

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
August 27, 2018 Approved 9-24-2018

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

ALTERNATES PRESENT: Robert Bourque

EXCUSED: Robin Lounsbury

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 replayed on the Town website.

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 Conservation Zoning Districts

Case 18-04-Z Continued from July 30, 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 5 regular members and 1 Alternate ZBA members present. This is a continued hearing from July 30, 2018. Chairman Kudrick opened the public hearing at 7:02 pm.

The secretary read a letter dated August 15, 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: DANA CARLUCCI MOVED TO CONTINUE CASE 18-04-Z TO MONDAY, SEPTEMBER 24, 2018 AT THE REQUEST OF THE APPLICANT. SECONDED BY PAUL PARADIS. 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 September 24, 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.

Representative from PACE Career Academy running late so Case #18-12-Z was taken into consideration next.

Case #18-07-Z

Applicant:	PACE Career Academy 65 Pinewood Drive Allentown, NH 03275
Property Owner(s):	Riverwood Drive LLC 28 Plumb Island Drive Newbury, MA 01951
Property Address:	716-718 Riverwood Drive Pembroke, NH 03275 Tax Map 632, Lot 18-4 in the C1 (Commercial/Light Industrial) and the AC (Aquifer Conservation) Zoning District.

Case 18-07-Z Continued from July 30, 2018 A request has been made for a **Variance under Article IV Use Regulations section §143-19 table of uses Community Facilities #2**. The applicant Pace Career Academy, 65 Pinewood Rd. Allentown NH, 03275 proposes to move a Charter School into **716-718 Riverwood Dr. map 632 lot 18-4 in the C1 (Commercial/light Industrial) and the AC Aquifer conservation Zoning District**. The owner of the property is Riverwood Drive LLC, 28 Plumb Island Dr. Newbury MA. 01951.

Chairman Kudrick stated that the Board has 5 regular members and 1 Alternate ZBA members present. Therefore, there was a full five-member board present for this hearing.

Chairman Kudrick opened the hearing at 8:35 p.m. This is a continued hearing from July 30, 2018.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed 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. All people wishing to speak must 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 the approval.

A notarized letter dated April 16, 2018, signed by David Cowie, Manager, Riverwood Drive, LLC, was provide to authorize Pace Career Academy to seek a variance or other permits it may need to use a portion of the property as a school. A Site Layout plan prepared by TFM for N.E. Tool & Equipment, Inc., Salem NH dated December 23, 2004; and a Site and Floor Plan for the area to be leased were included in the agenda packet.

Jorge Santana, Executive Director, PACE Career Academy, apologized for arriving late to the meeting. Today was the first day of school and it was very busy. Mr. Santana will provide the email from Paulette Malo confirming that Pembroke Sewer Commission is all set with the projected flow. An anomaly had

been discovered where a toilet handle had stuck open and 36,000 gallons per month was inaccurately recorded one month. PACE Career Academy has agreed to notify the Sewer Commission if there is a change in number of staff or students so the flow can be reevaluated.

The building is at the top of Riverwood Drive, with National Guard on one side, a storage facility on the other side, and an elementary charter school across the street. Riverwood Drive is off Route 106 by the John Deere site. The building has been a showroom, storage facility for motor bikes, tool shop, consignment shop and most recently, vacant for several years. Jorge Santana stated they propose to use 40% of the building and transform the front to a charter high school with three classrooms. No exterior changes are proposed. There is more than adequate parking for the propose use.

Dana Carlucci stated the building is in the commercial district and is valuable to taxpayers. Dana asked how long, in what price range, and where has the search for an ADA compliant location occurred. Jorge Santana stated he became Executive Director in May 2018 and inherited the search for an ADA compliant location. Right now, the academy plans to use 40% of the front area of the building. The current owner is Nate Sanel of National Powersports. PACE Career Academy would like to purchase the building on Riverwood Drive in two years. We pay taxes as a renter. If the variance is approved, our next step is to go to Planning Board for Minor Site Plan review. PACE Charter School is its own SAU #401 separate from the Pembroke School District. We are a nonprofit organization so price is a consideration.

Jorge Santana, Executive Director, PACE Career Academy, addressed the Variance criteria:

Please give a detailed description of your proposal below:

PACE Career Academy is a school district sponsored Charter High School with a maximum of 50 students, 25 in the morning and 25 in the afternoon. It has been in existence for 7 years and recently had its charter renewed by the NH Department of Education. PACE Career Academy would like to lease 6,000 of 14, 000 total square feet in a building that would be ADA compliant. PACE would have 4 classrooms. Four parking spaces are need for each classroom (16) and eight parking spaces would be needed for the other 8,000 square feet of warehouse which will be rented to another tenant for a total of 24 parking spaces. There are 29 parking spaces on the site. All traffic will be routed one way around the building. There is a charter elementary school across the street and their drop off and pick up schedule is very different from PACE Career Academy. A lease is pending with Riverwood Drive LLC. Financial aid is coming from NH Health Education Facilities.

1. **The variance will not be contrary to the public interest.** The variance would not alter the essential character of the neighborhood. No exterior changes to the building are planned. An existing charter elementary school whose drop off and pick up hours differ from PACE is located across the street. The variance would not threaten the public health, safety or welfare.
2. **The spirit of the ordinance is observed.** See number one above.
3. **Substantial justice is done.** The proposed use is consistent with the present use in the surrounding area and should not have an adverse effect on individual neighbors.
4. **The values of surrounding properties are not diminished.** No changes to the exterior are being made and proposed use should not change the value of the surrounding properties.
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.**

PACE has searched for ADA accessible space of 6,000 square feet or greater and there are none in the area. 716-718 Riverwood Drive is the only property available in the last three years that meets our needs and the Department of Education requirements.

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.

Again, Jorge Santana thanked the Zoning Board of Adjustment for their patience and support.

Chairman Kudrick summarized the case. This is **Case 18-07-Z continued from July 30, 2018**. A request has been made for a **Variance under Article IV Use Regulations section §143-19 table of uses Community Facilities #2**. The applicant, Pace Career Academy, 65 Pinewood Road, Allentown, NH 03275 proposes to move a Charter School into 716-718 Riverwood Drive, Map 632, Lot 18-4 in the C1 (Commercial/Light Industrial) and the AC (Aquifer Conservation) zoning district. Pace Career Academy proposes to move a charter school into a C1 area. This building has ADA services. Pace Career Academy does not charge for educational services. Trash pickup will be handled by the academy. The water usage is 350-400 gallons per day. Applicant will provide a copy of Sewer Commission flow approval to the town. 25 students in grades 9-12 will be attending in the morning and 25 students will be attending in the afternoon. PACE Career Academy staggers its hours so they do not coincide with the hours of drop off and pick up at Strong Foundations Charter School located across Riverwood Drive. Chairman Kudrick stated if a variance is approved, the applicant must next go to Planning Board for Minor Site Plan review. There will be a one way driveway from west to east. SAU 401 is taxable as it is not part of the Pembroke school system.

There being no further comment, Chairman Kudrick closed the public hearing at 8:49 p.m.

Deliberations: ZBA members discussed the Variance criteria.

- 1) **The variance will not be contrary to the public interest.** Dana Carlucci stated that he does not agree that the proposed use is in the public interest. The Pembroke Master Plan encourages commercial business in that area. A school use could go on a well and septic in 92% of the area of the town. According to section 11-6, Pembroke taxpayers extended Town water and sewer to this area to promote and expand commercial activities. Section 11-3 states that water and sewer paid a bond to provide this access. Section 5-24 notes that Pembroke is the 5th lowest in the area for overall commercial taxes received and Section 5-22 talks about expanding commercial uses. Dana Carlucci does not think this proposal is in the public interest. Chairman Kudrick stated it would still be a taxable building. If it were a town school it would not be taxable.
- 2) **The spirit of the ordinance is observed.** Chairman Kudrick stated PACE Career Academy is paying taxes as a renter. They are bringing new people in from out of town, similar to a business. Natalie Glisson expressed concern that there is no stop light on Route 106 for increased traffic.
- 3) **Substantial justice is done.** Tom Hebert stated that with a school use, there is far less chance that potential contaminants would have an adverse effect on the aquifer than with a commercial use. The land and building will always be commercial property. The building has been a tool shop, warehouse and consignment shop in the past.

- 4) **Property values are not diminished.** Agreed, no evidence presented that it will diminish property values. Another charter school is located across the street.
- 5) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Tom Hebert stated that the property is indistinguishable from surrounding properties and fits the needs of PACE Career Academy. Having an occupant prevents loss of tax revenue.

MOTION: Tom Hebert moved to approve **Case 18-07-Z**, a request for a **Variance under Article IV Use Regulations section 143-19 Table of Uses Community Facilities #2**. The applicant, Pace Career Academy, 65 Pinewood Road, Allenstown, NH 03275 proposes to move a Charter School into 716-718 Riverwood Drive, Map 632, Lot 18-4 in the C1 (Commercial/Light Industrial) and the AC (Aquifer Conservation) zoning district. The property is owned by Riverwood Drive LLS, 28 Plumb Island Drive, Newbury, MA 01951

subject to the following conditions:

1. Applicant will follow all state and local regulations.
2. The construction must be completed according to the submitted plans, or revised plans approved by the Pembroke Planning Board as final plans.
3. All necessary documentation must be submitted to the town before going forward.

Natalie Glisson seconded.

VOTE: PAUL - YES TOM – YES BRUCE – YES
DANA- NO NATALIE - YES

MOTION TO APPROVE VARIANCE WITH CONDITIONS PASSED ON A 4-1 VOTE.

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 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 Drive #2501 Singer Island Florida

Agent: James Coughlin, Partner, PO Box 210, Center Harbor NH

Chairman Kudrick opened the public hearing at 7:05 p.m. Natalie Glisson recused herself from Case 18-12-Z as an abutter. Chairman Kudrick stated that Alternate Member Bourque will vote on Case 18-12-Z.

Therefore, the Board has 4 regular members and 1 Alternate ZBA members present making a five member board.

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.

The assessing card, an aerial photograph, plans prepared by Eric Mitchell and Associates, Inc. and a notarized authorization from Wilfrid Poirier to allow James E.M. Coughlin of Center Harbor NH to act as agent on his behalf in all matters relative to and involved in a certain parcel of land with buildings containing 100 acres more or less that abut Center Road and Third Range Road.

James Coughlin addressed the Variance criteria:

Please give a detailed description of your proposal below:

We propose to subdivide Lot 563-90, one hundred acres plus or minus, in four (4) lots in the R-1 zoning district. Lots 90-2 and 90-3 have existing houses on them and Lot 90-1 previously had an existing home that was destroyed by a storm. The owner of Lot 90-1 continued to pay sewer and water connection. The 87 acre plus or minus lot will be sold to the Conservation Commission. See attached plans. Mr. Coughlin stated that the town will plow to the top of the hill and pick up trash to the top, as it has done for many years. Lots 563, Map 563 Lot (90-2) and Map 563 Lot (90-3) will be responsible for the maintenance and repair of the access road by a recorded common driveway agreement.

Chairman Kudrick asked Mr. Coughlin to verify that the town is currently plowing and picking up trash on private property. Mr. Coughlin stated yes, and there is language in a purchase and sale agreement with the Conservation Commission in writing to that effect. Again the responsibility for the maintenance of the shared driveway will be in the deeds of Lot 90-2 and 90-3. Mr. Clough stated that the existing homes have always had town plowing and trash pickup services. The four lots are assessed separately but with the same tax map number. Mr. Coughlin stated that the houses on the north side have no existing frontage. This plan adds 6,291 square feet to the town's right-of-way. All other requirements are met except frontage. There is no access to the roadway by any of the Conservation Commission parcel. In response to Bob Bourque's question the actual frontage now for lots 1, 2 and 3 is ZERO.

The variance will not be contrary to the public interest. This is a pre-existing condition since the 1950's. Mr. Poirier has owned the property since 1980. The properties on Map 563 Lot 90 were always assessed separately but under the same map and lot number. The use of the existing property is residential which is permitted by the zoning ordinance. The variance request is for relief of the frontage area requirement of Article 143 Section 21-B on a Class V road. The variance does not alter the essential character of the residential area of the neighborhood and is not contrary to the public interest.

1. **The spirit of the ordinance is observed.** The three (3) proposed house lots meet all the requirements of Article 143 Section 21 in an R1 zone except road frontage on a Class V road. In fact, the houses on the north side of Center Road have no existing frontage at the present time. The plan shows that we will be adding 6,291 feet to the Town's right-of-way and therefore, providing frontage for these existing homes. The granting of the variance would not threaten the public health, safety or welfare of the residents. The variance is consistent with the spirit of the zoning ordinances and does not violate the basic zoning objectives and is not contrary to public interest.
2. **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.

3. **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.
4. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
 - ii. **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.**

The property was originally a hospital built in the 1950's prior to the adoption of the zoning ordinances in 1974. There were multiple buildings and houses on the property at that time. The purpose of the owner's request is to subdivide the land into three (3) house lots to be sold separately and an 87 acre parcel to be sold to the Pembroke Conservation Commission. The unnecessary hardship is the peculiar characteristics of the land make it impossible to comply with the exact terms of the frontage requirement of the ordinance. All other requirements of the ordinance are met. The use of the property is the same as the surrounding area and does not violate or alter the character of the district or the purpose of the ordinance. The use is a responsible one and complies with the type of homes in the neighborhood.

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.

Ammy Heiser, Chairman, Pembroke Conservation Commission, stated that Jim Coughlin has been in conversation with the Conservation Commission for 5-6 years but the price of the parcel offered was \$250,000-\$300,000. Conservation criteria rate a large unbroken lot as good value. Access is from Third Range Road, there are upland wetlands, vernal pools, biodiversity, and historical aspects on this land. It will be accessible to residents in the Deerpath Lane area. The commission intends to build trails. The price was attractive at just under \$2,000 per acre (when other purchases have been \$3,000 per acre). Ammy Heiser stated she understands the town's concern about not having liability or expenses to maintain a road. Ms. Heiser said it has been a pleasure to work with the applicant. They offered to mark all the boundaries at their cost. Jim Garvin, Pembroke Cemetery Commission, is happy to hear about the possible preservation of the parcel. It has high value to the Pembroke Historical Committee. I appreciate your time and consideration of this offer.

In response to Board questions, hunting, fishing, walking trails and great views are all allowed activities on any Pembroke Conservation Commission land. Motorized vehicles, camping and fires are banned. For hunting and fishing, participants must follow all state and local regulations.

Barbara Nobrega, 208 Center Road, stated that work done on the property in 2000 disrupted the water table. Our driveway used to be over the culvert and after repaving, there is no culvert. Center Road is an icy mess in winter.

Lonny Meloon, 209 Bean Hill Road, stated that in 2008, 25% of the timber on the land was harvested, selectively cut by the diameter of the tree. Since that tree cutting work, each spring brings water and mud slides. It would take considerable money to put the land back as it was before the harvest.

Natalie Glisson, 205 Center Road, stated that Center Road is a fairly quiet road. She is concerned about increased traffic. Three times last winter, she slid back down the hill with studded tires. What will happen to the frontage property? The Lot 90-3 owner will own it.

Donna Neddeau, 402 Center Road, stated that trees break off and fall down. Trees have taken out my electric services. Who will be responsible for the trees on the frontage property?

Steve Keefe stated he walks his dog daily on the parcel. There are some nice trails existing. However, water fills his basement and streams under his house. His concern is new work, such as the rebuilding of house on Lot 90-1.

Chris Neddeau, 402 Center Road, asked if Lot 90-3 will own the right-of-way, and who will be responsible for the trees on the town section of Center Road.

During a 2008 boundary agreement boundaries were set and marked. James Coughlin is paying to spray and flag them, as well as the frontage.

Natalie Glisson, 205 Center Road, asked for clarification if the town section goes 350 feet up past two houses, is the owner of Lot 90-3 responsible for maintaining the end of Class V road upwards?

James Coughlin stated there is a note on the plan that Lots 90-1 and 90-2 are responsible for maintaining the common driveway.

Lonny Meloon summarized that the variance request is for the frontage. The 3 house lots will be separate and the remainder will be conveyed to the Pembroke Conservation Commission. That is correct.

Ammy Heiser, Conservation Commission, stated that when the Pembroke Conservation Commission purchases property it is left undisturbed. Our goal is to preserve and protect natural resources. We are concerned about increased traffic also. There is no parking on Center Road to access conservation land. The only legal access is on Third Range Road. Hopefully people find a wide spot on Third Range Road to pull over and park.

Barbara Nobrega, 208 Center Road, asked is the fire hydrant on town right-of-way? Where will the driveway for the rebuilt house be?

Lonny Meloon, 209 Bean Hill Road, noted that snow storage, drainage, water problems and tree problems are all Planning Board issues.

Chairman Kudrick stated these were all good concerns to bring up. Residents will need to attend Planning Board hearings and restate their concerns.

James Coughlin stated snow storage is on the right side of the open asphalt area at the top of the hill. Water and sewer went to the property when it was a sanitarium. One house has town sewer and private well and the other two houses have town sewer and town water. It is marked on the plan.

Bob Bourque asked what part is being purchased by the Conservation Commission. They are looking to buy the fourth lot of the proposed subdivision.

Dana Carlucci asked if there has ever been an instance of land coming out of conservation and being sold privately, such as to a land trust. Ammy Heiser stated that the Pembroke Conservation Commission is part of the Town of Pembroke. What would prevent this land from becoming a school? Ms. Heiser consulted Five Rivers Conservation Trust and others. They don't have the manpower to monitor properties. So the answer is put language in the deed to protect the land. What if the Conservation Commission wanted to sell one property and buy another property? Little pieces do not have high conservation value. A large, unfragmented lot is highly unlikely to be sold because it has high conservation value.

James Coughlin stated he has a copy of the proposed deed and it says "in perpetuity."

Dana Carlucci summarized the case. This is **Case #18-12-Z**, a request 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 Drive #2501 Singer Island Florida. The abutters list was read. The hospital on this lot was built in the 1950's. The water connection for the existing houses is on Center Road. The town will have no responsibility for the access road. The Town of Pembroke has been plowing and maintaining the road on private property at the top part of Center Road. The property is in the R1 zone. Some existing houses on Center Road have no frontage. Two houses on the Class VI section of road have town water and town sewer. The applicant will pay to set boundary pins. There will be 6,291 square feet of additional right-of-way to add frontage to some current houses. The subdivision will result in 3 house lots and an 87 acre piece to be sold to the Pembroke Conservation Commission. Access to the conservation area will be from Third Range Road. Ammy Heiser, Chairman of Conservation Commission, spoke in favor of the variance. A shared driveway from the Class 5 portion will be maintained by the residents. The town will have no liability on the shared driveway. This conservation land has good value for the town. It adds historic significance for Pembroke's Cemetery Commission and the Town as a whole. Barbara Nobrega spoke about storm water problems. Abutters stated a water problem began in the year 2000. Selective tree cutting was done in 2008 with a forester. Abutters questioned characteristics of the trees and water condition. Chris Neddeau asked who is going to be responsible for the right of way land. The Planning Board will hear this case, and that hearing will include questions about storm water, etc. The question was asked who will plow the Class VI portion of the road. Sewer and water is on the Class V section of Center Hill Road. Two houses on the Class VI section have town water and sewer. Mr. Bourque asked what lot Conservation Commission will own. The answer is the 87 acres. It would be highly unlikely that the land would be sold. Lots 90-2 and 90-3 will be responsible for the road maintained by a recorded common drive agreement, but it was stated that the town will continue to plow and pick up trash as they have for many years.

There being no further comment, Chairman Kudrick closed the public hearing at 8:10 p.m.

Deliberations: ZBA members discussed the Variance criteria.

- 1) **The variance will not be contrary to the public interest.** Tom Hebert stated that the property owner is cleaning up an unfortunate situation that was inherited.
- 2) **The spirit of the ordinance is observed.** Chairman Kudrick stated the town should not go onto private property. Doing so opens the town to liability issues, and could endanger expensive

equipment. He is concerned about the welfare of all residents. Dana Carlucci wants to protect residents and maintain roads. Could the ZBA put a condition on the variance that the Planning Board looks at the situation carefully? ZBA recommends to Planning Board, who may need to raise the issue to Board of Selectmen. Board consensus is that all departments need to be aware of this situation. Tom Hebert stated that with a house being built, a potential turnaround could be included on the town road section of that lot.

- 3) **Substantial justice is done.** There are land owners on the north side who do not currently have frontage on a public road.
- 4) **Property values are not diminished.** Agreed, no evidence of change in property values.
- 5) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

If the applicant built the driveway to the specs of town road, they would not be at the Zoning Board of Adjustment. Chairman Kudrick does not see hardship; Tom Hebert stated that building to town road specs is a solution that may require significant investment for return on selling lots. It may not be possible to reengineer the road to town specs due to steepness of slope. Bob Bourque noted that the destroyed house out back is to be replaced. The new driveway would be behind the fire hydrant and the new owner may have to participate in the maintenance of the common driveway. It was discussed that the Class VI road is rough but passable. Beyond the corner, there is two-way traffic. The Planning Board could deny upgrading the road, or require a hammerhead in an appropriate location. Chairman Kudrick wants the ZBA to recommend that the Planning Board look at an alternative other than continuing to plow and pick up trash up that road. All of these issues have nothing to do with the Zoning Board of Adjustment. Tom Hebert would like to request further information from Planning Board, Board of Selectmen, all town department heads on the feasibility of an alternative. Paul Paradis agrees. Chairman Kudrick stated that even if the town has been plowing and picking up trash on a private road, it doesn't make it right.

MOTION: TOM HEBERT MOVED TO CONTINUE CASE 18-12-Z TO MONDAY, SEPTEMBER 24, 2018 TO ALLOW TIME TO REACH OUT TO ALL TOWN DEPARTMENTS FOR FEEDBACK. 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 #18-12-Z was continued to September 24, 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. At the continued hearing September 24, Chairman Kudrick will reopen the public hearing and share the information received from all departments. Public comment will again be taken.

At the end of the meeting, the Zoning Board of Adjustment will discuss a strategy for sharing concerns with all town departments.

Representative from PACE Career Academy running late so Case #18-13-Z was taken into consideration after Case #18-07-Z.

Case #18-13-Z

Applicant:	PACE Career Academy
	65 Pinewood Drive
	Allenstown, NH 03275

Property Owner(s): Riverwood Drive LLC
28 Plumb Island Drive
Newbury, MA 01951

Property Address: 716-718 Riverwood Drive
Pembroke, NH 03275
Tax Map 632, Lot 18-4 in the C1 (Commercial/Light Industrial) and the
AC (Aquifer Conservation) Zoning District.

Case 18-13-Z A request has been made for a **Special Exception for the Aquifer Conservation District (AC) Article IX Use Regulation section §143-68**. The applicant Pace Career Academy, 65 Pinewood Rd. Allenstown NH, 03275 proposes to move a Charter School into **716-718 Riverwood Dr. map 632 lot 18-4 in the C1 (Commercial/light Industrial) and the AC Aquifer conservation Zoning District**. The owner of the property is Riverwood Drive LLC, 28 Plumb Island Dr. Newbury MA. 01951.

Present: Jorge Santana, Executive Director, Pace Career Academy

Natalie Glisson returned to the Board as a voting member. Chairman Kudrick opened the hearing at 9:00 p.m.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed 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. All people wishing to speak must 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 the approval.

The Secretary read the following letters into the minutes:

- Letter dated June 19, 2018 from Pembroke Health Officer stating that school use will not have a detrimental effect on the quality of the groundwater.
- Letter dated August 13, 2018 from Pembroke Town Planner indicating that due to the nature of use and no redevelopment proposed on site, it does not appear the proposed use would be detrimental to the aquifer. The applicant will need Planning Board Minor Site Plan review.
- Email dated 7/27/18 from Ammy Heiser, Chairman, Pembroke Conservation Commission, stating that the proposed use would have little to no impact on the aquifer because there is no building or soil disturbance.

Jorge Santana made a correction to the water usage. In the application, usage was listed at 200-250 gallons per day and should be revised to 350-400 gallons per day. Pace Career Academy has agreed to inform Pembroke Water Works if number of staff or students increases. At that time usage will be reevaluated.

Jorge Santana thanked the Zoning Board of Adjustment for their time and patience on this application. The building has ADA compliant doors and will build ADA compliant bathrooms and classroom entry doors in the hallway. Jorge Santana stated that Pace Career Academy does not charge for educational services. It has 25 students in the morning and 25 students in the afternoon. Hours of attendance will be staggered so they do not coincide with the hours of Strong Foundation Charter School across the street. Pace Career Academy curriculum focuses on career readiness and looks forward to partnering with local businesses.

Jorge Santana, Executive Director Pace Career Academy, addressed the Special Exception criteria:

Detailed description of proposal:

Pace Career Academy desires to lease space at 716-718 Riverwood Drive (6,000 square feet). Build out of the space will include four (4) classrooms, offices and bathrooms.

Please describe how the requested use is essential or desirable to the public convenience or general welfare. This leased space will provide ADA compatible access to students.

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. The proposed use is consistent with the present use of the surrounding area and no toxic material will be on site that would have any detrimental effect to health, morals or general welfare.

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. No exterior changes to the building will be made. Sufficient parking area is already present.

Please show that no factual evidence is found that the property value in the district will be adversely affected by such use. A charter school is located across the street with over 200 students. Property values should not be affected.

Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer. No, traffic will be routed in a one way driveway that is currently in place around the entire building.

Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. Trash services, as well as indoor and outdoor maintenance, will be contracted by PACE Career Academy.

Please show that there are no valid objections from abutting property owners based on demonstrable fact. All abutters have been notified and no valid objections have been received.

Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State. Water usage is estimated at 200-300 gallons per day. Sewage system meets all requirements.

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

Jorge Santana addressed the **Zoning Ordinance Article IX Overlay Districts, Section 143-68 Aquifer Conservation (AC) District section F, Special Exceptions** requirements:

- 1) The proposed use will not have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants. *The Pembroke Health Officer, Town Planner, and Conservation Commission all submitted letters indicating that the Pace Career Academy educational use would not have a detrimental effect on the quality of groundwater.*
- 2) The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer, or in the storage capacity of the aquifer. *The Pembroke Health Officer, Town Planner, and Conservation Commission all submitted letters indicating that the projected water*

flow would not have cause significant reduction in the long term volume of water contained in the aquifer.

- 3) The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this section. *As previously mentioned, the building is on town water and sewer and will not discharge wastewater other than is permitted.*
- 4) The proposed use complies with all other applicable sections of this section. *The proposed use complies with all applicable sections of Zoning Ordinance Section 143-68.*

Dana Carlucci summarized the case. This is **Case 18-13-Z**, a request for a **Special Exception for the Aquifer Conservation District (AC) Article IX Use Regulation section §143-68**. The applicant Pace Career Academy, 65 Pinewood Rd. Allenstown NH, 03275 proposes to move a Charter School into **716-718 Riverwood Dr. map 632 lot 18-4 in the C1 (Commercial/light Industrial) and the AC Aquifer conservation Zoning District**. The owner of the property is Riverwood Drive LLC, 28 Plumb Island Dr. Newbury MA 01951. This building has ADA services. Pace Career Academy does not charge for educational services. Trash pickup will be handled by the academy. The water usage is 350-400 gallons per day. Applicant will provide Sewer Commission approval to the town. The clerk reads into the record regarding Pembroke Water Works and gray water will not be a problem per Town Health Officer. Letters from Conservation Commission and Town Planner were read into the record. 25 students will be attending in the morning and 25 students will be attending in the afternoon. PACE Career Academy staggers its hours so they do not coincide with the hours of drop off and pick up at Strong Foundations Charter School located across Riverwood Drive.

There being no further comment, Chairman Kudrick closed the public hearing at 9:15 p.m. Chairman Kudrick stated that the board would deliberate and likely make a decision tonight. The public may stay but may not speak.

Deliberations: Chairman Kudrick led a review of the Special Exception criteria.

Please describe how the requested use is essential or desirable to the public convenience or general welfare. This leased space will provide ADA compatible access to students. Chairman Kudrick noted that the Bon Ton space at Steeplegate Mall is now a charter school. People do want alternative education choices for their children.

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. The proposed use is consistent with the present use of the surrounding area. Agree.

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. No exterior changes to the building will be made. Sufficient parking area is already present. Dana Carlucci cited Master Plan sections favoring increased commercial in this area. The land and building stay commercial with this use.

Please show that no factual evidence is found that the property value in the district will be adversely affected by such use. A charter school is located across the street with over 200 students. No evidence was provided that property values will be adversely affected.

Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer. No, traffic will be routed in a one way driveway that is currently in place around the entire building.

Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. Trash services, as well as indoor and outdoor maintenance, will be contracted by PACE Career Academy.

Please show that there are no valid objections from abutting property owners based on demonstrable fact. All abutters have been notified and no valid objections have been received.

Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State. Water usage is estimated at 350-400 gallons per day. Sewage system meets all requirements.

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: Tom Hebert moved to APPROVE Case 18-13-Z, a request for a **Special Exception for the Aquifer Conservation District (AC) Article IX Use Regulation section §143-68.** The applicant Pace Career Academy, 65 Pinewood Rd. Allenstown NH, 03275 proposes to move a Charter School into **716-718 Riverwood Dr. map 632 lot 18-4 in the C1 (Commercial/light Industrial) and the AC Aquifer conservation Zoning District.**

with the following conditions:

1. Must follow all State and local regulations for a business and follow best management practices.
2. Must follow the submitted floor plan and Plot plan.
3. Must obtain an AC Compliance Checklist from the CEO. Must complete the AC Compliance Checklist with all department signatures and must submit the completed AC Compliance Checklist with the Building Permit Application.

Paul Paradis seconded.

VOTE: PAUL - YES TOM - YES BRUCE - YES
DANA- NO NATALIE - YES

MOTION TO APPROVE SPECIAL EXCEPTION FOR THE AQUIFER CONSERVATION DISTRICT WITH CONDITIONS PASSED ON A 4-1 VOTE.

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of July 30, 2018 as amended. Dana Carlucci seconded.

VOTE: PAUL - YES TOM - YES BRUCE - YES
DANA- YES NATALIE - YES

MINUTES OF JULY 30, 2018 APPROVED AS AMENDED ON A 5-0 VOTE.

OLD BUSINESS -none

NEW BUSINESS –

Additional information needed for continued Case #18-04-Z – Chairman Kudrick stated it is reasonable to potentially ask for a hammerhead when upgrading a new lot on the town section of the road. Chairman Kudrick asked for permission from the Zoning Board of Adjustment to draft a letter outlining the concerns the ZBA is seeking comment on. Some of these issues are road turnaround, drainage, access for Fire department, and town plowing on private property- which is a liability to the town. The Board agreed that Chairman Kudrick and Code Enforcement Officer Dana Pendergast should draft a letter and Dana will

reach out to each individual town department head for comments. Dana Pendergast will receive comments and forward to Board members. After review of the comments, the ZBA will determine whether meetings are needed with town departments.

Chairman Kudrick stated he is looking out for all taxpayers. Bob Bourque stated that it is not uncommon for private roads to be plowed for life safety reasons, and for residents to carry trash down to the town road for pickup. Dana Pendergast stated that plowing usually only occurs on a designated emergency access. Chairman Kudrick stated that there are currently four long driveways on North Pembroke Road which are not plowed by the town. Years ago it was very common. Today it is imperative to protect expensive heavy equipment purchased by the town. Bob Bourque stated that this concern is nothing that the Planning Board could resolve, and the Board would need to pass it onto the Board of Selectmen who controls the Department of Public Works. Committing to plow a private road would require a vote at public meeting and the decision would ultimately lie with the Board of Selectmen. The Zoning Board of Adjustment wants to pass on a recommendation on for the Planning Board and Board of Selection to consider.

NEXT MEETING

Date of next ZBA meeting – Chairman Kudrick noted the next ZBA meeting would be on **Monday, September 24, 2018 at 7:00 p.m.**

ADJOURN **Motion:** Tom Hebert moved to adjourn. Dana Carlucci seconded. Vote was unanimous in favor of motion. Meeting adjourned at 9:32 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary