

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
August 28, 2017 DRAFT pending 8-31-17

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

ALTERNATES PRESENT: Paul Paradis, Ann Bond

EXCUSED: William Faith, Mark Simard

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary

Chairman Kudrick called the meeting to order at 7:00 p.m. Paul Paradis was designated to vote for Mark Simard. Ann Bond was designated to vote for William Faith.

Before the case is opened, Tom Hebert asked for a clarification. The table lists a 40 foot rear setback. Everett Hodge noted that Note #5 to Section 143-22 page 69 allows an exception to reduce the rear setback to 15 feet for accessory buildings.

Case #17-09-Z

Applicant:	Pierre Forcier dba PGF Commercial Properties LLC 69 Winslow Lane Candia, NH
Property Owner(s):	Pierre Forcier dba PGF Commercial Properties LLC PO Box 5008 Manchester, NH 03108
Property Address:	141 Pembroke Street Pembroke, NH 03275 Tax Map (266) Lot (102), in the R-1A Medium Density-Residential and the AD Architectural Design Zoning Districts.

Case 17-09-Z A request has been made for a **Variance** under Article V **Dimensional and Density Regulations**, § 143-21 **Table of Dimensional and Density Regulations**. The applicant, Pierre Forcier, dba P G F Properties is requesting a reduction of the required 15 foot rear and side setbacks. The Variance request is to construct a single story 48 feet x 65 foot storage building. The east side of the proposed building will be 10 feet from the rear property boundary where 15 feet is required. The northwest rear corner of the proposed building will be 4 feet from the side property boundary where 15 feet is required. The property is located at 141 Pembroke Street, Map (266) Lot (102), in the R-1A Medium Density-Residential and the AD Architectural Design Zoning Districts.

The clerk took the roll call and all members were present. Chairman Kudrick opened the public hearing at 7:02 p.m. There were 3 regular members and 2 alternate members present. 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.

Copies of the tax map, assessor's card and a ZBA Exhibit Plan for PGF Properties, LLC 141 Pembroke Street Tax Map 266, Lot 102 prepared by Joseph Wichert, LLS Inc., 802 Amherst Street, Manchester, NH 03104 were included in the agenda packet.

Pierre Forcier, 69 Winslow Lane, Candia NH; owner of 141 Pembroke Street addressed the Variance criteria:

Please give a detailed description of your proposal below:

Mr. Forcier stated I plan to build a wood structure 48' x 65' single-story storage building approximately 26-28' high. The building will look exactly the same as my recent renovation to the existing building. The proposed building is to store trailers, boats and vehicles out of sight. I am not trying to change the use as this building with 2 bays is for personal repair and service of vehicles I own. I want to continue the same use and add more storage. When I purchased the property, there was a partial 6 foot wooden stockade fence on the north side of the property that belonged to the neighbor. I fenced the rest of the area with 6 foot vinyl galvanized fencing. The stockade fence later fell down and the neighbor and I each paid half the cost to replace that section with the same vinyl fencing as the rest of the lot. The storage buildings are entirely fence in.

The property line runs at a diagonal in the back of the property and starts at 20 feet. The fencing is 7 feet from the rear property line to save the trees. From point to point, the proposed building is 26 feet from the closest neighbor's house. The design tucks the building in the corner to maximize turnaround space and keep the rear neighbor's view clear. I plan to store my own equipment and vehicles in the brand new building. I will pave when the building is complete. The front abutters have no objections. The lot is fenced all around and the land sits 4-5 feet lower than Route 3. The design squares off the building and keeps it parallel with the other building.

1. **The variance will not be contrary to the public interest.** A variance will allow me to build a storage building to store vehicles and trailers out of sight.
2. **The spirit of the ordinance is observed.** There is still a setback from the property line at the northern corner, with another meeting the setback. The building is downhill and is 26 feet from abutting residences.
3. **Substantial justice is done.** A variance would allow me to use my property and store equipment.
4. **The values of surrounding properties are not diminished.** No decrease in surrounding property value would occur. The addition should add value to the area.
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.**

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.

The existing lot is small, and I need extra room to maneuver a truck, 30 foot trailer and 33 foot boat.

Pierre Forcier displayed his large plan on the bulletin board. He stated that he needs two bays of 48 feet in the storage building for a boat and motor home and at least 3,000 square feet overall. The first bay is reserved for a 33 foot boat with 30 foot trailer, hitch and motor. I need room to back it in.

Ann Bond asked if the building could be turned around the other way, so that Mr. Forcier would drive vehicles straight in.

Chairman Kudrick stated that the town has rules and regulations. A 4 foot setback where 15 feet is required is too little. It is a safety and maintenance issue. Even though the current neighbor agrees with the plans, a future neighbor may not. Is there any way to reconfigure the building to give it more setbacks?

Tom Hebert asked if the applicant could slide the building down 8 feet and increase both setbacks in doing so. Chairman Kudrick stated that 4 foot setback is not in the spirit of the ordinance. A variance stays with the property forever. There would not be room for maintenance on the fence in that area. Chairman Kudrick stated that the ZBA has to look out for the best interest of the town, now and in the future. Tom Hebert agrees that access is needed for fire safety. Chairman Kudrick stated 4 feet is tight for a man and ladder.

Pierre Forcier stated that moving the building down would require notches. He wants to keep the design of the building a simple rectangle. He has cleaned the yard nicely and abided by the rules 6-7 years of owning the lot. He had time to renovate the existing building this year.

Pierre Forcier stated the distance to the front house is 25 feet. He gave that neighbor 4 feet additional from the property line to allow room to walk around his house. Everett Hodge noted that in the recent past, there was a property line adjustment to get the house on its own lot. Dana Carlucci asked if Mr. Forcier could move the corner of the building over 4 feet and still be able to use the building as he planned. Pierre Forcier stated he could move the building 4 feet but any more than that would require that he notch into the building. Everett Hodge asked how often Mr. Forcier moves the boat. He moves the boat twice a year and is getting rid of storage for the boat in the Lakes region.

Mr. Forcier proposes 4 garage doors, 12-13 feet wide and two of them need to be 14 feet high. Wider doors are better for access to the building. Pierre Forcier stated that there will be no water or sewer in the proposed building. There will be electricity for sure and the gas line runs by, so heat may be considered.

Chairman Kudrick thanked Mr. Forcier for displaying his large plan and explaining the details.

Dana Carlucci summarized the case. This is **Case 17-09Z Case 17-09-Z**, a request for a **Variance** under Article V **Dimensional and Density Regulations**, § 143-21 **Table of Dimensional and Density Regulations**. The applicant, Pierre Forcier, dba P G F Properties is requesting a reduction of the required 15 foot rear and side setbacks. The Variance request is to construct a single story 48 feet x 65 foot storage building. The east side of the proposed building will be 10 feet from the rear property boundary where 15 feet is required. The northwest rear corner of the proposed building will be 4 feet from the side property boundary where 15 feet is required. The property is located at 141 Pembroke Street, Map (266) Lot (102), in the R-1A Medium Density-Residential and the AD Architectural Design Zoning Districts. The building will be wood structure and will look similar to recently renovated existing building. The proposed building will be used to store boats, trailers, motor home, and excess cars. There is 6 foot vinyl fencing all around the property. The fence in back is 7 feet from the property line. The house to the north is 26 feet from the proposed building point to point. The designer wanted to square off the building. The applicant will pave when the building is done. The land sits 4 feet lower than Route 3. The Board suggested moving the building to obtain more setback area. Four garage doors are proposed, with two of them 14 feet high. The ordinance calls for 40 foot rear setback but Note #5 to section 143-22 allows a

reduction to 15 feet for accessory buildings. The building height will not exceed 35 feet and will be approximately 26-27 feet high with the same roof pitch as the existing building.

There being no further comment, Chairman Kudrick closed the public hearing at 7:37 p.m.

Deliberations: ZBA members discussed the Variance criteria.

Chairman Kudrick stated his biggest concern is the 4 foot setback in the corner sloped to the fence where 15 feet setback is required. Four feet is not enough. Ann Bond agreed that 10 feet where 15 feet setback is required is acceptable but 4 feet is not.

Dana Carlucci stated that he went over to the site. Three other properties have structures on the property line. Another three properties have structures less than 8 feet from the property line. This is one of the tightest lot areas in Pembroke, worse than in the B1 zone. I understand about the need to get fire equipment on site. However, I believe the request meets the spirit of the ordinance because Note #5 to 143-22 states that in the R1, B1 and B2 zones accessory buildings only need to meet the **average setback of adjacent lots**. Further, Oxford dictionary describes adjacent as also being lots 2 or 3 properties away, not just beside a lot. Dana Carlucci stated that we want a building that can be utilized and also need adequate room behind the building.

Chairman Kudrick stated he has seen accessory buildings in the setback in that area. Before 1974 there was no zoning ordinance. Paul Paradis noted that even doubling the setback from 4 to 8 feet would make the building 30 feet to the house in the rear. Ann Bond asked why the building has to be so big. Is there a way to adjust the building size and better meet the required setbacks? Dana Carlucci stated that the storage building is a reasonable use but everything about the properties in that area is non-conforming. It would be nice to keep the property value increasing. The lot area is tighter than in the B2 zone. If the applicant could adjust the size of the building to be a little more compliant, the board would be more inclined to consider the variance. There are other design options that could still store the 33 foot boat, trailers and vehicles in the building. Maybe keeping the 48 foot bays and storing fewer vehicles would be a viable option.

Tom Hebert stated that Mr. Forcier did an exceptional job improving the lot and the existing building. What if the next owner rents out the proposed second storage building as a retail automotive repair shop and in the long term it had no sewer and sewer. The purpose morphs over time. Another owner may not be so upfront with plans. Town staff is unable to monitor everything happening in Pembroke.

1) The variance will not be contrary to the public interest. Chairman Kudrick stated that a 4 foot setback is a safety issue. Dana Carlucci stated it was not contrary to public interest unless one is including fire department. Ann Bond stated that the person living in back is okay with the 4 foot setback. Tom Hebert said if a new person moves in, they will see the structure and be aware of it before purchasing the back property. Chairman Kudrick stated there was no mention of light pollution but the security light should be located on the south end of the building and ideally, be motion detector activated. Tom Hebert asked if the plan goes to Planning Board site review. It does not. There were no abutters present at tonight's hearing, no opposition and no feedback.

2) The spirit of the ordinance is observed. Chairman Kudrick stated the lot is a very tight area to back vehicles into. A four foot setback is a safety concern and should come out at least another 4 feet, or at least provide 10 feet setback. Dana Carlucci stated the lot was created pre-zoning ordinance and does not conform. Dana Carlucci stated I believe the request meets the spirit of the spirit of the

ordinance because Note #5 to 143-22 states that in the R1, B1 and B2 zones accessory buildings only need to meet the **average setback of adjacent lots.**

- 3) Substantial justice is done. The owner is able to use the property, and could locate a second storage building if it were shifted closer to the front building.
- 4) Property values are not diminished. Agreed, will not diminish property values.
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The lot is small and the property owner wants to put in a large storage building.

Tom Hebert suggested that instead of making a motion and putting conditions on it, could we continue the public hearing and allow the applicant to come back to the Zoning Board of Adjustment with a revised plan. The applicant could take our deliberations into consideration and work with his designer to revise the plan.

Chairman Kudrick stated he would support such a motion. Chairman Kudrick would specifically like to see more information on the turning radius with the boat and trailer. He noted that he had marked out similar turning radii in the past using chalk and tested them to see if the angle was correct for the situation.

MOTION: Tom Hebert moved to continue the public hearing for **Case 17-09-Z**, a request for a **Variance** under Article V **Dimensional and Density Regulations**, § 143-21 **Table of Dimensional and Density Regulations to September 25, 2017** to allow the applicant additional time to submit revised plans. The revised plans are to show an increase in the rear set back and the turning radius.

Dana Carlucci seconded.

VOTE: PAUL - YES TOM – YES BRUCE – YES
 DANA- YES ANN - YES

MOTION TO CONTINUE PUBLIC HEARING TO SEPTEMBER 25, 2017 PASSED ON A 5-0 VOTE.

Pierre Forcier asked if he can leave the building setback as 10 feet on the east side. The Board was more concerned about the proposed 4 foot setback. The applicant will provide revised plans.

Chairman Kudrick noted that the continued hearing would not be renoticed to abutters. Interested parties should check the Zoning Board of Adjustment minutes and agendas online for more information.

MINUTES OF PREVIOUS MEETINGS

MOTION: Ann Bond moved to approve the minutes of June 26, 2017 as amended. Dana Carlucci seconded.

VOTE: PAUL - YES TOM – YES BRUCE – YES
 DANA- YES ANN - YES

MINUTES OF JUNE 26, 2017 APPROVED AS AMENDED ON A 5-0 VOTE.

OLD BUSINESS

Sign case – Oral arguments were heard in Boston MA.

Golf course – This application has gone to Planning Board.

NEW BUSINESS

Change to ZBA Rules of Procedure – Everett Hodge discussed a housekeeping change to Article 938 Miscellaneous regarding rehearing. Reasonable time to file an appeal is set at 30 days. If the Board grants a rehearing, a hearing will be held within 30 days following provided all notice fees are paid and all notification procedures set forth in RSA 676:7 are followed.

MOTION: Tom Hebert moved to update the ZBA Rules of Procedure as proposed by Everett Hodge. Dana Carlucci seconded.

VOTE: PAUL - YES TOM – YES BRUCE – YES
 DANA- YES ANN - YES

RULES OF PROCEDURE AMENDED AS PROPOSED ON A 5-0 VOTE.

NEXT MEETING

Date of next ZBA meeting – Chairman Kudrick noted the next ZBA meeting would be on **Monday, September 25, 2017 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 8:20 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary