

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
February 24, 2020**

**Approved May 11, 2020**

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

**ALTERNATES PRESENT:** Robert Bourque, Blakely Minor III

**EXCUSED:**

**STAFF PRESENT:** Dana Pendergast, Code Enforcement Officer; Susan Gifford, Recording Secretary  
The clerk took the roll call and seven members were present.

Chairman Kudrick called the meeting to order at 7:00 p.m. Chairman Kudrick stated that the meeting is being recorded and is available to watch 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 Conversation Zoning Districts

**Case 18-04-Z Continued from August 27, 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 two, 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

**Present:** Mike Gallo, owner

Chairman Kudrick explained that Chairman Kudrick stated that the case has been presented and the public hearing was closed on January 27, 2020. The Zoning Board of Adjustment continued their deliberations to check with Legal Counsel before moving forward. The discussion is not open to the public.

Dana Pendergast reported that the response from Legal Counsel advised that a variance is not required in this case. This is multifamily planned development like the condominium at the golf course. This is the same type of situation and it requires a Special Exception. Note #4 multifamily is a permitted use in the R1 zoning district.

Chairman Kudrick noted that the applicant does not meet Special Exception criteria #8, adequate facilities, as they cannot put a sewer system connection in. Dana Pendergast noted that the ZBA could vote either to

conditionally approve the Special Exception based on obtaining sewer, or deny it. A special exception is good until an applicant meets the conditions. Bob Bourque noted that a special exception goes with an application. If the application is denied or rescinded, that special exception is invalid. The applicant should be required to come back to the ZBA within a stated period if a conditional approval is given. Bob Bourque asked how much frontage is on Wilkins Road. There is 300 feet of frontage.

Chairman Kudrick noted that the ZBA reviewed each criteria at the January 27, 2020 meeting.

**MOTION:** Tom Hebert moved to approve **Case #18-04-Z continued from August 27, 2018**, a request 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 two, 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. Potential Properties Corp. 34 Rundlett Hill Road Suite 4, Bedford NH 03110-5824, owns the property. 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.

Approval is subject to the following conditions:

1. Applicant will follow all state and local regulations.
2. Applicant must have an approved sewer main plan, with all costs borne by the applicant.
3. Applicant will adhere to site plan as submitted except for approved Planning Board changes and final plan approval.

Dana Carlucci seconded.

**Discussion:** Board members discussed whether a time limit should be set for the conditional Special Exception. A one-year time frame was discussed. Chairman Kudrick stated I do not believe in conditional approval. It is not fair to surrounding property owners. The application is already two years old, and changes might be made in the zoning ordinance. Dana Carlucci stated that he sees some benefit to improving the infrastructure in that area. Dana Carlucci is in favor of conditional approval of the application. Tom Hebert stated that nothing could happen until the applicant obtains sewer. Natalie Glisson asked if we could make a different motion. Chairman Kudrick stated that a motion and second is on the table. If the applicant were able to obtain sewer, Chairman Kudrick would prefer to see the applicant come back with a new plan. Tom Hebert stated that there is not adequate sewer at this time. Without clear indication that negotiations between the two towns will go forward, it is futile to approve the application. Chairman Kudrick contacted Pembroke Sewer Commission and they have no updated information to give out. Dana Carlucci stated that maybe an approval of a conditional special exception would give the applicant an advantage to go directly to the Sewer Commission. A pump system is going across neighboring land because they have constant water in their basements. Gallo could spearhead a discussion with the sewer commission. Natalie Glisson stated that a ZBA denial of the special exception could lead to the same discussion with the sewer commission.

**Amended motion:** Dana Carlucci moved to amend the above motion by adding condition #4.

4. Special Exception will be valid for one year, after which the applicant must come back to ZBA.

Tom Hebert accepted amended motion.

**AMENDED MOTION:** Tom Hebert moved to approve **Case# 18-04-Z continued from August 27, 2018**, a request 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 two, 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. Potential Properties Corp. 34 Rundlett Hill Road Suite 4, Bedford NH 03110-5824, owns the property. 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.

Approval is subject to the following conditions:

1. Applicant will follow all state and local regulations.
2. Applicant must have an approved sewer main plan, with all costs borne by the applicant.
3. Applicant will adhere to site plan as submitted except for approved Planning Board changes and final plan approval.
4. Special Exception will be valid for one year, after which applicant must come back to ZBA.

Dana Carlucci seconded.

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

MOTION TO APPROVE SPECIAL EXCEPTION WITH CONDITIONS FAILED ON 1-4 VOTE

Chairman Kudrick stated that a special exception must meet all nine criteria. This proposal does not meet criteria #8, show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.

**MOTION:** Tom Hebert moved to DENY **Case #18-04-Z continued from August 27, 2018**, a request 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 reason for the denial is that applicant cannot meet Criteria #8 **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.**

Dana Carlucci seconded.

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

MOTION TO DENY SPECIAL EXCEPTION PASSED ON 4-1 VOTE

Bruce Kudrick recused himself for Case #20-03-Z. Blakely Minor was designated to vote for Bruce Kudrick on Case #20-03-Z.

#### **Case #20-03-Z**

Applicant: Bruce and Paula Kudrick  
217 Dearborn Road  
Pembroke, NH 03275

Property Owner(s): Bruce and Paula Kudrick  
217 Dearborn Road  
Pembroke, NH 03275

Property Address: 217 Dearborn Road  
Pembroke, NH 03275  
Tax Map 266 Lot 86 in the R1 Zoning District.

Present: Bruce and Paula Kudrick

**Case 20-03-Z** A request has been made for a **Variance under Article IV Section § 143-21**. The applicant, Bruce & Paula Kudrick of 217 Dearborn Rd. Pembroke NH 03275 is requesting a **Variance** to construct a 21' X 16' (336 sq. ft.) attached garage on lot 266-86 with in 25' of the front setback where 30' is required. The property is located at 217 Dearborn Rd. in the R-1 Zoning District and is owned by Bruce & Paula Kudrick of 217 Dearborn Rd.

The clerk read the case description and the list of abutters.

Vice Chairman Hebert opened the public hearing at 7:20 p.m.

Vice Chairman Hebert 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.

Assessing cards, tax map, Google Map street view, aerial photo and list of abutters were included in the agenda packet. Bruce Kudrick displayed a drawing that highlighted where the proposed garage would be located. Smith Avenue is on the left side. The side view of the house shows a space just wide enough for a vehicle.

Bruce Kudrick gave a detailed description of the proposal:

We are requesting a disability variance in order to erect a 21' x 16' garage, which will fall 5 feet into the side setback where a 30-foot setback is required. The setback will be 25 feet. I ripped my quad muscle recently and Paula has health issues requiring titanium bars in her back. The garage needs to be 16' wide to open both doors. There is a 12' wide area underneath the porch where an antique truck is stored. Bruce Kudrick stated he considered other areas to locate the garage but septic tanks, sewer line and electric line location did not allow an alternate location.

Paula Kudrick addressed the Variance criteria:

1. **The variance will not be contrary to the public interest.** When the house was built, there was not a road on the east side, so the setback was not an issue. Now the house itself is in the setback. Adding the garage will not change the nature of the property.
2. **The spirit of the ordinance is observed.** The addition of the garage will not have any impact on neighboring properties.
3. **Substantial justice is done.** This is a disability variance request. Paula will more easily be able to access the vehicle in winter conditions. Currently, due to health conditions, this is difficult.
4. **The values of surrounding properties are not diminished.** If anything, property values may be enhanced by the improvement of our property.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
  1. **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:**  
**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; and:** ii.  
**The proposed uses is a reasonable one.**

We feel this is both a reasonable request and reasonable use of the property, due to the situation of the house and health concerns of Paula Kudrick.

2. **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.**

Bruce Kudrick, 217 Dearborn Road, stated that he met with their neighbors over the weekend. All are in favor of the proposed garage. The garage is minimum size needed for one vehicle.

Dana Carlucci asked if Note #5, typical setbacks of adjacent lots, would apply in this situation after Smith Avenue was constructed. One abutter has less setback for a structure.

Dana Pendergast stated that we would have to measure abutters' frontage and see how it affected their side setback. All house frontages would have to be measured, and an average setback would be calculated. The property owners across the street could apply for an equitable waiver for relief. Dana Carlucci said he was looking at just one abutter, and did not consider an average of all abutters would be required.

Bob Bourque stated that the proposal is a reasonable use, and he feels the application should be approved.

Natalie Glisson summarized the case. This is **Case 20-03-Z**, a request for a **Variance under Article IV Section § 143-21**. The applicant, Bruce & Paula Kudrick of 217 Dearborn Rd. Pembroke NH 03275 is requesting a **Variance** to construct a 21' X 16' (336 sq. ft.) attached garage on lot 266-86 with in 25' of the front setback where 30' is required. The property is located at 217 Dearborn Rd. in the R-1 Zoning District and is owned by Bruce & Paula Kudrick of 217 Dearborn Rd. Applicants wish to construct a garage 21' x 16' five feet into the 30 feet front setback. The main reason for the garage is physical disabilities for him and his wife. They both experience difficulty clearing snow off the vehicle. Bruce looked at other ways to place the garage but ran into septic tanks and other setback lines. Paula Kudrick read the criteria. The garage would be the minimum size necessary for one vehicle. They are not trying to make it bigger or more non-conforming than it is. Bob Bourque says it is a reasonable request and feels the application should be approved. The building inspector explained the process to use average setbacks in an area.

There being no further comment, Vice Chairman Hebert closed the public hearing at 7:40 p.m. The Board will decide all cases within 30 days.

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

1. The variance will not be contrary to the public interest. Considering the lot size and amount of space, the application is not contrary to public interest.
2. The spirit of the ordinance is observed. Bob Bourque stated the spirit of the ordinance is observed because Smith Avenue was not a road when the house was built.
3. Substantial justice is done. Dana Carlucci stated that it would protect the wellbeing of the occupants with no ill effects to neighbors.
4. Property values are not diminished. No evidence presented on property values.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Applicant's house was built before Smith Avenue was constructed.

**MOTION:** Dana Carlucci moved to approve **Case 20-03-Z**, a request for a **Variance** having been presented to the Board. The applicant, Bruce & Paula Kudrick of 217 Dearborn Rd. Pembroke NH 03275 is requesting a **Variance** to construct a 21' X 16' (336 sq. ft.) attached garage on lot 266-86 5 feet into the front setback where 30' is required. The property is located at 217 Dearborn Rd. in the R-1 Zoning District  
Approval is subject to the following conditions:

1. Applicant will follow all state and local regulations.
2. Construction will adhere to site plan as submitted.

Blakely Minor seconded.

**VOTE:** PAUL - YES TOM - YES BLAKELY - YES  
DANA- YES NATALIE - YES

**MOTION TO APPROVE VARIANCE WITH CONDITIONS PASSED ON A 5-0 VOTE**

Bruce Kudrick returned to the Zoning Board of Adjustment.

**Case #20-04-Z**

Applicant:	Lawrence and Kim Chadbourne 539 4 <sup>th</sup> Range Road Pembroke, NH 03275
Property Owner(s):	Lawrence and Kim Chadbourne 539 4 <sup>th</sup> Range Road Pembroke, NH 03275
Property Address:	539 4 <sup>th</sup> Range Road Pembroke, NH 03275 Tax Map 563, Lot 112-4 in the R-3 Rural/Agricultural-Residential Zoning District.

**Case 20-04-Z** A request has been made for a **Special Exception under Article IV Use Regulations, § 143-18.1**. The applicant, Lawrence Chadbourne 539 4<sup>th</sup> Range Rd. Pembroke NH 03275 is requesting a **Special Exception** to construct an ADU on Lot 563-112-4. Special Exception permits ADUs in any zone that allows single-family detached dwelling units. The property is located at 539 4<sup>th</sup> Range Rd. in the R-3 Zoning District and is owned by, Lawrence and Kim Chadbourne 539 4<sup>th</sup> Range Rd.  
Present: Lawrence Chadbourne, John Clark, Dick

The secretary read the abutters list into the minutes.

Tax map, existing ponds, NH DES subsurface system approval Permit #00998 dated May 13, 2004 for a three-bedroom home, abutter list, assessing card and sketch of proposed addition was provided in the agenda packet.

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.

Chairman Kudrick opened the public hearing at 7:45 p.m.

**Description of Proposal:** John Clark, 502 Pembroke Street, explained that they would like to add on to Larry Chadbourne's house to provide a basic Accessory Dwelling Unit for their father to live. The addition would be 24' x 30' with a 24' by 24' garage. Access would be in the rear of the house, with a door into the main house.

The Chadbournes had another septic design done which with approval given by State of NH DES. Property owners can continue to use the existing septic until it fails. The new design would be implemented if necessary. There is more than adequate area behind the house for the addition. The septic is in the back and the well is in the front. A&B Lumber is preparing the plan. A sketch shows the addition 30 feet off the back of the house. A new driveway to the unit will be built around the septic system. There is a pond 39 feet from the structure. The existing leach field is more than adequate for one additional bedroom. It has a 1,250-gallon tank.

John Clark and Lawrence Chadbourne read the Special Exception application criteria into the minutes:

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** My dad is getting older and we need him closer to watch over him.
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.** Adding on to my house will not change or impair the integrity of the district.
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.** This is the perfect spot for the addition. It will not change the character of the property or the original house.
4. **Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** An addition will add value to my property.
5. **Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No. This proposed ADU will not change traffic or be any bother to surrounding properties.
6. **Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Well, septic, electric and heat provided.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** Abutting property owners have no problem with the addition.
8. **Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** The septic system is rated for a four-bedroom house and we only use one bedroom presently. The well is an artesian well with a great water supply. (He added that the information is in the packet which shows the septic being rated for a four-bedroom home.)
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. This is not for multi-family use and no town system necessary.

Dana Pendergast explained that State law just requires that an applicant for an ADU has a State approved septic plan on file in case the existing system fails. Dana Pendergast explained that Pembroke sets 750 square feet maximum size of Accessory Dwelling Unit. This proposal is a 720 square feet ADU with a door between the facilities.

Chairman Kudrick announced that the Board will decide all cases within 30 days. Notice of decision will be posted for public inspection within five business days of the decision and will be sent to the applicant. The Board will approve, deny or continue the deliberation. No comments will be taken from the audience.

This hearing is officially closed at 7:58 p.m.

The Board discussed the Special Exception criteria:

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.** Dana Carlucci stated that this is exactly the reason ADU's are allowed by State and Town's regulations and is a good thing to have for older parents and other family members.
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.** Chairmna Carlucci said that the addition is behind the house and will not be seen from the road. The design of the addition matches the existing house.
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 ADU's are allowed by the ordinance.

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 is no factual evidence that the property value will be affected by such use.
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, at the most, there will be one other car.
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 the unit presently has a heating system, electricity, septic, and a well. Everything is there to take care of the ADU.
7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.** Chairman Kudrick noted that no one objected to the application.
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 the applicant has an artesian well and a septic system with very large 1,250-gallon tank.
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.** Chairman Kudrick said that it is not a multi-family unit. It is a single-family house with a use that is approved by the Town.

**MOTION:** Tom Hebert moved to approve **Case 20-04-Z, Special Exception for an ADU:** A request has been made for a **Special Exception under Article IV Use Regulations, § 143-18.1.** The applicant, Lawrence Chadbourne 539 4<sup>th</sup> Range Rd. Pembroke NH 03275 is requesting a **Special Exception** to construct an ADU on Lot 563-112-4. ADUs are permitted in any zone that allows single-family detached dwelling units by Special Exception. The property is located at 539 4<sup>th</sup> Range Rd. in the R-3 Zoning District and is owned by, Lawrence Chadbourne 539 4<sup>th</sup> Range Rd.

Approval is subject to the following conditions:

1. Applicant will follow all state and local regulations.
2. Construction will adhere to site plan as submitted.
3. One unit will be owner occupied.

Paul Paradis seconded.

**VOTE:** PAUL - YES TOM - YES BLAKELY - YES  
DANA- YES NATALIE - YES

**MOTION TO APPROVE VARIANCE WITH CONDITIONS PASSED ON A 5-0 VOTE**

### **MINUTES OF PREVIOUS MEETINGS**

**MOTION:** Tom Hebert moved to approve the minutes of January 27, 2020 as amended. Dana Carlucci seconded.

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

**MINUTES OF JANUARY 27, 2020 APPROVED AS AMENDED ON A 5-0 VOTE.**

### **OTHER BUSINESS /CORRESPONDENCE –**

**Pembroke Zoning Ordinance changes -** Dana Carlucci read the list of proposed zoning ordinance changes that Planning Board sent to March 2020 Town Meeting. ZBA particularly supports freestanding sign setback and corner sight clearance ordinances.

**Rules Update -** Dana Pendergast will prepare a draft of ZBA rule changes for continuances and time limits on conditions as discussed for next meeting. Board consensus is that after three meeting continuances are approved, applicant must appear at fourth meeting to provide a status so the Zoning Board of Adjustment can take appropriate action.



**OSI Spring Conference** – Hold the date for May 30, 2020.

**New legislative bills that affect towns** – Dana Pendergast will watch for 2020 update to come out.

**NEXT MEETING**

**Date of next ZBA meeting** – Chairman Kudrick noted the next ZBA meeting would be on **Monday, March 24, 2020 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 8:25 p.m.

Respectfully submitted,  
Susan P. Gifford  
Recording Secretary