

**PEMBROKE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
February 26, 2024
(ADOPTED)**

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

ALTERNATES PRESENT: Wendy Chase, Robert Bourque,

EXCUSED: Blakely Miner III, 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.

Chairman Kudrick appointed Alternate Member Bourque as a voting member.

Roll call was taken by the Reporting Secretary.

The Reporting Secretary read the case aloud.

Case 24-02-Z A request has been made for a **Special Exception under Article IV Use Regulations, § 143-18.1 Accessory Dwelling Units**. The applicants, Andrea and Kyle Fitzgerald of 458 North Pembroke Road., are requesting a **Special Exception** to construct an ADU over a proposed new garage. A **Variance** is required **§ 143-18.1**. The property is located at 458 North Pembroke Road, Map 935, Lot 47-1, in the R-3D Rural/Agricultural-Residential District, and is owned by the applicants.

Applicant: Andrea (Blais) and Kyle Fitzgerald

Property Owner(s): Andrea (Blais) and Kyle Fitzgerald

Property Address: 458 North Pembroke Road
Tax Map 935, Lot 47-1 in the R-3D Rural/Agricultural-Residential District

Included in the Member Packets: Fee Schedule Worksheet, NH Land Consultants Septic Plans, NH Dept. of Environmental Services Approval for Construction of Individual Sewage Disposal System (ISDS), Second Floor Floor Plan, Tax Card.

Present: Andrea and Kyle Fitzgerald

Mr. Bacon said that all abutters had been notified.

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, Andrea (Blais) Fitzgerald read the application aloud:

Please give a detailed description of your proposal below:

A 40' x 25' addition to the main house that consists of a three-car (attached) garage facing the N. Pembroke Road with living space on the second floor (top of garage) considered to be an ADU. This addition with living space (ADU) is for my mother, Carlene Blais, and will be used for her living as an in-law apartment. Will consist of kitchen, living room space, master bedroom, bathroom and an office. Per outlined plan, this ADU will be about 682 sq. ft. (less than required 750 sq. ft.). This to allow a "common area" between the main living (house) and the ADU.

Has this property received a Special Exception or Variance in the past? Not that I am aware of.

- 1. Please describe how the requested use is essential or desirable to the public convenience or general welfare.** Personally, this is important for my mother and family. To provide her with living space, but still preserving her independence and privacy within the ADU-style addition as she continued to age. Community-wise, she desired to remain in Pembroke as she has lived here for over 31 years. Initially on Donna Drive, then Third Range Road, now Pembroke Pines.
- 2. Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare.** Per lot map with addition illustrated on it, this addition does not impede on neighbors or public roads (N. Pembroke). My mother living in this space, alone, will not impeded on community resources. Rather, she will get to remain in a community where she has lived for 30+ years. Initially with my dad. He passed in 2021. Therefore, it is important for her to remain in the Pembroke community with her family.
- 3. Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.** Expanding on a home with the addition (ADU) and having common area allows for socialization within the family, yet preservation of privacy for the main home dwellers (Andrea, Kyle, children (2), and my mother in the ADU).
- 4. Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** Given this 40' x 25' addition is attached and not impeding on public and private areas, this actually benefits the community value and our home value.
- 5. Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No. Addition (ADU) will have one person living in it. Therefore, this will not add traffic or any other public/neighborhood nuisance at any significance.

6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** (1) Septic plan done and DES approved. (2) ADU will have water (well), heat, electrical off main house; (3) Electrical panel will be upgraded appropriately by licensed professionals.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** Abutting properties are more than 60 feet, if not more, from addition. Plus, as per lot map, addition encompasses its dimensions within the current driveway space.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** (1) As above septic plan attached. (2) Appropriate and working current ground well.
9. **If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system.** ADU is considered “in-law apartment” not multi-family. Will have adjoining space/door to main house and be below 750 sq. ft.

Those in favor:

Henry Friedrich, 456 N. Pembroke Rd., said that he was the original owner of that subdivision. He said that the ADU will not deter from the area and that their proposal was fair.

Evelyn Friedrich, 456 N. Pembroke Rd., had no objection to their proposal.

Those in opposition: None

Vice Chairman Hebert asked if the new approved septic system design was going to be part of the project.

Mrs. Fitzgerald said yes.

There was no rebuttal from those in favor or in opposition to the project.

Chairman Kudrick summarized the case as follows:

Case 24-02-Z, the applicant is asking for a Special Exception for an Accessory Dwelling Unit (ADU) at 458 N. Pembroke Road, Map 935, Lot 47-1 in the R-3D Rural/Agricultural-Residential District. The Applicant went over all the rules and also explained why they would like to construct an ADU. They have an approved septic plan which, once they have approval, will be installed as part of the project. Electricity and water will come from the house. The ADU will be 682 sq. ft. where 750 sq. ft. is allowed. Two people spoke in favor of the project and no one spoke in opposition.

Chairman Kudrick announced that the Board will decide all cases within 30 days. Notice of decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. This hearing is officially closed at 7:14 p.m. The Board will approve, deny or continue the deliberation. No comments will be taken from the audience.

Chairman Kudrick complimented the Applicant on their well-organized packet which consisted of a map of the original house, a map showing the addition and where the well is located, along with the new septic design. He said that this was an example of what the Board should be seeing from all applicants.

Deliberations: The Zoning Board of Adjustment reviewed the Special Exception criteria:

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** Chairman Kudrick said that this is what an ADU was designed for. All members agreed.
2. **Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare.** Vice Chairman Hebert said that no one will realize that it is there – it will be a garage with a space above it, like in other neighborhoods. All members agreed.
3. **Please describe how the specific site is an appropriate location for the proposed use and that the character of adjoining uses will not be affected adversely.** Chairman Kudrick said that it is a perfect location for the ADU. All members agreed.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** Chairman Kudrick said that there was no evidence showing that properties will be devalued. All members agreed.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** Chairman Kudrick said that there will only be one additional car. All members agreed.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Chairman Kudrick said that they have an approved septic design and will be putting it in as part of the project. All members agreed.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** Chairman Kudrick said that there was no one in opposition to the project. All members agreed.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** Chairman Kudrick said that they meet the requirements with the new septic system design and the water capacity is adequate to supply the property. All members agreed.

9. **If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system.** N/A

MOTION: Alternate Member Bourque moved to approve the application (**Case 24-02-Z A request for a Special Exception under Article IV Use Regulations §143-18.1 Accessory Dwelling Units**) as presented.

Chairman Kudrick asked Mr. Bacon if, when he inspected the ADU, the Applicant had less than the approved 682 sq. ft. or more than 682 sq. ft. but less than the 750 sq. ft. allowed by the Town, would the Applicant need to return to the Board for further approval?

Mr. Bacon said no.

Seconded by Member Carlucci.

VOTE: B. Kudrick – Y T. Hebert – Y D. Carlucci – Y
 R. Bourque – Y P. Paradis – Y

MOTION TO APPROVE THE APPLICATION (CASE 24-02-Z A REQUEST FOR A SPECIAL EXCEPTION UNDER ARTICLE IV USE REGULATIONS §143-18.1 ACCESSORY DWELLING UNITS) AS PRESENTED PASSED ON A 5-0 VOTE.

Approval of Minutes – January 22, 2024

MOTION: MEMBER BOURQUE MOVED TO APPROVE THE MINUTES OF JANUARY 22, 2024 AS PRESENTED. SECONDED BY MEMBER HEBERT. UNANIMOUSLY APPROVED.

V. Other Business / Correspondence - None

Mr. Bacon verified with the Board that the Applicant would not need to provide a septic plan until they were approved?

Chairman Kudrick said yes. It would only be required before they received a Certificate of Occupancy.

Mr. Bacon explained that the only reason the Fitzgeralds had a septic system designed and approved prior to coming to the Board was because the case was opened prior to the Board’s decision.

Chairman Kudrick thanked Mr. Bacon for contacting Town Counsel regarding detached ADUs.

Chairman Kudrick read a definition that was given to him in 1975. “A variance is a relaxation or a waiver of a strict interpretation of any provision of an ordinance and may be granted by the Board of Adjustment or appeal.” He pointed out that the rule is talking about giving a waiver of an ordinance.

He continued to say that, in a handout that he received years ago states: “A variance is a waiver of any provision of the ordinance authorizing the landowner to use his or her land in a manner that would otherwise violate the ordinance and may be granted by the Board of Adjustment or appeal.”

He then pointed out that in the NH Planning and Land Use Regulations 2022-2023, it says: “Nature of a Variance: A variance was in the nature of a waiver of the strict letter of the zoning ordinance without sacrificing the spirit of the purpose.”

With regard to a detached ADU, and, given the information provided above, Chairman Kudrick asked how the Board can hear a variance for an ordinance that does not exist.

An attached ADU is listed in the ordinance, therefore, it can receive a variance.

Chairman Kudrick pointed out that Town Counsel should have been made aware, when he was asked about detached ADUs, that an ordinance for detached ADUs does not exist in Pembroke.

Member Carlucci agreed with Chairman Kudrick.

Chairman Kudrick said people are coming before the Board and spending a lot of money knowing that it might not go through. Detached ADUs are not in the Town Code.

Alternate Member Bourque agreed and said that he never understood how a variance could be given on a regulation that is not there. He also pointed out that RSA 674:73 also states that “A municipality is not required to but may permit detached accessory dwelling units.” He continued to say that the Town has looked at this and has said that they do not want detached ADUs and that is why we left it at 674:72. At that time, the town called them “In-law apartments”. Once 674:73 came into existence, the Town never adopted detached dwelling units in its regulations, and that is why he could not understand how someone could get a variance for a detached ADU.

Chairman Kudrick said that Vice Chairman Hebert researched detached ADUs in surrounding towns and found that, except for Hooksett that does not allow detached ADUs, they followed the standard RSA.

Alternate Member Bourque said that his concern was that if the Town added language that detached ADUs are not allowed, then an applicant could apply for a variance.

Vice Chairman Hebert agreed and said that if detached ADUs were mentioned in Pembroke’s regulations, even to say that they were “not allowed”, someone could apply for relief because it was mentioned.

He also said that if detached ADUs are not in the Town Code, then there are no grounds for relief from the fact that the Town is not allowing it because it is not mentioned.

Mr. Bacon said that there are many examples of things that are not mentioned in the code and yet the Board has granted variances on. An example would be multifamily dwellings in the R3, that are designated by a dash (meaning not permitted) in the Table of Uses. He said that a detached ADU is not

permitted but you cannot stop someone from filing a variance request for a detached ADU. It is the very reason that the ZBA exists. He said that he could advise people that the Board is not fond of granting variances for detached ADUs.

Member Carlucci said that if detached ADUs were listed in the Table of Contents with a dash, then someone could apply for a variance because it is mentioned in the Town Code.

Chairman Kudrick said that it will be up to the Planning Board to change the Code next year if they want to include detached ADUs.

He said that he did not think that the Planning Board was in favor of detached ADUs.

Alternate Member Bourque said, at this point, we do not allow detached ADUs. He said that he does not see how a variance can get relief for a detached ADU since it is not in the Table of Regulations. If it is added to the Table, even if it is not allowed, an applicant can ask for relief from it because it is mentioned in the Code. The State has indicated that the Towns can allow it if they want. To this point, Pembroke has not wanted to allow it, therefore it is not in the Code. If it is added to the Table of Uses with a dash, then it is opening the door for a request for relief from it.

He said that he recalled that, at a joint meeting between the Planning Board and the Zoning Board, the consensus was that we were not going to do anything about detached ADUs and see if it made sense to continue handling it the way we were doing it now. He preferred to continue handling them the way that has been done than doing something else.

Alternate Member Bourque also mentioned a newspaper article that reported that the state was looking into changing zoning regulations in towns that could accommodate lots with water and sewer and cut the lots in half (10,000 sq. ft).

Because of budget constraints, Chairman Kudrick recommended that the Board not contact Town Counsel, unless it is absolutely necessary.

VI. Adjournment

MOTION: Vice Chairman Hebert moved to adjourn the meeting at 7:43 pm. Seconded by Member Paradise. Unanimously approved.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary