

**MINUTES**  
**PEMBROKE ZONING BOARD OF ADJUSTMENT**  
**September 24, 2018 Approved November 26, 2018**

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

**ALTERNATES PRESENT:** Robert Bourque

**EXCUSED:**

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

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

**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 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 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 member present. Chairman Kudrick opened the hearing at 7:02 pm. This is a continued hearing from August 27, 2018.

The secretary read a letter dated September 19, 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 Allentown have not finalized the court case regarding the availability of town sewer for the project.

**MOTION: TOM HEBERT MOVED TO CONTINUE CASE 18-04-Z TO MONDAY, OCTOBER 29, 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 October 29, 2018. All interested parties are encouraged to check the Town website or call the Zoning Department to get information pertaining to future meetings and locations.

**Case #18-12-Z**

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

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

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

**Case 18-12-Z Continued from August 27, 2018** A request has been made for a **Variance under Article V use regulations section § 143-21 Table of Dimensional and Density Regulations B minimum contiguous lot frontage (feet)**. The applicant Wilfrid Poirier 4100 North Ocean Dr. #2501 Singer Island Florida proposes to subdivide lot **563-90 Center Rd in the R1 zone** into four lots with less than the required amount of frontage on a class V road. Lots 90-1 and 90-2 require 120' and lot 90-3 requires 135'. The owner of the property is Wilfrid Poirier 4100 North Ocean Dr #2501 Singer Island Florida

Chairman Kudrick opened the public hearing at 7:05p.m. Natalie Glisson recused herself for Case #18-12-Z. Chairman Kudrick designated Alternate Member Bob Bourque to vote on this case. 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.

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 on Center Road and Third Range Road.

The clerk read two letters into the record. In a letter to Pembroke Select Board dated August 30, 2018, Chairman Kudrick expressed Zoning Board of Adjustment concerns with creating 3 new lots with no frontage. Also, there were concerns about liability of the town providing winter maintenance and trash pickup on private roads. David Jodoin, on behalf of the Select Board, responded in a letter dated September 19, 2018 that the town has an agreement with the property owner Wilfrid Poirier to enter into a Purchase and Sale agreement. Per section 6(d) the Town of Pembroke is not liable for any maintenance on the private section of Center Road, and will continue providing winter plowing and trash pickup as has been done for years. A copy of the Purchase and Sale Agreement was provided. Other department concerns were that Fire was unhappy with the road but was required to respond if needed.

James Coughlin, partner of Wilfred Poirier, provided an overview of information provided at prior public hearing.

Please give a detailed description of your proposal below:

We propose to subdivide Lot 563-90, one hundred acres plus or minus, into four (4) lots in the R-1 zoning district. Two lots have existing houses on them and the other lot previously had an existing home. The 87 acre plus or minus lot will be sold to the Conservation Commission. See attached plans. 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. Current practice is that the town uses the private section of Center Road to turn its equipment around.

**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.**
  - 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.**

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.**

James Coughlin stated that the grade on the private section is 15.5% to 14%, while Town of Pembroke road standards allow 8%. To reach the 8% grade we would have to dig 35 or 40 feet down, remove tremendous amounts of material and the road would be 12 feet lower than the existing houses and cause terrible drainage issues. Our intention was to develop 50 houses on the property but we cannot do that because 3<sup>rd</sup> Range Road is not open. The subdivision plan will be on the Technical Review agenda for Planning Board consideration. It proposes to cure the pre-existing non-conforming use.

Ammy Heiser, 604 Buck Street and Chair, Conservation Commission, stated that Steven Whitley, Town Attorney, has put in language limiting the liability of the town to maintain the road. Conservation land will be accessible from 3<sup>rd</sup> Range Road by parking on the side of the road and walking in.

Kathleen Lockhead, 229 Brickett Hill Road, asked if Conservation land access would be from Brickett Hill Road. Ammy Heiser stated that 3<sup>rd</sup> Range Road could be accessed by School Street or Brickett Hill Road but few people are expected to walk on the property. It is a wetland area that the Conservation Commission is trying to preserve for conservation value and future trails. The intent is to create as little disturbance to the property as possible.

Chairman Kudrick stated he is not in favor of making a pre-existing non-conforming use more non-conforming by increasing the number of lots from one to four. It is against NH RSA 674-19.

James Coughlin stated that granting a variance would make the lots legal lots. He suggested that the ZBA get the opinion of Town counsel if needed. It is the same as approving a variance for 70 feet of frontage where 100 feet is required. The variance makes it conform on the plan.

Chairman Kudrick stated that the lots would still have no frontage on a Class V or better road.

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'. Chairman Kudrick sent a letter to the Board of Selectmen regarding trash pickup and plowing a private way. The response indicated that the town has a Purchase and Sale agreement with the property owner, and would continue to plow and pick up trash, with 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 for years. The property is in the R1 zone. Some existing houses on Center Road have no frontage. The way the original subdivision was done does not conform to today's zoning regulations therefore producing a hardship. The road grade exceeds standards so cannot conform due to damage to storm drainage and removal of thousands of feet of material. 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. Conservation land will be accessed from 3<sup>rd</sup> Range Road. The intent is to preserve the land for conservation value and pedestrian access. The Board will consider continuing this public hearing to October 29, 2018 due to a request for more information by the Zoning Board of Adjustment.

There being no further discussion, Chairman Kudrick closed the public hearing at 7:32 pm.

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

- 1) **The variance will not be contrary to the public interest.** Chairman Kudrick stated that it concerns me that the town travels up and down private roads with equipment. Municipal associations warn this is very bad practice. The short section (about 1,000 feet) of the private road is roughest. What if the property owners refuse their deeded responsibility to maintain the private road? Dana Carlucci understands the non legality aspect, but sees a lot of pluses to the variance application. Tom Hebert stated that there is potential opportunity to create legal lots. However, the lots don't comply with any standards and have absolutely no frontage on Class V road. There is an opportunity for the town to take over the private road.
- 2) **The spirit of the ordinance is observed.** Chairman Kudrick stated that taking a non-conforming lot and putting three additional lots in is not in the spirit of the ordinance. Nothing will change in the future with the subdivision. Dana Carlucci stated that the lower three lots would gain frontage. Would the town agree to take over Center Road? With this agreement, the town would have no maintenance responsibility for the road. Bob Bourque agrees that creating four lots – 90, 90-1, 90-2, and 90-3 is making the property more non-conforming and is not the way to go. Chairman Kudrick asked if there would be a problem if a property owner wanted to put a building on the fourth lot. Dana Pendergast would not be able to issue a building permit without a variance.
- 3) **Substantial justice is done.** Would the town only access the road for fire and emergency reasons? Paul Paradis noted that the town currently uses the private road as a turnaround. Chairman Kudrick stated that the town could purchase a piece of property and put in its own hammerhead. Mr. Poirier owns the right-of-way and could still deed it to the town.
- 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.** Chairman Kudrick stated that there is no hardship because the applicant has other options, including asking the town to take over the Class V road. The town is already providing winter maintenance and trash pickup on the road. The town is responsible for 384 feet of the worst part of Center Road. In Chairman Kudrick's opinion, the grade of the road is not a hardship. The town could make Center Road a town road and the property owner would not need a variance. Conservation could buy land.

Tom Hebert stated we received no feedback as requested from town departments. Dana Carlucci stated that the process is that a plan would not go to Technical Review until it goes to Planning Board. To create lots, the property owner needs a variance. Bob Bourque noted that an applicant can go to either board first. Dana Carlucci stated that the Zoning Board of Adjustment is lacking information from Police, DPW, Board of Selectmen on feasibility of taking over the road, and Sewer Commission on easements for lines. The question now is would the town be willing to take over the road? Their letter of response indicated the town will continue providing snow plowing and trash pickup despite liability to town vehicles.

Chairman Kudrick proposed that the Zoning Board of Adjustment schedule a discussion with its attorney before taking the question to the Board of Selectmen. The Zoning Board of Adjustment wants complete information before a decision is made. Chairman Kudrick is very uncomfortable with going against RSA 674 and making a property that is pre-existing non-conforming more non-conforming. Dana Carlucci stated that the proposal would give the lower three lots frontage.

**MOTION: TOM HEBERT MOVED TO CONTINUE BOARD DELIBERATIONS OF CASE 18-12-Z TO MONDAY, OCTOBER 29, 2018 TO ALLOW TIME TO ADDRESS THE**

**NON CONFORMITY ISSUE WITH LEGAL COUNSEL. SECONDED BY DANA CARLUCCI. UNANIMOUSLY APPROVED.**

Chairman Kudrick stated that the original abutters for this application would not be renoticed. The Board deliberations on Case #18-12-Z were continued to October 29, 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 October 29, Chairman Kudrick will reopen the public hearing and share the information received from all departments. Public comment will again be taken.

Natalie Glisson returned to the Board as a voting member.

**Case #18-14-Z**

Applicant: Tom Decato  
533 N Pembroke Road  
Pembroke, NH 03275

Property Owner(s): Tom and Roxanne Decato  
533 N Pembroke Road  
Pembroke, NH 03275

Property Address: 533 N Pembroke Road  
Pembroke, NH 03275  
Tax Map 935 Lot 13-1 in the R3 Zoning District.

**Case 18-14-Z** A request has been made for a **Special Exception under Article IV Use Regulations, 143-18.1 Accessory Dwelling Unit.** The applicant Tom Decato, 533 North Pembroke Road, Pembroke NH 03275 is requesting a Special Exception to allow an Accessory Dwelling Unit **at Lot 935-13-1 in the R3 Zone.** The property is owned by Tom Decato, 533 North Pembroke Road, Pembroke, NH 03275.

Chairman Kudrick opened the hearing at 8:00 pm.

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 land use change form from Merrimack County Registry of Deeds dated 12/17/2003; tax map, assessing card and list of abutters were included in the agenda packet.

Tom Decato addressed the Special Exception criteria:

**Detailed description of proposal:**

I believe I meet the criteria for an Accessory Dwelling unit under SB 146 containing two bedrooms, 1 bath, and measuring 722 square feet constructed within existing dwelling. The ADU will be contained completely within my home with no outside changes to the building. I will put in 2 interior doors and close up one wall from the kitchen to the living room. I have ample parking. The unit will be for the use of my in laws or my own parents.

**Please describe how the requested use is essential or desirable to the public convenience or general welfare.** Provides housing and support for family members.

**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.** Copy of septic design provided to show ability to add usage.

**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.** The accessory unit will be within the existing dwelling. No outward changes to the dwelling or surroundings are anticipated.

**Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** The accessory unit will be within the existing dwelling. No outward changes to the dwelling or surroundings are anticipated.

**Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No, we anticipated no more than two additional vehicles and the use of the accessory unit will be strictly residential.

**Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Residential accessory unit which per SB146 includes provisions for sleeping, eating, cooking and sanitation.

**Please show that there are no valid objections from abutting property owners based on demonstrable fact.** To be determined per notification of abutters by Town of Pembroke. 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 service by artesian well in dwelling with 3 bedroom septic design. No additional bedrooms will be added to the overall property.

**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

Dana Carlucci summarized the case. This is **Case 18-14-Z**, a request for a **Special Exception under Article IV Use Regulations, 143-18.1 Accessory Dwelling Unit**. The applicant Tom Decato, 533 North Pembroke Road, Pembroke NH 03275 is requesting a Special Exception to allow an Accessory Dwelling Unit **at Lot 935-13-1 in the R3 Zone**. Mr. Decato addressed the criteria. The proposed ADU does not exceed 750 feet, is within the home, has at least one interior door, ample off street parking, no outside changes, one electric meter, and does not exceed 40% of space. It conforms to all criteria of 143-18.1

There being no further comment, Chairman Kudrick closed the public hearing at 8:10 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 reviewed the Special Exception criteria and 148-18.1

The ADU is set up to provide housing and support to family, is allowed in all residential zoning districts, no evidence shown that property values will decrease, off street parking for two vehicles is provided, no objection received from abutters, adequate water and sewage in place.

**MOTION:** Tom Hebert moved to APPROVE **Case 18-14-Z**, a request for a **Special Exception under Article IV Use Regulations, 143-18.1 Accessory Dwelling Unit**. The applicant Tom Decato, 533 North Pembroke Road, Pembroke NH 03275 is requesting a Special Exception to allow an Accessory Dwelling Unit at **Lot 935-13-1 in the R3 Zone** with the following conditions:

- 1) Must submit a set of detailed plans.
- 2) Must follow the submitted floor plan and Plot plan.
- 3) Must follow all State and Town regulations
- 4) One of the units must be owner occupied.

Paul Paradis seconded.

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

**MOTION TO APPROVE SPECIAL EXCEPTION FOR ACCESSORY DWELLING UNIT WITH CONDITIONS PASSED ON A 5-0 VOTE.**

Chairman Kudrick changed the agenda order, placing Case #18-16-Z before Case #18-15-Z as a variance is needed to proceed.

**Case #18-16-Z**

Applicant: Marc and Deanna Dumont  
36 Donna Drive  
Pembroke, NH 03275

Property Owner(s): Marc and Deanna Dumont  
36 Donna Drive  
Pembroke, NH 03275

Property Address: 36 Donna Drive  
Pembroke, NH 03275  
Tax Map 565 Lot 81-29 in the R1 Zoning District.

**Case 18-16-Z** A request has been made for a **Variance under Article IV Use regulations section § 143-18.1 Accessory Dwelling Unit**. The applicant Marc and Deanna Dumont, 36 Donna Drive, Pembroke NH 03275 is requesting a variance to allow an Accessory Dwelling unit at **565-81-29 36 Donna Drive in the R1 zone that exceeds 750 square feet**. ADU shall not exceed 750 square feet. The property is owned by Marc and Deanna Dumont, 36 Donna Drive, Pembroke, NH 03275.

The clerk took the roll call and all members were present.

Chairman Kudrick opened the public hearing at 8:17 p.m. There were 5 regular members and 1 alternate member 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.

Tax maps, assessing card, Second Floor plan, Certificate of Use and Occupancy Permit Number R-2004-326 for Belcher Garage Addition, Residential Building Permit R-2004-326 for Belcher Garage Addition



showing project cost \$83,500, Plot Plan, Residential Electrical Building Permit R-2005, Residential Mechanical Building Permit R-2005-12 for mechanical and Residential Building Permit R-2005-11 for plumbing and list of abutters were included in the agenda packet.

Clerk read an email dated September 24, 2018 from Amy Manzelli and Chad Turmelle, neighbors, who fully support the application for variance and special exception. The apartment is already built and in use. It has been occupied without issue for more than a decade.

Deanna Dumont addressed the Variance criteria:

Please give a detailed description of your proposal below:

We are seeking approval of the size of our pre-existing living space over the garage of approximately 1,200 square feet, 2-bedroom unit for use as and accessory dwelling unit. Currently the Town's maximum size for an accessory dwelling unit is 750 square feet. The unit needs a stove plugged in, and has Town water and sewer. No changes are planned. No construction will occur. The Dumonds purchased the property a year ago August.

1. **The variance will not be contrary to the public interest.** The structure is pre-existing. The variance will not change the current surroundings and will not change the number of occupants allowed in the home per HUD standards.
2. **The spirit of the ordinance is observed.** The size of this proposed accessory dwelling unit will not change the use and intention of the space. It is two bedrooms regardless of the square footage. The State created the law with intentions to give homeowners the means to offset costs and increase rental properties without having to increase infrastructure. This variance would allow this.
3. **Substantial justice is done.** The State of NH law says a municipality shall allow single-family dwellings to have an accessory dwelling unit. This variance will enable us to have one; and will not subvert the intentions of any town or state ordinances as use and number of residents remains the same.
4. **The values of surrounding properties are not diminished.** It is suggested by the State that an accessory dwelling unit can actually increase surrounding property values. It should not diminish it. Also the property value should not diminish as the structure is pre-existing. See page 13, NH Housing: Accessory Dwelling Units in New Hampshire: A Guide for Municipalities.
5. **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.**

**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 space cannot be used in strict conformance as the size pre-exists and cannot be taken away without demolition and financial hardship. The cost to take away the existing square footage of living space far outweighs anything gained by the community by not approving the variance of 1,200 square feet.

Dana Pendergast read some history of the property. A prior owner was denied a variance for a duplex because 40,000 square feet was needed and only 21,000 square feet existed. An addition was done by permit over the garage as a family room and it received a Certificate of Occupancy in 2004.

Ken Knight, 38 Donna Drive, lives next door. Mr. Knight stated that the unit was built for a mother in law and was used as an ADU including cooking facilities. The new owners were shown the main house and the ADU.

Kenneth Rochon, 417 Ross Road, has lived there 32 years. His concern is that the property remains owner occupied. Also, will a variance open up the opportunity for more units in the neighborhood and are there regulations on the number of people who can live in the accessory unit?

Mark Dumont stated that occupancy will meet HUD standards. Deanna Dumont stated we intend to keep the property owner occupied. We will rent it now and use it later for our family. State regulations require no less than 750 square feet for an Accessory Dwelling Unit and an interior door attached to main space. Our bedroom wall is a shared wall with accessory kitchen. There are two interior doors from a shared entry way which has a slider to the back yard.

Chairman Kudrick asked for clarification. There are two interior doors to the unit from the mudroom but at least one interior door should connect the dwelling to the other unit.

Dana Pendergast used the Webster definition of interior door “connects rooms.” A letter from previous Code Enforcement Officer to prior owners in Florida on the status of the property and stated that the living space over the garage is not a second dwelling unit and cannot be listed as a 2 family. The Dumonts bought a home with violations not expressly communicated by the realtor. The Dumonts have had people living there, but none at present and they want to clear up all matters. It is a pre-existing non-conforming ADU. There is no kitchen but will be when a stove is plugged in. The requirement for an interior door must easily integrate into the unit, allowing access to pass into both units from within the house.

Chairman Kudrick explained as a courtesy that the new owners need to comply with any applicable Water Works and Sewer Commission fees for the units. Sewer and Water are separate entities from the town. These fees must be paid before a Certificate of Occupancy can be issued.

Dana Carlucci asked if there was any way of increasing the main living space into the 1,200 square feet over the garage. To extend the bedroom would require removing the ADU kitchen and plumbing and would be a huge financial burden.

Dana Pendergast stated that if a variance was approved, it could make any prior unfavorable decisions appealable to someone who was denied. There is one water meter and one electric meter. The owners do not have to have family live in the unit. The real estate rep misrepresented the unit as rentable and not an ADU with the stove removed.

Deanna Dumont stated there is ample parking for 6-8 vehicles in the driveway. Bob Bourque asked what was to the left in the upstairs entry way. There is a window to the left, and closet and sitting area to right. What would it take to make the unit conforming? According to town records it is a single- family home with 1,592 square feet in main house and 1,200 square feet over the garage. There are two separate heating systems, oil forced hot water and oil forced hot air.

Dana Pendergast stated that the new owners have been very responsive to all of his requests.

Dana Carlucci summarized the case. This is **Case 18-16-Z** A request has been made for a **Variance under Article IV Use regulations section § 143-18.1 Accessory Dwelling Unit**. The applicant Marc and Deanna Dumont, 36 Donna Drive, Pembroke NH 03275 is requesting a variance to allow an Accessory Dwelling unit at **565-81-29 36 Donna Drive in the R1 zone that exceeds 750 square feet**. Amy Manzelli sent in a letter in favor of the applicant. The applicant described the plan. Webster definition of 'interior door' was discussed. Sewer and water fees were discussed. It was suggested there may be sewer or water fees. Discussion included that the applicant inherited this non-conforming use. This is an existing 1,200 square feet living space. Applicant would like to make unit a proper ADU.

There being no further comment, Chairman Kudrick closed the public hearing at 9:20 p.m.

**Deliberations:** Chairman Kudrick stated that the original owners built an unapproved duplex and the new property owners were not given correct facts. Applicants have come in to request and oversized ADU variance. The new owners are working with the town to correct any deficiencies. Old property owners were sent letters. These issues come up when property is sold. Chairman Kudrick stated this is a very large variance request. However, the applicant did not build the unit. It is an illegal unit they are trying to correct. ZBA members discussed the Variance criteria.

1. **The variance will not be contrary to the public interest.** The unit follows the ADU requirements other than size.
2. **The spirit of the ordinance is observed.** The unit follows the ADU requirements other than size.
3. **Substantial justice is done.** A variance would create a legal space.
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.** It would be costly to demolish and reduce the size of the pre-existing unit.

ZBA members discussed any possible way to make the main house larger and the unit smaller. This unit is already built and has been used for over 10 years. If a variance is approved, as well as a Special Exception, the unit will be a legal Accessory Dwelling Unit if the property is sold in the future. If the ADU use is abandoned, after three years the owner loses the use and must come back to ZBA,

**MOTION:** Tom Hebert moved to approve **Case 18-16-Z**, a request for a **Variance under Article IV Use regulations section § 143-18.1 Accessory Dwelling Unit** having been presented to the Board for consideration by the owner. The applicant Marc and Deanna Dumont, 36 Donna Drive, Pembroke NH 03275 is requesting a variance to allow an Accessory Dwelling unit at **565-81-29 36 Donna Drive in the R1 zone that exceeds 750 square feet** subject to the following conditions:

- 1) Must follow all state and local regulations.
- 2) Must obtain a letter of operational approval from Pembroke Water Works.
- 3) Must obtain a letter of operational approval from Pembroke Sewer Commission.
- 4) Must obtain current Certificate of Occupancy through Town.
- 5) Must meet maximum HUD occupancy standards.
- 6) Owner must occupy one of the units.
- 7) Adequate off street parking must be provided for all occupants.

Dana Carlucci seconded.

<b>VOTE:</b>	PAUL - YES	TOM - YES	BRUCE - NO
	DANA- YES	NATLIE - YES	

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

**Case #18-15-Z**

Applicant: Marc and Deanna Dumont  
36 Donna Drive  
Pembroke, NH 03275

Property Owner(s): Marc and Deanna Dumont  
36 Donna Drive  
Pembroke, NH 03275

Property Address: 36 Donna Drive  
Pembroke, NH 03275  
Tax Map 565 Lot 81-29 in the R1 Zoning District.

**Case 18-15-Z** A request has been made for a **Special Exception under Article IV Use Regulations, 143-18.1 Accessory Dwelling Unit**. The applicant Marc and Deanna Dumont, 36 Donna Drive, Pembroke NH 03275 is requesting a Special Exception to allow an Accessory Dwelling Unit **at Lot 565-81-29 in the R1 Zone**. The property is owned by the applicant.

Chairman Kudrick opened the hearing at 9:30 pm.

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 land use change form from Merrimack County Registry of Deeds dated 12/17/2003; tax map, assessing card and list of abutters were included in the agenda packet.

Deanna Dumont addressed the Special Exception criteria:

**Detailed description of proposal:**

We are seeking a Special Exception to use the current living space above our garage as an Accessory Dwelling unit as defined by State Law, Title LXIV, Chapter 674, Section 674:71, 72, 73.

**Please describe how the requested use is essential or desirable to the public convenience or general welfare.** The requested accessory dwelling unit will have minimal impact while increasing and integrating affordable housing into the community, without the need for more infrastructure and land development.

**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 zone is single-family residential and the property will continue to be a single-family residence with the approval of the Variance requested with use as an accessory dwelling.

**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.** The specific site is .51 acres located in a zone for residential single-family use with all appropriate setbacks. The structure is not being added to, nor the

number of occupants allowed by the Town of Pembroke and HUD standards.

**Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** Per NH Housing, December 2017, Accessory Dwelling Units in New Hampshire: A Guide for Municipalities, Accessory Dwelling Units can increase property values and thus add to the tax base.

**Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No, the driveway is already able to fit 6 plus vehicles. There are no blind spots or obstruction s from the driveway to the road. All driveway dimensions already fall within needed criteria and will not need to be changed.

**Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Town sewer and town water hookup already exists and is approved for occupancy. Pre-existing plumbing, sinks and bathroom done by permit. Heat and hot water pre-exists by permit. Ability to add cooking facility (stove) exists due to pre-existing electrical done by permit. There are two egresses as well.

**Please show that there are no valid objections from abutting property owners based on demonstrable fact.** No changes will be made to the property or building already in use as a single-family residence.

**Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** Home is already hooked up to town water and town sewer and meets standards set by Town and State. Please see department approval form for Certificate of Occupancy.

**If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system?** Property will still be a single-family use currently hooked up to Town water and Town sewer.

Ken Knight, 38 Donna Drive, next door neighbor stated that the unit adds value to the neighborhood and is kept up nicely by the Dumonts.

Dana Carlucci summarized the case. This is **Case 18-15-Z**, a request for a **Special Exception under Article IV Use Regulations, 143-18.1 Accessory Dwelling Unit**. The applicant Marc and Deanna Dumont, 36 Donna Drive, Pembroke NH 03275 is requesting a Special Exception to allow an Accessory Dwelling Unit **at Lot 565-81-29 in the R1 Zone**. The property is owned by the applicant. The same information discussed for Case #18-16-Z pertains to Case #18-15-Z as well.

There being no further comment, Chairman Kudrick closed the public hearing at 9:44 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 reviewed the Special Exception criteria.

**Please describe how the requested use is essential or desirable to the public convenience or general welfare.** The requested accessory dwelling unit provides affordable housing into the community, without the need for more infrastructure and land development.

**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 zone is single-family

residential and the property will continue to be a single-family residence with the approval of the Variance requested with use as an accessory dwelling.

**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.** The unit is pre-existing and has been there since 2005.

**Please show that no factual evidence is found that the property value in the district will be adversely affected by such use.** Per NH Housing, December 2017, Accessory Dwelling Units in New Hampshire: A Guide for Municipalities, Accessory Dwelling Units can increase property values and thus add to the tax base.

**Will undue traffic, nuisance or unreasonable hazard result from your proposed use? Yes or no and please explain your answer.** No, the driveway is already able to fit 6 plus vehicles.

**Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.** Town sewer and town water hookup already exists. Operational letters of approval are needed and payment of any fees.

**Please show that there are no valid objections from abutting property owners based on demonstrable fact.** No changes will be made to the property and building already in use as a single-family residence.

**Please show that the proposed use has an adequate water supply and sewerage system and meets applicable requirements of the State.** Home is already hooked up to town water and town sewer and meets standards set by Town and State.

**If the proposed use is for multi-family dwellings, will it be served by the Town water system and by the Town sewerage system?** Property will still be a single-family use currently hooked up to Town water and Town sewer.

The ZBA reviewed the criteria of 143-18.1. The ADU is set up to provide housing and support to family, is allowed in all residential zoning districts, received a variance on 750 square foot size, has at least one interior door, no evidence shown that property values will decrease, off street parking for two vehicles is provided, no objection received from abutters, adequate water and sewage in place. The home has one water, electric and sewer service, applicant will comply with any sewer and water fee and all setbacks are met.

**MOTION:** Tom Hebert moved to APPROVE **Case 18-15-Z**, a request for a **Special Exception under Article IV Use Regulations, 143-18.1 Accessory Dwelling Unit**. The applicant Marc and Deanna Dumont, 36 Donna Drive, Pembroke NH 03275 is requesting a Special Exception to allow an Accessory Dwelling Unit at **Lot 565-81-29 in the R1 Zone** with the following conditions:

- 1) Must follow all state and local regulations.
- 2) Must obtain a letter of operational approval from Pembroke Water Works.
- 3) Must obtain a letter of operational approval from Pembroke Sewer Commission.
- 4) Must obtain current Certificate of Occupancy through Town.
- 5) Must meet maximum HUD occupancy standards.
- 6) Owner must occupy one of the units.
- 7) Adequate off street parking must be provided for all occupants.

Natalie Glisson seconded.

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

**MOTION TO APPROVE SPECIAL EXCEPTION FOR ACCESSORY DWELLING UNIT WITH CONDITIONS PASSED ON A 4-1 VOTE.**

**MOTION:** Dana Carlucci moved to continue the ZBA meeting past the scheduled end time of 10:00 p.m. Tom Hebert seconded. Motion passed unanimously.

**Case #18-17-Z**

Applicant: Jeffrey White  
434 Nadine Road  
Pembroke, NH 03275

Property Owner(s): Jeffrey White  
434 Nadine Road  
Pembroke, NH 03275

Property Address: 434 Nadine Road  
Pembroke, NH 03275  
Tax Map 565 Lot 81-130 in the R1 Zoning District.

**Case 18-17-Z** A request has been made for a **Variance under Article V Use regulations section § 143-21 Table of Dimensional and Density Regulations H Rear set back**. The applicant Jeffrey White, 434 Nadine Road, Pembroke NH 03275 proposes to add a 14' x 24' shed to the rear of his lot within 10 feet of the lot line where 15 feet is required at **565-81-130 434 Nadine Road in the R1 zone**.

Chairman Kudrick opened the public hearing at 10:01 p.m. There were 5 regular members and 1 alternate member 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.

A plot plan was included in the agenda packet.

Jeffrey White addressed the Variance criteria:  
Please give a detailed description of your proposal below:

I propose to install a premanufactured 14' x 24' shed/barn at the base of my hill on the back border of my property. No electric or plumbing will be installed. No foundation or slab will be used. The shed will rest on cement blocks. There is a 10 feet setback on the north side boundary and 5 feet setback on the west rear boundary. I cannot move the shed away from the boundary lines 15 feet as required due to a large hill and runoff of water. I have the smallest piece of property in my neighborhood with a significant hill. It goes up 12 feet over the course of 20 feet.

1. **The variance will not be contrary to the public interest.** This area and the proposed shed cannot be seen from the road. The two residential abutters have expressed no objections. The third abutter is the "golf course" and the area in question is a large tract of woods.
2. **The spirit of the ordinance is observed.** The rear setback variance request is for areas which are forested and not in daily use by any measure. The building and area will fit into the forested and

existing landscaped look of the area. The building will not prevent or diminish the use of the abutters land nor harm any views.

3. **Substantial justice is done.** The look of this area will be improved by storing lawn mowers, ATV's, skimobiles and various parts and spare tires indoors rather than outside.
4. **The values of surrounding properties are not diminished.** The values of surrounding properties will benefit from a better visual view of the area.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
  - iii. **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.**

Due to setback regulations and non-buildable hill on my small property, this is the only place on my property to have a shed/barn.

**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 space cannot be used in strict conformance as the size pre-exists and cannot be taken away without demolition and financial hardship. The cost to take away the existing square footage of living space far outweighs anything gained by the community by not approving the variance of 1,200 square feet.

Dana Carlucci summarized the case. This is **Case 18-17-Z**, a request for a **Variance under Article V Use regulations section § 143-21 Table of Dimensional and Density Regulations H Rear set back**. The applicant Jeffrey White, 434 Nadine Road, Pembroke NH 03275 proposes to add a 14' x 24' shed to the rear of his lot within 10 feet of the lot line where 15 feet is required at **565-81-130 434 Nadine Road in the R1 zone**. Applicant proposes to install a premanufactured 14' x 24' shed/barn at the base of his hill on the back border his property. No electric or plumbing will be installed. No foundation or slab will be used. The shed will rest on cement blocks. There is a 10 feet setback on the north side boundary and 5 feet setback on the west rear boundary. The shed cannot be moved away from the boundary lines 15 feet as required due to a large hill and runoff of water

There being no further comment, Chairman Kudrick closed the public hearing at 10:05 p.m.

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

1. The variance will not be contrary to the public interest. The shed cannot be seen from road.
2. The spirit of the ordinance is observed. Chairman Kudrick stated that applicant needs variance because of the steep and sudden drop off of land in that area.
3. Substantial justice is done. Equipment can be stored inside a shed.
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 hardship is the large hill where the land slopes very steeply.

**MOTION:** Tom Hebert moved to approve **Case 18-17-Z**, a request for a **Variance under Article V Use regulations section § 143-21 Table of Dimensional and Density Regulations H Rear set back** having been presented for consideration by the property owner. The applicant Jeffrey White, 434 Nadine Road,



Pembroke NH 03275 proposes to add a 14' x 24' shed to the rear of his lot within 10 feet of the lot line where 15 feet is required at **565-81-130 434 Nadine Road in the R1 zone.**

subject to the following conditions:

1. Applicant must follow all state and local regulations.
2. Must identify actual property lines with the Code Enforcement Officer before construction begins.
3. The shed must be located with no less than 10 feet setback on the north side boundary where 15 feet is required, and no less than 5 feet setback on the west rear boundary.

Paul Paradis seconded.

**VOTE:** PAUL - YES TOM - YES BRUCE - 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 August 27, 2018 as amended. Dana Carlucci seconded.

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

MINUTES OF AUGUST 27, 2018 APPROVED AS AMENDED ON A 5-0 VOTE.

### **OLD BUSINESS** -none

**NEW BUSINESS** – **Resignation letter** – **MOTION:** Dana Carlucci moved to accept with regret the resignation letter dated September 18, 2018 from Robin Lounsbury. Paul Paradis seconded. Motion passed unanimously.

### **NEXT MEETING**

**Date of next ZBA meeting** – Chairman Kudrick noted the next ZBA meeting would be on **Monday, October 29, 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 10:10 p.m.

Respectfully submitted,  
Susan P. Gifford  
Recording Secretary