

PEMBROKE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
March 28, 2022
(ADOPTED)

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

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

EXCUSED:

STAFF PRESENT: Paul Bacon, Code Enforcement Officer, Steven M. Whitley, Esq. of Sulloway & Hollis PLLC

Chairman Kudrick called the public hearing meeting to order at 7:02 p.m.

Roll call was taken by the Reporting Secretary.

Chairman Kudrick said that this is a rehearing of Case 21-21-Z and 21-22-Z. He appointed Alternate Member Chase to vote in place of Member Glisson since Alternate Member Chase attended the original hearings.

PUBLIC REHEARINGS

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 Rd. 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.

Case 21-22-Z A request has been made for a **Variance under Article V Table of Dimensional and Density Regulations, §143-21, D and Note 6**. The applicant, William E. Evans, 194 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 Rd., Map 563 Lot 15 in the R-1 Medium Density-Residential District and is owned by the applicant.

Present: Robert Best, Esq. of Sulloway Hollis and William E. Evans, the Applicant.

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.

The Reporting Secretary read aloud an email from Kimm Phillips, dated March 28, 2022 in support of Case 21-21-Z and Case 21-22-Z.

Attorney Best introduced himself and said that he is representing William E. Evans, the Applicant, through Mr. Evans' revocable trust.

Attorney Best said that this is a rehearing and was told that they could rely on the original submissions and original materials. He said that he wished to incorporate all of the material previously provided into this hearing. He also wanted to make sure that all of the testimony and material originally provided are regarded as part of what is presented at this meeting.

He thanked the Board for the opportunity to have a rehearing.

Looking at the tax map, Attorney Best explained that the parcel is approximately 45 acres with some frontage on Beacon Hill Road and some frontage on Third Range Road. Prior to a recent petition with the Board of Selectmen, the frontage that it had was entirely on Class VI roadways. The Board of Selectmen granted permission to convert 565' of Beacon Hill Road to a Class V road. The proposed development would be accessed off that upper part of Beacon Hill Road. The road does not connect to Pembroke Street. It would connect 500' from the homes that are at the corner of Beacon Hill Road and Third Range Road. The road would dead-end at this parcel so there would not be anyone that would have any reason to drive by unless they were going to the proposed complex.

Attorney Best pointed out the intersection of Sheep Davis Road and said that the route is not very far from the Concord boundary.

He described the plan that presents with a colored picture of a building on the right side and an engineering drawing on the left which was part of the original submission. The picture is a site plan of a similar site. The Applicant would like to consolidate the entire development on Beacon Hill Road to one portion of the property and leave the rest as open space. It would avoid crossing wetlands which would require permits. They prefer to leave the majority of the property in an undisturbed state for walking trails/nature/wildlife. Once they are before the Planning Board, the open space could be permanently established as open space pending the granting of the variance.

The plan also showed an architectural rendering of what the buildings could look like.

Attorney Best said that the first variance is to use 3 buildings instead of 17 buildings spread throughout the 45 acres in order to reach the number of housing units (101) desired. The Town's ordinance allows 6 or 8 per building. The variance is to cluster the housing units together in 3 buildings.

The advantage to seniors of having 3 buildings rather than 17 is that it is less far for them to walk to their cars because the parking is consolidated and it is easier to walk to facilities such as laundry or indoor social activities in the common areas. It is also easier for residents to connect with their neighbors since they only have to walk down the hall and not go outside in bad weather.

Attorney Best also said that it is very important to think of economics. Although the ZBA and Planning Board should not consider the project cost, the Master Plan talks of the importance of affordable housing which may not be accomplished depending on the style of the land's use and buildings. In order to be a financially viable project and be financed by the NH Housing Finance Authority, the target rent, based on the complexes in Salem and Londonderry, would be under \$1,000 for a 1-bedroom apartment and between \$1,100-1,200 for a 2-bedroom unit. The rents are below the market rate apartments in a private venture. Based on Attorney Best's experience, the market rent for this type of housing would be closer to \$2,000 per month. Creating a building style that is affordable and keeping the buildings compact is functionally and economically important for senior housing.

The second variance deals with the road frontage. By Pembroke's zoning ordinance formula, the necessary frontage for this project would be 1,110'. The Applicant would like to get a variance that would allow him to use the 565' that the Board of Selectmen upgraded to a Class V. The idea of having a lot of road frontage for a project is about congestion, traffic flows, turning, and sight distances which are necessary when people come and go. Because this is a senior housing project and is located at the end of the road, none of those issues come up.

Attorney Best said that when they were before the Board of Selectmen, they did not ask for all of Beacon Hill Road to be opened down to Pembroke Street because the neighbors strongly objected to that being done. The advantage to opening Beacon Hill Road would have been that it might have been easier for people (fire, police, ambulances) to get to Pembroke Street. He said that the requested 565' was a compromise. If the Applicant was driven to having 1,100', they could have proposed opening part of Third Range Road because they have enough frontage on Third Range Road to provide the project if converted to Class V. The neighbors did not want the range roads to be opened or Beacon Hill Road to be opened to Pembroke Street.

The second page of the plan, was a conceptual plan or yield plan that depicted an overhead view of the property, the internal roads, and the lot lines if the Town ordinance was followed. A special exception would be needed to construct the yield plan senior housing. The Applicant would have to convince the Board of Selectmen to create new public roads within the parcel, the result of which would be a sprawling development that would take up the entire 45 acres with no undisturbed land for water infiltration, walking trails or wildlife. Instead of seniors being able to gather in one building and visit each other with only an elevator ride to the common room, they would have to walk 300' to the next lot in order to visit with folks. Interaction would be difficult.

Attorney Best handed out photos of the development created in Salem and Londonderry. At the last meeting, the Board requested more information about how the parcel could impact the value of abutting properties. He spoke of Braemoor Woods in Salem and a development in Londonderry.

The map of Braemoor Woods contains Clough Farm Circle which is workforce housing that is architecturally similar to those proposed for Pembroke. Braemoor Woods Village is high-end condominiums (approximately \$470,000 per condo). Granite Hill is senior living. Braemoor Ridge contains duplexes, and Eagles Nest homes are single-family homes worth approximately \$1 million. They all co-exist in the same area. The senior housing has not, in any way, discouraged the construction or higher end homes or affect the home values or diminished the character of the neighborhood.

The picture which showed a #8 is architecturally identical to Pembroke's proposed building.

The Pembroke buildings would have the following amenities – walking paths, 200' of wooded buffers to shield the buildings from the view of neighbors, elevators, indoor mailboxes, laundry facilities, a library, and a common area. It is intended to look like the quality of a nice hotel.

The Londonderry development is in a residential neighborhood with a school and other homes. Pembroke's 3 buildings would contain 3 stories. The Londonderry buildings have solar panels on the roof which Attorney Best could not say whether solar panels would be part of Pembroke's construction. In Londonderry, the lessened electricity cost is passed onto the tenants. He said that a sprawling development would probably not have the solar advantage.

Attorney Best said that water would be supplied by Pembroke Water Works.

Attorney Best referred to a letter dated November 22, 2021 from Douglas Ricard, a life-long resident of Pembroke who is a licensed real estate agent and has worked as a real estate appraiser for ten years, and with the NH Board of Tax and Land Appeals for the last 15 years where he was involved in the adjudication of real estate valuations. The letter says "I have no reason to expect this project will negatively impact surrounding property values . . . the project is exactly what . . . Pembroke needs for several reasons, including: (1) It provides appropriate housing for citizens aged 62 and over; (2) It increases the Town's tax base, which increases Town revenues without increasing any town costs; and (3) It will not impact the school system, which accounts for two-thirds of our Town's expenses."

Attorney Best said that as the 5 criteria in the variance are considered, the Master Plan is the Town's guiding document. It encourages senior housing. He read from the Housing Section, Section 3.2, Table 3.3 which lists the strength of a mix of housing types and the concern is the lack of adequate senior housing and services. Under the heading "Opportunities", it lists a growing workforce. Developing senior housing frees up other housing inventory for the workforce population. The Master Plan also includes the need for improving the quality of rental units. Statistics suggest the need for housing for an aging population such as single floor living, a small living space, and lower costs.

The Master Plan Housing Section called Matching Housing Supply to Age Groups which states that older residents are likely to seek smaller units, yet housing units of 3+ bedrooms far outnumber 2-bedroom units in the State. In Section 3.5 it says that "the housing and needs assessment conducted for Pembroke shows a projected need for 101 units."

He also referred to Section 3.7 and the Senior Housing Ordinance section in the Master Plan which suggests a strong need for senior housing in Pembroke along with discussions. Allowing senior housing by right may lower costs for seniors and young people just entering the work force.

He said that the information contained in the Master Plan should be part of the thought process when going through the 5 variance criteria.

The Applicant read the application aloud:

Please give a detailed description of your proposal below.

The variance is from Article IV Table of Use Regulations §143-19, #3 which requires 6 dwelling units per building where the Applicant would like to do 3 buildings with 34 units.

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

There is strong public interest in available senior housing that is affordable. They have an interest in consolidating the project and leaving open space. It is of public interest to not cross wetlands or to build roads on the parcel. It is important to public interest to have senior housing that meets the needs of seniors as stated in the Master Plan – compact, single level within the apartment, not having a sprawled development.

Attorney Best added that neighbors may say that they do not want to see a big building next to them because they have a single family house and only single family homes should be built next to them. He said it was important to consider what is permitted in the zone and what is the character of the neighborhood. Things that are permitted by right in that neighborhood are town structures such as a public works garage, a library or school, police or fire departments and any agricultural use.

He said that it is a medium density residential neighborhood and the proposed development is a little more than a medium density but it is roughly in keeping with a residential neighborhood.

2. The spirit of the ordinance is observed.

Multifamily dwelling units are allowed by special exception in R1, Medium Density Residential District. The spirit of the ordinance is derived from the Master Plan and should be interpreted to mean that whatever the ordinance opts to do should be carried out to reach the Master Plan's goal. It also governs the concepts of clustering the development, leaving as much open space and woodland as possible. By granting the relief there would be less construction, less congestion, fewer and larger buildings which would suit senior housing better.

3. Substantial justice is done.

NH Housing Finance Authority's current estimate is that New Hampshire is short 20,000 housing units of workforce housing. Even though this variance is for senior housing, the estimates deal with the idea that senior housing clears out housing stock which will fill the workforce housing need. 101 units is a small portion compared to 20,000 but is still important enough to pursue. To keep senior housing affordable, achievable, functional for senior residents balanced with a compact development should be easy to see that substantial justice standpoint is achieved.

4. The values of surrounding properties are not diminished.

There is no evidence to suggest that property values will be diminished. The Board indicated at the last hearing that that point was well-covered. When looking at the Salem and Londonderry developments, it is clear that property values will not diminish by consolidating the buildings as opposed to spreading them out.

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

Some of the unnecessary hardship comes from cost and spreading out the development so it does not work as well for seniors. Some of it also comes from the construction challenges and difficulties with more paving, more public roads, wider areas, more things to plow and landscape. These are a tremendous hardship. It also takes away the open space and wooded areas for wildlife to be used as a buffer from the property.

When analyzing hardship, Attorney Best said that you get into the notion that 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.

Attorney Best asked what the public interest was of the ordinance to require 6 or 8 units per building. He said that it was to foster and encourage the development of senior housing and workforce housing. He said that it was probably also mindful of the best use of the property, how it impacts others, and how it impacts the environment. A project to consolidate the units into 3 buildings improves and enhances the environmental impact, the availability of housing for seniors and it makes it possible and reachable. The NH Housing Finance Authority is not financing 8-unit buildings anymore. With the current environment, it is not possible to use land in that way and to construct buildings that way. It would not be able to go forward as a senior housing development. It would have to go forward as a market-rate development.

(ii) The proposed use is a reasonable one.

Attorney Best said that he felt that the Board understood at the first meeting that senior housing is needed and it is a reasonable use.

(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

In response to Attorney Best's questions as to whether he should begin discussing the next case or wait until a decision on this first case is made, Chairman Kudrick said that even though the information pertains to both cases, he felt that it would be best to handle each case separately.

Attorney Best said that the first time that the Board heard the case, the variance was denied for the following reasons: (1) the variance was contrary to the public interest. While senior housing is identified as a need in Town, the proposal would vary significantly from the use and character of the surrounding properties and of the current zoning code. (2) the spirit of the ordinance is not observed and the proposal would significantly alter the character of the neighborhood which currently consists of one and two-family homes.

He said that in his request for rehearing, the Applicant provided a number of reasons why they thought that the Board ought to rehear and reconsider those particular findings about the variance being contrary to the public interest and that it would significantly alter the character of the neighborhood.

He said that there was a little idiosyncrasy in the language that the Board used in speaking to "significantly altering the character of the neighborhood" when the legal standard is whether the variance "alters the essential character" of the neighborhood. He said that "significantly alter the neighborhood" is different from "altering the essential character of the neighborhood."

Attorney Best said that the essential character of the neighborhood is its essence which is what is permitted in that zone as a matter of right in the medium density residential zone. Included is one and two-family residential homes but it also includes libraries, schools, and even a shooting range.

He said that when he suggests these alternative uses, he is not threatening to do so, and is not saying that "if you don't do this, we will do that". He said that that is not what this is about and it is not a game that they play. It is about providing the information that is needed to understand what the essential character of the neighborhood is. It is measured by the things that are permitted there as a matter of right, therefore, a highway garage, a library, or school, including a private school or daycare could open up as a matter of right in the medium density residential district according to the ordinance.

He said that that is what the "essential character" of the neighborhood is. It is not simply looking at what is next door or saying that it does not look like the things next door so, therefore, it alters the neighborhood.

Attorney Best said that the developments in Londonderry and Salem showed that those developments sit in residential neighborhoods with single-family homes abutting them and they did not alter the essential character of the neighborhood. It is still a residential neighborhood.

He said that the Board, at the last hearing, expressed that they thought that affecting the values of the neighboring properties was covered well but that it still would affect the character of the neighborhood. He said that he wanted to make sure where those two concepts can be aligned. He said that if you alter the essential character of the neighborhood wouldn't you expect that it would show up in values? If they don't show up in values, can you say that something altered the essential value of the neighborhood?

In the request for rehearing, Attorney Best said that they talked about seeking a decision on the road opening variance because, whether it is accepted or denied, the applicant deserves the right to know that and not pursue an appeal of one variance only to come back for another variance. He said that they both should be decided tonight.

With regard to the essential character of the neighborhood, it was pointed out that the location will be 565' beyond the nearest resident. It will be at a dead end, no person will have cause to pass or view it unless they were going to it. For the most part, the buildings will be very hard to see because of the buffers.

He said that when considering the essential character of the neighborhood, they thought that the open space was very important for wildlife, and whether preserving that space actually preserves the character of the neighborhood which is a rural area with large undeveloped parcels.

To allow the same use that could be done in 17 buildings to be done in larger buildings in a consolidated way makes a lot of sense and is a really good project. He also said that they meet all 5 criteria in the variance and one that Pembroke should approve.

Chairman Kudrick said that unnecessary hardship means that which is owing to a special condition of the property. He asked Attorney Best to elaborate with more detail on why this piece of property is different.

Attorney Best said that because it is 45 acres and not a 15 acre parcel where every inch is needed in order to develop it, they are able to leave 35 acres in undeveloped state for woodland and wildlife and its environmental impact. If they did not do that, they would have to seek NH DES permits to cross wetlands and build more roadways and create sprawl. It would be a hardship if put to the task of having to do all of those things because the property has wetlands and slopes. Where it is located is also a unique aspect of the property. It is at a dead end road. He said that it was fortunate to have the Board of Selectmen grant the right to convert part of it to a Class V road. All those things are unique elements to this parcel that relate to whether it makes sense to consolidate the entire development into a part of the parcel rather than to create sprawl.

Alternate Member Bourque asked if the upgrade of 565' to a Class V road was the amount requested by the Applicant or if it was the amount that the Board of Selectmen granted.

Attorney Best said that it was both. It was not an uninformed request. It was a very long process with the Board of Selectmen which ended up in a "muddy decision" which the Applicant appealed. Part of the "muddy decision" was determining how much road they wanted. Ultimately the proposal that the Selectmen approved ended up with 565' which was necessary for the development. It was a very well-tailored length of road that was needed without doing any more than was necessary from the Selectmen.

Chairman Kudrick asked if anyone wished to speak in favor of the Case.

Doug Ricard, 441 Cross Country Road, stated that he was not being paid to be at the meeting or to speak in favor of the project. He recalled that when he first heard about the project, that it rang true for him –

he is 75 years old and, although he can still plow his driveway, shovel the walkways, and mow his lawn, there will come a time when he will not be able to do so and would still want to remain in Pembroke.

He said that he heard a lot of talk about placing this development in the field at the top of Bricket Hill. He explained that because of the water issues in the field, it would be very difficult to install a septic system there. Mr. Ricard said that the proposed location is private for residents and very few people would be able to see it. He pointed out that people spent hours writing the zoning and subdivision regulations with the best interest of the town in mind. The zoning ordinance and clarifications are changed annually. He said that his experience has shown that property values will not be negatively impacted by the development.

There being no further questions or comments in favor of the case, Chairman Kudrick asked for anyone in opposition of the Case to speak.

Mark Dumas, 318 Beacon Hill Road, said that he agrees that elderly and workforce housing is needed. Although he believes that Mr. Evans has every right to do this development on his land, in his opinion, he does not have the right to ask the Board to ignore the rules that the Town has in play or to cloud them in a different way in order to build something that is not allowed. He said that he does not want 3 large apartment buildings built in his area. He said that a petition, with hundreds of signatures, has been submitted against this development.

Mr. Dumas said that he would prefer the sprawled development or a cluster development similar to the housing behind the Pembroke Congregational Church. He pointed out that Mr. Evan's development will be built in R1 but will fully impact R3.

He said that a hammerhead at the end of Beacon Hill Road is not needed. The Town has no problem turning their vehicles around in that area. He also said that busses are not allowed to go down dead end or one-way streets. He felt that comparing Londonderry and Salem to Pembroke was absurd.

Stacey Kallelis, 254 Beacon Hill Road, gave copies to the Board of an outline of 2 maps based on the tax cards. She said that her concern is altering the character of the neighborhood but also the adjoining zones. She said that the focus has been on R1 and did not want to lose sight of the development's impact on R3. Special Exception, C, states "not to impair the integrity and character of the district and adjoining zones". The adjoining zone is, with the exception of 3 homes prior to Mr. Evan's property, R3. She would prefer a neighborhood within her neighborhood. She was not convinced that property values would not be diminished. She also did not feel that Mr. Evans met the hardship criteria.

Ms. Kallelis proposed creating a committee to propose a reasonable way to bring senior housing to Pembroke. She would be willing to spearhead the committee.

Alison Lamothe, 242 Beacon Hill Rd., said that Attorney Best mentioned the lengthy process of completing wetland permits. She has completed wetland permits herself and said that it is time-consuming but not impossible to do. She would prefer to have a large neighborhood and also feel that the development would bring a lot of traffic.

Krestin Dumas, 318 Beacon Hill Road, said that pictures can misrepresent greatly. She said that the reason that the decision turned on the appeal before the Board of Selectmen was because one of the Selectmen heard that a bus does not go down that road and he wanted to have it changed. She said that the dead-end road ends where a bus would have to turn around but that busses never go down dead-end roads. She said that the petition that was brought to the last meeting was signed by 312 residents of Pembroke. She also said that there is no tax benefit to the development because seniors need a lot of services. She said that the fire department, police department, and town services have said that the project was not a good idea. She said that traveling down Beacon Hill Road was proven, 20 years ago, that it is not doable.

Dan Boyer, 223 Beacon Hill Rd, asked if there was any guarantee that the housing residents would be from Pembroke.

Rebuttal by the Applicant:

Attorney Best said that in terms of senior housing being government housing, this is not government housing. The government would not own the building, but may provide some financing and does not import people from other districts. It is made available to people who are interested in living in Pembroke. He said that a study was done on how far people come to live in senior housing developments and it is a handful of miles.

With regard to a project 20 years ago that was mentioned, Attorney Best said that they do not know what the project was but it was not Mr. Evans' project or this plan and has nothing to do with the proposal before the Board.

Attorney Best said that they have never told the Board of Selectmen that nobody living in senior housing was going to be driving. It will be fewer people than if it was workforce housing. They will, at the appropriate time, have a traffic study done that will show what the traffic impact will be and what parking will be needed, but those are core Planning Board functions which the Planning Board will test the Applicant on.

The traffic study professionals will also comment on what the impact will be on police and fire departments along with ambulances. With regard to the implied tax impact from the likely increase in ambulance runs, it is not the case. Senior housing does not use more resources than it supplies. He said that the biggest cost to government has always been schools of which 2/3 of the budget goes towards. If there are no school age students, there is diminished tax impact.

He said that the discussions of roadway, busses and turnarounds seemed like a carry-over from the Board of Selectmen meeting and their decision is not part of the Zoning Board's decision.

Attorney Best said that there was some confusion about the presentation of photos because it was said that pictures do not represent necessarily the reality. He said that he presented a number of pictures and that anyone can see the developments that he spoke of in Salem or Londonderry at any time. He said that they really are in residential neighborhoods and not in the center of things. They are within the medium density residential districts (R1).

The fact that someone would have to drive through an R3 district to get to an R1 district is a fact. A car could and will drive along a public road to get to an area. He said that for a development of this size there will not be a large traffic impact. He again pointed out that all these questions are Planning Board questions.

Attorney Best said that the notion that to get wetland permits is just paperwork, is not true. The point is that an applicant would cross a wetland. It is better to leave the wetlands alone, which is the point of doing a compact development – to leave the open space in its natural state. The question is whether you want to cross all the wetlands when you can avoid it and that is the hardship.

He could not respond to the map that was distributed by a resident because he did not see it.

There was testimony that Mr. Evans has the right to develop his lot and put senior housing on it but does not have the right to ask the Board for permission to build something that is not allowed. The ZBA is here for exactly that purpose. A variance is for permission to do something that the regulations do not allow. It is achieved by satisfying the 5 criteria that are in the regulations. The ZBA is an outlet to allow some relief when the regulations do not comply in a way that they ought to. There is no harm or wrong committed by coming before the ZBA. It requires the Applicant to explain why it makes sense and why it meets the variance criteria. It is exactly what the ZBA is here to do -- to consider that information.

Attorney Best said that he would not discuss the petition because this is not a petition process. He said that it is not how variances are granted or Planning Board approval is granted or how Selectmen view road opening petitions.

There were no comments from the Board.

Rebuttal:

Dan Boyer, 223 Beacon Hill Rd, asked where the Londonderry development was located.

Attorney Best said that it was located at 30-32 Sanford Road, Londonderry, NH.

There were no further rebuttals by the opposition.

There were no further comments from the Applicant.

There were also no questions from the Board or the public.

Chairman Kudrick recessed the case in order to allow the Board to question Attorney Whitley. He also said that the Board does not hear any cases after 10:00 pm so he wanted to give notice to any applicant in the audience who was on the agenda and was waiting to be heard.

The Board recessed at 9:10 pm

Chairman Kudrick resumed the meeting at 9:26 pm

Member Glisson summarized the case as follows:

Case 22-21-Z under Article 563, §143-19, Table of Use Regulations which is specifically for a request for multifamily buildings greater than 6 units.

A letter from resident Kim Phillips was read in favor. The applicant presented and discussed the yield plan and presented other developments (Salem and Londonderry) that were similar to the one proposed. Comparisons were made to explain how senior housing would not reduce the value of surrounding properties. There was a verification letter from the Pembroke Water Works which is in the file. A letter from Mr. Ricard was presented and Mr. Ricard who is a real estate agent and a Pembroke resident spoke in approval of the variance. There was also a discussion on how the Master Plan stressed that senior housing is desired. The Applicant read through the criteria and reviewed the Board's previous decision which denied the variance and discussed the rebuttal of why the case should be approved at this rehearing. Chairman Kudrick asked about special conditions relative to property hardship. The Applicant discussed how they would have to seek permits across wetlands and that it is currently on a dead-end road which makes it a valuable piece of property for the variance. Alternate Member Bourque asked for clarification about the amount of road requested to be opened for a Class V road. Mr. Ricard spoke in favor of the project and shared the reasons why. Mr. Dumas, an abutter to the project, spoke in opposition and shared his reasons why. Ms. Kalelis spoke in opposition and provided tax card information. Ms. Lamothe stated that she is a diagonal abutter in opposition and shared her experiences in applying for a wetland permit. Ms. Dumas spoke in opposition and concerns for traffic. Mr. Boyer, an abutter to the project, asked if the occupants to the project would be Pembroke residents. The Applicant made a rebuttal and explained that it is not government housing and that anyone could live there whether Pembroke residents or not, and stated that once someone occupies the apartment, he/she would then become a Pembroke resident. It was stated that the previous project of 20 years ago that was mentioned, had nothing to do with the current proposal. The road opening is not part of the ZBA criteria for assessing the variance. It was discussed how a traffic study will be done at the Planning Board level. Tax impact was discussed and the reason to have a compact development was addressed to not disturb the wetlands. Mr. Boyer asked where the development in Londonderry was located.

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 once the case is closed.

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

Chairman Kudrick officially closed the hearing at 9:35 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

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

Alternate Member Chase said that she did not believe that a variance should be granted for public interest. She thought that the proposal of more than 6 dwelling units would cause overcrowding and the height and size of the proposed buildings would create a high-density development which she felt was contrary to what the Town would like.

Member Glisson said that she felt that senior housing was needed in the state and that this is a good piece of property for it but it is not the ideal location in a very private neighborhood.

Vice Chairman Hebert said that he has to reflect on the density of what this is going to be and the effect that it will have on the neighborhood. Whether senior housing is needed and desired is not in question but the Board is not looking at a request for that particular use. The Board is looking at a request specifically on a density standpoint and, that he has a hard time thinking that it would be in the public interest the way that it is proposed.

Chairman Kudrick said that it would be creating a high density where 1 and 2-family dwelling units are for that zone. He agrees that Pembroke needs housing, but he felt that it would alter the character of the neighborhood and will be out of place and will have additional traffic that will be coming up and down that road since the project is at the end of the dead end road. In his opinion, the project is not in the right spot.

Member Carlucci said that the Master Plan points out that elderly housing is definitely needed. It also points out that conservation area, open space, and cluster subdivisions are encouraged. The Master Plan also mentions eliminating urban sprawl which the Town's 2-acre house lots contribute to. He was in favor of the project and did not think that it would have the impact that residents feel that it will have.

Member Paradis said that he felt that the project is too big for the location.

Alternate Member Miner agreed that the Town needs senior housing. The density associated with compacting the 3 buildings will be extreme for that area. Public interest and right of use for that zone is single family, vacant lot or duplex housing – not 101 units in 3 buildings.

Alternate Member Bourque said that he agrees that 3 commercial residential buildings in a residential area will be too much for the neighborhood to take between traffic and that there is only 1 way in and out. If something happens to Beacon Hill Road it would be difficult to get in or out of that area. He

also felt that it would be overcrowding the area and will not be acceptable in the sense of it being out of place with the rest of the neighborhood.

2. The spirit of the ordinance is observed.

Alternate Member Bourque said that he did not know how to answer that one.

Alternate Member Miner said that his answer to the previous question also pertains to this question and stands by his previous statement.

Member Paradis agreed with Alternate Member Miner.

Member Carlucci said that the spirit of the ordinance is to provide housing for older folks and this project will do that. He said that 101 units seems like a large number but the Town has a good road on Beacon Hill Road and on the short distance to Route 106. He said that he would vote yes on this statement.

Chairman Kudrick said that the answer to the last question will hold for this question.

Vice Chairman Hebert said that he ties the spirit of the ordinance together with public interest. When going back to the zoning regulations, and the purpose of the zoning, overcrowding of the land is stated at the beginning of the chapter. He said that he does not see that the density of the proposed project is not going to overcrowd the land. The density of the project because it is concentrated in one corner, was problematic for him.

Member Glisson said that it violates the ordinance in face of the zoning objectives. It is overcrowding, yet spreading it out over 45 acres is also pretty dense. She was not sure if it would be better to leave open land and put the project all in one area. She was torn between the two possibilities.

Alternate Member Chase said that when she thinks of the current zoning and use of the space which is single family homes, duplexes, and open land, and the proposal for more than 6 dwelling units per building, she did not feel that it fit with the characteristics of the property nor does it fit with the spirit of the zoning.

3. Substantial justice is done.

Alternate Member Chase said that when she looked at the definition of substantial justice, which is “not outweighed by the gain; up to the general public as an injustice” she had no concerns.

Member Glisson, Chairman Kudrick and Vice Chairman Hebert all agreed with Alternate Member Chase.

Member Carlucci said that he felt that there would be a loss to public gain because there would be 2-acre lots on the parcel, there would be no open space put aside for recreation and conservation space, therefore he felt that substantial justice would be done by granting the variance.

Member Paradis agreed with Member Carlucci.

Alternate Members Miner and Bourque said that they had no issues with substantial justice.

4. Property values are not diminished.

Alternate Member Bourque said that it is a hard statement to prove because it is all opinion and the present housing market is energized because of the high housing prices. He did not think that there could be a fair comparison to say whether or not the value of a property would diminish or increase.

Alternate Member Miner and Member Paradis agreed with the previous statement.

Member Carlucci said that he does not believe that the value of the surrounding properties would be diminished.

Chairman Kudrick, Vice Chairman Hebert, and Member Glisson agreed with Member Carlucci. Vice Chairman Hebert also said that any new construction appreciates the value of the neighborhood.

Member Glisson also said that she cannot disregard a professional which is an expert in real estate.

Alternate Member Chase said that she agreed. Mr. Ricard's expert in-person testimony and his letter was good and satisfied her.

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.

Alternate Member Chase said that when she thinks about hardship, she thinks about special conditions of the land that would not allow development within the confines of the zoning. She said that she listened to all the information but did not feel that there were special conditions that would warrant a hardship in this case.

Member Glisson said that there could be hardships for this land but the Applicant did not provide a surveyor or any commentary on the wetlands and how difficult it would be. He did not bring in an expert to say that, because of the land configuration, he could not build in certain areas. She did not feel that hardship was proven.

Vice Chairman Hebert agreed with Member Glisson. He said that there was nothing that was brought to the Board that separates this land from some of the abutting properties that are of similar size. They all have wetlands, slopes, and are very similar properties.

Chairman Kudrick said that the Applicant has to prove unnecessary hardship of the land and he did not feel that the Applicant did so. All the land in the area is about the same with regard to slopes and all battle with wetlands. He said that the Board is not preventing him from using the property. He did not feel that the Applicant proved that the project property was in any way different from other properties in the area.

Member Carlucci said that he felt that the applicant came in with a need for the community as far as elderly housing and was willing to fill that need. He could have proposed to put up 4 buildings but instead proposed to set land aside for conservation, and public use.

Member Paradis agreed with Member Carlucci.

Alternate Member Miner said that in that neighborhood, all the property owners deal with slopes, wetlands, and the dead-end. There is no specific hardship for this property. He said that the biggest issue was that the Applicant provided 2 plans -- one showing that he can fully utilize the entire property which showed him that the Applicant can get around any hardship that he may have.

Alternate Member Bourque said that under the Table of Uses for R1, duplexes are permitted by right but would need a special exception for up to 6. The property of 45+ acres is developable, therefore, it is not only restricted to putting up 3 story buildings, he can put in a full development which was shown on the yield plan. As such, there really is no limitations on the property that he can only do three 3-story buildings. He could spread it out and create a regular residential neighborhood per site plan regulations but the Applicant does not want to do that because of costs. In his opinion, the Applicant did not prove hardship and that he had to have the three 3-story buildings.

Vice Chairman Hebert said that, in reference to **Case 21-21-Z**, a request for a variance having been presented to the Board for consideration, a variance is required because the proposed development would have a larger number of dwelling units per building than what is allowed by code.

MOTION: Vice Chairman Hebert moved to deny **Case 21-21-Z** application as presented. The reason for the denial is the following: (1) It is contrary to public interest and the spirit of the ordinance is not observed. (2) The project will alter the essential character of the neighborhood because the current neighborhood consists of single family homes, and duplexes and the larger three-story buildings would be a denser structure than what is currently existing there and would have an adverse effect. (3) The hardship of the land is not satisfied in that this does not satisfy the criteria because the Applicant did not identify that this property is burdened by the zoning restrictions in a way different than other similarly situated properties in the zone and adjoining zones. Seconded by Member Carlucci.

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

MOTION TO DENY CASE 21-21-Z, APPLICATION AS PRESENTED. THE REASON FOR THE DENIAL IS THE FOLLOWING: (1) IT IS CONTRARY TO PUBLIC INTEREST AND THE SPIRIT OF THE ORDINANCE IS NOT OBSERVED. (2) THE PROJECT WILL ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE THE CURRENT NEIGHBORHOOD CONSISTS OF SINGLE FAMILY HOMES, AND DUPLEXES AND THE LARGER THREE-STORY BUILDINGS WOULD BE A DENSER STRUCTURE THAN WHAT IS CURRENTLY EXISTING THERE AND WOULD HAVE AN ADVERSE AFFECT. (3) THE HARDSHIP OF THE LAND IS NOT SATISFIED IN THAT THIS DOES NOT SATISFY THE CRITERIA BECAUSE THE APPLICANT DID NOT IDENTIFY THAT THIS PROPERTY IS BURDENED BY THE ZONING RESTRICTIONS IN A WAY DIFFERENT THAN OTHER SIMILARLY SITUATED PROPERTIES IN THE ZONE AND ADJOINING ZONES PASSED ON A 4-1 VOTE.

Case 21-22-Z A request has been made for a **Variance under Article V Table of Dimensional and Density Regulations, §143-21, D and Note 6**. The applicant, William E. Evans, 194 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 Rd., Map 563 Lot 15 in the R-1 Medium Density-Residential District and is owned by the applicant.

Present: Robert Best, Esq. of Sulloway Hollis and William E. Evans, the Applicant.

Chairman Kudrick opened the rehearing at 9:55 pm.

Chairman Kudrick explained that the Applicant did not have to repeat all the testimony that was said in the prior case and to begin with the variance criteria.

Attorney Best said that it is important to have a decision on this Case as well, even though the Board denied the first Case, so that they would know what to do with it.

He said that this is a request for a variance from §143-21, the Table of Dimensional and Density Regulations which would require, for a 101-unit apartment building, to have 1,110' contiguous uninterrupted feet of frontage on a Class V or better roadway. This property will have approximately 560' of contiguous frontage on a Class V or better roadway. The contiguous frontage which was mentioned earlier was granted by the Board of Selectmen in a petition to lay out a Class V road over a Class VI roadway.

The decision why the Applicant asked for 565' is because that is what is necessary to support the apartment building development. He said that even though the Board has denied the variance for that, it is important to take that proposal almost as if it had been granted in terms of considering why there is reason to consider this requirement for frontage because, if the Applicant does not do that, then the table for frontage only requires approximately 88'. The only reason he would need 1,110' is related to the 3 apartment buildings.

Attorney Best said that he would like to incorporate all of the testimony in this evening's hearings and those of last fall and all exhibits, testimony from the abutters, all the testimony from supporting parties and opposing parties. He would like all of that to be part of the discussion and to rely on their written submissions.

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

Attorney Best said that the variance would not be contrary to the public interest because the public interest in a frontage requirement like that is to prevent different commercial developments from being developed close to each other and, therefore, would be a lot of frontage requirements to keep things spread out for the sake of driveways and traffic flow. None of that applies to this project because it is at the end of a road and the 565' that it will have is designed specifically to accommodate all the traffic flow. There will be nobody driving past it. There will be no sight distance issues. The public interest circles back to the earlier discussions of senior housing and supporting the concept from the Town's Master Plan. He said that if the Town wants to have a senior housing development and there is no public interest that opposes having 565' instead of 1,110', the Board has enough to support granting a variance for this.

2. The spirit of the ordinance is observed.

Attorney Best said that the spirit of the ordinance is observed because the spirit of the ordinance is intended to deal with congested developments or things that will abut near each other, or affect traffic flow and turning movements. Being at the end of the road, where nothing is going passed, those issues do not come up. He said that even the 1,110' is an anomaly related to the formula that is in the ordinance. Even if there was 565' on a busy road, that is an awful lot of frontage for a development and more than enough to manage the traffic issues. They believe that the spirit of the ordinance is observed.

3. Substantial justice is done.

Attorney Best said that it is very important to have senior housing and to promote the senior housing development. This particular ordinance does not serve any public purpose because there is no need to have 1,110' of frontage and the 565' is the right amount. It prevents them from having to go and ask for opening all of Beacon Hill Road or all of Third Range Road which would be the alternative if the variance is not granted.

4. Property values are not diminished.

He said that there is no indication that any particular amount of frontage has any impact on the surrounding property values. There is also no evidence that any senior housing developments have a negative impact on the values of surrounding properties. Attorney Best said that the neighbors were fairly adamant about not opening Beacon Hill Road and Third Range Road and those types of things would have some potential impact on property values. To keep it to the minimum amount as necessary makes a lot of sense.

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.

(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 many of the arguments are the same as the ones made for the first variance. He said that there is a lot of uniqueness to the parcel but for this 565', it has no other frontage except for frontage on Class VI roads. There is a lot of interest in town for not opening up more Class VI roads which would be what the Applicant will be forced to do if the variance was denied. The alternative development would be much like the yield plan with new public roads to be maintained going through the development at a cost to the public to plow the roads, etc. if the variance is not granted. He said that wetland crossings are things that are to be avoided. It is a hardship to cross wetlands when it is avoidable.

Senior housing is a reasonable use of the property. Attorney Best said that there may be some concerns about traffic that flow from 101 senior housing units, but the traffic is identical whether the variance is granted or not because there would be the same 101 units at the end of Beacon Hill Road whether it is done in 3 buildings or the frontage configuration in the yield plan -- exactly the same number of people that live there would come and go. It is a reasonable use. He said that 565' provides all the access needed so why would they want to have excess frontage that serves no particular purpose.

Attorney Best said that he wants to augment the criteria with those that were put in writing.

The Board had no questions.

Chairman Kudrick reminded the public that the same rules apply from the last case – if anyone wishes to speak they must state their name, address, and interest in the case.

No one spoke in favor of the Applicant and the Case.

Opposition to the Case:

Mark Dumas, 318 Beacon Hill Road, asked for a point of clarification: The Applicant is asking to secure the 500' that already went through the Board of Selectmen for future development.

Chairman Kudrick said yes. It is access to his property.

Attorney Best clarified that the variance does not run on the same path that the Board of Selectmen did when they voted. They gave permission to turn a Class VI road into a Class V road. He said that this would allow that amount of frontage to be sufficient for a housing development with 101 units. He said that although it may seem confusing given that the first variance was denied, but in order to be able to present both variances on a potential appeal, they need to have a decision from the Board that allows them to raise that issue.

Chairman Kudrick clarified that the Applicant is looking for frontage on their property to build 101 units. Attorney Best agreed.

Alternate Member Bourque asked what the total frontage is of the Class VI portion of their property on Beacon Hill Road.

Attorney Best said that he thought that the entire frontage of the Class V and VI road is approximately 700' of which 560' is to be converted, therefore, it is another 150' or 200' on Beacon Hill Road. He thought that there was approximately 1,100' on Third Range Road if it was Class V. Since it has to be contiguous, Attorney Best said that if they were not granted a variance, they would be petitioning the Board of Selectmen to open all of Third Range Road which would give 1,110' for no reason at all because it is not the right way to access the development. That is the reason for the variance. Attorney Best said that he was not threatening to go to the Board of Selectmen. They are here to ask for the variance in hopes that it will be granted and then address whatever outcome comes from that.

Attorney Whitley asked Attorney Best if they were still requesting 101 units, but they will just not be in 3 buildings anymore. They will be either 1 or 2 family houses or the Applicant will come back for a special exception to have 6 units per building.

Attorney Best said he does not want to sound like they are in any way threatening the Board, but it is to appeal the decision on the earlier variance and then that would put the Applicant in line for what they are talking about in considering building, if successful. That is the basis for asking for the second variance. He said that if they were doing buildings of 2 or 6 units, they would not need the roadway variance because they would be building new town roads through the property and everyone would have all the frontage that they needed.

Attorney Whitley asked Attorney Best if the following statement was accurate: It sounds like the Applicant is asking the Board to not remember that they just denied the variance for the density variance previously requested and the project that the Applicant wanted to do is basically the same.

Attorney Best said yes, that that was accurate. He said that he realizes that it is a little confusing but ultimately if they do not successfully appeal the first denial, then whatever happens with the second one becomes moot because they cannot build the apartment buildings and they will not need 1,110' of frontage and no new rights are created, no unintended consequences would occur. There is simply two variances needed for the same concept.

Attorney Whitley said that the concept has not changed as a result of the denial of variance earlier this evening.

Attorney Best said that that statement was correct.

Attorney Whitley continued by saying that the schematics that were shared showing the location of the curb cuts, the entry into the property does not change for consideration of this variance.

Attorney Best said that that statement was correct. The plan with the colored picture on the side that has the road going down Beacon Hill Road to a couple of entrances into the apartment buildings is exactly what would be sought after. The yield plan one is just a concept to see what the physical dimensions of the property holds.

Attorney Whitley said that he was talking about the first plan, not the yield plan and thanked Attorney Best for clarifying.

Stacey Kallelis, 254 Beacon Hill Road, said that she is opposed to the Board making a decision this evening. She was not necessarily opposed to the road frontage but felt that it was unfair to make a decision on something that was just denied.

Mark Dumas, 318 Beacon Hill Road, said that he agreed. He said that since the Applicant lost his appeal, he should go through the appeal process and, if he succeeds, then he should be heard as a continuation of this project. He thought it was unfair to continue to move a project forward that has just been denied and to forget everything that has just happened.

Attorney Best said that that is exactly the point of being before the Zoning Board and asking for the second decision on this. They are entitled to appeal on all of the reasons why that the Board thinks that this project should not go forward at the same time. It should not be the case where an applicant runs up an appeals process and then whatever time and money it takes to do that and the Town spends whatever time and money it takes to respond to it only to come back and then hear a second variance and find out that there is some reason why they may want to appeal that as well. Whatever errors that the Board thinks are part of the project, the applicant should know about them all at once so they can go and have them all heard, and the applicant deserves the opportunity to have them all heard, at once.

Chairman Kudrick reminded the next applicant that it was past 10:00 pm and that his case would not be heard this evening. He suggested that he contact the Code Enforcement Officer to make arrangements for another Zoning Board meeting.

Attorney Whitley said that if the Board would like another recess, he would be happy to answer any of their questions.

The Board agreed to take a recess. Chairman Kudrick recessed the meeting at 10:09 pm.

Chairman Kudrick continued the meeting at 10:25 pm. and said that Alternate Member Chase would be voting on this case.

There were no further questions or comments from the Applicant or the public.

Member Glisson summarized the case as follows:

Case 21-22-Z under Article 563, §143-21 Table of Dimensional and Density Regulations. The Applicant stated that he would like to incorporate all applicable information from the last previous variance request into this present variance. The Applicant read through the criteria. No one spoke in opposition. Mr. Dumas asked for clarification about the variance. No one spoke in opposition. The Applicant clarified reasons for continuing. They would like to make an appeal and, should this case be denied, they would like to make them both together. Alternate Member Bourque asked about the entire frontage of the property. Attorney Whitley asked the Applicant about their plan going forward which was clarified. Ms. Kallelis and Mr. Dumans thanked Town Counsel for clarifying. The Applicant stated that the reason for being heard is to be able to appeal all variances together.

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 once the case is closed.

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

Chairman Kudrick officially closed the hearing at 10:27 pm.

ZONING BOARD MEMBER DELIBERATIONS:

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

Alternate Member Bourque said that he did not think that it would be contrary to the public interest and said that 565' is a reasonable amount to gain access to the property.

Alternate Member Miner said that the Applicant already has 560' and the Board is here for the usage. The Applicant would like to be allowed 101 units on 560' of continuous frontage where 1,110' is required. He said that the essential character of the neighborhood is single family, duplexes, and vacant lots. Building 101 units on 560' of road frontage seems drastic.

Attorney Whitley reminded the Board that this is the frontage variance request, not the building density one.

Alternate Member Miner said that the Board is basing this frontage on the plan to access 101 units. He had issue with not meeting the Town's full 1,110' of frontage.

Member Paradis said that he is against the 560'.

Member Carlucci said that he does not see any problem with 560' on a Class V road.

Chairman Kudrick agreed with Member Carlucci.

Vice Chairman Hebert said that it is tough when the Board does not know what the end use will be. He said that it seems like the intent is to put 101 housing units in there and saying that 560' is adequate to have up to 101 units. The 560' is there today. He said that he realizes that the Applicant is not asking for 101 units right now, but is asking for the frontage to be enough to support up to 101 units. He said he was having a hard time with this question.

Member Glisson said that she has no problem with it and feels that it will be enough to put a roadway in if he uses the yield plan.

Alternate Member Chase said when she thinks of the public interest she feels that it would alter the essential character of the neighborhood because if it is part of the overall plan that has been proposed, she said she would not approve it.

2. The spirit of the ordinance is observed.

Alternate Member Chase said that she did not think that it is observed if the zoning regulation is to require more than that.

Member Glisson said that this is the reason why there are variance requests -- to make land more accessible.

Vice Chairman Hebert said that he tied the spirit of the ordinance and contrary to public interest together and he felt that he could not agree with one and disagree with the other, therefore he disagrees that the spirit is observed.

Chairman Kudrick and Member Carlucci said that they had no problem with it. Since the Board does not know what it will be used for, Member Carlucci said that it might be adequate if the housing units are built or for single family housing. He is not sure because it is more of a planning board issue.

Member Paradis agreed.

Alternate Member Miner said that since the Applicant already has 560', he could build single family homes or another road off the 560' to build the yield plan. The Board is basing the usage off the plan for 101 units and 3 buildings.

Alternate Member Bourque said that he does not think that the 1100' frontage is a good number. He felt that it should be moved up from 560' to 700' on Beacon Hill Road.

3. Substantial justice is done.

Alternate Member Bourque said that if the frontage was increased from 560' to 700', he felt that substantial justice would be done because that is what everyone else is required to do to upgrade a Class VI road to a Class V road.

Alternate Member Miner said that he was fine with that.

Member Paradis agreed.

Chairman Kudrick, Vice Chairman Hebert, Member Carlucci, Member Glisson and Alternate Member Chase agreed that they were fine with the frontage.

4. Property values are not diminished.

Alternate Member Chase said that she did not think that there would be any impact to values because of a change of frontage.

Member Carlucci, Member Paradis, Member Glisson, Vice Chairman Hebert, and Chairman Kudrick agreed that the frontage would not affect the property values.

Alternate Member Miner said that changing the use of the frontage will not affect property values.

Alternate Member Bourque said that he did not think that values would 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.

Alternate Member Bourque said that he did not think that it would be.

Alternate Member Miner said that he had no issue with this one.

Member Paradis agreed.

Member Carlucci said that he was okay with it.

Chairman Kudrick said that the Applicant did not really satisfy why he needed that footage. The applicant did not prove why he needed the lesser amount.

Vice Chairman Hebert said that he did not see what it was that established hardship for this property to be able to have less frontage than a similar property down the road.

Member Glisson said that she did not think that he adequately proved the hardship in the sense that there is nothing necessarily different about this land that requires him to have a smaller frontage than any other.

Alternate Member Chase agreed. She thinks of hardship as having to do with the characteristics of the land. She did not hear anything that made this parcel unique.

(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.

In reference to **Case 21-22-Z**, a request for a variance having been presented to the Board for consideration, a variance is required because the lot does not have the frontage required to support the proposed construction.

MOTION: Vice Chairman Hebert moved to deny **Case 21-22-Z** application as presented for the following reasons: (A) It does not satisfy the criteria that the variance would be contrary to public interest; (B) the spirit of the ordinance is observed; and (C) with regard to the density that could potentially be put on that property for buildout; and (D) the literal enforcement does not result in unnecessary hardship. The applicant failed to adequately define that there was a hardship on the property. Seconded by Member Carlucci

Alternate Member Miner clarified that a yes vote means that the member is denying the variance. Chairman Kudrick said yes.

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

MOTION TO DENY Case 21-22-Z APPLICATION AS PRESENTED FOR THE FOLLOWING REASONS: (A) IT DOES NOT SATISFY THE CRITERIA THAT THE VARIANCE WOULD BE CONTRARY TO PUBLIC INTEREST; (B) THE SPIRIT OF THE ORDINANCE IS OBSERVED; AND (C) WITH REGARD TO THE DENSITY THAT COULD POTENTIALLY BE PUT ON THAT PROPERTY FOR BUILDOUT; AND (D) THE LITERAL ENFORCEMENT DOES NOT RESULT IN UNNECESSARY HARDSHIP. THE APPLICANT FAILED TO ADEQUATELY DEFINE THAT THERE WAS A HARDSHIP ON THE PROPERTY PASSED ON A 3-2 VOTE.

Approval of Minutes – February 28, 2022

MOTION: Vice Chairman Hebert moved to approve the minutes of February 28, 2022 as presented. Seconded by Member Carlucci. Unanimously approved.

V. Other Business / Correspondence

Chairman Kudrick said that David Jodoin is working on having a video screen in the conference room to aid in discussions with Town Counsel.

Alternate Member Miner suggested that all motions be worded “to approve” rather than “to deny” for clarity along with the reasons why the motion is denied.

Attorney Whitley said that it helps if the Board has a motion to deny to have the specific reasons in the motion of why the motion was denied because if it is denied, the Applicant has rights which they can exercise.

VI. Adjournment

MOTION: Vice Chairman Hebert moved to adjourn the meeting at 10:50 pm. Seconded by Member Carlucci. Unanimously approved.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary