

**PEMBROKE ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
August 28, 2023  
(ADOPTED)**

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

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

**EXCUSED:**

**STAFF PRESENT:** Paul Bacon, Code Enforcement Officer, Jocelyn Carlucci, Reporting Secretary

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

Roll call was taken by the Reporting Secretary.

**PUBLIC HEARINGS**

**Case 23-13-Z** A request has been made for a **Variance under Article VIII Signs, § 143-62 Dimensional Table of Signs**. The applicant, Pembroke Pines Country Club of 42 Whittemore Rd., Pembroke NH 03275 is requesting a **Variance** to construct an Electronic Changing sign in the LO Zoning District. A **Variance** is required because Electronic Changing Signs are not allowed in the LO district. The property is located at 470 Pembroke St., Pembroke, NH, 03275, Map 634 Lot 24, in the LO-Limited Office, Zoning District.

**Applicant:** Pembroke Pines Country Club

**Property Owner(s):** Pembroke Golf, LLC

**Property Address:** 470 Pembroke Street  
Tax Map 634, Lot 24 in the LO District

**Included in the Member Packets:** Fee Schedule Worksheet, Tax Map, Plot Map, Sign A Option 1, Sign A Option 2, Sign B Option 1, Sign B Option 2, Sign C Restaurant Wall Sign, Sign D Rear Restaurant Wall Sign, Sign E Pro Shop Wall Sign, Quitclaim Deed, Abutters List, and Sign Permit.

**Present:** Tim Peloquin of Promised Land Survey, LLC and Robert MacCormack, owner of Pembroke Pines Country Club

Mr. Bacon said that all abutter notices were sent out but did not receive all the return cards.

The Reporting Secretary read the case aloud.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

Chairman Kudrick pointed out that there was no case number on the copy of the application received by the Board.

Mr. Bacon said that he did not know why there should be a case number on the application since there is a case number on the Agenda and it is in the folder.

Chairman Kudrick pointed out that the case number should be on the application since the application will eventually be placed in a file which, in the future, will be easily identifiable.

Mr. Bacon said he would ask Elaine to put it on the application.

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

**Please give a detailed description of your proposal below:** We request to replace the existing Pembroke Pines Country Club sign which is located at the intersection of Pembroke Street and Whittemore Road. The proposed new sign would exceed the 6-foot height requirement limit and the 32 sq. ft. area allowed. This proposed sign is illuminated and includes lit information board which is programmable. See attached details of said proposed sign.

1. **The variance will not be contrary to the public interest.** Because the proposed sign is intended to promote safety, comfort, and well being of the users of the street and will further promote traffic safety by directing travelers to the Country Club, Restaurant, Function Hall, weddings, outings, etc. and not create potential hazards of turn-arounds, cut-throughs, or the like.
2. **The spirit of the ordinance is observed.** The Town of Pembroke has granted a new clubhouse and Function Facility which is under construction and near completion. The intention is to enhance the new Clubhouse and Facility/s with an automated sign system which is up to date with current industry standards. Further, with the new sign, guests of the new facility/s who may be unfamiliar with the area, will be able to appropriately navigate to the facility/s, particularly at night when lit (during business hours).
3. **Substantial justice is done.** We are asking to replace an existing sign with an up-to-date sign. We believe this new sign will best direct guests to the facility/s. Further, we believe this new sign will lesson traffic congestion which may occur at Pembroke Street or cut-throughs of nearby neighborhoods. For these reasons, we believe substantial justice is done, and will allow our facility/s to compete equally with other like facilities and event centers in the area, and assure long-term success here.

4. **The values of surrounding properties are not diminished.** With our development of the area, the neighborhoods within our locus have seen an increase in their property values that other areas in Pembroke likely have not. Having these new amenities, and a new walkable restaurant and its grandeur, we believe this new sign will help residents in this area, and continue to increase their property values.

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 property (Pembroke Pines) is unique and of special significance in the area. This new sign, as proposed and replacing existing sign, will help direct travelers, some from faraway areas, appropriately to the facility/s intended. Events here may include corporate, weddings, large parties, graduations, etc. This sign is important to direct said travelers to these events, golf course activities, and the new “1759 Grille”. In order for our substantial investment to this facility to be fully sustainable, both short and long-term, a new up-to-date sign is imperative.

**(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.** As stated, Pembroke Pines, as a whole, has special significance to the area as well as the Town of Pembroke. The substantial recent investments in this property, short and long-term, is a true betterment to the community at large. By not granting this reasonable request of sign relief, both in size and message board, the facility and its associated recreation will be limited, and cause various hardships to the owner, and the community, both short and long-term as stated.

Mr. Peloquin said that there is a small monument sign on 2 posts which has been in existence for a long time. Mr. MacCormack improved it about 10 years ago. He stated that a locus plan was included in the packet that shows where that sign exists. It also shows where a sidewalk will be built to connect Pembroke Street to the new clubhouse. The new sidewalk will traverse behind the sign.

Mr. Peloquin said that the sign is important. Mr. MacCormack has made a large investment on the property and the sign is imperative to help advertise and steer people in the right direction. With regard to the message board, the owner is willing to work with the Town in various emergency events, and Town functions at various times and post messages that will be appropriate i.e. “Vote Today” . The idea will be to post a message, such as “the wedding party of so and so” or to advertise a corporate event. The message board is important as opposed to affixing the old fashion letters to a sign board. He said that they understand that they are not allowed neon, various colors, or exploding fireworks on the electronic sign and assured the Board that none of that will be part of the sign. Although the sign is large, Mr. Peloquin pointed out that the facility is large.

He said that the golf course was built around 1960. It predated Town zoning. He said that it “is by-and-large a commercial property”. It is zoned Limited Office but the golf course was first in that neighborhood. It was a gravel pit and a golf course in 1960. Mr. MacCormack made a substantial investment in the golf course, the new clubhouse, a new driving range, and needed housing. By creating these phases, it has created long-term sustainability of the golf course. The sign is very important to help Mr. MacCormack with his investment.

Mr. MacCormack said that in 1960 the Town allowed the golf course to be built as a commercial property. It has run as a commercial property continuously for 63 years. In the 1970’s, zoning was instituted into that area as an overlay and zoned Limited Office. The original golf course was considered a country club, with a public swimming pool. It was known as a recreational facility. It had a retail establishment (the pro shop), an eating establishment (the restaurant), an equipment repair facility (the maintenance facility), a commercial parking lot, open storage of construction equipment and golf equipment and it also had a structure for golf equipment storage. He said that the one thing that all these things have in common is that none of them are allowed in a Limited Office space, but, for 63 years, it has been that way.

Three years ago, he said that he came to the Zoning Board and Pembroke approved a new clubhouse. That clubhouse was the main reason that they were trying to assure the sustainability of the golf course market. He explained that Beaver Meadow Golf Course is owned by the City of Concord which contributes tax dollars annually to help support the golf course. The City of Manchester contributed \$4 to \$5M to the Derryfield Golf Course in upgrades and also offsets its annual deficit through taxes.

Mr. MacCormack said in order to compete with those other golf courses is to upgrade the facility. When the ZBA approved the new clubhouse, it allowed them to create a function facility which will offer the golf club revenue during the off-months. When the new clubhouse was approved, it was built to commercial standards.

He said that the one thing that they are lacking is a sign. It is his opinion that the facility is not in a good location for people to find. He said that while going through Phase 1 of the apartments, the club house and driving range and Phase 2 of the apartments, the largest concern from neighbors was the traffic coming in and out of the facility. They did not want people going through the neighborhoods.

Mr. MacCormack said that his fear is that people coming from out-of-town, when driving along Route 3, will miss Whittemore Road. He said that several times the GPS has led deliveries to the club house via Donna Drive because it is the shortest distance. One way to accomplish this is through the presentation of a nice looking sign that fits into the community and people will see.

He said the project is unique and is bringing in hundreds of people in a single day. In the future, they will be asking for directional signs on the northbound and southbound sides of the road that will identify Pembroke Pines Country club as the next right/left, etc. He said that the benefits of having the sign outweigh the negative in terms of safety, convenience of neighborhoods, and easy to get people directly in and out of the facility.

Mr. Peloquin said that the message board would also post other things such as a high school or Town event.

Mr. MacCormack said that they have over 20 outings a year that are nonprofit outings such as the American Cancer Society. They only want messages such as “Welcome American Cancer Society Golf Benefit”. The present message board is manual, he would like the convenience of changing the message from his home.

Chairman Kudrick said that in the Board’s packet, there are pictures of multiple signs.

Mr. Peloquin said that the sign company provided a full package of their proposal to Mr. MacCormack i.e. the restaurant sign, etc. They will be returning in a month with a separate variance.

Mr. MacCormack said that he is not asking for the other signs at this time. He just wanted the Board to know that eventually they will be asking for them.

Chairman Kudrick confirmed that all the Board is discussing is the sign on Route 3 and Whittemore Road.

Mr. MacCormack said yes.

Those in favor of the Applicant:

Kristen Vachon, 469 Pembroke Street, said that she was quite pleased to see what the sign looked like. She asked if the sign was going to be running during business hours and will the lighted portion be shut off after business hours. Her concern is it will shine in their windows at night.

Mr. MacCormack said that the Town of Pembroke has strict guidelines on illuminated and message board signs. There are only certain amounts of brightness that can be shown. The brightness can be higher during the daytime and diminished at nighttime. The illuminated sign must be off by 11:00 pm or until the hours that the business is open. There are 2 pages of guidelines that they must follow.

Kristen Vachon, 469 Pembroke Street, asked if the new sign would be in the exact same location as the present sign.

Mr. MacCormack said that that comes down to the building inspector. Presently the old sign is in the Town’s right-of-way which normally is not done. The land was previously owned by the electric company. He purchased it and joined it with the golf course. They did so, so they could control the sign and its location.

Mr. MacCormack said that per zoning regulations, the building inspector will decide the location taking into consideration things such as traffic site distance.

Mr. Peloquin said that, because of wetlands, the position of the sign is where it should stay.

Kristen Vachon, 469 Pembroke Street, asked if it would be blinking or scrolling constantly.

Mr. MacCormack said that that was not their intent. His understanding is that they can only use 2 colors and the message can only change once a day. They are only looking to have text to promote different member guest tournaments, membership drives, etc.

Mr. Peloquin said that the text is not intended to be loud, offensive, or blinking.

There were no other people to speak in favor.

Those opposed to the Applicant:

Kathy Johns, 5 Whittemore Road, asked for more information pertaining to the sidewalk.

Mr. Peloquin said that from the Fairway Drive neighborhood, there will be a crosswalk that will connect to the sidewalk across the street. Everything will be on the golf course side. The sidewalk will run along the entire road down to the golf course, with a grass strip between the curb and the sidewalk. It is intended to respect the wetlands.

Mr. MacCormack said that they have actively met with the Town Engineer, the Public Works Department, and the Wetlands Board and have come up with a consensus that works for everyone. The Town must approve it.

Kathy Johns, 5 Whittemore Road, asked when the sidewalk would be completed.

Mr. Peloquin said that he anticipates a spring construction.

Michael Johns, 5 Whittemore Road, asked if the power to the lighted sign was going to be overhead or underground.

Mr. MacCormack said that coming off a pole is typically up to Eversource. Usually another pole is placed behind an existing pole and wires are run to the pole and down to a meter base, and the wires would go underground to the sign.

Michael Johns, 5 Whittemore Road, asked when the sign will be lit. He was concerned that, if the business has a bar, it could be open until 2 a.m., the sign would be lit until then.

Mr. MacCormack said that presently the golf course closes at 8 or 9 pm. The new facility will have a restaurant but the hours have not yet been set. When it is open for functions, the function would be open until 10:30 or 11 pm. He said that if the Town said that the light had to be off by 9 or 10 pm that is not

something that will hurt them because by that time, the guests will have found the facility. The sign is to direct people to the facility which he feels is hard to find.

Chairman Kudrick said that the Zoning Board can put conditions as to how long the sign can be on.

Alternate Member Bourque asked if the current sign was illuminated.

Mr. MacCormack said no, but the new sign will be.

Alternate Member Bourque asked if the new sign would be illuminated and have a message board.

Mr. MacCormack said yes. The message board will be based on the Town's zoning regulations. The upper board will be illuminated with a light pointing to the sign in order to stop the light from going through Mr. Johns' windows.

Alternate Member Bourque asked if illuminated signs were allowed.

Mr. Bacon said yes.

Chairman Kudrick asked Mr. Bacon if the Public Works Department had the authority over where the sign would be located as it was at the time that the old sign was erected.

Mr. Bacon said that, as far as he knows, authority had not changed.

Chairman Kudrick said, "Then it's still with the Public Works Director?"

Mr. Bacon said "Of course, we would coordinate with Public Works".

Mr. Peloquin said that they would be perfectly amicable to work with the Public Works Director and the Town Engineer as they are with the sidewalk, because the sign is in the Town's right-of-way. Mr. Bacon would also be consulted.

Chairman Kudrick asked what the size is of the current sign.

Mr. MacCormack thought that it was 20 square feet. Possibly 10 ft. wide and does not go above the guidelines for a pedestal sign.

Mr. Bacon said that they only need to take into account the body of the sign itself, the structure does not count.

Mr. MacCormack said that the Town allowed them 10 years ago to duplicate the size of the old Plausawa sign which he believed was 20 sq. ft.

Member Glisson said the sign regulations say it can be 12 sq. ft.

Chairman Kudrick said the small sign below is 29 sq. ft., not counting the posts.

Mr. Peloquin said 32 sq. ft. is allowed in a commercial zone.

Alternate Member Bourque said that the Applicant is saying that 32 sq. ft. is allowed in the commercial area. He pointed out that the golf course is not in a commercial area, but in the Limited Office District.

Chairman Kudrick clarified that in 2008, it was found that the Plausawa sign was not correct. The town made an error. The owner had to get a waiver. They had to come in for a waiver of dimensional requirement. What they got was a 2' x 6' sign on the lower part. The problem became apparent to the Town when the "bunker bar and grill" wanted a sign permit for the same location.

The existing sign was approximately 20 sq. ft. and, at that time, was moved. The Plausawa had received a State permit for the sign but not a Town permit. He asked the Applicant if he had a state DOT permit for the new sign.

Mr. Peloquin said that they do not need it because it is not in the State right-of-way, it is in the Town right-of-way.

Mr. MacCormack said that when they went for their sign in 2012, they were allowed the existing waiver because they were duplicating what was existing except with a different name. The sign was inspected and they received a permit from the Town.

Chairman Kudrick pointed out that the way the application reads: "The proposed new sign would exceed the 6-foot height requirement and the 32 sq. ft. area allowed." The LO District only allows 12 sq. ft. He referred to the chart on Page 79 of the Pembroke Zoning Ordinance. He said that a freestanding sign is allowed but only 12 sq. ft.

Member Glisson pointed out that the application indicates 32 sq. ft. but the sign picture that Mr. Peloquin gave to the Board says 27.44 sq. ft.

Mr. MacCormack said that he thinks that the sign company counted the granite.

Mr. Peloquin said that it is 27.44 sq. ft. that they are asking for beyond the 12 sq. ft. and that the 32 sq. ft. on the front of the application was unintentional and should have been 12 sq. ft. (a typo) within the LO District.

Alternate Member Bourque said that the oval sign says 27.44 sq. ft. and the event sign is 21 sq. ft.

Chairman Kudrick said that the signage would be a total of 48.44 sq. ft. He then asked the applicant: "The new sign that you are looking for, Pembroke Pines Country Club, is 27.44 sq. ft.?"



Mr. MacCormack said that that was correct.

Chairman Kudrick continued: “The event sign is 21 sq. ft.”

Mr. MacCormack said yes.

Chairman Kudrick continued: “The existing sign is 27.44 ft. Is that correct?”

Mr. MacCormack said that he was not sure but did not believe that it was that large.

Chairman Kudrick said that he calculated 29 sq. ft.

Mr. MacCormack said that they knew they were exceeding the size of the present sign.

Chairman Kudrick asked Mr. Bacon if the 6 ft. height limit was for the entire town or for a specific area? He noted that free standing signs are mentioned on page 141 but could not find anything else in the sign section that mentioned height.

Mr. Bacon said that there is another place in the ordinance that says that the sign cannot be any higher than what we permit a building to be in Pembroke. He said that the sign ordinance is spread all over the chapter and that the Planning Director is working on organizing it.

Chairman Kudrick proceeded to give the history of why there are no electronic signs on Route 3. In 2011, a dental office on the South end of Route 3 installed an electronic sign. The people went ballistic. There was a hearing about it at which the town’s residents did not want Route 3 in Pembroke to look like Route 3 in Hooksett. That is why sign regulations were adopted. The portion of the sign ordinance having to do with electronic signs were adopted at Town Meeting on March 17, 2012. It was a very heated topic.

Alternate Member Bourque said that the discussion did not only center around the dental sign, but also with the Mobile Station and their electronic fuel price sign. After the second sign came in, people decided that they did not want a marquis or changing electronic signs on Pembroke Street. They were restricted to South of Dr. Albee and in the commercial district.

Chairman Kudrick said that anywhere North of Main Street, electronic signs were not allowed but anywhere South of Dr. Albee’s they were allowed.

Alternate Member Bourque said that then there was the “Signs for Jesus” that was a case that cost the Town a good deal of money to fight in court, and won, both at the Regional and Federal Court. He felt that if the Board allows this sign, the Board will be opening a can of worms again because other current churches and businesses will want to put up electronic signs.

Chairman Kudrick said that he just wanted the applicant to be aware of the history ahead of time.

Mr. MacCormack said he wanted to clarify a few things. He said that the town certainly allows illuminated signs in their zoning many times over. It says that they discouraged them, not that they don't allow them. What the Town does not allow is electronic message or video boards but they are allowed, by right, in the commercial zone and on Pembroke Street, South of Main Street. He states that at the very beginning of this conversation, they explained their position which was that although they are in an LO District, they, legally, are not governed by that because the golf course pre-existed that zoning. He said, at best, the Board could call it nonconforming. He said that there was a commercial property there in 1960, there was a commercial property there in 2020 when the Board approved the club house, and they are asking for the golf course to be judged as a commercial property and if it was a commercial property it would be able to use it by right.

Alternate Member Bourque said that he believes that the question of whether it is commercial property or an LO Zone and non-commercial should be brought before Town Counsel.

Vice Chairman Hebert said that the Applicant submitted their application and indicated in the highlighted block where the sign would be located. According to the Town's regulations, electronic changing signs "shall be located a minimum of 200 ft. away from any offsite residential dwelling unit." He asked the Applicant to speak to the 3 or 4 houses that are in close proximity to that sign as to the distance from their sign and to their property.

Mr. Peloquin said that it is within 200 ft.

Mr. MacCormack said that he was not sure.

Vice Chairman Hebert said that he would like to get some information before the Board proceeds.

Mr. MacCormack said that, in essence, the reason they are before the Zoning Board is because they understand that their project does not meet the zoning requirements.

Vice Chairman Hebert said that he understands, but to the other meeting attendants who have expressed concern about illumination and close proximity to their house, he would like to get some of those dimensions.

Alternate Member Bourque said that, with regard to the Applicant's claim that the golf course is a commercial property, Pembroke does not have mixed use to allow residential in a commercial area. The Applicant built 50+ residences in the Applicant's "commercial area" which is not allowed.

Mr. MacCormack said that he did not say that it was a commercial area. He said that the property that the golf course is on predated the LO Zoning District. It is their position, that the golf course is, at best, a nonconforming use and that they are asking it to be looked at as a commercial property which it has been since 1960. This is the basis of their request to the Board.

Alternate Member Bourque said that he did not agree. The Town declared it an LO Zoning District, and, therefore, is not a commercial area and the Applicant has to go by the LO Zoning regulations.

Mr. MacCormack said that he understood and that is why they asked the Board to review it as a commercial property which it was. He said that he understood and agreed with Alternate Member Bourque's logic but stated that their logic would be parallel to the Board's. The property has been a commercial property and has had a specific commercial use in 63 years. If it was a commercial property, by right, they could put the sign in. He said that he knows that it is a gray area and is not saying that it is a defined law, but they are trying to give the Board the basis of where they are coming from.

Mr. Peloquin said that although it says that there are no electronic signs in that area of Route 3, the high school has one.

Chairman Kudrick clarified that the Town has no authority over the high school or the school district.

Alternate Member Bourque said that during the "Signs for Jesus" trial, it was brought up that the school had an electronic sign and the Court understood that and still stood with the Town and did not allow "Signs of Jesus" to put up their message board at the Hillside Church.

Mr. MacCormack reiterated that the thing that is very important to them is getting people directly to their property. He does not want to get the calls when people are going down Donna Drive or on Woodland Ridge Road. They are trying to get people from Route 3 to their property. If the sign is not allowed, he fears that people will go down those other streets.

Chairman Kudrick said that he lived in Hooksett when Route 3 was a two-lane road, before all the signs went up. Now Hooksett has a four-lane road. Pembroke's residents do not want that in their Town. He said that he wants to be fair with everyone. He would like to speak with Town Counsel to see exactly where we stand and be able to express to him Mr. MacCormack's points about being a non-conforming use, so when the Board makes a decision, it is the best decision that they can make and is fair for the Town and the Applicant.

**MOTION:** Vice Chairman Hebert moved to continue **Case #23-13-Z** in order to confer with counsel. Seconded by Member Carlucci.

<b>VOTE:</b>	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson - Y	P. Paradis – Y	

**MOTION: VICE CHAIRMAN HEBERT MOVED TO CONTINUE CASE #23-13-Z IN ORDER TO CONFER WITH COUNSEL PASSED WITH A 5-0 VOTE.**

With reference to Case 23-14-Z, Chairman Kudrick asked the Board if they would also like to speak to Town Counsel. He asked the Applicant if they would like to bring Case 23-14-Z to the Board at this time. It is their right to do so.

Mr. MacCormack said that it made sense to keep the cases together.

**MOTION:** Vice Chairman Hebert moved to continue **CASE 23-14-Z** until the Board confers with Town Counsel.

Mr. Peloquin asked that a date certain be provided.

Chairman Kudrick said it would probably be at the next meeting and Mr. Bacon would set it up.

Alternate Member Miner asked for case clarification because the questions in both applications have the same responses.

Vice Chairman Hebert said that **Case 23-13-Z** is for illumination and an electric message sign and **Case 23-14-Z** is for size and height.

Member Glisson said that she did not think that Case 23-14-Z could be continued since it was never opened.

**MOTION:** Vice Chairman Hebert moved to reschedule **Case 23-14-Z** to September 25, 2023 after the Board has a chance to confer with Town Counsel because both **Case 23-13-Z** and **Case 23-14-Z** are related. Seconded by Member Carlucci.

<b>VOTE:</b>	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson - Y	P. Paradis – Y	

**MOTION: VICE CHAIRMAN HEBERT MOVED TO RESCHEDULE CASE 23-14-Z TO SEPTEMBER 25, 2023 AFTER THE BOARD HAS A CHANCE TO CONFER WITH TOWN COUNSEL BECAUSE BOTH CASE 23-13-Z AND CASE 23-14-Z ARE RELATED PASSED WITH A 5-0 VOTE.**

Mr. Peloquin said that he would also have their attorney speak to Town Counsel.

Alternate Member Miner asked Mr. Bacon if he could have the Applicant amend the sign size on their application.

Mr. Bacon said that the size is on their picture that they handed out. They are looking for 48.44 sq. ft.

Alternate Member Miner pointed out that their application says 32 sq. ft.

Chairman Kudrick said that their application states that 32 sq. ft. is allowed where only 12 sq. ft. is allowed, so he asked that Mr. Bacon have the Applicant make the correction on their application.

Mr. Bacon said that he would amend the application himself.

Member Glisson said that she would not want Mr. Bacon to make the change on the application because then he would be liable.

Chairman Kudrick said that the Applicant should amend the Application and write “where 12 sq. ft. is allowed.”

Member Glisson said that the Application must be specific and, legally, it needs to be on the application because the Board can hold them to that.

Alternate Member Miner said that legally it has to be in the Case’s final documents.

Chairman Kudrick agreed that it should be on the application because it follows the regulations and the Applicant should also sign and date it.

Member Glisson said that the Board has turned down applications because they were not specific.

Chairman Kudrick said that he wants everything on the Applications to be correct. He, again, asked Mr. Bacon to have the Applicant sign and date the Application.

Mr. Bacon said that Case 23-14-Z is signed, has the case number on it, and the date it was filed.

Chairman Kudrick pointed to the bottom of page 3 of Case 23-14-Z where the signature is missing.

Mr. Bacon said it was a copy error because his copy is complete. He asked if the Board would like a copy of the completed application.

Chairman Kudrick said that the Applicant had to make a change to it anyway, so they could sign it at that time.

Mr. Bacon said that the Applicant is not going to change the application -- he would or Chairman Kudrick can speak to the attorney about it.

Chairman Kudrick said that it is the Applicant’s application, not the Building Inspector’s application, therefore, the Applicant should change it. It is not up to Mr. Bacon to change it.

Mr. Bacon asked Chairman Kudrick exactly what he would like.

Chairman Kudrick said that on page 1, where it says “32 sq. ft.” are allowed, it should say “12 sq. ft. are is allowed.”

Mr. Bacon asked if Chairman Kudrick would like him to change it for them.

Chairman Kudrick said no.

Mr. Bacon asked how Chairman Kudrick would like him to have the Applicant change it.

Chairman Kudrick said to just ask them. If they come into the office to make the change, the change needs to be initialed or they can print out a new application. He also said that he would like to have copies of the new application.

Mr. Bacon said that he would get the Applicant to come into the office and make the change and initial it. He asked if Chairman Kudrick would like new copies of that document.

Chairman Kudrick said that the Board needs new copies of the corrected application.

Mr. Bacon asked how many copies he should make.

Chairman Kudrick said as many as there are members.

**Case 23-15-Z** A request has been made for a **Variance under Article V, Dimensional and Density Regulations, §143-21, Table of Setbacks**. The applicant, Catherine and Kevin Sullivan, of 453 Carrie Ave., is requesting a **Variance** to replace their smaller, deteriorated shed in the same location. The new shed will be 4.5 feet from the side setback where 15’ is required. The property is located at 453 Carrie Ave., Map 563, Lot 81, in the R-1, Medium Density-Residential district, and is owned by the applicant.

**Applicant:** Catherine and Kevin Sullivan

**Property Owner(s):** Catherine and Kevin Sullivan (Catherine Yanulavich)

**Property Address:** 453 Carrie Avenue  
Tax Map 563, Lot 81 in the R-1, Medium Density-Residential District

**Included in the Member Packets:** Fee Schedule Worksheet, Abutters List, e-mail from Mike Payeur to Paul Bacon, and hand-drawn sketch of lot.

**Present:** Catherine and Kevin Sullivan

Chairman Kudrick called the meeting to order at 8:27 p.m.

The Reporting Secretary read the case aloud.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

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

**Please give a detailed description of your proposal below.** We are proposing to place a 12' x 10' shed in the original shed location. The shed will come within 5-8 ft. (the Applicant said 4.5 ft. rather than 5-8 ft.) from the property line. There is no other place location on our property in which to place a shed due to the layout of the property, severe water flow and erosion, hillscape, tree-line and driveway. We have no other outbuildings. Please consider our hardship.

1. **The variance will not be contrary to the public interest.** We do not believe the variance will be contrary to the public interest. We are doing our best to ensure our property is in line with the public interest, especially that of our immediate neighbors. We don't believe the variance will be contrary to that. This will be our only out-building. It will be very modest in size.
2. **The spirit of the ordinance is observed.** The spirit of the ordinance is observed to the degree that it absolutely can be given the circumstances of our lot/property (see unnecessary hardship #5).
3. **Substantial justice is done.** We have looked at this from every angle of our property and our needs. Our needs require a larger shed, but we are settling for a smaller shed in order to be more in tune with the ordinance and our property.
4. **The values of surrounding properties are not diminished.** The values of surrounding properties will not be diminished. The shed will not encroach on the property line to a degree that would diminish the surrounding properties. Neither will it be an eyesore. The shed will enhance our property.
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.** Almost half of our .23 acre lot is taken up by a wooded hill. At the bottom of the hill, there is an almost constant stream of water which travels from the hill above. The water has caused much erosion to our driveway and property. We have looked at every angle of our

property to place the shed. We have come up with the best possible solution with the least impact to the property and to our neighbors – most in tune with the ordinance.

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

The Recording Secretary read aloud the email from Mike Payeur to Paul Bacon dated August 18, 2023 with regard to the Shed Placement at 453 Carrie Ave., Pembroke, NH.

Alternate Member Bourque asked for clarification – the application says that the shed will be 5-8 ft. from the property line and the Agenda says it will be 4.5 ft. from the property line.

Mr. Sullivan said that it will be 4.5 ft. He said that when he filled out the application, he was estimating, but then Mr. Bacon asked him to be more specific and discovered that it was 4.5 ft.

Alternate Member Bourque said that he felt that the Variance Application should be amended.

Chairman Kudrick said that the measurement was changed on the first page to 4.5 ft. from the side setback where 15 ft. was required. He recalled that Mr. Bacon had asked that he come in because the Application originally said 5-8 ft. They revised the schedule and it was changed. He said that the Board should just make note that it is going to be 4.5 ft.

Vice Chairman Hebert asked how close the existing shed is from the property line.

Mr. Sullivan said that he already removed the shed and did not take those measurements. The old shed was elongated and raised in the front. They removed it and plan to level the land and place the new shed in the other direction. It will allow the water to move past it and not run across the driveway and down the road and create ice. They have a lot of water problems in that area and are trying to control it.

Chairman Kudrick asked if the new shed was going to be approximately in the same location?

Mr. Sullivan said yes, it will be in the same location but turned sideways.

Chairman Kudrick asked if anyone lived on the south side of the property.

Mr. Sullivan said that Mike Payeur lives there.

Mike Payeur said that he lives on Pembroke Street but his property extends and abuts the Sullivan house.

Chairman Kudrick asked for those in favor of the case to speak.



Mike Payeur, Pembroke Street, said that everyone should be as lucky as he is to have neighbors as good as the Sullivans.

No one spoke in opposition of the case.

There were no further questions from the Board. There was no rebuttal by those in favor or in opposition of the case.

Chairman Kudrick summarized the case as follows:

**Case 23-15-Z, Variance under Article V, Dimensional and Density Regulations, §143-21, Table of Setbacks.** The applicant, Catherine and Kevin Sullivan, of 453 Carrie Avenue is requesting a **Variance** to replace a small deteriorated shed in the same location. The new shed will be 4.5 ft from the side setback where 15 ft. is required. The property is located at 453 Carrie Avenue, Map 563, Lot 81 in the R-1 Medium Density-Residential District. The old shed has already been removed. It was situated East-to-West on the property. The new shed will be positioned North-to-South on the property. The new shed will be approximately 10' x 12'. They read Articles 1-5 aloud. A letter from a neighbor was read into the record. The Applicant has a great deal of water that comes down through his property when it rains.

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

Chairman Kudrick officially closed the hearing at 8:44 p.m.

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

1. **The variance will not be contrary to the public interest.** Member Carlucci said that he does not see how it could be. All Board members agreed.
2. **The spirit of the ordinance is observed.** Alternate Member Bourque said that he believed that it is. All Board members agreed.
3. **Substantial justice is done.** Alternate Member Bourque said yes. Member Carlucci said that it will protect their property. Vice Chairman Hebert said it will make the best use of the property. All Board members agreed.
4. **Property values are not diminished.** Chairman Kudrick noted that no one has presented information to prove that property values would be diminished. All Board members agreed.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.** Chairman Kudrick said that the lot is small and has a lot of water coming through it. The property is hilly and there are very little places that the shed could be placed other than where the old shed was. The hardship is the land.

**(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.** Vice Chairman Hebert said that in reference to Case 23-15-Z a request for a variance having been presented to the Board for consideration, the following motion is presented:

**MOTION:** Vice Chairman Hebert moved to approve the application **(Case 23-15-Z)** as presented with the following conditions: (1) Must follow all State and local regulations except those that pertain to the specific condition being addressed through this hearing; (2) Prior to the start of construction, the Applicant must coordinate for a site inspection with the Code Enforcement Officer. The purpose of this inspection is to verify the exact location of the proposed construction as it relates to the lot line in question; (3) The actions of this Board allow for the proposed construction to be no closer than 4 ft. 6 inches from the side property line. Seconded by Member Paradis.

<b>VOTE:</b>	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson - Y	P. Paradis – Y	

**MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE APPLICATION (CASE 23-15-Z) AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) MUST FOLLOW ALL STATE AND LOCAL REGULATIONS EXCEPT THOSE THAT PERTAIN TO THE SPECIFIC CONDITION BEING ADDRESSED THROUGH THIS HEARING; (2) PRIOR TO THE START OF CONSTRUCTION, THE APPLICANT MUST COORDINATE FOR A SITE INSPECTION WITH THE CODE ENFORCEMENT OFFICER. THE PURPOSE OF THIS INSPECTION IS TO VERIFY THE EXACT LOCATION OF THE PROPOSED CONSTRUCTION AS IT RELATES TO THE LOT LINE IN QUESTION; (3) THE ACTIONS OF THIS BOARD ALLOW FOR THE PROPOSED CONSTRUCTION TO BE NO CLOSER THAN 4 FT. 6 INCHES FROM THE SIDE PROPERTY LINE PASSED WITH A 5-0 VOTE.**

Alternate Member Bourque asked for someone from the Board to quote him the regulation that says an alternate cannot make a motion.

Member Glisson said that they looked it up before and will try to find it for him.

## **Approval of Minutes – May 22, 2023**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF MAY 22, 2023 AS PRESENTED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF APRIL 24, 2023 AS PRESENTED. SECONDED BY MEMBER PARADIS. UNANIMOUSLY APPROVED.**

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

Workshop: ADU discussions.

Chairman Kudrick thanked all those members who attended the recent ADU discussion with the Planning Board. He said that he would like all Board members, even alternates, to participate in the ADU discussion that he would now like to have. At the end of the discussion, he said that all members (even alternates) will vote on the decision and the majority will rule.

Chairman Kudrick said that originally he was in favor of doing away with ADU Special Exceptions coming in front of the Board. Some paperwork came to his attention that the building inspector allowed an ADU to go into a multi-family building. Because of that, he would like all the ADUs to come to the Board for approval so that errors such as this would not occur. He said that many times newer employees are not aware of all the rules. Originally he felt that by allowing the Building Inspector to approve all standard ADUs, it would be streamlining the process, but, after the error came to his attention, he changed his mind.

Alternate Member Chase said that the ADUs should all come before the Board. She said that she was interested in the conversation that occurred at the recent Planning Board and Zoning Board discussion of how the Zoning Board evaluates and are aware of what occurs in neighborhoods and felt that it is important that the all ADUs come to the Board.

Member Glisson agreed.

Vice Chairman Hebert said that all ADUs should come to the ZBA for approval. The more eyes on it, the better. Although it is a balancing act, and is something that is allowed, he felt that more oversight by the Town and the more people that see it, the more chance that the Board will catch things.

Member Carlucci said that he thought input by surrounding residents is real important. The staff may not know what happened 20 years ago that might affect someone's property and felt that by having the ADUs come before the Board it is the only way to get input from the residents.

Member Paradis agreed.

Alternate Member Miner disagreed. He said that he thought that the Building Inspector should be allowed to approve the "cookie-cutter" ADUs.

Chairman Kudrick clarified that Alternate Member Miner feels that the Building Inspector should be able to sign off on a “cookie-cutter” ADU?

Alternate Member Miner said yes after the Board defines what the “cookie-cutter” ADU is.

Alternate Member Bourque said that he is opposed to what the majority is saying. He said that basically an individual has a right by State law to have an ADU in a single family home. The town is interceding and saying that in order to use your freedom given to you by law and the State, the individual must pay the Town \$200 for the ZBA to say yes. What was discussed at the Planning Board level was that if someone wanted to build a “cookie-cutter” ADU and follow the rules as listed in §143-18.1, it would be allowed by a permit. If the ADU varied in any way, the applicant would have to come before the ZBA to get a variance or a special exception. In that way, the Town would not be taking advantage of the applicant who wants to put in an ADU by making them pay a minimum of \$200 for something that is allowed by right.

Chairman Kudrick once again clarified that Alternate Member Bourque is saying that if they follow §143-18.1 A-H (which is a “cookie-cutter” ADU), they should receive a permit without going before the Board.

Alternate Member Bourque said yes and if the Planning and Zoning Boards together want to add additional controls to that, then it would be added to the “cookie-cutter” measurement and be allowed by permit only. If an Applicant wanted to deviate from any of the regulations, they would require a special exception or a variance.

Alternate Member Miner said that that would protect against multi-family or any other variation from occurring.

Alternate Member Chase said that, if the applicant did not come to the Board, then they would not have any abutter notifications.

Alternate Member Bourque asked if the abutters would be notified if a garage was built or if someone remodeled their kitchen. He said it would be permitted with just a permit.

Alternate Member Chase said that with an ADU there would be more people in the home which would mean more cars, more noise, more sewer.

Chairman Kudrick said that originally the ADUs were set up for families to take care of parents, grandparents, or even a child with special needs.

Even though the Board may define a “cookie-cutter” ADU, Member Carlucci said that, at a hearing, the Board would hear comments from the audience members that give the Board information that the Board might not know.

Alternate Member Bourque said that he did not see the difference between making an addition to a home for other purposes other than an ADU or an ADU where a permit is still required.

Alternate Member Miner asked if the Town required a permit to have an Air BNB in their home.

Chairman Kudrick said he did not know.

Alternate Member Miner said that people could move into anyone's house, for example, 15 people could move into a 3-bedroom home.

Member Carlucci said that if there are residents that are hearing a case that is allowing 15 people in a house, someone might have information about something, such as boundaries.

Chairman Kudrick said the Board was getting off the subject of ADUs.

Alternate Member Miner said that it is not focusing on the variances of the ADU, it is focusing on allowing the permitted-allowed ADU -- the very basic ADU as a building permit.

Chairman Kudrick said that the Planning Board is expecting a direction in which the Zoning Board would like to go on this subject.

Member Carlucci said that even a boilerplate ADU can go awry. A town needs planned development. Presently the Town has two buildings where the sewer tripled because of lack of oversight. He felt that residents on the ZBA would handle the subject better.

Alternate Member Bourque said that if people do not come to the Town and make changes under the table, how is the Town going to stop it. The only way these problems are being caught is through the Sewer Department.

Vice Chairman Hebert said that he understood the argument of an ADU being a State-given right and an applicant should not be burdened with a \$200 application fee, but perhaps all "cookie-cutter" ADU applications need to come to the ZBA for approval and the ADU permit fee could be deducted from the construction permits (plumbing, electrical, etc.) so that the Town would not be taking someone's rights away.

He said that he seriously felt that the more eyes on the project, the better chance that someone may pick up on something that would otherwise slip through the cracks. Although some people may grumble, the Town could make it so that the impact is not quite so bad.

Member Carlucci pointed out that the first month's rent will more than pay for the permit fees. It's an investment.

Vice Chairman Hebert said that if the application is for a "cookie-cutter" ADU, the Town could give the fee back as a token of good faith.

Mr. Bacon said that the average price for an application is approximately \$290.

Vice Chairman Hebert said that the applicant may not recoup 100% but it is better than recouping nothing. The Zoning Board could make the recommendation to the Planning Board. For example, adding a line item to A through H which would imply that an ADU that is “a cookie-cutter style”, would still have to come before the Board but the fees associated with noticing abutters and newspaper ads, etc. would be subtracted from the overall permitting fees.

Alternate Member Miner said that the Board could lessen the burden by letting the ADU go to a permit.

Vice Chairman Hebert said that then the Board would not have the oversight.

Member Carlucci said that when excessive sewer was used unexpectedly, it affected an individual that was forthright from opening a commercial business downtown. That person had all the permits and was ready to go but because of lack of oversight, there was not any sewer available once he was completed and the spot is still vacant. So, it does not do planned development any good – especially downtown.

Alternate Member Bourque said that they cannot stop the crooks.

Chairman Kudrick said that the offender can be fined or the Town can place an injunction against them once they are caught. For example, he said that a person in Hooksett put an ADU in and the Town allowed it. The Sewer Department was never notified. The Sewer Department had their own fees at that time and the applicant refused to pay the \$1500 fee. The Department could have filed a tax lien. Chairman Kudrick said that he wanted to go after the Building Inspector and the Town for allowing the ADU to be built without notifying the Sewer Department. The money was eventually paid.

Member Glisson said that paid staff may not live in the town or know the area whereas the Board is made up of residents who have lived in Pembroke for a long time.

Chairman Kudrick said that everyone on the Board would have a chance to vote. He asked for a roll-call vote on the following:

**To leave the ADU process the way it is:**

<b>W. Chase – Y</b>	<b>B. Kudrick – Y</b>	<b>D. Carlucci – Y</b>
<b>N. Glisson – Y</b>	<b>T. Hebert – Y</b>	<b>P. Paradis – Y</b>

**To change the ADU process to a permitted process by the Building Inspector:**

<b>B. Miner – Y</b>	<b>B. Bourque - Y</b>
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Chairman Kudrick said that any regulations can be altered and could be reviewed in the future.

Alternate Member Bourque said that another part to the discussion was on detached ADUs but was not sure where it ended.

Chairman Kudrick said that the way it is being handled now is to come before the ZBA so the Board can look at each one individually and make a determination at that time. It was decided to not write any regulations on the detached ADUs and to leave it the way it presently is.

Chairman Kudrick asked the Reporting Secretary to send the decisions to him for signature and then forward it to the Planning Board.

Alternate Member Bourque said that if there are any other zoning changes that the Board would like to see, this is the time to get it to the Planning Board. He forwarded Member Carlucci's two recommendations for the definition of "family" and the cooking definition to mimic the Sewer Department's definition rather than "oven/stove" because people can now cook with microwaves, crockpots, air fryers, etc. and not have an oven/stove.

Alternate Member Bourque said that he forwarded those suggestions to the Planning Board Chair.

Chairman Kudrick said that he would like to see changes to the sign ordinance because the information is scattered among different portions of the regulations.

Alternate Member Bourque said that the Planner has spent a lot of time on the ordinance, trying to organize it and is presenting it to the Planning Board.

Mr. Bacon asked the Board to revisit what the golf course wrote on their application. He said that there is nothing wrong with the following sentence "The proposed new sign would exceed the 6-foot height requirement limit and the 32 sq. ft. area allowed." He clarified that the applicant is referring to the 6-foot height requirement which is in the code and the 32 square feet that is allowed in a commercial zone.

Alternate Member Bourque said that the golf course is not in a commercial zone.

Mr. Bacon said that that is what the applicant is arguing and that is why he wrote the sentence that way.

Mr. Bacon said that there is nothing on the application that needs to be changed. It is up to the Board whether they will buy the argument that it is basically commercial because it has been commercial since the 1960s. In his opinion, the application is written correctly.

Alternate Member Bourque said that if the applicant thinks that it is commercial, then he should not have added residential in the past because the Town does not allow mixed use in the commercial zone.

Chairman Kudrick said that that is why the Board needs to speak to Town Counsel.

Mr. Bacon said that the 32 sq. ft. sign is in the commercial zone.

Vice Chairman Hebert said that by reading that statement by itself as a lay person who is not familiar with the LO or commercial zone, someone could assume that 32 sq. ft. is allowed. He is relating it to a Commercial District where 32 sq. ft. is allowed, but by the tax card the golf course is in the LO District.

Mr. Bacon said that the point he is trying to make is that there is no reason to change the sentence in the applications because that is what the applicant intended. Mr. Bacon said that he cannot change the applications and that he must accept what an applicant has given to him.

Member Glisson said with that being said, then the Board should leave it alone and take it in the spirit in which it was intended but it could mess his application up.

Chairman Kudrick said to leave the application alone then and just have him sign it.

Mr. Bacon said that the application is already signed and the confusion stemmed from him trying to get the packets done prior to an alteration being made. He made the copies before he gave the application to Elaine to process and that is why the case number was not on the copies.

Chairman Kudrick asked Mr. Bacon to talk to Mr. Jodoin and set up a time to meet with the lawyer.

Mr. Bacon asked Chairman Kudrick to call Mr. Jodoin and explain the circumstances and ask for a meeting with Town Counsel.

Vice Chairman Hebert asked Mr. Bacon if the site visits had been working.

Mr. Bacon said that the only difficult part is that people do not always know where their property lines are. He has not had anyone object to his checking on it.

Vice Chairman Hebert said that a land survey would not be necessary because it usually involves a minor structure such as a sheds or garage. Larger projects would require a survey.

Member Glisson will not be at the next month.

There was no correspondence.

## **VI. Adjournment**

**MOTION:** Vice Chairman Hebert moved to adjourn the meeting at 9:28 pm. Seconded by Member Glisson. Unanimously approved.

Respectfully submitted,  
Jocelyn Carlucci  
Recording Secretary