

**MINUTES**  
**PEMBROKE ZONING BOARD OF ADJUSTMENT**  
**October 29, 2018      Approved 11-26-2018**

**MEMBERS PRESENT:** Bruce Kudrick, Chair; Tom Hebert, Vice Chair; Dana Carlucci, Paul Paradis

**ALTERNATES PRESENT:** Robert Bourque

**EXCUSED:** Natalie Glisson

**STAFF PRESENT:** Dana Pendergast, Code Enforcement Officer; Susan Gifford, Recording Secretary

Chairman Kudrick called the meeting to order at 7:00 p.m. Chairman Kudrick stated that the meeting was being recorded and live streamed on the Town website.

Chairman Kudrick called for a moment of silence to honor William Bonney, who passed away last week. William Bonney was Chair of the Zoning Board of Adjustment for over 20 years, his second time around.

Alternate Member Bourque will vote on Case 18-04-Z making a five member board.

**Case #18-04-Z**

Applicant:	Gallo Realty Group 34 Rundlett Hill Road, Suite 4 Bedford, NH 03110-5824
Property Owner(s):	Potential Properties Corp. 34 Rundlett Hill Road, Suite 4 Bedford, NH 03110-5824.
Property Address:	109 Wilkens Avenue Pembroke, NH 03275 Tax Map 266, Lot 117 in the R-1 Medium Density-Residential, B-1 Business / Residential and the AC Aquifer Conversation Zoning Districts

**Case 18-04-Z Continued from September 24, 2018** A request has been made for a **Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3**. The applicant, Gallo Reality Group, 34 Rundlett Hill Road Suite 4, Bedford NH 03110-5824 is requesting a **Special Exception** to construct 2,6 unit townhouses. A **Special Exception** is required under **§ 143-19 Table of Use Regulations #3** in the R-1 and B-1 Zoning Districts. The property is owned by, Potential Properties Corp. 34 Rundlett Hill Road Suite 4, Bedford NH 03110-5824. The property is located at 109 Wilkins Avenue, Map 266 lot 117 in the R-1 Medium Density-Residential, B-1 Business / Residential and the AC Aquifer conservation zoning Districts.

Agent: Matt Peterson, Development Consultant, Hillside Design Group, LLC; 746 DW Highway, Unit B; Merrimack, NH 03054

Chairman Kudrick stated that the Board has 4 regular members and 1 Alternate ZBA member present. Chairman Kudrick opened the hearing at 7:02 pm. This is a continued hearing from September 24, 2018.

The secretary read a letter dated October 17, 2018 from Matthew Peterson, Hillside Design Group, Merrimack NH requesting that application #18-04-Z be continued to the next month's Zoning Board of

Adjustment meeting. Mr. Peterson stated in his letter that the Town of Pembroke and Town of Allenstown have not finalized the court case regarding the availability of town sewer for the project.

**MOTION: TOM HEBERT MOVED TO CONTINUE CASE 18-04-Z TO MONDAY, NOVEMBER 26, 2018 AT THE REQUEST OF THE APPLICANT. SECONDED BY BOB BOURQUE. UNANIMOUSLY APPROVED.**

Chairman Kudrick stated that the original abutters for this application would not be renoticed. The public hearing on Case #18-04-Z was continued to November 26, 2018. All interested parties are encouraged to check the Town website or call the Zoning Department to get information pertaining to future meetings and locations.

**Case #18-12-Z**

Applicant: Wilfrid Poirier  
4100 North Ocean Drive #2501  
Singer Island, FL 33404

Property Owner(s): Wilfrid Poirier  
4100 North Ocean Drive #2501  
Singer Island, FL 33404

Property Address: Center Road and Third Range Road  
Pembroke, NH 03275  
Tax Map 563 Lot (90) in the R-1 Zoning District.

**Case 18-12-Z Deliberations continued from September 24, 2018** A request has been made for a **Variance under Article V use regulations section § 143-21 Table of Dimensional and Density Regulations B minimum contiguous lot frontage (feet)**. The applicant Wilfrid Poirier 4100 North Ocean Dr. #2501 Singer Island Florida proposes to subdivide lot **563-90 Center Rd in the R1 zone** into four lots with less than the required amount of frontage on a class V road. Lots 90-1 and 90-2 require 120' and lot 90-3 requires 135'. The owner of the property is Wilfrid Poirier 4100 North Ocean Dr #2501 Singer Island Florida.

Chairman Kudrick explained that the Zoning Board of Adjustment officially **closed** the public hearing on Case #18-12-Z on September 24, 2018. During their deliberations on September 24, 2018 the Board moved to continue deliberations on Case #18-12-Z to meet with legal counsel and get clarity. The Board did meet with legal counsel and reopened deliberations at 7:07 p.m. October 29, 2018 to review the five criteria.

**Deliberations:** ZBA members discussed the Variance criteria.

1. **The variance will not be contrary to the public interest.** Dana Carlucci stated that residential use is similar to uses in the area.
2. **The spirit of the ordinance is observed.** Dana Carlucci noted the proposed residential development is in the R1 zoning district.
3. **Substantial justice is done.** The guiding rule is that substantial justice is any loss to the individual owner that is not outweighed by a gain to the general public is injustice. The Supreme Court has considered whether the proposed use is consistent with the present uses in the neighborhood and that the purposes of the zoning ordinances were not adopted specifically to alter the types of uses in a neighborhood.

4. **The values of surrounding properties are not diminished.** The values of the surrounding properties are not diminished since the properties in the area are all residential homes of similar value, type and use.

At this point, James Coughlin, partner of the applicant, stated he would like to **withdraw application #18-12-Z**. Chairman Kudrick asked if he understands that he must completely start over to submit a new application. Mr. Coughlin stated that he fully understands that he must submit a new application.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

**MOTION: BOB BOURQUE MOVED TO ACCEPT THE WITHDRAWAL OF APPLICATION #18-12-Z AT THE REQUEST OF THE APPLICANT. SECONDED BY TOM HEBERT. UNANIMOUSLY APPROVED.**

**Case #18-20-Z**

Applicant:	Juan Puchalski 424 Terrie Drive Pembroke, NH 03275
Property Owner(s):	Juan Puchalski and Jenny Manzelli 424 Terrie Drive Pembroke, NH 03275
Property Address:	424 Terrie Drive Pembroke, NH 03275 Tax Map 565 Lot 81-121 in the R1 Zoning District.

**Case 18-20-Z** A request has been made for a **Variance under Article V use regulations section § 143-21 Table of Dimensional and Density Regulations G Side set back**. The applicant Juan Puchalski 424 Terrie Dr. proposes to add a 16 X 16 shed to the left side of the lot within 5 feet of the lot line when 15 feet is required lot **565-81-121 in the R1 zone**. The owner of the property is Juan Puchalski, 424 Terrie Dr. Pembroke NH.

Chairman Kudrick opened the public hearing at 7:10 p.m. Chairman Kudrick stated that the Board has 4 regular members and 1 Alternate ZBA member present. Alternate Member Bourque will vote on Case 18-20-Z. Therefore, there was a full five-member board present for this hearing. Chairman Kudrick explained the rules of the hearing. Anyone who wishes to speak will give their name, address and interest in the case. All questions are directed to me, the Chair.

Tax maps, assessing card, Shed Proposal Plan dated 10/3/2018, an aerial photograph and list of abutters were included in the agenda packet.

Juan Puchalski addressed the Variance criteria:  
Please give a detailed description of your proposal below:

We would like to install a 16' x 16' shed on the side of our property, set back 5 feet from the property line to 422 Terrie Drive. We have a 50 foot buffer zone around a soft gas pipeline easement in our back yard

that prevents us from installing it in the back of our property where we would meet all setback requirements.

1. **The variance will not be contrary to the public interest.** This shed will be used for tool and lawn equipment storage in a similar manner to other sheds installed in houses on this street and neighborhood.
2. **The spirit of the ordinance is observed.** The original plan for the shed was to install it in our back yard, 15 feet away from other properties. Due to the gas pipeline's presence under our property, we are unable to do so. The location chosen attempts to minimize the visual impact and tries to place the shed next to the existing tree line.
3. **Substantial justice is done.** It will be an injustice to not allow us to place the shed in this location because we have no other viable options on our property because of the gas pipeline. Also, there will be no injustice to the general public or to our neighbor by locating the shed on the side property. There are already well established trees along the border. Beyond the trees are our neighbor's driveway and a deck. So, there is a lot of distance between the proposed shed and the neighboring home. Balancing the loss to us if we cannot build the shed there versus the gain to the general public if we are not allowed to do it, our loss is greater, and therefore, substantial justice would be done in granting this variance.
4. **The values of surrounding properties are not diminished.** The style of the shed will be similar to that of the house to make it aesthetically pleasing. There are other sheds in the neighborhood with similar front yard locations, so it would not look out of place.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
  - i. **No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:**
  - ii. **The proposed use is reasonable.**

Installation of a storage shed is a reasonable use, but due to the gas pipeline underneath our property we are not able to install it in a location where we would be able to meet the requirements of the ordinance.

**B. If the criteria in subparagraph (A) are not established, an 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 make a reasonable use of it.**

If the criteria in subparagraph (A) is not established, if the special condition of the gas pipeline did not exist, we would have installed the shed in our back yard, meeting all setback requirements. We are unable to do so and request the ability to place the shed on the side of our property.

Dana Carlucci asked if the applicant had considered putting the shed further back toward the easement. Yes, but there is a boulder, kid's toys and swing set there. Dana Carlucci asked if there was a fence in the rear. Juan Puchalski stated there are existing fences from all the properties.

Ann Bond, 433 Micol Road, stated that when she purchased her property 27 years ago, she clearly knew from the detail on the deed she had an easement on her property. The setback used to be 10 feet not 15 feet. Ann Bond stated she came to the ZBA in 2013 for a variance for a garage and was not allowed 11 feet variance as she requested for a two car garage. The garage was needed for her disabled son, so she had to downsize the garage to one car rather than two cars as designed. Ann Bond is seeing a lot of variances approved in her neighborhood such that structures are encroaching on property lines and homes.

Karen Gallagher, 446 Terrie Drive, stated that she has lived at her property for 30 years and has no problem with the location of a shed as long as it is 15 feet from the side property line. She is also concerned about the growing number of variances approved that allow structures to encroach on neighbors. Five feet is not enough room to get a lawn tractor into a shed. The trees may get overgrown and a shed at the end of the fence may become an eyesore. Also, the house next door was recently sold and the new owner was not notified of this hearing. They are not on the abutter list.

Dana Pendergast stated that the Town of Pembroke goes by the town tax cards as listed at the Registry of Deeds.

Karen Gallagher stated that the property may not have transferred. The previous owner is deceased and the executor of the estate is selling the property. Chairman Kudrick stated that once the deed is registered, the new owner would be listed on any abutter list.

Nancy Stewart, 516 Pembroke Street, stated that she is here for a different case, but the notice she just received October 22 was for a hearing on October 19, 2018 a date which had already passed. Dana Pendergast confirmed the date on the notice was incorrect. The notice was corrected and reposted, and was put on the town website. A number of people did call about the discrepancy. Legally abutters must receive notice of a hearing affecting them 5 days ahead of date of hearing.

Chairman Kudrick apologized for notice of the incorrect date, the change and the delay in receipt. He promised to take it up with the people at town hall in charge of sending out notices. Thank you very much for bringing this information to our attention.

**MOTION: BOB BOURQUE MOVED TO CONTINUE CASE #18-20-Z TO NOVEMBER 26, 2018 TO ALLOW FOR PROPER RENOTICE TO ALL ABUTTERS. SECONDED BY DANA CARLUCCI. UNANIMOUSLY APPROVED.**

Chairman Kudrick apologized for the inconvenience of having to return next month, but the Board wants to make sure everyone is noticed properly. Dana Pendergast stated that unfortunately, the incorrect date was listed for the next three cases as well. It is one notice with all of the cases listed.

**MOTION: BOB BOURQUE MOVED TO CONTINUE CASES #18-21-Z, #18-22-Z and #18-23-Z TO NOVEMBER 26, 2018 TO ALLOW FOR PROPER RENOTIFICATION TO ALL ABUTTERS. SECONDED BY DANA CARLUCCI. UNANIMOUSLY APPROVED.**

Chairman Kudrick again apologized for the mix up, but unless every abutter is noticed properly it could be a legal issue in the future. Notification for all of tonight's new cases will be resent to all abutters for November 26, 2018.

**Case #18-21-Z**

Applicant: Nicole Paquet  
269 Chester Turnpike  
Candia, NH 03034

Property Owner(s): Nicole Paquet  
269 Chester Turnpike  
Candia, NH 03034

Property Address: 518 Pembroke Street

Pembroke, NH 03275  
Tax Map 634 Lot 36 in the LO Zoning District.

**Case 18-21-Z** A request has been made for a **Variance under Article V use regulations section § 143-21 Table of Dimensional and Density Regulations D Minimum Contiguous Lot Frontage Multiple Family**. The applicant Nicole Paquet 269 Chester Turnpike, Candia NH proposes to add a Third Living unit to the property at 518 Pembroke St. that has 100 Feet frontage when 150 feet is required lot **634-36 in the LO zone**. The owner of the property is Nicole Paquet 269 Chester Tpk, Candia NH

**Case #18-22-Z**

Applicant: Nicole Paquet  
269 Chester Turnpike  
Candia, NH 03034

Property Owner(s): Nicole Paquet  
269 Chester Turnpike  
Candia, NH 03034

Property Address: 518 Pembroke Street  
Pembroke, NH 03275  
Tax Map 634 Lot 36 in the LO Zoning District.

**Case 18-22-Z** A request has been made for a **Variance under Article V use regulations section § 143-21 Table of Dimensional and Density Regulations A Minimum Lot Area**. The applicant Nicole Paquet 269 Chester Turnpike, Candia NH proposes to add a Third Living unit to the property at 518 Pembroke St. that has 40,510.8 square Feet when 56,000 square feet is required lot **634-36 in the LO zone**. The owner of the property is Nicole Paquet 269 Chester Tpk, Candia NH

**Case #18-23-Z**

Applicant: Nicole Paquet  
269 Chester Turnpike  
Candia, NH 03034

Property Owner(s): Nicole Paquet  
269 Chester Turnpike  
Candia, NH 03034

Property Address: 518 Pembroke Street  
Pembroke, NH 03275  
Tax Map 634 Lot 36 in the LO Zoning District.

**Case 18-23-Z** A request has been made for a **Special Exception under Article IV § 143-19 Table Of Use Regulations, Residential #3**. The applicant Nicole Paquet 269 Chester Turnpike, Candia NH proposes to add a Third Living unit to the property at 518 Pembroke St. that will make it a multifamily use and requiring a special exception lot **634-36 in the LO zone**. The owner of the property is Nicole Paquet 269 Chester Tpk, Candia NH

**CORRESPONDENCE** – The Zoning Board of Adjustment members received a letter dated October 22, 2018 from Carolyn Cronin, Town Planner, proposing that she and Dana Pendergast create a joint application for Special Use Permits and Site Review of aquifer conservation concerns. There would be one application to fill out, one application fee, and one set of comments from a consistent list. Zoning does not

currently include Water Works in the review but would like them to be on the list for comments. The Zoning Board of Adjustment supports the development of a joint application and consistent slate of comments for Special Use Permits and Site Review.

Carolyn Cronin requested other ideas for changes in the zoning ordinance for consideration at Town Meeting. The ZBA mentioned Definitions, shed sizes, Temporary Containers (currently licensed each year), rhino roofs, carports that have side walls added later, and restrictions on travel campers/recreational vehicles. Recreational vehicles outside a campground are currently limited to 60 days per year, and can be stored and parked during times of non-use. Concerns are septic and water while being used on property.

#### **MINUTES OF PREVIOUS MEETINGS**

**MOTION:** Dana Carlucci moved to postpone approval of the minutes of September 24, 2018 to the November 26, 2018 meeting. Bob Bourque seconded.

**VOTE:** PAUL - YES TOM - YES BRUCE - YES  
DANA - YES BOB - YES

MINUTES OF SEPTEMBER 24, 2018 POSTPONED ON A 5-0 VOTE.

#### **NEXT MEETING**

**Date of next ZBA meeting** – Chairman Kudrick noted the next ZBA meeting would be on **Monday, November 26, 2018 at 7:00 p.m.**

**ADJOURN** **Motion:** Bob Bourque moved to adjourn. Dana Carlucci seconded. Vote was unanimous in favor of motion. Meeting adjourned at 7:48 p.m.

Respectfully submitted,  
Susan P. Gifford  
Recording Secretary