

**PEMBROKE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
January 22, 2024
(DRAFT)**

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

ALTERNATES PRESENT: Robert Bourque, Blakely Miner III

EXCUSED: Wendy Chase

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.

New Cases

Case 24-01-Z A request has been made for a **Variance under Article IV Use Regulations, § 143-19 Table of use regulations, A, (3)**. The applicants, George & Judy Bower, 441A&B Sixth Range Rd., are requesting a **Variance** to create a 3rd dwelling unit out of the existing carriage house, to add to the separate, existing two-family home. A **Variance** is required because multi-family dwellings are not allowed in the R-3 district. The property is located at 441A&B Sixth Range Rd., Pembroke, NH, 03275, Map 262 Lot 55, in the R3-Rural/Agricultural-Residential, zoning district.

Applicant: George and Judy Bower, Trustees

Property Owner(s): The Bower Family Revocable Trust of 2009

Property Address: 41 Sixth Range Road
Tax Map 262, Lot 55 in the R3-Rural Agricultural-Residential Zoning District

Included in the Member Packets: Fee Schedule Worksheet, Warranty Deed, Tax Map, Plot Map, Notice of Decision Pembroke Zoning Board of Adjustment regarding Case 19-07-Z, Cal Technologies map, abutters' list.

Present: George and Judy Bower

The Reporting Secretary read the case aloud.

Chairman Kudrick asked Mr. Bacon if, to the best of his knowledge, all abutters had been notified.

Mr. Bacon replied yes.

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, George Bower read the application aloud:

Please give a detailed description of your proposal below. We would like to convert the current structure which had been used for storage to a residential living unit for an elderly couple, husband and wife, providing for a single level living space. This change to a residential unit for the currently existing structure requires a variance to allow the property to accommodate the needs of our family for three-family living spaces. The other existing two-family unit would be occupied by immediate family members who can provide support.

Has the property received a Special Exception or Variance in the past? Yes

1. **The variance will not be contrary to the public interest.** The variance is not contrary to the public interest as it will not alter the residential or rural character of the neighborhood, or the health and safety of the general public. The structure currently exists on the property and would not result in changing the rural feel or appearance of the neighborhood. There would be only a minimal increase in traffic. The property is 65 acres and has more than enough square footage and acreage to support three living units.

2. **The spirit of the ordinance is observed.** The spirit of the ordinance is observed because the variance causes no harm to the rights of the general public. The rural zoning characteristics of the area would remain since the building already exists on the 65 acre property. There would be no impact on the neighbors since the building is already built. Changing the structure usage from storage to a living unit would not cause any type of over crowding to the neighborhood. In addition, there is currently a separate well and septic that could be used for the new living units if it is determined that the well and/or septic system serving the current two living units is not capable of supporting three living units.

3. **Substantial justice is done.** If the variance is granted, we believe it would cause no harm to the rights of the general public. The variance would also increase the value of the lot and therefore increase the town's tax base without adding another structure to the property and giving the feel of overcrowding from the street view.

The variance would allow our immediate family member to have separate living spaces on the property while providing support for us as we age and provide a single living level.

4. **The values of surrounding properties are not diminished.** The values of the surrounding properties would not be negatively impacted since the building already exists on the property. The visual appearance of the current area would be improved with exterior upgrades such as landscaping and could potentially add value to the surrounding properties. The majority of the changes will be done to the interior of the current structure.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.** The proposed use of the existing structure is a reasonable one and would not affect the interests of the general public. It allows the family to be together but not crowded and provides support for the elderly parents.

(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 property is zoned R-3 which does not allow for a three-family structure(s). Other residential zoning classes except R-3 allow for a three-family structure(s) with the approval of a special exemption. A special exemption option is not available in the R-3 zoning. The only way to allow more than two living units on a single tax lot even if the square footage and setbacks are met, and the use is reasonable, is to request a variance.

Additionally, denial of the variance would create a hardship as we would be forced to be separated from our family and their support and live at another location. As we are getting older but still independent, the family needs three separate living spaces which the property can support without building another structure.

Chairman Kudrick said that the property came for a frontage Variance in 2019 because they wanted to subdivide the land where the carriage house sits. Presently, the applicant would like to turn the carriage house into a house.

Chairman Kudrick asked where the septic systems were located.

Mr. Bower said that the current system is adjacent to the main house – referred to as Structure A.

Chairman Kudrick asked Mr. Bower to draw the location of the septic systems and the wells on a submitted lot layout.

Mr. Bacon showed each member of the Board, the drawing illustrating the leachfield, septic systems, the existing buildings and 2 wells (deep well and shallow well).

Those in favor of the application:

David Arsenault (219 Sixth Range Road) said he was in favor of the application.

Those opposed to the application:

James Quinzani, (444 Sixth Range Road) said that he built the septic system and the carriage house. He showed photos of the system and its construction. There was water under the carriage house which would run down the street onto his land. He also said that the gray water also runs down the road and onto his land. He said that there was no septic tank.

Donna Quinzani said that when the carriage house was built, the owner was not supposed to use the septic tank any more. The existing septic tank should have been cemented over but was not. In her opinion, they cannot use the septic tank to the carriage house.

Mr. Bacon said that he has reviewed all the property records. The septic tank near Building B is empty. There is no plumbing in the carriage house, it is just a structure. The carriage house was put on the footprint of the building that burned down which was when they tried to get a variance to subdivide and the variance failed. It remained a carriage house. At the present time, there is no existing septic system for that building.

Chairman Kudrick asked if the main house has an approved septic system.

Mr. Bacon said yes.

Chairman Kudrick asked if the carriage house had an approved septic system.

Mr. Bacon said no.

Mr. Bacon said that the Town records show that the septic was discontinued in 2011. He said that the carriage house has a wood floor and a full basement.

Mr. Arsenault (219 Sixth Range Road) said that he owned the property for 20 years. When the building burned in 2011, he did not reuse the septic system that was there. The carriage house was built on the only piece of the poured foundation from the original structure. There is no septic, no water. It is just a shell with a 100 amp service. There is no wiring, and no plumbing except one breaker and one panel.

Rebuttal by Applicant:

Mr. Bower said that everything that Mr. Quinzani has talked about is non-existent. The current building has no water or septic at this time. They are prepared to hook up whatever is needed to be in accordance with all State regulations. The carriage house is fully constructed and capable of being converted from a storage facility into a living facility. The basement is intact (a poured concrete basement), over which is an empty studded shell measuring approximately 50' x 22' with no walls.

Judy Bower said that, as part of the project, their builder would have a certified septic person tell them if they can connect the building to the current septic system or if a new septic system would be required. The same goes with the well.

Mr. Bacon said that a new septic design would have to be done regardless. He said that the rule is that an appropriate septic has to be given before any building permits are issued.

Member Glisson asked what the distance was from the main duplex to the carriage house.

Mr. Arsenault said it is approximately 150' to 200'.

Alternate Member Bourque asked, with reference to Part 5 of the enforcement provisions, if the buildings would have to be attached.

Mr. Bacon said that it is considered multi-family but is permitted to be separate buildings (Page 43). He said that only one principal structure shall be permitted on a lot except for multi-family developments. He gave an example of Pembroke Pines and 30 High Street which consist of a number of buildings which is considered a multi-family development.

There was a lengthy discussion of whether 430' of road frontage along a Class V road would be required. It was determined that only 240' of frontage was necessary.

Mr. Bacon said that he consulted the GIS map a number of times to verify the frontage.

Member Glisson said that she felt that the frontage would need to be verified by measuring it. She was referring to 143-21.

Mr. Bacon said that he did not have to measure it because he could see that it is 150' or more.

Richard Berube (647 Sixth Range Road) suggesting having the property surveyed in order to be certain of the road frontage.

Mr. Bower said that the Town should have a record of the road frontage. He would not want to proceed with surveying until he received the variance.

Rebuttal by opposition:

Mrs. Quinzani said that the subdivision hearing determined that the applicant needed 200' of frontage and they only had 130' of road frontage.

Mrs. Bower said that she was told by the Planner that they needed 230' of frontage for the main house (duplex) and 10 additional feet for each other unit.

Mr. Bacon said that 230' of frontage is needed for a duplex and 10' for each additional unit, therefore, 240' total on a Class V road is required. They have well over 240'.

Rebuttal by opposition:

Mr. Quinzani said that there is a clause in the RSA that says that you can add a building in an R-3 District if you connect it 25' away. He suggested years ago that they move the house on the barn slab, and connect it 25' which would solve everything except the septic problem.

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

Chairman Kudrick summarized the case as follows:

Case 24-01-Z, a Variance at 441 A&B Sixth Range Road, Map 262, Lot 55 under Article IV Use Regulations, §143-19 Table of Use Regulations, A, (3). The Applicant is requesting to add a third dwelling unit within the existing carriage house to the existing two-family home. A variance is required because a multi-family dwelling unit is not allowed in the R-3 District. The applicant read all 5 criteria. In 2019, a variance was requested for a subdivision with a 2-acre lot. It was denied. The applicant was asked to show the Board where the septic systems and wells were located for both buildings on the property. The septic system for the carriage house was disconnected in 2011. The carriage house has to have an approved septic system and approved water system. It has electricity to the carriage house but, before a building permit can be issued he must show proof, to the building inspector, of an approved septic system. The distance between the carriage house and the duplex was discussed. One abutter brought pictures of the property before and after construction of the structures which showed runoff. It is allowed to have more than one building on a lot – they have 2 (duplex and the carriage house). It was determined that they have 240’ of frontage on a Class V road. There is over 150’ between the buildings. The land should be surveyed in the future.

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 hearing has been closed.

Mr. Bower pointed out that all the material submitted by Mr. Quinzani was taken before any of the septic issues were addressed. There were numerous septic complaints which were investigated by the Town on the entire property and found the septic problems to be non-existent – the most recent being in November 2023.

Chairman Kudrick emphasized that the carriage house will need a brand new system before a building permit would be issued.

Mr. Bower said he fully understood.

Mr. Quinzani said that the folder that was given to the Board shows an email from Eastern Analytical pertaining to 2 samples that were analyzed.

Chairman Kudrick officially closed the hearing at 8:02 p.m.

Chairman Kudrick said that the Applicant has a second building on the property which they would like to change into a residence. They need a septic system. They may need a well, but that is not up to the Board. They have the required frontage.

Alternate Member Miner asked how the abutter’s paperwork will be handled.

Chairman Kudrick said that it will be retained as part of the file.

Mr. Bacon said that his office is swamped with paperwork and that the submitted documents from the abutter are irrelevant to the case presently before the Board and does not need to be part of the record.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that Case 24-01-Z is for a variance for

1. **The variance will not be contrary to the public interest.** Member Carlucci said that since it is housing, it is not contrary to the public interest. He said that the Master Plan would like to see the R-3 areas minimally impacted. In his opinion, the past septic issues would be addressed. All other Board members agreed and felt that if the building was not used, it would deteriorate.
2. **The spirit of the ordinance is observed.** Chairman Kudrick said that the applicant is aware that he must replace the septic system. Member Carlucci said that it ensures housing stock per the Master Plan and would meet the Town's need. All Board members agreed.
3. **Substantial justice is done.** Chairman Kudrick said that he felt that substantial justice would be done by cleaning the place up and installing a new septic system and possibly a new well. All will be in accordance with State and local codes and will be on record. All Board members agreed.
4. **Property values are not diminished.** Chairman Kudrick said that no one came forward with evidence that diminishing property values would be caused by granting this application.
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 by taking care of the building, it will no longer be a hardship. The building and its facilities will be inspected by the building inspector. All Board members agreed.

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

Vice Chairman Hebert said that this is in reference to **Case 24-01-Z**, a request for a variance having been presented to the Board for consideration. A variance is required because multifamily dwellings are not permitted in the R-3 District.

MOTION: Vice Chairman Hebert moved to approve the Variance (**Case 24-01-Z A Variance under Article IV Use Regulations, §143-19, Table of Use Regulations, A (3)**), as presented with the following conditions: (1) The applicant must follow all state and local regulations except those that pertain to specific conditions being addressed through this hearing; (2) Prior to obtaining a building permit, the applicant must provide documentation that verifies that the existing septic is adequate to service the three units proposed. In the event that the existing system will not be adequate, a State-approved septic design that is adequate for the three units must be provided. Seconded by Member Carlucci.

Member Bourque asked if the well would have to be tested to make sure that it is adequate and relocated, if necessary?

Vice Chairman Hebert said that if they have to do a new septic design, the septic designer will take the well radius into consideration with the design. If the well is too close to the new septic system, a new well would have to be created.

Mr. Bacon said that a well was not necessary in order to pull a building permit but a septic is.

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

MOTION TO APPROVE THE VARIANCE (CASE 24-01-Z A VARIANCE UNDER ARTICLE IV USE REGULATIONS, §143-19, TABLE OF USE REGULATIONS, A (3)), AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS EXCEPT THOSE THAT PERTAIN TO SPECIFIC CONDITIONS BEING ADDRESSED THROUGH THIS HEARING; (2) PRIOR TO OBTAINING A BUILDING PERMIT, THE APPLICANT MUST PROVIDE DOCUMENTATION THAT VERIFIES THAT THE EXISTING SEPTIC IS ADEQUATE TO SERVICE THE THREE UNITS PROPOSED. IN THE EVENT THAT THE EXISTING SYSTEM WILL NOT BE ADEQUATE, A STATE-APPROVED SEPTIC DESIGN THAT IS ADEQUATE FOR THE THREE UNITS MUST BE PROVIDED PASSED ON A 5-0 VOTE.

Approval of Minutes – October 23, 2024

MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF OCTOBER 23, 2023 AS AMENDED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

V. Other Business / Correspondence – None

Chairman Kudrick said that he and Member Carlucci attended the recent NH Municipal Association Land Use Conference for the Zoning Board on October 21, 2023. He spoke with an attorney about ADUs. He explained that the Town has regulations pertaining to regular ADUs but nothing about detached ADUs. He asked if detached ADUs would be allowed by a variance. The attorney said no.

Then Chairman Kudrick reiterated the question to the attorney after the conference. The attorney's answer was the same. He gave the attorney's name and phone number to David Jodoin so he could verify the information.

Mr. Bacon said that the ZBA exists in order to make allowances for the written rules.

Chairman Kudrick still felt that if there are no detached ADUs written in the Town Code, then detached ADUs could not be heard by the ZBA, even with a variance. He said he would like more clarification.

Chairman Kudrick asked for a list of ZBA 2024 meeting dates. Mr. Bacon will send him one.

VI. Adjournment

MOTION: VICE CHAIRMAN HEBERT MOVED TO ADJOURN THE MEETING at 8:25 PM. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary