

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
October 23, 2023  
(DRAFT)**

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

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

**EXCUSED:** Robert Bourque, Natalie Glisson

**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.

Chairman Kudrick appointed Alternate Member Chase as a voting member.

**CONTINUED PUBLIC HEARING FROM SEPTEMBER 25, 2023:**

**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, Attorney Charles Cleary, and Robert MacCormack, owner of Pembroke Pines Country Club

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 said that on September 27, 2023, members of the Board attended a site visit to look at a mock-up of the sign. He thanked the Applicant for doing the mock up and said that it was very helpful.

Mr. Peloquin said that there was one error on the application – the 200 ft. rule from the sign to any residences which incorporated 2. Attorney Cleary said that he resubmitted that part to accompany the application, and renotified the abutters.

Mr. Peloquin said at the earlier meeting, it was stated that the Town does not want lit signs. He said that although the applicant respects the quaintness of the Town and are not looking to do anything too out-of-the-ordinary but emphasized that this project was out-of-the ordinary and a very large investment. Mr. MacCormack took time to petition different people in the area and has a signed petition of those in favor of the sign and what the applicant is trying to do. They asked that the petition be incorporated as part of the application.

Mr. MacCormack said that the petition was taken at the golf course. There are approximately 120 town's people who signed the documents.

Mr. Peloquin said that, with regard to the site walk, they felt that generally the sign made a good impression with the Board and seemed to allay most concerns.

Chairman Kudrick asked if the petition was for the electronic sign or for the overall sign?

Mr. MacCormack said that it was for the overall sign with the electronic message board.

Attorney Cleary said that they submitted a letter from Thomas Skahen, a broker from Streamline Communities noting that the “design concept” of the sign will not negatively impact the value of the homes in the surrounding areas.

He also said that he submitted supplemental information to address the legal requirements a little more directly. Some of it was close to what Mr. Peloquin presented in the prior hearing.

With this sign, which has the electronic messaging board, the applicant is saying that the new clubhouse, with its amenities, is a destination business. The sign will attract people to it. The business makes money as golfers, guests, diners, and wedding attendees physically come to the golf course and clubhouse. He pointed out that there is a significant difference between Route 3 and the clubhouse which is located down on Whittemore Road. If any type of business could use a reasonably sized and messaging sign, it is this one.

1. **The variance will not be contrary to the public interest.** Attorney Cleary said that, in the C1 Zoning District which is a ½ mile to the North, electronic messaging signs are allowed by right. Some of those signs are lit and some are larger. The nearby Mobile station has an electronic messaging sign. He said that his feeling is that the area will get more populated with commercial businesses, some of which will ask for signage to accommodate their businesses. They do not believe that the general area will be affected by granting the ordinance.
2. **The spirit of the ordinance is observed.** Attorney Cleary said that the purpose of the sign is to attract and notify the public that they are there and give them notification of what is going on. The events will change constantly and keep people informed on what they are attempting to attend. It directs them to the site. The existing sign which the Board approved 10 years ago needed a variance and the Board found that conditions were met for that sign which is now difficult to see when coming from the North because of the surrounding plant growth. They feel that, with the investment of this project, they really need a proper sign for the business.

3. **Substantial justice is done.** Attorney Cleary said that the project was a tremendous opportunity and investment in order to keep this golf course viable for the next decades. This sign is appropriate for this type and size of business. They have not had any public opposition to the sign.
4. **Property values are not diminished.** Attorney Cleary said that the area that Mr. MacCormack created is a benefit. Mixed use projects such as this, with recreation, dining, functions, and housing are very desirable. A letter to this effect from Streamline Communities was submitted. It states that the sign, itself, will not diminish property values.

**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 Cleary said that this is a special property -- 160+ acre golf course, and was permitted through approvals to build a 28,000 sq. ft. clubhouse. It will have compatible businesses within it and function facilities. It would be difficult to find multiple properties like this in Pembroke. Compared to other businesses along Route 3, this business needs members of the public to attend, therefore, the sign is very critical. He asked that the Board find the proposed variance for the electronic messaging sign acceptable.

He said that the case, Harborside Associates LP v. Parade Residence Hotel, LLC, is a large hotel that was rebuilt and wanted to put a very large sign on its top. The court found that, given the size of the building and its reputation in the area, it was different and that the sign was not objectionable and should be allowed by variance.

Those in favor of the electronic sign: Kathy Johns, 5 Whittemore Road, said she was in favor of the electronic sign.

Those opposed to the electronic sign: Cheryl Cooper, 472 Pembroke Street (north of Whittemore Road), said she lives in the house next to the sign and is not in favor of the electronic sign. She said that she loves Pembroke, loves the golf course, and said that the Town is pretty, but does not want to see a digital sign out her bedroom and bathroom windows.

Rebuttal by the Applicant and those in favor: Attorney Cleary said that there is brush and objects between the sign and Ms. Cooper's house. The sign is not visible in its present location and is not being moved from its present location so the affect would not be what she may be thinking. She is about 175 ft. from the sign.

Mr. Pelloquin pointed out that Ms. Cooper may not be aware that the message board is lower on the sign and they do not believe that she will see it.

Bob MacCormack said that he spoke with many neighbors, but not Ms. Cooper. He said that the letters to the abutters indicated a compromise – that the new sign would be installed at the general location of the current sign, they would limit the message board usage from 7 am to 9 pm. It would be off at all other times. They would limit the electronic message board to: Text only (no displays, videos, or multi-colors), only one color, and limit the sign usage from 7 am to 9 pm (9 pm to 7 am the message board will be dark).

Rebuttal by opposition: None

Questions from the Board: None

Chairman Kudrick summarized the case as follows:

**Case 23-13-Z**, initial hearing was on August 23, 2023. Pembroke Pines Country Club is asking for a sign over 12 sq. ft in area plus a programmable sign. They read the 5 criteria. The reason they are asking for this sign is: (1) To have people outside of Pembroke find the Pembroke Pines Country Club for golf, weddings, dinners, other outings and residences; (2) To stop people from turnarounds and cutting through nearby neighborhoods; (3) It would not diminish the value of nearby properties – it would improve it. They talked about the history of the club and believe that this was commercial land and always has been. They looked at having approximately 20 outings per year. In the future, they plan on putting smaller signs along

Route 3, North and South (approximately 1,000 ft. from Whittemore Road). In 2013 they received a variance for the present sign. The public asked about the changing of the sign, its brightness, and when it would be on. They talked about 11 pm or closing of business. There would be no fireworks on the sign. They talked about a sidewalk going down Whittemore Road. The Zoning Board believed that there was some problems with the information on the application and the Board voted, at that time, to continue the case in order to speak with Town Counsel.

On September 25, 2023, the applicant asked to continue Case 23-13-Z and 23-14-Z. The Board did so. The Board scheduled a site walk for September 27, 2023 in order to look at the sign at the location. The owner of the property created a mock-up of the sign and, on Wednesday, September 27, 2023, 4 Board members were at the site, one member drove by the site at a later time and one member received emailed pictures of the sign. Also, on September 25, 2023, corrections were made to the application and was signed, and dated.

Mr. Pelloquin said that the Applicant, in this case, is Mr. MacCormack and Pembroke Pines.

Chairman Kudrick continued: On October 23, 2023, additional information was read into the record on all 5 variances. They submitted a signed petition of 120 people in favor of the sign. A letter from a real estate broker was submitted stating that the electronic sign would not hurt the value of surrounding properties. One person (living North of Whittemore Road) spoke in opposition of the sign and one person (residing South of Whittemore Road) spoke in favor of the sign. The Applicant indicated that the electronic sign would run from 7 am to 9 pm.

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 is closed.

Mr. MacCormack said that the electronic changing sign will be an internally lit sign.

Chairman Kudrick explained that the light would be inside – not shining from the ground.

Chairman Kudrick officially closed the hearing at 7:29 p.m.

Chairman Kudrick explained why there are no electronic signs along Route 3. He said that it began years ago when a dentist put an electronic sign on Route 3. It created a stir in the community which prompted a meeting. People did not want electronic signs from Main Street to the Concord line. The Board had no control over the school's electronic sign. The gas stations, one South of the Safety Center and one North of Whittemore Road was grandfathered, because they were installed before the ordinance was adopted.

He remembered that the residents did not want electronic signs because they did not want Route 3 to look like it does in Hooksett. He said that he presently is aware of 4 people who would also like to have electronic signs. He said that he understands what the Applicant is trying to accomplish by having the sign, but Chairman Kudrick said that he is keeping in mind what the Town residents want. In his mind, the Board is working for the residents of Pembroke and they want to keep the aesthetics of Route 3 the way it is.

Member Carlucci said that the ordinance is based on the Master Plan. A number of members and residents were involved in creating the current 2020 Master Plan.

He said that he was able to find sections in the Master Plan for each criteria. To improve the Route 3 character, it mentions landscaping, maintaining Pembroke's rural character as important, talks about historic markers and the watering trough. In another section, it says that 84% of residents rank Pembroke's rural character as important. They want to improve the community character and aesthetics on Pembroke Street. Another section states that the corridor plays an important part of Pembroke's character.

Member Carlucci said that, as a business owner, he understands that the sign would benefit the Applicant but there is much information that goes against the purpose of Pembroke's ordinance. The Board represents the residents.

## **ZONING BOARD MEMBER DELIBERATIONS:**

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

Alternate Member Chase said that there is a contrast from what the public wants based on the Master Plan and feedback that we have received along the way about electronic signs. Vice Chairman Hebert agreed.

Pembroke has a population of approximately 7,000 people. Alternate Member Miner said that, when the Master Plan was created, 84% of respondents did not want electronic signs along Route 3. The 120 signatures on the petition in favor of the electronic sign is a much smaller percentage. All Board members agreed.

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

Vice Chairman Hebert said that the Board would not be upholding the spirit of the ordinance if they went against the Master Plan and the regulations which are stating the intent of the Master Plan. All Board members agreed.

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

Alternate Member Chase said that the benefit to that business is significantly more than the benefit to the overall Town which wants to maintain the no-electronic sign ordinance.

Chairman Kudrick said that it would be very hard to say no to all the other people who would like electronic signs. He reiterated that he understands why the Applicant would like to have one but the problem is that it goes against what the Town's people want and it opens the door to many other things that could happen. All Board members agreed.

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

Chairman Kudrick said that the sign would not diminish property values. All 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. (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.**

Chairman Kudrick said that the Applicant could still put up an internally-lit sign with the letters. He would still have a message center similar to the one at the Safety Center. All Board members agreed.

Vice Chairman Hebert said that this is in reference to **Case 23-13-Z**, a request for a variance having been presented to the Board for consideration. A variance is required because electronic changing signs are not allowed in the district.

**MOTION:** Vice Chairman Hebert moved to deny the application as presented with the following reasons: (1) After deliberations, the Board has determined that the request for a variance does not satisfy Criteria 1, 2, 3, or 5 of the variance standards for the following reasons: (1) The requested variance is contrary to the public interest and that it would alter the essential character of the neighborhood and is a threat to public health, safety, or welfare. An electronic changing sign at this location, is inconsistent with the more rural, small-town New England character. An electronic changing sign at this location, could threaten public health, safety, or welfare because electronic changing signs are more distracting than traditional signs, particularly when they are situated where other electronic changing signs are not present. (2) Variance does not observe the spirit of the ordinance. The proposal is inconsistent with the following purpose of the sign ordinance §143-57(a) which promotes safety, comfort, and well-being of the users of the streets, roads, and highways and enhances and preserves the aesthetics of the Town of Pembroke and §143-57(b) to reduce distractions and obstructions caused by signs which would adversely affect traffic safety. The proposed sign does not promote the safety of the users of the street, because as an electronic sign in an area where there are very few other electronic signs, it would create a distraction for drivers. The proposed sign does not preserve aesthetics because it is inconsistent with the rural aesthetic that the Town has attempted to maintain in the zone in question. (3) Substantial justice is not done. The convenience of being able to change the message electronically vs. manually, does not outweigh the harm to the public safety and aesthetics given the Town's commitment to keeping that district pristine and clear. (5) Literal enforcement of provision does not result in an unnecessary hardship. No special conditions of the property makes it such that there is no relation between the ordinance's purpose of protecting aesthetics and promoting safety and the application

of the ordinance to this parcel. No special condition of the property makes it such that the property can be reasonably used in strict conformance with the ordinance and literal enforcement can still allow for a traditional sign that would get the message out clearly and affectively. Seconded by Member Carlucci

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

**MOTION TO DENY THE APPLICATION AS PRESENTED WITH THE FOLLOWING REASONS: (1) AFTER DELIBERATIONS, THE BOARD HAS DETERMINED THAT THE REQUEST FOR A VARIANCE DOES NOT SATISFY CRITERIA 1, 2, 3, OR 5 OF THE VARIANCE STANDARDS FOR THE FOLLOWING REASONS: (1) THE REQUESTED VARIANCE IS CONTRARY TO THE PUBLIC INTEREST AND THAT IT WOULD ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD AND IS A THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE. AN ELECTRONIC CHANGING SIGN AT THIS LOCATION, IS INCONSISTENT WITH THE MORE RURAL, SMALL-TOWN NEW ENGLAND CHARACTER. AN ELECTRONIC CHANGING SIGN AT THIS LOCATION, COULD THREATEN PUBLIC HEALTH, SAFETY, OR WELFARE BECAUSE ELECTRONIC CHANGING SIGNS ARE MORE DISTRACTING THAN TRADITIONAL SIGNS, PARTICULARLY WHEN THEY ARE SITUATED WHERE OTHER ELECTRONIC CHANGING SIGNS ARE NOT PRESENT. (2) VARIANCE DOES NOT OBSERVE THE SPIRIT OF THE ORDINANCE. THE PROPOSAL IS INCONSISTENT WITH THE FOLLOWING PURPOSE OF THE SIGN ORDINANCE §143-57(A) WHICH PROMOTES SAFETY, COMFORT, AND WELL-BEING OF THE USERS OF THE STREETS, ROADS, AND HIGHWAYS AND ENHANCES AND PRESERVES THE AESTHETICS OF THE TOWN OF PEMBROKE AND §143-57(B) TO REDUCE DISTRACTIONS AND OBSTRUCTIONS CAUSED BY SIGNS WHICH WOULD ADVERSELY AFFECT TRAFFIC SAFETY. THE PROPOSED SIGN DOES NOT PROMOTE THE SAFETY OF THE USERS OF THE STREET, BECAUSE AS AN ELECTRONIC SIGN IN AN AREA WHERE THERE ARE VERY FEW OTHER ELECTRONIC SIGNS, IT WOULD CREATE A DISTRACTION FOR DRIVERS. THE PROPOSED SIGN DOES NOT PRESERVE AESTHETICS BECAUSE IT IS INCONSISTENT WITH THE RURAL AESTHETIC THAT THE TOWN HAS ATTEMPTED TO MAINTAIN IN THE ZONE IN QUESTION. (3) SUBSTANTIAL JUSTICE IS NOT DONE.**

**THE CONVENIENCE OF BEING ABLE TO CHANGE THE MESSAGE ELECTRONICALLY VS. MANUALLY, DOES NOT OUTWEIGH THE HARM TO THE PUBLIC SAFETY AND AESTHETICS GIVEN THE TOWN'S COMMITMENT TO KEEPING THAT DISTRICT PRISTINE AND CLEAR. (5) LITERAL ENFORCEMENT OF PROVISION DOES NOT RESULT IN AN UNNECESSARY HARDSHIP. NO SPECIAL CONDITIONS OF THE PROPERTY MAKES IT SUCH THAT THERE IS NO RELATION BETWEEN THE ORDINANCE'S PURPOSE OF PROTECTING AESTHETICS AND PROMOTING SAFETY AND THE APPLICATION OF THE ORDINANCE TO THIS PARCEL. NO SPECIAL CONDITION OF THE PROPERTY MAKES IT SUCH THAT THE PROPERTY CAN BE REASONABLY USED IN STRICT CONFORMANCE WITH THE ORDINANCE AND LITERAL ENFORCEMENT CAN STILL ALLOW FOR A TRADITIONAL SIGN THAT WOULD GET THE MESSAGE OUT CLEARLY AND AFFECTIVELY PASSED ON A 5-0 VOTE.**

Before hearing Case 23-14-Z Chairman Kudrick said that the words “an electronic changing sign” must be removed from the application since the Board is now going to be discussing the size of the sign, not the electronic portion of the sign. He asked that the words be removed from the application description of the case on the agenda and the change be initialed and dated.

Attorney Cleary gave permission to Mr. Bacon to cross out those words.

**Case 23-14-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 a sign which is 48.4 square feet. A **Variance** is required because signs over 6 square feet 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

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

Chairman Kudrick called the meeting to order at 7:45 pm.

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:

Attorney Cleary said that, as mentioned, only 12 square feet is allowed in this district. Ten years ago, the Board found it insufficient for the Pembroke Pines business and found that a variance was justified to 28 square feet. The applicant is seeking 48.4 square feet for the sign and given what has been constructed, the vast improvement and expansion of the golf course, the clubhouse, and the entire project, a larger sign is appropriate. 120 people did not object to increasing the sign size.

Chairman Kudrick held up a photo of the sign and verified with Attorney Cleary that it was indeed the correct sign that they will be discussing. Attorney Cleary agreed.

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

Attorney Cleary said that the Applicant feels that a 49 square foot sign is appropriate to give visitors the opportunity to make the turn into Whittemore Road and to avoid sudden stops, cut-throughs, and turn-arounds because the facility is not seen from Route 3.

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).

Attorney Cleary said that he noticed that few businesses along Route 3 have signs that are 12 square feet. Considering the investment and uses at the golf course (restaurant and function center) the Applicant feels that additional square footage for the sign would be appropriate.

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 in 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.

Attorney Cleary said that the 49 square foot sign would be proportional to the overall size of the golf course and business. To their knowledge, no member of the public is opposed to the size of the sign.

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.

Attorney Clearly pointed to the letter from Streamline Communities and said that they do not believe that the increase in the sign size will affect 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 specific 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 owner, and the community, both short and long-term as stated.

Attorney Cleary said that the property is unique to the area and is a large multi-business facility which needs substantial signage to identify what is happening down Whittemore Road and to provide visibility to those traveling along Route 3.

The size limit of 12 square feet does not fit this new current business. There is no fair and substantial relationship between the 12 square foot sign limitation in the zoning ordinance and the application to this project. This property, more than any other property along Route 3 is entitled to a reasonably sized sign that identifies and provides good visibility and direction.

Those in favor of the application: Kathy Johns, 5 Whittemore Road.

Those in opposition of the application: Cheryl Cooper, 472 Pembroke Street. She said that she did not receive any information on the sign. Chairman Kudrick had her come to the table and showed her the picture of the sign and noted that it would not have an electronic display.

Rebuttal by the Applicant and those in favor: None

Rebuttal by the opposition: None.

Chairman Kudrick summarized the case as follows:

**Case 23-14-Z**, was a continuation but the case was never opened because the applicant requested that Case 23-13-Z be continued and wanted Case 23-14-Z to be heard at the same time.

Chairman Kudrick said that this is a variance from the 12 square foot sign ordinance to a 48.4 square foot sign. The applicant read all 5 variance criteria to the Board. By petition, 120 people were in favor of the sign. At the meeting, one person was in favor of the sign and one was against the sign. The reason for increasing the sign was because the old one was hard to see and since they plan on many people coming to the facility the sign needed to be upgraded. They showed the audience the new mockup of the sign that will be erected and all Board members looked at pictures or went to see the mock-up of the sign. Chairman Kudrick thanked the Applicant again for making the mock-up.

Vice Chairman Hebert asked the Applicant to refresh his memory as to the times that the sign will be illuminated.

Mr. MacCormack said that the time that he had offered was for the electronic messaging board. He asked the Board to use their discretion but, if it is only going to be a lit sign, he asked that the Board allow the sign to be on when the building is open per the ordinance – to 11 pm.

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 is closed.

Chairman Kudrick said that the applicant would like the sign to be lit when they are open and the lit sign would be off when the business closes but no later than 11 pm. From 11 pm to 6 am the sign must be off.

Chairman Kudrick officially closed the hearing at 8:03 p.m.

Chairman Kudrick said that, in his opinion, the sign needs to be upgraded. When traveling North and a car is at the top of Whittemore Road, the bottom of the sign is not visible. The car blocks the bottom of the old sign.

Alternate Member Miner said that the sign mock-up was a great help because the sign pictures and the requested size (49 square feet) made the sign seem massive. The visibility of the bottom of the new sign will not be blocked by a car waiting to turn off Whittemore Road.

Chairman Kudrick said that the new sign will be in the exact location of the present sign.

## **ZONING BOARD MEMBER DELIBERATIONS:**

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

Chairman Kudrick said that it will not be contrary to the public interest. All Board members agreed.

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

Member Carlucci said that the ordinance is all about safety and a larger sign will provide that because it will be easier to see.

Chairman Kudrick said that the sign is in a tough location because of the trees and the Applicant is doing the best he can with that.

Vice Chairman Hebert said that the sign is proportional to the space.

All Board members agreed.



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

Member Carlucci said that the sign will be more visible with this size.

Vice Chairman Hebert said that there will be no harm to the public and that it will be a benefit to the public and the Applicant. All members agreed.

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

Chairman Kudrick said that the size of the sign will not diminish the value of surrounding properties. All 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. (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.**

Chairman Kudrick said that the Applicant has a hardship because the sign is at the top of the hill and the present sign being low to the ground with trees on both sides. By bringing it up higher and a little wider, it will be better.

Vice Chairman Hebert said that the fact that the clubhouse cannot be seen from Route 3, the larger sign will identify the location and give the driver time to make the turn onto Whittemore Road.

Chairman Kudrick said that he visited the Pembroke Pines website and the directions to Whittemore Road are very clear. All Board members agreed.

Vice Chairman Hebert said that this is in reference to **Case 23-14-Z**, a request for a variance having been presented to the Board for consideration. A variance is required because the proposed sign is larger than what is allowed by regulations.

**MOTION:** Vice Chairman Hebert moved to approve the application with the following conditions: (1) Must follow all state and local regulations except those that pertain to the specific conditions being addressed through this hearing. (2) The actions of this Board allow for a sign that is up to 49 square feet and is further defined as the plan submitted dated September 19, 2023 with an internally lit information board that is 21 square feet in size but is non-programmable. Seconded by Member Carlucci.

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

**MOTION TO APPROVE THE APPLICATION WITH THE FOLLOWING CONDITIONS: (1) MUST FOLLOW ALL STATE AND LOCAL REGULATIONS EXCEPT THOSE THAT PERTAIN TO THE SPECIFIC CONDITIONS BEING ADDRESSED THROUGH THIS HEARING. (2) THE ACTIONS OF THIS BOARD ALLOW FOR A SIGN THAT IS UP TO 49 SQUARE FEET AND IS FURTHER DEFINED AS THE PLAN SUBMITTED DATED SEPTEMBER 19, 2023 WITH AN INTERNALLY LIT INFORMATION BOARD THAT IS 21 SQUARE FEET IN SIZE BUT IS NON-PROGRAMMABLE PASSED ON A 5-0 VOTE.**

### New Cases

**Case 23-20-Z** A request has been made for a **Variance under Article VIII Signs, § 143-63 Special Conditions for Specific Types of Signs, X (5)**. The applicant, Pembroke Pines Country Club of 42 Whittemore Rd., Pembroke NH 03275 is requesting a **Variance** to construct an Electronic Changing sign which is within a 200 foot radius of two residences. A **Variance** is required because Electronic Changing signs within 200 feet of a residence 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 Golf, LLC

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

**Property Address:** Whittemore Road  
Tax Map 634, Lot 24 in the LO District

**Included in the Member Packets:** Fee Schedule Worksheet, Supplemental Information in Support of Variance. (Cases 23-13-Z and 23-14-Z), Notice of Decision Pembroke Zoning Board of Adjustment, Exhibit A, Quitclaim Deed, Tax Card.

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

The Reporting Secretary read the case aloud.

Chairman Kudrick called the meeting to order at 8:15 p.m.

Attorney Cleary stated that the Applicant has asked to withdraw the application for Case 23-20-Z.

**Case 23-21-Z** A request has been made for a **Variance under Article IV Use Regulations, § 143-19 Table of use regulations, A.** The applicant, New England Flower Farms, LLC, is requesting a **Variance** to construct dormitory style housing for seasonal workers. A **Variance** is required because dormitory style housing is an unlisted use in the Table of Uses. The property is located at 316-318 Borough Rd., Pembroke, NH, 03275, Map 561 Lot 36, in the C1-Commercial/Light Industrial, zoning district.

**Applicant:** New England Flower Farms, LLC

**Property Owner(s):** 316-318 Borough Road LLC

**Property Address:** 316-318 Borough Road  
Tax Map 561, Lot 36 in the C1-Commercial/Light Industrial,  
Zoning District

**Included in the Member Packets:** Narrative, New England Flower Farms H-2A Temporary Agricultural Workers Housing Development by T. F. Bernier, Inc., Fee Schedule Worksheet, New England Flower Farms ZBA Siteplan Phase 1 and Build Out, letter from John Dapergolas of 316-318 Borough Road, LLC allowing T.F. Bernier to speak on his behalf.

**Present:** Tim Bernier of T.F. Bernier, Inc. and Attorney Brett Allard for New England Flower Farms, LLC, John Huntington, Jr. and Henry Huntington.

Chairman Kudrick called the meeting to order at 8:17 pm.

The Reporting Secretary read the case aloud.

Member Carlucci recused himself from the case. Chairman Kudrick appointed Alternate Member Miner to vote in his place.

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.

Mr. Bernier said that he has been working with New England Flower Farms on this project. He has worked with the H-2A program which provides agricultural businesses with agricultural workers. The Applicant looked at many properties and this property fit their needs. It is located at 316-318 Borough Road, has 794 ft. of frontage on Borough Road. It is located between Commerce Way and Route 106. They are 360 ft. from Route 106. Genrose Stone is the abutting use between the property and Route 106. The site presently has a single rental unit which is a non-conforming use and will be eliminated.

The site has access to Town water and sewer. They met with the Sewer and Water Departments. At buildout, the Water Department had no issues. With regard to sewer, the treatment plant has been upgraded and there is plenty of flow at the plant to handle this project but the two sewer commissioners between Pembroke and Allentown have not reached an intermunicipal agreement between the two towns for cost sharing and flows. Mr. Bernier said that he has been working with Paulette Malo of the Sewer Department.

Mr. Bernier said that they plan to phase the project and will have an on-site septic system for Phase 1 but it would max out the lot for septic so they would not be able to move on without sewer.

The build-out is 4 buildings. Phase 1 is the middle 2 buildings. The other 2 buildings may be built together or individually within 4 years.

New England Flower Farms owns a very large horticultural facility on North Pembroke Road in Pembroke and a smaller facility in Loudon. They have been a business in Pembroke for 25 yrs.

**Please give a detailed description of your proposal below.** To construct dormitory style housing for seasonal agricultural workers (workforce housing). The seasonal workforce serves Pleasant View Gardens commercial greenhouse operation located at 830 North Pembroke Road. \*\*See attached narrative for a full description.

Mr. Bernier read the entire attached Narrative.

The front of the buildings will face Borough Road and be 2 stories. The back of the building is 3 stories with a walk-out basement for utilities and laundry facilities.

Mr. Bernier said that H-2A has very specific criteria and these buildings will exceed their requirements. The workers receive a visa to work a maximum of 9 months and then return to their country. Most of the workers are married and send the money home.

As seasonal agricultural workers, the facility will not be at full capacity all the time. The workers' peak work time is from late December and runs for approximately 4 months, then the work and workers decrease until October.

Chairman Kudrick asked what the maximum number of workers would be.

Mr. Bernier said that, in Phase 1, it would be 128 workers and 256 at buildout of the 4 buildings.

Chairman Kudrick asked if, at the present time, the Farm had that many people working.

John Huntington, Jr. said yes but they are not H-2A workers. The present workers live in Massachusetts and New Hampshire.

Mr. Bernier said that, for the last 4 years, the Farm was buying single family homes in the area and putting 8-10 workers into the houses depending on septic and well capacity. When they realized that they would need 126 H-2A workers, they found that it was not feasible to continue purchasing homes in residential neighborhoods. This would be a much better alternatives.

Chairman Kudrick asked if there would be anyone in the building for security.

Henry Huntington said that, currently they do not but once they have the first 2 buildings, they will have a full time staff member in their Human Resource Department just to manage the H-2A program with help as well.

He said that they presently have 5 homes and the HR staff is constantly in the homes and inspect them on a weekly basis. They are trying to determine what their needs will be once all the workers are in one place. What they have found is that a couple of the guys will rise to the top and become more in charge of those homes. They will be figuring it out as they go.

John Huntington said that the HR staff will not be living on the premises as a den mother.

Mr. Bernier said that the workers come back every year. It is competitive. If the workers have a nice place to stay, they will come back which, in turn, allows the Farm to choose the best workers to come back. If the facilities are not very nice, the workers will opt to work at another farm. These are not college kids, they are all adults and people who come back every year.

Alternate Member Chase asked if the workers were all men.

Henry Huntington said that currently they are all men but now with smaller separate units, it allows the Applicant to bring women in as well and have separate facilities for different genders.

With regard to the yard maintenance, Henry Huntington said that they will take care of the property. It will look appropriate since beauty is their business.

Chairman Kudrick asked if this was similar to the apple pickers who work from the South to the North.

Henry Huntington said yes, that they work with an agency called the Apple Council.

John Huntington said that many of the workers who have shorter contracts will sometimes transfer to the apple orchards.

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

1. **The variance will not be contrary to the public interest.** There exists an immediate need for agricultural workers at local area farms. Housing of these workers has become a critical need for the success of local business. The variance will not be contrary to the public interest as it satisfies this critical need. The use is located in the commercial district where suitable services are available.

Mr. Bernier said that the location of the property is in the commercial district and will be replacing an existing non-conforming use single family resident. The parcel is surrounded on three sides by commercial uses and on the fourth by a vacant town owned parcel. To the east Borough Road transitions from the commercial district and commercial uses to the residential district and residential uses. The proposal is most closely associated with a hotel use which is permitted in the commercial district although the proposed use will generate less traffic. The architecture was designed to provide an appropriate transition from commercial to residential while maintaining a use that is less intense than others permitted in the district.

The facility is located only 1.5 miles from the farm and workers will be bussed to the farm and back to the facility. All traffic will leave the facility heading west to Sheep Davis Road and then to the farm. The facility will not produce any toxic materials, excessive noise or safety-related issues for the community as it provides human habitation and does not include manufacturing, or retail sales.

Mr. Bernier said that they are planning on using school buses to transfer the workers to work, between 6:30 am and 7 pm. The site was designed to accommodate the school buses. There will be parking in the rear of the buildings, any lighting in the parking lot will be in the back of the building. The closest that the buildings will be to Borough Road is 64 ft. All utilities are buried which will provide plenty of room for landscaping. It will be low intensity, low traffic, with busses transporting the workers and will have a low impact on the neighborhood.

At buildout, there will be 2-4 busses in the morning and 3-6 smaller van-size busses to transport the workers, a maximum of 10 trips, to bring them to the farm. The facility is located 1.5 miles from the farm.

**2. The spirit of the ordinance is observed.** There exists a critical need for agricultural workers. This specific use is not listed in the Pembroke zoning ordinance. This use is most similar to a dormitory or hotel which is allowed in the Pembroke commercial district. The use requires a public water supply in accordance with the New Hampshire environmental drinking water rules, limiting areas that it can be placed. The proposed project will be in the spirit of the ordinance as it is located in an area that can provide the necessary services and ensuring no threat to public health or safety. Providing this much needed resource within 1.5 miles of the farm with adequate services is in the spirit of the ordinance.

**3. Substantial justice is done.** Although there has been a need for agricultural workers for decades the recent economic realities have changed the historical level of need. This change was not foreseen by the ordinance and as such has not accounted for this use. This need is critical to the success of a substantial and beneficial member of the Pembroke community. The proposed use will not have a negative effect as it will not put any children in the school system, it will provide substantial revenue to the town in property taxes, vehicle registrations and utility fees. The proposed location is on the outer edges of the commercial district and the proposed use is appropriate for this transitional area. The proposed use will also replace an existing non-conforming use (single-family rental house) in the C-1 district.

**4. The values of surrounding properties are not diminished.** The development will be located in the C-1 commercial district and bounded on three sides by commercial uses. To the east is a town owned vacant commercial property. The use will provide workforce housing and will be vacant during the day. Workers will be bussed in groups to the farm resulting in minimal traffic impacts. The closest residential use is over 450' from the proposed buildings, is a non-conforming use in the C-1 district and will be well buffered. For these reasons the proposed use will not negatively affect the abutting uses of their values.

**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.** The property is located within 1.5 miles of the farm and has access to a required public water supply and municipal sewer. The property is also located just off a state highway providing quick access to the farm. The use is not listed in the ordinance, which in itself is creating a hardship. The proposed use is most similar to a hotel, which is a permitted use on this property. The ordinance's purpose is to provide the public with necessary goods and services while protecting the public good. The proposed use is similar to a hotel and as such not appropriate for established residential neighborhoods. The proposed use is a reasonable one and located in an appropriate area with access to required services. The site is also nearly flat with gravely sandy soils and no wetlands or environmentally sensitive areas.

Mr. Bernier said that he checked lot density and they are about 30% lot density and have 70% non-impervious surface open space.

Chairman Kudrick said that, if this case is approved, it will go in front of the Planning Board.

Mr. Bernier said that approximately 20% of the workers may go to the Loudon facility.

Henry Huntington said that when they started out they had about 25,000 square feet of greenhouse and now have 10 acres of greenhouses in Pembroke.

Those in favor of the case: Dana Carlucci, 8 Prospect Street, said that he met the Huntingtons when the Economic Development Committee (EDC) was looking to improve their commercial base (in 2001) when Pembroke had their TF Moran charettes. Since then, they have developed as EDC hoped, they teamed up with Pembroke Sand and Gravel (PS&G) so as PS&G removes dirt, thankfully, the Huntingtons expand.

Mr. Carlucci said that there are 3 generations of Huntingtons and he has worked with them at their greenhouses and housing. All facilities are very well maintained. He said that he feels that the project will be a clean and quiet use. He said that it is his opinion that the housing is auxiliary and subordinate to their business. It is specific to their

business. After being around them for 20+ years, I feel that they are still very good community members and I support this project.

John Dapergolas, the abutter at 107 Sheep Davis Road, and present owner of 316-318 Borough Road. He said that they are a good neighbor and would make sure that nothing would contaminate the aquifer.

Those in opposition to the case: None

Rebuttal by the Applicant and those in favor of the case: None

Rebuttal by the opposition: None

Chairman Kudrick asked if all abutters were notified by registered mail.

Mr. Bacon said yes that all the abutters have been sent the registered notification but he has not received all the green cards back.

Chairman Kudrick summarized the case as follows:

**Case 23-21-Z**, is a request for a Variance for dormitory style housing for seasonal workers. The Applicant read through all 5 criteria. The project will have Town water and maybe sewer. For Phase 1, consisting of 2 buildings, they can put in a septic system. If the plan is approved by the Zoning Board and the Planning Board, they will begin construction in Spring 2024. There will be a total of 4 buildings. New England Flower Farms has been in business for 25 years, they started with a 25,000 square foot facility and today their facility is over 430,000 square feet. They have a smaller facility in Loudon.

The buildings will be 2 stories with walkout basements. This is an H-2A program. They are hoping to get Town sewer if an intermunicipal agreement is met. The workers will not have any cars. They will be bussed from the dorms 7 days a week, with the majority working 6 days a week. Traffic time will be from 6:30-7:30. There will be 2-4 busses, and 3-6 vans transporting the workers. Some of the workers work 9 months a year, most of them are married and send the money home. This is very similar

to what the apple pickers do. In late December they arrive and most workers are here for 4 months and by October there are only a few workers left.

The Applicant will maintain the site. The first phase will house approximately 128 people. The total buildout will house 256 people from all over the world. In the past, the Applicant purchased houses and put as many workers as legally allowed into those houses. This project will allow everyone to be in one place and will result in less traffic than before. Presently, they only have men workers but, following the H-2A program, women may come in the future since they will have the ability to house them in a separate dormitory.

The Applicant will use 30% of the lot in a commercial zone. Commercial establishments are all around their buildings and Pembroke owns land east of the site.

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 is closed.

Chairman Kudrick officially closed the hearing at 9:05 p.m.

Chairman Kudrick said that the Applicant needs workers to do planting. The workers come from the H-2A program. By building the dormitories, they will create a very good housing development for the workers so they can get the best workers. Chairman Kudrick said that sometimes at the apple orchards, the workers are housed in very small buildings or trailers. Here they will be in a clean environment. The workers send their money back to their families. He said that he has never heard of any people who have had trouble with the workers because if they cause trouble, they are returned to their country.

## **ZONING BOARD MEMBER DELIBERATIONS:**

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

Alternate Member Miner said that it would not be contrary to the public interest. It is a great use of that transitional space.

Chairman Kudrick said that it is nice because they are keeping a business open that can keep expanding as the gravel operation eliminates gravel. By continuing to develop the land, it helps the Town of Pembroke.

Vice Chairman Hebert said that there are impactful businesses that have the potential of creating problems that could be placed on that site. This project would not be harmful to the environment.

All Board members agreed.

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

Vice Chairman Hebert said that they are upholding the spirit of the ordinance.

Alternate Member Chase said that the zoning ordinance would allow a hotel with more people.

Alternate Member Miner said that this use is better than a hotel -- less turnaround. The workers are there to sleep and work.

All Board members agreed.

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

Vice Chairman Hebert said that it is a benefit to the Town and the Applicant. There is no harm to Town and is a great use of that property.

Alternate Member Chase said that it is a low impact to the Town.

All Board members agreed.

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

Chairman Kudrick said that no one has brought proof that the value of surrounding properties 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. (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 pointed out that there is no ordinance to enforce.

Chairman Kudrick said that it would be a hardship to the owner more than anything else. It is not a hardship to the land.

All Board members agreed.

Vice Chairman Hebert said that, in reference to Case 23-21-Z, a request for a variance having been presented to the Board for consideration. A variance is required because the proposed use is not listed in the zoning ordinance.

**MOTION:** Vice Chairman Hebert moved to approve the application as presented with the following conditions: (1) Must follow all federal, state, and local regulations; (2) must adhere to the submitted plans except to the extent such plans are reasonably modified through the Planning Board review process, with the plans approved by the Planning Board being the final plans. Seconded by Alternate Member Miner.

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

**MOTION TO APPROVE THE APPLICATION AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) MUST FOLLOW ALL FEDERAL, STATE, AND LOCAL REGULATIONS; (2) MUST ADHERE TO THE SUBMITTED PLANS EXCEPT TO THE EXTENT SUCH PLANS ARE REASONABLY MODIFIED THROUGH THE PLANNING BOARD REVIEW PROCESS,**

**WITH THE PLANS APPROVED BY THE PLANNING BOARD BEING THE FINAL PLANS PASSED ON A 5-0 VOTE.**

**V. Other Business / Correspondence**

Septic suggestion from Code Enforcement Officer

Mr. Bacon said that the Board was looking for ways to be a little easier, financially, on ADU applicants. One of the requirements for an ADU is to demonstrate a septic system that can handle the added load and barring that, getting a design done to prove to the Board that septic would be handled responsibly. He suggested to leave it up to his office in case the ADU case is denied, the Applicant would not have spent the money for a septic design. He would like to make it a part of approving a building permit. Before a building permit would be issued, Mr. Bacon would require the paperwork necessary for §143-18.1 D which reads “Septic system design/capacity shall be approved by the NH Department of Environmental Services and provided to the Town.”

He suggested that the Board include a condition that the applicant “must follow state and local codes and a septic system must be approved by the Building Department”.

Chairman Kudrick gave an example: A person comes in for an ADU. They have a septic design for 3 bedrooms and are putting in a 4<sup>th</sup> bedroom. The septic system is not designed for that. Currently the Applicant would have to provide the Board with information of a new septic design before the Board could approve it. Instead, per Mr. Bacon’s suggestion, the Board would approve the ADU with a 3-bedroom septic system and add a condition that before they receive a Building Permit, they must prove to the Building Inspector that they have an appropriate septic design. The Board agreed.

**V. Approval of Minutes – September 25, 2023 and September 27, 2023**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF SEPTEMBER 25, 2023 AND SEPTEMBER 27, 2023 AS PRESENTED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

**VI. Adjournment**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO ADJOURN THE MEETING AT 9:23 PM. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

Respectfully submitted,  
Jocelyn Carlucci  
Recording Secretary

DRAFT