schedule Worksheet; Abutters' List; Tax map; Assessing Card; Letter dated Oct. 4, 2021 to ZBA from William E. Evans, Trustee; Notice of Decision, Pembroke Board of Selectmen dated Aug. 25,

2021; Pembroke Sewer Commission letter dated Sept. 27, 2021 from Paulette Malo, Operations Director; Map of Beacon Hill Road; Conceptual Grading and Drainage Site Plan dated September 24, 2020; Pembroke Master Plan Zoning Map dated October 2004.

**Present:** Robert L. Best of Sulloway & Hollis, PLLC and Willam E. Evans

Chairman Kudrick opened the meeting at 7:17 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.

Mr. Bacon read aloud the following letters:

1. Email from the Chairman of the Pembroke Conservation Commission received October 25, 2021.
2. Letter from Danny and Julie Boyer of 223 Beacon Hill Road dated October 25, 2021

Chairman Kudrick stated that the two applications will be heard in two separate hearings.

Attorney Best apologized in advance for the redundancy that will occur because the two applications overlap one another.

Attorney Best said that he objected to the two letters that were read aloud. He said that the Chair of the Conservation Commission indicated that they met on October 18 at a public hearing to discuss the applications with no notice to the Applicant. He said that there is no matter before the Conservation Commission and, therefore, the testimony should not have been received or made to the Board. He clarified that he does not make that statement as a way to affect the Board's vote in any way but must have his objection on the record that the testimony itself was based on a public meeting for which the Applicant had no notice.

With regard to the second letter, Attorney Best said that there are many issues that were noted such as lighting, low-income issues, needs for federal subsidies, public transit, isolating at-risk folks, emergency services and the Class VI road section. He said that all the issues are very important but they would be addressed by the Planning Board. The items do not relate to the criteria for the Zoning Board.

Attorney Best began by discussing the Town's Master Plan. He referred to the vision section of the July 2020 draft. He read: "Our vision is to provide a variety of housing types that meet the current and future needs of residents." He pointed out that the Master Plan mentions the needs of the community such as providing housing choices for seniors and a variety of housing that meets all demographics and that there is inadequate senior housing. The Master Plan suggests that there is a need for senior housing, single floor living, smaller living space, and lower costs. He noted that the Master Plan also says that "we should enhance the cluster housing requirements to address the issues of available senior housing."

He noted that the Master Plan Housing Objectives and Recommendations lists: (1) Consider the development of a senior housing ordinance. (2) Consider increased density permitted by right to bring housing costs down for both young people just entering the workforce and for seniors. (3) Consider a mix of uses in appropriate areas along Route 3 to accommodate varying development pressures, including greater housing densities. It also states that the "Visioning Session and survey responses suggested a strong need for senior housing options in Pembroke."

The Applicant began by creating a Yield Plan in order to see what could be built without a variance. The Yield Plan indicated that they could build 17 buildings consisting of 4-6 apartments per building without a variance. Attorney Best said that to build in accordance with the Yield Plan would be a terrible idea. It would use every square inch of the property, would have roadways going through it, all the trees would be cut, the buildings would be spread out on several acre lots with lawns. This type of a development would be very expensive to build and make available to seniors because it would require more maintenance such as to care for landscaping, grass to mow, more snow to plow, and sidewalks to shovel.

Attorney Best emphasized that they are not proposing the Yield Plan.

Attorney Best pointed out that the applicant is proposing building a cluster development on less than 10 acres and leave 35 acres completely untouched in its natural state which is better for the environment, water runoff, drainage, wildlife, and neighbors.

The 17-lot Yield Plan would require a special exception.

He said that if the developer was building as a matter of right, without the need of a special exception, they could build 50 1-2 units apartment buildings.

Attorney Best said that the reasons for the variances is to do something better for the community. The Town needs affordable senior housing and it can be done in an affordable compact way which would be best suited for seniors because of location to services, support from neighbors down the hall, etc. and not be spread out throughout the entire site.

He said that the Town regulations allow 1 or 2-unit buildings as a matter of right (no variance needed and straight to the Planning Board for approval). He said that they could also do a 17-lot

subdivision with 4-6 unit buildings per lot with a special exception and no variance. They are trying to avoid these possibilities.

He said that it is hard to find a better vision of the public interest than the Town's Master Plan which is rife with the idea that they need senior housing options and they need to be affordable. Without affordable senior housing, seniors will have to leave the community. He said that various articles and studies show New Hampshire is 20,000 housing units short of what is needed and senior housing is a 42% of that.

Attorney Best said that if the project is approved by both the Zoning and Planning Boards, the property will become permanently protected and the remainder of the 35 acres could never come forward again to be developed.

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

**Please give a detailed description of your proposal below.**

Proposal is for the construction of 101 age-restricted, multi-family residential units on an approximately 45 acre parcel located on Beacon Hill Road. Currently, the applicant's parcel is not yet developed. In order to preserve open space on the parcel and minimize traffic and other impacts of this proposed use for the property, the applicant seeks variance relief from the lot frontage requirements and maximum dwelling unit restrictions within this R-1 zone.

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

The project proposes the construction of 101 age-restricted multi-family residential units. The need for such housing for the active-adult community is strong and well-documented. The variance sought by the Applicant is to provide 101 units in three buildings each containing up to 34 apartments whereas the ordinance permits such housing in 1-2 unit buildings as a matter of right, or up to 6 unit buildings by special exception. Absent the variance, providing 101 units of age-restricted multi-family would require a sprawling development consisting of at least 17 and perhaps as many as 51 structures on the property. Such intense development would likely encompass every developable square foot of the 45.72 acre property. If the variance was granted, the apartment unit would be located in three buildings which, including the necessary parking areas, would probably cover about 20% of the parcel, leaving up to 80% of the parcel in its natural state.

There is no question that income restricted senior housing is in the public interest. State law provides for interest-free bond financing for such development because it is desperately needed. Moreover, by creating age-restricted housing, the Applicant's proposed use would offer a less-burdensome impact on town resources, including the school system, than a conventional residential development might have. For example, conventional development might include



school-aged children and the increased traffic impacts associated with extracurricular activities, along with more work force commuters. By contrast, age-restricted housing has a much lower impact on town resources, and far less vehicular traffic than conventional housing might be expected to have. Further, the Pembroke Master Plan, in its discussion of housing, identifies the specific need for additional housing inventory, particularly for members of the senior community. Also, the Master Plan notes the general desire to preserve the character of this Town. There is no question that this development advances both objectives.

The question before the ZBA is whether such development ought to be implemented in an intense, sprawling manner as the ordinance requires, or, would it be in the public interest to concentrate the development into a compact footprint of three buildings, leaving the majority of the parcel in its natural and undisturbed state. The variance is clearly in the public interest given that a compact development that leaves the vast majority of the parcel undisturbed, minimizes the environmental impact, while maximizing the addition of much needed senior housing is in the public interest.

## **2. The spirit of the ordinance is observed.**

As previously noted, the proposed multi-family residential use is allowed by special exception in the R1 district, provided the development occurred in buildings containing up to six units per building. The spirit of the ordinance is to promote multi-family development, and especially senior housing that is in keeping with the character of the town, which generally consists of low impact, environmentally-friendly residential development in the R1 district. The spirit of the ordinance is observed by the proposed development because clustering the senior housing in three buildings occupying a small portion of the site leaves the vast majority of the site permanently undisturbed in its rural, wooded condition. By contrast, without the variance, the construction of an expansive, sprawling conglomeration of small buildings surrounded on all sides by parking areas, covering every inch of the parcel is clearly not in the spirit of the ordinance.

By granting the requested relief and allowing the Applicant to construct fewer, larger buildings, this Board will afford him the ability to create a more compact development footprint, which will preserve a large portion of the open space on the property and maintain the spirit of the ordinance.

Attorney Best said that the spirit of the ordinance in the Master Plan is to create affordable senior housing. A 4-6 unit building will be triple the cost for a rental. The maintenance costs such as plowing the roads, shoveling the snow, mowing the lawns and planting shrubs could make the rental price unaffordable for seniors.

## **3. Substantial justice is done.**

As was previously stated, the project proposes the construction of age-restricted, multi-family housing. The Town's Master Plan states that the creation of additional housing inventory to support the needs of the Town is an important part of sustaining the community. The property that is the subject of this application is suitable to support this specific community need, and the granting of relief to the Applicant affords him the opportunity to utilize his property in a reasonable fashion, consistent with the goal to preserve the character of the surrounding area. In addition to the benefits that open space provides to the population of Pembroke, such development supports natural wildlife habitat and wildlife movement through the area.

Applicant's property is sufficient in size to accommodate the number of units sought (with 0.45 acres or 19,602 square feet attributable to each unit), however, there is little desire or comparative benefit to creating a sprawling neighborhood that covers the entire parcel when there is a better option readily available through this variance. Substantial justice is done by granting this variance because doing so would accommodate a more efficient and environmentally sensitive development to meet the growing housing needs in the Town. By limiting the scope of the footprint for this project by granting the desired relief, this Board can maintain the vision contained in the Town's Master Plan for preservation of the open-space and environmental character of Pembroke, while also acknowledging and balancing the needs of the public.

Attorney Best said that cluster subdivisions are preferred on a Planning Board level in most municipalities and there are a number of environmental benefits such as drainage, water runoff, lighting, and impacts on the neighbors. He said that the buildings will be visible to a few homes (although there are a lot of trees and space between them) but not for the vast majority of neighbors.

The parcel is unique because of its size and its location to Concord, the business and office districts, and the highway system.

#### **4. The values of surrounding properties are not diminished.**

Applicant's proposed development would also protect the value of surrounding properties, especially compared to the development that would result from not granting the variance. In connection with this proposed use, the Applicant intends to permanently dedicate the open space portions of the subject property to the Town for preservation purposes. Such land can be available for recreational trails, wildlife, or simply an enhanced view-scape for surrounding properties. The natural buffer surrounding the consolidated age-restricted housing units would render the structures largely screened from view outside the property.

Literal enforcement of the Ordinance, as addressed in more detail below, would have a drastically larger impact on the values of surrounding properties, due to the possibility of a larger footprint development on the 45.72 acre parcel. Overall, the proposed use is not expected to

negatively impact the value of the surrounding properties, and the dedication of the remaining open spaces for preservation are likely to increase property values.

Attorney Best said that there is no evidence that there will be a negative effect on property values.

Open space land is also available for recreational trails, wildlife, and view-scape by not having the entire parcel fully developed.

The proposal is supported by the NH Housing and Finance Authority. The model building pictured in the Board's packet is a graphic that was done in a different development.

He said that property values increase where there is a balanced community with workforce housing, senior housing, and areas where there is lower density, medium density and higher density. For a town to thrive, there needs to be young people, working-age people, people closer to retirement, people who volunteer, and people who work for schools. Adding senior housing will not diminish the community value.

**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**

As previously stated, the Ordinance requires more numerous, but smaller buildings for multi-family development, absent a variance. That kind of development is possible on this parcel, but not as desirable. The Master Plan includes recognition of the benefit of multi-family housing in the underlying zoning district, and especially senior housing. Senior housing is more effective and more affordable in compact, small footprint development where common areas and amenities are easier to access, and safety and security is enhanced by the compact footprint. There are few other parcels in Pembroke with the size necessary to develop multi-family residential housing, and the ability to cluster the development on a portion of the parcel in a manner that is largely screened from view from surrounding properties. To that end, no fair and substantial relationship exists between the requirement to use more numerous, smaller buildings and the application of that provision to this parcel. The Ordinance is authorized in such a manner as to allow the creation of multi-family residential dwelling by special exception and the Town's recently updated Master Plan includes a discussion as to the specific importance of the creation of responsibly-developed housing to support the senior community. This property can support that community like few others in the R1 zone. The Ordinance protects against the overdevelopment of residential areas and the minimization of open spaces by restricting the number of dwelling units. However, few parcels in the vicinity of the subject property approach

anything near its size, while at the same time being able to support clustered development and a large swath of open space. Here, applicant proposes to develop only a small portion of his 45.72 acre parcel, while offering the addition of 101 units for senior housing in Pembroke and the dedication of the remaining open spaces to the public for continued preservation. A denial of the Applicant's request would result in an unnecessary hardship and would be contrary to the spirit and intent of the Ordinance.

Attorney Best said that in the case of building 17 buildings rather than 3 buildings, the unnecessary hardship tends to fall on the use and makes senior housing on the site impractical to do. He said that there is also hardship on those people who enjoy appreciate open space. He said that if the variance is not granted, and the Applicant goes through a traditional development, the lot will be cleared (45 acres of houses and roads).

He said that the general public purpose of the ordinance is to provide senior housing. All of Pembroke's ordinances and Planning Board review of things flow down from the Master Plans. The location is close to Pembroke's commercial district, office district, and Concord which makes it the ideal location for senior housing.

He said that there are people that do not want any development on a piece of land and many who have vacant land next to them and who would prefer that it be left that way, but it is not a right or reason to stop a project.

**(ii) The proposed use is a reasonable one.**

As discussed in more detail above, the proposed use is not only reasonable, it directly addresses a need in this community. The Applicant, by way of this request, simply wishes to complete a project to aid in the development of age-restricted housing options for Pembroke residents in a manner that is environmentally sensitive and minimizes the footprint of the development.

**(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.**

Member Carlucci asked what the Applicant meant by age-restricted.

Attorney Best said that there are two models for age-restricted housing. The commitment before the Planning Board is to build housing intended for tenants age 62 years old and older. The 62 and older restriction requires 100% of the units within the development to fit in that category.

The other age-restricted housing category of 55 years of age and older which requires 80% of the housing units to be in that category.

He said that both the 55 and 62 year old categories come from the Federal Fair Housing Act which allow you to discriminate against young people and say that they cannot move in.

Mr. Evans said that the units will be one and two-bedroom units.

Attorney Best said that the project is based on Town water and Town sewer and if those services cannot be arranged, the project will not exist because the funding will not allow on-site wells and septic systems.

Chairman Kudrick asked for clarification of what will happen to the 35 unused acres remaining after the development.

Attorney Best said that the unused land will be protected “on a legal basis” as open space. There would be an easement created to the Conservation Commission or another Town entity to enforce the fact that there is no building available there.

Mr. Evans said that the land presently abuts conservation land.

As to ownership and building maintenance, Attorney Best said that the site will be owned by a private entity that would rent the units to age-restricted residents.

Mr. Evans said that it would also be overseen annually by New Hampshire Housing and Finance Authority (NHHFA) and the management company must comply with very stringent requirements.

Attorney Best said that when a development is financed by NHHFA, there is a list of criteria on keeping the site clean, serviced, landscaped, etc.

When asked the expected monthly rent per unit, Attorney Best said that he did not know. They are intended to meet the affordable senior housing criteria.

With regard to the number of parking spaces, Attorney Best said that that would be dictated by the Planning Board.

No one spoke in favor of the application.

The following spoke in opposition to the application.

Vincent Greco, 211 Beacon Hill Road, said that he has lived on Beacon Hill Road for over 10 years. He was concerned about traffic on Beacon Hill Road. The road was not designed to carry traffic through to Routes 3 and 106. He said that he is in opposition to the variance.

Mark Dumas, 318 Beacon Hill Road, gave a handout to the Board. He said that 20 years ago, Concord Area Trust for Housing attempted to build this same project at that same location. He said that the Town opposed it. He said that the present project does not fit in with the character of the area. He was also concerned of the traffic flow and the number of cars associated with this development and other developments presently being built in the area.

Kerstin Dumas, 318 Beacon Hill Road, had concerns about the pond that abuts the project. She was also concerned about children living with their handicapped grandparents and attending the school system which the town would then be responsible for. She also expressed a concern with law enforcement in low-income and senior housing developments.

Stacey Kallelis, 254 Beacon Hill Road, said that the project was a gross excess of rental units and was not in character with the surrounding area. She was concerned about sharing EMS Services and how water and sewer will be impacted when considering the senior housing project presently being constructed in Allenstown.

Chairman Kudrick clarified that Pembroke has received written confirmation that they have sewer capacity with the Allenstown Sewer Treatment Plant. A new Plant permit will be coming out at the beginning of 2022.

Alison Lamothe, 240-246 Beacon Hill Road, was in opposition to the 101 units. She felt that it was too many units and there would be no public transportation for the seniors.

When asked about a traffic study, Chairman Kudrick said that traffic will be addressed by the Planning Board.

Cynthia Simek, Fourth Range Road, was concerned about the traffic that presently exists because of construction along Fourth Range Road.

Sandro Dakalovic, 208 Beacon Hill Road, felt that traffic would create an unsafe environment for young families with children. He also said that property values would decrease because of the noise coming from Route 3 and 106. He would like to preserve the horse farm profile along Beacon Hill Road.

Patricia Manseau, 211 Beacon Hill Road, said that she cannot see having this development in their community and opposes it.

Kerstin Dumas, 318 Beacon Hill Road, said that she has a petition with 311 signatures in opposition to the project. She will send it to the Zoning Board.

Danny Boyer, 223 Beacon Hill Road, said that he wrote the letter that was read aloud and asked that the Board thoroughly consider it along with the input heard at this meeting. He opposed the project.

#### REBUTTAL BY THE APPLICANT:

Attorney Best said that, with regard to traffic, the Planning Board has the purview over traffic. He said that although people talk about traffic and safety as a factor in reducing property values, Attorney Best said that there is no evidence of such based on other similar developments that have been built.

Having been on a Planning Board for more than a decade and being familiar with traffic reports, Attorney Best found that traffic from traditional developments with 101 units will produce approximately 10 cars in the peak hours (approximately 1 car every 5-6 minutes). The information has come from traffic experts. In reality, it is a fraction of the number of homes. He said that approximately 10% of the number of units at the peak hour (week days in the AM and approximately 5 PM).

Attorney Best said that when they meet with the Planning Board, his estimates will be backed up by a traffic study by a traffic engineer. A development such as this one will not produce a whole lot of traffic.

With regard to the road design on Routes 3 and 106, Attorney Best said that the state has upgraded the intersection of Routes 3 and 106 but the traffic from this development will not flow directly to Routes 3 and 106. It will flow north. He said that they did not want to connect South to Beacon Hill Road to Route 3 because it would have required taking other people's properties to build the road and it could have created cut-throughs for people who might have found this a better way to drive. The fact that this road is open to the north is a compromise based on feedback received. He said that the compromise was different from what the Police and Fire Departments offered. They said that they would prefer to get through to Beacon Hill Road from Route 3. The Selectmen were in favor of a hammerhead so the school busses and plows could turn around.

With regard to the comment about the proposed development by Concord Trust for Housing, Attorney Best said that they have no obligation to answer to another applicant's project from 20 years' ago. The Applicant deserves to be judged on the application that is before the Board.

He also said that, with regard to other developments taking place on the other end of Four Range Road, he has no knowledge of them and it has no impact on whether this is an appropriate variance to grant.

Attorney Best said that with regard to the allegations that he made threats or promises about what the applicant was allowed to build was not a threat or promise. He said that the Applicant does not want to build what is allowed, he wants to build a compact development that leaves 2/3 or 3/4 of the parcel open.

With regard to talk about whether age restriction include disabilities and whether it is open to the whole populous, Attorney Best said that age-restriction is an age restriction. If someone is disabled and over 62, they can live there, otherwise there is no open opportunity for disability. The comments that were made that age restriction is for 30 year, is incorrect. The actual requirement from the NH Housing and Finance Authority is a 99-year restriction. It is as permanent as you can get when it comes to those types of restrictions.

Attorney Best said that the audience talked about how 101 units was not condensed. He explained that 101 is the number of units on the 17-lot subdivision with 4-6 units per building which is the same number of units that the Applicant is proposing. He said that a yield plan's purpose is to tell them how many units they could fit on the site with a traditional subdivision, then you take that number and make it more compact on a portion of the property which is exactly what condensed is.

There was testimony about students living in Manchester with their disabled grandparents – Attorney Best said that he had no idea what the purpose of that statement was, but clarified that children cannot live in age-restricted housing no matter how they are related to the occupant. Attorney Best said that the Applicant should be judged on their proposal and not something that happened in Manchester.

There was discussion of the Applicant being technically in R1 but not far from R3 and Attorney Best said that an applicant is entitled to the regulations that exist in the zone that the property exists. Zones are merely lines on a map.

With regard to comments about special exceptions and the integrity of the zone, it was pointed out that the Applicant is not before the Board for a special exception. The Applicant is here for a variance and they have already been over those criteria.

With regard to the project going on in Allenstown and sharing the sewer, Attorney Best said that Chairman Kudrick already received confirmation that sewer capacity is available.

The Planning Board will address the comments about the project being a strain on resources.

With regard to seniors driving and public transportation, Attorney Best said that many people on the Board and in the audience are over 62 and that they managed to attend this meeting. There is no urgent need for public transportation simply because there is a 62 and older age-restricted development. The fact of .8 cars per unit is the choice of the apartment dweller not a requirement of the developer.



There is no data to suggest that building an apartment complex with NH Housing and Finance Authority, with annual audits on how it looks, how it runs, and how it is maintained, decreases property values. He said that it increases property values and makes it a nice community to live in.

Attorney Best said that there were comments that compared a three-apartment building to a vacant 45-acre site as it sits today. He said that that is not a fair comparison and is not the choice before the Board. The property will be developed one way or another and it's a matter of whether it is done in a smart way, with 3 buildings, or if they are forced, because they do not get a variance, to have to come up with another option. But the environmental impact of placing the buildings in one corner of the property and keeping 2/3 or 3/4 of it untouched is a tremendous environmental benefit over what would happen without the variance.

With regard to a petition, Attorney Best said that that was not how variances are decided.

#### REBUTTAL FROM OPPOSITION:

Stacey Kallelis, 254 Beacon Hill Road, asked for clarification on the difference between a special exception and a variance.

Chairman Kudrick said that a variance seeks permission to do something that the ordinance does not allow. In this circumstance, the proposed 3 buildings are not allowed in that zone.

A special exception would be if the Applicant came before the Board with a plan to build 8 units per building where no more than 6 is allowed.

Kerstin Dumas, 318 Beacon Hill Road, said that there was no compromise with the residents with regard to the road going through to Route 3/106 because there is no road. She also said that any realtor will confirm that such a development along with the other developments that are presently occurring in the area will drive down property values.

There were no further comments from the public.

Chairman Kudrick said that he would like to clarify with Town Counsel the following topics: The rules of age-restrictions, disabilities and how long the age-restrictions are in place. He said that a developer recently came in with a study that showed surrounding property values. He suggested that the developer or the surrounding property owners come up with a market analysis of the area.

He said that he would also like to see a letter from Pembroke Water Works saying that they can run water to the development. He considered it important to the health and welfare of the occupants of the surrounding area.

**MOTION:** Vice Chairman Hebert moved to continue the meeting until November 22, 2021 in order to allow the Applicant to get the information that Chairman Kudrick requested such as a market analysis, a letter from Pembroke Water Works, and to allow the Zoning Board to reach out to Town Counsel to clarify age restricted/disability criteria. Seconded by Member Carlucci.

In answer to Mr. Bacon's question, Mr. Evans said that NH Housing Finance Authority will finance the project with a 62 and over restriction. It flows from a Federal Law of the Fair Housing Act (FHA).

**VOTE:**            B. Kudrick – Y            T. Hebert – Y            D. Carlucci – Y  
                      W. Chase – Y            P. Paradis – Y

**MOTION TO CONTINUE THE MEETING UNTIL NOVEMBER 22, 2021 IN ORDER TO ALLOW THE APPLICANT TO GET THE INFORMATION THAT CHAIRMAN KUDRICK REQUESTED SUCH AS A MARKET ANALYSIS, A LETTER FROM PEMBROKE WATER WORKS, AND TO ALLOW THE ZONING BOARD TO REACH OUT TO TOWN COUNSEL TO CLARIFY AGE RESTRICTED/DISABILITY CRITERIA PASSED ON A 5-0 VOTE.**

Chairman Kudrick explained that the meeting will be continued until November 22, 2021 and that subjects such as traffic, sidewalks, width of the road, etc. are Planning Board issues. He said that no notices will be sent out as reminders so interested parties should refer to the Town website for the ZBA agenda.

He also thanked everyone for being courteous.

**Case 21-22-Z** A request has been made for a **Variance under Article V of Dimensional and Density Regulations, §143-21, D and Note 6**. The applicant, William E. Evans, 104 Woodhill Hooksett Rd. Bow, NH 03304 is requesting a variance from the dimensional requirements to allow 101 units on 560 feet of continuous frontage where 1,110 feet of continuous frontage is required. The property is located at 225-229 Beacon Hill Road, Map 563, Lot 15, in the R-1 Medium Density-Residential District, and is owned by the applicant.

**Applicant:**                            William E. Evans, Trustee  
    194 Woodhill Hooksett Road  
    Bow, NH 03304

**Property Owner(s):**                William E. Evans and Mary Lou Evans Irrevocable  
    Trusts

**Property Address:**                225-229 Beacon Hill Road

Pembroke, NH 03275  
Tax Map 563, Lot 15 in the R-1 Medium Density-Residential  
District

**Included in the Member Packets:** Variance Application with attachment; Fee Schedule Worksheet

**Present:** Robert L. Best of Sulloway & Hollis, PLLC and Willam E. Evans

Chairman Kudrick called the meeting to order at 8:45 PM.

The Recording Secretary read the case aloud.

Mr. Bacon read aloud the Notice of Decision of the Pembroke Board of Selectmen dated August 25, 2021.

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.

Chairman Kudrick assured Attorney Best that the Board is willing to rely on the general background of what the Applicant is proposing and that it is not necessary to repeat all the information presented in the prior case.

Attorney Best said that the need for 1,110 ft. of frontage results from a formula from the Table of Uses where a multi-family housing unit would require 120' of frontage, plus 10 additional feet for each unit beyond 2. Normally, with a 6-8 unit building, it would end up with 120-200' of frontage for what was required. The Yield Plan followed those calculations.

He said that when they condensed the units into 3 buildings all located on one lot, they added 990' because of the 10' per unit over 2 to the 120 and end up with 1,110'. The reason for the exceptionally large amount of contiguous frontage results from the same objective as before which is to compact the development into 3 buildings that are located on a portion of the property rather than be spread out throughout the property.

He said that the property has approximately 1,260 linear ft. on Third Range Road (a Class VI road). Up until the Board of Selectmen approval, it had 750' along Beacon Hill Road. The whole purpose behind an ordinance that talks about the amount of contiguous frontage, is to have

some orderly way of arranging the traffic in and out, the driveways, the sight distances down the road, etc. He said that, in this case, there is no fair application to this property because they can produce the 2 driveways needed for in and out for the 3 building development on the 560' that the Applicant asked for.

He apologized for giving the impression that the Applicant made a deal with abutters when he said that they compromised with neighbors. Attorney Best explained that what he meant was that they heard the neighbors' input and altered their proposal as a way of acknowledging some of their concerns. He said that much of the neighbors' concern was to see as little road opened as possible and not to open range roads which is why the Applicant did not propose to open 1,000' of Third Range Road.

He said that the 560' along Beacon Hill Road proposed to the Board of Selectmen was done deliberately to be as small an impact while achieving the engineering requirements to make it a safe accessible driveway.

Chairman Kudrick asked Attorney Best if the reason why they did not go any further or go down Beacon Hill Road was because of the homeowners on the road?

Attorney Best said "yes, that was exactly it". They did not ask for anything more than 560' because they knew that it was an irritant to all the neighbors and especially if they had gone all the way down to Rt. 3. He said that there was "hot, hot opposition to that kind of a concept."

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

**Please give a detailed description of your proposal below.**

Proposal is for the construction of 101 age-restricted, multi-family residential units on an approximately 45 acre parcel located on Beacon Hill Road. Currently, the applicant's parcel is not yet developed. In order to preserve open space on the parcel and minimize traffic and other impacts of this proposed use for the property, the applicant seeks variance relief from the lot frontage requirements and maximum dwelling unit restrictions within this R-1 zone.

Article 563, Section 143-21 - Table of Dimensional Density Regulations: Variance request from the Dimensional Requirements to allow 101 units on 560 feet of continuous frontage where 1,110 feet of continuous frontage is required (Zoning Section 143-21, Table of Dimensional and Density Regulations, (D-R1 zone, Note 6)).

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

The Applicant seeks a variance to allow the proposed development to proceed with 560 feet of continuous frontage on a Class V roadway with additional contiguous frontage along a Class VI roadway, and additional non-contiguous frontage on a Class VI roadway. In total, the property

has over 1,800 feet of frontage, in two segments. This variance will not be contrary to public interest and, in fact, is in concert with the community interests outlined in the Town's recent Master Plan. Due to the uniqueness of this parcel and its location, the public interest supports having no more contiguous road frontage than is strictly necessary for design and engineering purposes. The development of additional contiguous Class V road frontage is strongly opposed by abutters and is not needed to support the level of development on this parcel. The proposed development will provide a much-needed housing opportunity for the residents of the town, in such a design that affords for the preservation of not only a large portion of the parcel's open space, but also the character of the surrounding area. To accomplish this, the proposal intends to utilize 560 feet of contiguous Class V roadway, which provides ample space for entrance and egress of all traffic, municipal vehicles, fire and rescue vehicles and the like.

The property is currently bordered by approximately 1,800 feet of frontage of both Class V and Class VI roads; however, such distance is not continuous. Instead, this parcel has lot frontage on two roads, Beacon Hill Road (Class V and Class VI), and Fourth Range Road (Class VI). Notably, the required lot frontage relates directly to the number of units, and does not take into account the overall area of the parcel. Here, though there are multiple buildings proposed, there will be only one entrance to the development, which will be on the Class V lot frontage. This is necessary and useful because the development on the parcel will be clustered near the Class V frontage. There is no advantage to having additional frontage, since the remainder of the property will be open space, which is best left undisturbed and without road frontage.

Moreover, any public concerns underlying the frontage requirement under this Ordinance (e.g. reduction in the number of driveways for multi-family units or preservation of on-street parking for the size of the development) will be abated by the aforementioned single entrance and the on-site parking lots and the decreased reliance on personal vehicles for proposed residents who will have access to resident transportation in addition to any private vehicles. Further, opening more road than is necessary for access to the development would not be in the public interest, as it would mean that the town would have to maintain more road infrastructure. Accordingly, the requested relief is not contrary to the public interest and the size of the parcel is large enough to support this development.

Attorney Best said that the public's interest of creating a minimum lot frontage is generally intended for much smaller lot such as 2-6 units and start with 120' and end up with 160' because it's a 4-unit apartment. In their case, they do not have individual driveways for a bunch of little buildings. They have 2 two-way driveways that are more than adequate to service the property without any need in separating them any further. It also supports the public interest of not opening more road which the Town would have to maintain, plow, and would add to the cost of the project and would make it more difficult to create affordable senior housing.

Attorney Best said that there would also be environmental impacts that would be required if they opened up roadways. Roadways have drainage structures around them which are a separation

point for wildlife. Wildlife do not cross Class V roads as freely as if they were crossing a Class VI road or no roadway at all. Opening up and building long stretches of roads as would be done on a 17-lot subdivision where there is approximately 2,000' of internal roadway, has a tremendous environmental impact.

## **2. The spirit of the ordinance is observed.**

The spirit and intent of the ordinance is to assure that the parcel is large enough and has enough frontage to support the scope of proposed development. To that end, frontage may serve as a proxy for the size of the parcel, or contiguous frontage may provide sufficient room for necessary entrances, exits, and sight distances from driveways. None of those needs are present on this parcel. The subject property exceeds the requisite frontage amount by a significant portion, though that frontage is not entirely along a Class V roadway, and instead runs on two Class VI roads. The parcel is more than large enough to support the development, and the cluster-style approach to the development locates all of the improvements in a corner of the parcel. Indeed, the lack of continuous lot coverage does not correlate with the size of the parcel due to its L-shape. In addition, the configuration of the driveway along a dead-end portion of Beacon Hill Road means that lengthy sight distances are not needed. The spirit of the ordinance, i.e., the dedication towards reasonable developments, is observed with this proposal. As such, to require the opening of an additional 550 linear feet of Beacon Hill Road to meet the frontage requirement would not further the spirit of the Ordinance, because the proposed development has adequate access to a Class V or better road, and the subject property has a significant amount of lot coverage and lot area to support this project.

Attorney Best said that the spirit is intended to make sure that the driveways and access ways are safe. There is no need to have an additional 600' of frontage in order to accomplish the goals of the ordinance. He said that the property is more than large enough that the development is almost entirely to the interior of it.

## **3. Substantial justice is done.**

Substantial justice is achieved by the granting of this variance, as the property can adequately support this consolidated housing development, while still preserving much of the open space of the property and the character of the surrounding areas. Moreover, granting this variance permits the Applicant to make a reasonable use of his L-shaped 45.72 acre parcel, where he otherwise would be restricted despite the parcel's size, because it does not have a continuous frontage. Moreover, the abutters have been clear in their opposition to opening more Class V roadway.

Attorney Best said that substantial justice is done by requiring a minimal amount of paving while having accessible senior housing.

**4. The values of surrounding properties are not diminished.**

The values of surrounding properties are not diminished by allowing the proposed development to proceed with 560 feet of access on a Class V roadway, as compared to what the property values would be if there were 1,110 feet of contiguous road frontage. In fact, surrounding properties will enjoy the benefits of a minimized compact development, with only as much road frontage as is strictly needed for engineering design and function of the site. As discussed in connection with the first variance request, the proposed development results in the dedication of a significant portion of the property as natural and open space, while also achieving a goal that the Town's Master Plan has established by way of providing additional housing infrastructure to support an active adult/senior living community. The combination of more efficient development footprint, the construction of additional housing to support a need established by the Master Plan, and the preservation of significant open space and mature wooded area are benefits to the community and it would therefore not be anticipated to diminish surrounding property values.

Attorney Best said that the values of surrounding properties would not be diminished at all by having 560' of roadway vs. 1,100' of roadway. When considering property value, those are the things that are compared – what is the Applicant proposing to do and what the regulations require. He asked if 1,100' of roadway would improve the values of the surrounding properties. He said that it would probably create more people going up and down through the woods on Third Range Road which probably no one wants. He said that there is clearly a benefit to doing this project with as minimal a footprint as possible.

**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**

There is no substantial relationship between the general public purpose requiring an extended length of contiguous road frontage and its application to this parcel. The property has more than adequate road frontage to support the development, and does not require multiple access points, or long site distances along roadways in order to make the driveways function well. As previously stated, the Ordinance includes provisions for the construction of multi-family housing in the underlying zoning district. This project is well suited to this property, and the literal enforcement of the ordinance would produce no material benefit to the public. A denial of the Applicant's request would result in an unnecessary hardship and would be contrary to the spirit and intent of the Ordinance, as well as the Master Plan.

Attorney Best said that proposing the construction of another 600' of roadway comes with a substantial expense which is a hardship and it is unnecessary in that there is no engineering benefit to having simply more roadway. There is no substantial relationship between the general public purpose of having safe ingress and egress to having just extra road that does not do anything. There is no need to make the driveways function any differently.

**(ii) the proposed use is a reasonable one.**

The proposed use is reasonable in that it is designed to minimize the overall footprint of the development and seeks to preserve open spaces on the parcel. Moreover, this proposed use conforms to the recommendations in the recently updated Master Plan, and the interest in increasing senior housing options in Pembroke. The Applicant, by way of this request, simply wishes to complete a project, which, as has been previously stated, is for 101 units that could likely otherwise be permitted in separate 6-unit buildings by special exception in this zoning district, but he aims to complete this project in a more environmentally sensitive and efficient manner that would better conform to the existing surrounding areas.

**(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.**

Attorney Best said that it is reasonable because less development with a smaller footprint is more beneficial, more reasonable, than doing a bigger, broader development with 1,100' of roadway and both are the keys to being able to do affordable senior housing on the site.

Chairman Kudrick explained that when it was stated that the buildings would have Town water and sewer, the water and sewer lines would come up Beacon Hill Road from Route 3.

Mr. Evans said that there is a manhole at the top of the lower portion of Beacon Hill Road and a hydrant at the terminus of that section of the road. It comes to the end. He said his site is approximately 275' to the sewer, downhill.

Chairman Kudrick said that when the water and sewer lines are installed, there will be a road for access to the water and sewer lines. He said that the road should be gated at both ends. He explained that a sewer easement is 30' wide, and water has to be 10' away from the sewer line to allow for heavy equipment. He said that it will be similar to a Class VI road which will have to be gated to prevent people from going up and down it. The Town sewer and water lines will have to be maintained and repaired as necessary. He said that it would be a Planning Board issue but he wanted to make the public aware of what it would look like.



No one spoke in favor of the application.

In opposition to the road:

Mark Dumas, 318 Beacon Hill Road, said that the Board of Selectmen addressed the issue with the Applicant. He said that the Town can put up a gate, but cannot lock it.

Krestin Dumas, 318 Beacon Hill Road, said that since the right-of-way will not be gated and locked, it will become a cut-through for Fourth Range Road.

Stacey Kallelis, 254 Beacon Hill Road, said that the residents of Beacon Hill Road did not hear a proposal for using the other end of Beacon Hill Road.

Vincent Greco, 211 Beacon Hill Road, asked if, once sewer and water lines are run up the dirt section of Beacon Hill Road, if the Town would plow it in the winter or only plow just beyond his house as they do now.

Chairman Kudrick said that that would be up to the Water and Sewer Department to decide how the snow would be handled. He said that the State requires that it be an “all weather road”. He said that it would not be a road for the public. It would only be an access road for the utility companies in order to fix the lines if needed.

He said that the Applicant wants to open 560’ of roadway instead of the required 1,100’ specifically because they do not want to open the road up to Rt. 3.

Attorney Best said that the law of “Gates and Bars” stated that because it is a public way, there cannot be a lock on it. The Town will continue to plow the snow to the end of Beacon Hill Road as they always have. Snow storage will be at the proposed hammerhead. It will not be passable in the winter time.

Patricia Manseau, 211 Beacon Hill Road, asked if there was any other means to get water and sewer to the proposed development other than from the bottom of Beacon Hill Road.

Chairman Kudrick said that he did not know and that would be a question for the applicant.

Attorney Best said that he did not know the answer to that question either because until they pass the Zoning Board variances and meet with the Planning Board, all the engineering has not been done. He said that they cannot finance the development with wells and/or septic systems, it must be with Town utilities.

Vice Chairman Hebert asked where the 560' ended.

Attorney Best said that on the map, in the left margin, where it says Beacon Hill Road at the top and move down to "to route 3" and across from the "E" in "route" is the end of 560'. He said that it goes a short distance past the driveway. This is one configuration of the hammerhead that only goes in one direction. The Board of Selectmen wanted a two-direction hammerhead which will be configured on the final plans. It will be either completely in the right-of-way or on Mr. Evan's property.

There were no further question from the Board.

Chairman Kudrick apologized to the public and to the Applicant for talking about the water and sewer going up the easement even though it is not a Zoning Board issue, but he wanted everyone to be aware of the possibility of what could happen.

Chairman Kudrick asked how the Board felt about voting on this variance in view of the fact that the first variance application was continued. He also asked if the Board votes to grant the second variance and the first variance is later denied, would that cause an issue.

Vice Chairman Hebert said that he did not feel comfortable pursuing any kind of a vote knowing that there is a pending variance that may hinge on each other or have repercussions.

Chairman Kudrick wondered if the Board approved the 560' variance, which goes with the land, would it go with the land forever even if the first variance is not granted. He would prefer to confer with Town Counsel.

Member Carlucci agreed with Vice Chairman Hebert.

**MOTION:** Vice Chairman Hebert moved to continue **Case 21-22-Z** to November 22, 2021 in order to confer with Town Counsel. Seconded by Member Carlucci

**VOTE:**            B. Kudrick – Y                            T. Hebert – Y                            D. Carlucci – Y  
                         W. Chase – Y                            P. Paradis – Y

**MOTION TO CONTINUE CASE 21-22-Z TO NOVEMBER 22, 2021 IN ORDER TO CONFER WITH TOWN COUNSEL PASSED ON A 5-0 VOTE.**

Chairman Kudrick announced that the public will not be renoticed and for them to access the ZBA agenda by the Town's website.

#### **IV. Approval of Minutes – September 27, 2021**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF SEPTEMBER 27, 2021 AS PRESENTED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

#### **V. Other Business / Correspondence**

Correspondence related to the ZBA's discussion around soliciting comments from department heads.

Chairman Kudrick said that the Board asked if they could hear from other departments before hearing large development cases.

Mr. Bacon said that the Board can ask specific questions of the department heads but cannot have a Technical Review Committee hearing prior to the Zoning Board meeting. He said that Town Counsel said that the ZBA and the Planning Board can hold a joint meeting.

Vice Chairman Hebert asked why the Applicant was not upgrading the road to their entire frontage.

Mr. Bacon said because there was objection from nearby neighbors about opening it all the way to Route 3 and so the Applicant decided to open it only as much as necessary to do the project.

Mr. Bacon said that, in order to open Beacon Hill Road all the way through, they would have to buy property on both sides of the road for the width. He said that he also did not know if the Town could take, by eminent domain, the land necessary to create a Class V road.

Chairman Kudrick said that it would have been nice if the Board of Selectmen had sent a letter to the ZBA explaining why they did not want to open Beacon Hill Road to Route 3 knowing that this development was coming before the ZBA.

He said that he would like to find out, from Town Counsel, what the ZBA can and cannot do.

The Board would like the following questions asked of Town Counsel:

1. Confirm rules of age-restricted (62 vs. 55) housing that is financed by NH Housing and Finance Authority.
2. Where can the guidelines/restrictions for NHHFA be found.
3. Are disabled people allowed?

4. Can there be children living with a tenant who is over 62 or 55.
5. How long does age-restricted housing last (99 years vs. 30 years)
6. In a 62 and older community, does 100% of all occupants have to be 62 and over or can there be people under 62 living with the person who is 62 and paying the bills for that unit;
7. For a 55 and older community, does 80% of the building occupants have to be 55 and older and, if so, who can live in the other 20% of the building.
8. How can the ZBA get more information from Town departments prior to large cases being heard by the ZBA.
9. When discussing traffic, how much can the ZBA discuss knowing that it is a Planning Board issue.
10. What are the limitations of what the ZBA can and should be discussing with an Applicant.

Chairman Kudrick said he would like to see the answers pertaining to the NHHFA in writing so it can be placed with the file. The other questions should be discussed in person with Town Counsel.

Vice Chairman Hebert said that some of the above questions may not be necessary if Town Counsel can direct the ZBA to the federal guidelines associated with a NHHFA development.

Chairman Kudrick said that the ZBA needs a refresher course on variances and special exceptions and the Board's parameters and the rules of procedure. Mr. Bacon will discuss it with David Jodoin.

## **VI. Adjournment**

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

Meeting adjourned at 10:05 p.m.

Respectfully submitted,  
Jocelyn Carlucci  
Recording Secretary