

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
June 25, 2018 Approved July 30, 2018

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

ALTERNATES PRESENT: Robert Bourque, Natalie Glisson

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 live streamed.

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 May 29, 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 Realty 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 Conversation Zoning Districts.

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

Chairman Kudrick stated that the Board has 4 regular members and Alternate Member Bourque will vote on Case 18-04-Z making a five member board. Chairman Kudrick opened the hearing at 7:02 pm. This is a continued hearing from May 29, 2018.

The secretary read an email and letter from Matthew Peterson, Hillside Design Group dated June 18, 2018 requesting that application #18-04-Z be continued to the next month's Zoning Board of Adjustment meeting.

MOTION: BOB BOURQUE MOVED TO CONTINUE CASE 18-04-Z TO MONDAY, JULY 30, 2018 AT THE REQUEST OF THE APPLICANT. SECONDED BY DANA CARLUCCI. 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 July 30, 2018. All interested parties are encouraged to check the Town website or call the Zoning Department to get information pertaining to future meetings and locations.

Case #18-07-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 May 29, 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. The property is owned by Riverwood Drive LLS, 28 Plumb Island Drive, Newbury, MA 01951

Chairman Kudrick opened the public hearing at 7:06 p.m. There were 4 regular members and 2 alternate members present. Bob Bourque was designated to vote on Case 18-07-Z, therefore, there was a full five-member board present for this hearing.

The secretary read an email dated June 19, 2018 from the Assistant Director of PACE Career Academy requesting that application #18-07-Z be continued to the next available Zoning Board of Adjustment meeting.

MOTION: BOB BOURQUE MOVED TO CONTINUE CASE 18-07-Z TO MONDAY, JULY 30, 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 #18-07-Z was continued to July 30, 2018. All interested parties are encouraged to check the Town website or call the Zoning Department to get information pertaining to future meetings and locations.

Case #18-10-Z

Applicant: Alan Tilton
729 Cross Country Road
Pembroke, NH 03275

Property Owner(s): Alan Tilton
729 Cross Country Road

Pembroke, NH 03275

Property Address: 729 Cross Country Road
Pembroke, NH 03275
Tax Map 935 Lot 41-2 in the R-3 (Rural/Agricultural-Residential) Zoning District.

Case 18-10-Z A request has been made for a **Variance** under **Article IV Use Regulations**, §143-19 **Table of Uses Retail and Service #11**. The applicant, Alan Tilton, 729, Cross Country Road, Pembroke, NH, 03275 proposes to open a Motor Vehicle Service garage and Inspection Station at 729 Cross Country Road, Map 935 Lot 41-2 in R-3 (Rural/Agricultural-Residential) Zoning District. The owner of the property is the applicant.

The clerk took the roll call and read the list of abutters.

Chairman Kudrick opened the public hearing at 7:10 p.m. There were 4 regular members and 2 alternate members present. Bob Bourque was designated to vote on Case 18-07-Z. Therefore, there was a full five-member board present for this hearing.

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 assessing card, A Google map aerial photo, and a copy of Residential Building Permit R-2010-313 issued 10/18/2010 for a Minor Home Business at Map 935 Lot 41-2 along with several photographs of the property were included in the agenda packet. Permission was granted for a Minor Home Business to rebuild carburetors and do minor repairs on antique and classic motor vehicles as outlined under zoning regulation 143-28.

Alan Tilton stated that he proposes to provide motor vehicle repairs by appointment only. Sometimes the owner will drop the vehicle off and pick it up when repairs are complete. Sometimes owners will drop off a vehicle for a quote and then decide whether to proceed with repair. Owners may wait while a state inspection or minor repair is completed.

Alan Tilton addressed the Variance criteria:
Please give a detailed description of your proposal below:

I propose to do service and repair to customer vehicles and provide state inspections. The objective is to have customers wait for service or to leave their vehicle in my shop until the repair is complete. Parking will not be a concern due to the fact that repairs will be by appointment only.

1. **The variance will not be contrary to the public interest.** The variance is not contrary to the public interest because it will not alter the residential character of the neighborhood or threaten the health or safety of the general public. As a result, this variance will not violate the basic objectives of the zoning ordinance.

2. **The spirit of the ordinance is observed.** The spirit of the ordinance is observed because the purpose of the Town of Pembroke zoning ordinance is to provide for an orderly presence.
3. **Substantial justice is done.** Substantial justice will be done because denial of this variance will result in no gain to the general public. Granting this variance will have no negative effect on the present uses and atmosphere in the neighborhood.

The values of surrounding properties are not diminished. Granting the variance will not result in a change of use or any change of appearance at my property. Property values in the area will not diminish due to this request.

4. **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.**

There will be no unnecessary hardship due to the fact that no changes will occur to the landscape of my property or surrounding properties. The purpose of the variance request is to provide a service to my neighbors which I believe is a reasonable one.

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.

This variance will not conflict with the ordinance or create any hardship.

Dana Carlucci asked if any of the work would take place outdoors. Alan Tilton stated all work will occur inside the garage. An exception may be a flat tire repair or a jump to a car that won't start. Alan Tilton stated that the work will be done in an existing 36 feet wide by 40 feet deep garage. Due to storage, the work area is 40 feet by 24 feet with one lift and cement floor. Alan Tilton has containment for gasoline, oil and antifreeze and recycles all products properly at the Town of Pembroke DPW facility.

Bob Bourque asked how much of these products or potentially hazardous material are typically retained. Alan Tilton said he stores one gallon of gasoline every two weeks, 10 gallons of oil a week at most, and very little antifreeze.

Chuck Schmidt, 732 Cross County Road stated he lives across the street from Alan Tilton. Mr. Tilton is very responsible in his actions and I have no concern about his proposal.

Dana Carlucci asked Dana Pendergast what types of inspections typically occur for vehicle repair services. Dana Pendergast, Code Enforcement Officer, stated the request for an inspection station triggered a visit to the property. Dana Pendergast found the garage very neat, very clean, and quite nondescript in that the current operation was not observable to anyone passing by. If approved for a variance, it would be subject to yearly inspections through the Fire Department. Dana Pendergast performs all inspections for the Pembroke Fire Department.

Bob Bourque asked if the proposal would be subject to minor site plan review at Planning Board. Dana Pendergast replied that a Variance is required because Table of Uses Retail and Service #11 is not allowed in the R3 zoning district. A variance is not subject to site plan review. Dana Pendergast stated that Residential Building Permit R-2010-313 was issued 10/18/2010 for a Minor Home Business at Map 935 Lot 41-2. Permission was granted for a Minor Home Business to rebuild carburetors and do minor repairs

on antique and classic motor vehicles as outlined under zoning regulation 143-28. If the applicant were to apply for a Major Home Business under zoning regulation 143-29, a Planning Board minor site plan review would be required.

It was noted that the aerial photograph provided showed plenty of dirt parking for vehicles. The house is to the left and there is a gap between the house and garage. There is a good tree buffer in place.

Alan Tilton stated that he does carry fire apparatus in his garage- three fire extinguishers – and the Fire Department is across the street.

Jim Haggett, 722 Cross Country Road stated he lives across the street from Alan Tilton and he has no concerns about his plans for vehicle repair and state inspection services.

Chairman Kudrick summarized the case. This is **Case 18-10-Z**, a request for a **Variance** under **Article IV Use Regulations, §143-19 Table of Uses Retail and Service #11**. The applicant, Alan Tilton, 729, Cross County Road, Pembroke, NH, 03275 proposes to open a Motor Vehicle Service garage and Inspection Station at 729 Cross Country Road, Map 935 Lot 41-2 in R-3 (Rural/Agricultural-Residential) Zoning District. The owner of the property is the applicant. The garage is 36 feet wide by 40 feet deep with one lift and a concrete floor. The Building Inspector made a site inspection and found the garage very neat and very clean. In 2010 Alan Tilton opened a Minor Home Business to repair antique cars and carburetors. In 2012, that use was expanded to include State motorcycle inspections. Gasoline, oil and antifreeze are contained and taken to the town shed to be disposed of properly. Estimated amounts used are one gallon of gasoline every two weeks, 10 gallons oil a week at most, and very little antifreeze.

All work will be done inside the garage. Work is expected on 2-3 cars per day. The only work done outside would be repair of a flat tire or a jump start. There is plenty of parking area on the property. This lot is not in the Aquifer Conservation zoning district.

There being no further comment, Chairman Kudrick closed the public hearing at 7:26 p.m.

Deliberations: ZBA members discussed the Variance criteria.

Dana Carlucci led a review of each criterion.

1. The variance will not be contrary to the public interest. Applicant has been operating a Minor Home Business at the site since 2010 with no complaints reported. Having motor vehicle repair and State Inspection services available might be beneficial to residents. There is plenty of parking, buffer and sight line to the driveway.
2. The spirit of the ordinance is observed. Tom Hebert noted that there is no overcrowding on the property and it is a low key business. It is not a commercial repair facility with three bays. Discussion over number of trips occurred. With a Minor Home Business, 5 trips per day are allowed. With a Major Home Business, 15 trips per day are allowed. The definition of trips includes customers, vendors, deliveries, and all business related trips.
3. Substantial justice is done. The applicant is still subject to sign, junk and all applicable ordinances. Tom Hebert noted that in the Master Plan, repair services are not typical in the R3 zoning District.
4. Property values are not diminished. Agreed, will not diminish property values. There have been no complaints about the operation of the minor home business. The use was expanded to include State motorcycle inspections in 2012.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. It was noted that a variance goes with the property. If the property were sold the new owner

could continue the Motor Vehicle service garage and Inspection Station. If the use did not occur for two years in a row, it would be considered abandoned.

MOTION: Tom Hebert moved to approve Case #18-10-Z, a request for a **Variance** under **Article IV Use Regulations**, §143-19 **Table of Uses Retail and Service #11**. The applicant, Alan Tilton, 729, Cross County Road, Pembroke, NH, 03275 is approved to open a Motor Vehicle Service garage and Inspection Station at 729 Cross Country Road, Map 935 Lot 41-2 in R-3 (Rural/Agricultural-Residential) Zoning District **subject to the following conditions:**

1. All state and local codes shall be followed.
2. Trips per day will be limited to 15.
3. Existing building cannot be enlarged.
4. Hours of operation will be 7:00 am to 5:00 pm Monday through Friday and ½ day on Saturday.

Dana Carlucci seconded.

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

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

MINUTES OF PREVIOUS MEETINGS

MOTION: Bob Bourque moved to approve the minutes of May 29, 2018 as amended. Tom Hebert seconded.

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

MINUTES OF MAY 29, 2018 APPROVED AS AMENDED ON A 5-0 VOTE.

OLD BUSINESS -none

NEW BUSINESS

Email regarding joint training with Planning Board – Chairman Kudrick stated he received an email from David Jodoin, Town Administrator, offering joint training to Planning Board and Zoning Board of Adjustment members by staff from Town Counsel's office. The proposed date of July 10, 2018 at 7:00 p.m. will be confirmed by email to all members. All are invited to attend.

NEXT MEETING

Date of next ZBA meeting – Chairman Kudrick noted the next ZBA meeting would be on **Monday, July 30, 2018 at 7:00 p.m.**

ADJOURN **Motion:** Bob Bourque moved to adjourn. Tom Hebert seconded. Vote was unanimous in favor of motion. Meeting adjourned at 7:55 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary