

**PEMBROKE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
JANUARY 24, 2022
(ADOPTED)**

MEMBERS PRESENT: Bruce Kudrick, Chairman, Dana Carlucci, Natalie Glisson, and Paul Paradis

ALTERNATES PRESENT: Wendy Chase, Robert Bourque and Blakely Miner III

EXCUSED: Thomas Hebert, Vice Chairman

STAFF PRESENT: Paul Bacon, Code Enforcement Officer

Chairman Kudrick called the meeting to order at 7:01 p.m.

Roll call was taken by Alternate Member Miner who also read the first case aloud.

PUBLIC HEARINGS (continuation from December 27, 2021):

Case 21-30-Z A request has been made for a **Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units**. The applicant, Jules Pellerin, of 135 Tina Dr., is requesting a Special Exception to construct an ADU over a proposed new garage. A Special Exception is required under § 143-18.1. The property is located at 135 Tina Dr., Map 266, Lot 85-35, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Jules A. Pellerin
135 Tina Drive
Pembroke, NH 03275

Property Owner(s): Jules and Lisa Pellerin

Property Address: 135 Tina Drive
Pembroke, NH 03275

Tax Map 266, Lot 85-35 in the R-1A Medium Density-Residential district

Included in the Member Packets: No additional documentation

Present: Jules Pellerin

Chairman Kudrick appointed Alternate Member Bourque to vote on this case.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application 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.

He stated that anyone wishing to speak must first 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 its approval.

Mr. Pellerin said that they would like to build a 32' x 40' garage in the back yard, adjacent to their home. Due to the size and configuration of the lot, it was impossible to lay it out against the driveway because of the water easement and the backyard utilized with the grandchildren and the dogs. Attaching it to the house would take more room. He said that they would also like to utilize the second floor of the garage as a future ADU.

Chairman Kudrick said that since all the special exception application criteria was read at the last meeting, he would not require it at this meeting.

Member Carlucci asked if the Board had clarified whether one meter, one water line, and one sewer line was required.

Chairman Kudrick said that in the Town's ordinance (§143-18.1 G), an ADU cannot have separate water, sewer, gas, or electric lines. The lines must run from the main house. He also said that the owner of the property must live in one of the units.

Mr. Bacon said that a variance is allowed to be granted for a detached ADU and, as such, an attached interior door connecting the ADU to the house is not required.

Chairman Kudrick said that in response to Mr. Bacon's email to Town Counsel regarding RSA 674:73, an attached interior door is moot if the Board grants a variance for a detached ADU. The State allows detached ADUs but the Towns are not required to allow them. Chairman Kudrick said that there is nothing in the Town's ordinance that says that detached ADUs are not allowed.

Mr. Bacon said that the point of the variance is to have a detached unit. The State does not say that it cannot be done. It says that a municipality can choose to do it.

Alternate Member Miner said that he feels that the 3 cases are difficult to navigate. In his opinion, the Board cannot grant the Special Exception for an ADU until they have granted the variance for a detached ADU.

After some discussion, the Board concluded that they would concentrate on the Special Exception first, then the variance for the unit size, and, lastly, the variance for the detached unit.

No one spoke in favor or in opposition of the case.

The applicant and the Board had no further questions or comments.

Member Glisson summarized the case as follows: **Case 21-30-Z, a Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units.** Applicant made his presentation. He explained that he would like to build a 32' x 40' garage with an ADU above. The location of the garage is odd because of the lot configuration and the water easement. Mr. Carlucci asked if they could have a separate water or sewer system. Mr. Kudrick clarified that the utilities must come from the main house and said that the property owner must occupy one of the units. The Board discussed the information from Town Counsel regarding allowing the Board to grant an ADU. There was discussion on which case should come first. No one spoke for or against the case.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:25 p.m.

DELIBERATIONS: The Zoning Board of Adjustment reviewed the Special Exception criteria:

1. **Please describe how the requested use is essential or desirable to the public convenience or general welfare.**

Member Carlucci said that the ADU will provide the owner occupancy later in life.

Chairman Kudrick said that it is basically what the State law requires with regard to ADUs.

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.**

Chairman Kudrick said that the garage and ADU will be behind the home and will not be seen.

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 there are houses behind the Applicant's home.

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 no one has shown that the property value will be diminished.

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 there will not be any additional traffic.

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 property has water, sewer, gas, and electricity.

7. **Please show that there are no valid objections from abutting property owners based on demonstrable facts.**

Chairman Kudrick said that no one has come forward.

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 spoke with the water and sewer departments which indicated that there were no problems.

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 this is not a multi-family dwelling.

MOTION: Member Carlucci moved to approve **Case 21-30-Z** for a **Special Exception under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units** to allow an ADU at 135 Tina Drive as presented with the following conditions: (1) The applicant must follow all federal, state, and local regulations.

Seconded by Alternate Member Bourque.

VOTE:	B. Kudrick – Y	R. Bourque – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO APPROVE CASE 21-30-Z FOR A SPECIAL EXCEPTION UNDER ARTICLE IV USE REGULATIONS § 143-18.1 ACCESSORY DWELLING UNITS TO ALLOW AN ADU AT 135 TINA DRIVE AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL FEDERAL, STATE, AND LOCAL REGULATIONS PASSED ON A 5-0 VOTE

Chairman Kudrick opened the public hearing at 7:29 pm.

Case 21-31-Z A request has been made for a **Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units “A”**. The applicant, Jules Pellerin, of 135 Tina Dr., is requesting a **Variance** to construct a 1,200 sq. ft. ADU over a proposed new garage where 750 sq. ft. is allowed. The property is located at 135 Tina Dr., Map 266, Lot 85-35, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Jules A. Pellerin
135 Tina Drive
Pembroke, NH 03275

Property Owner(s): Jules and Lisa Pellerin

Property Address: 135 Tina Drive
Pembroke, NH 03275

Tax Map 266, Lot 85-35 R-1A Medium Density-Residential district

Present: Jules Pellerin

Alternate Member Miner read the case aloud.

The Board agreed that it would not be necessary for Chairman Kudrick to read the rules again.

As requested by Chairman Kudrick, the Applicant read the application aloud:

Please give a detailed description of your proposal below.

To add a 1200 sq. ft. ADU on top of proposed 32' x 40' garage.

1. The variance will not be contrary to the public interest.

All existing neighbors have been consulted. None had any objections. The building will not be visible from the street and not impact public appearance.

2. The spirit of the ordinance is observed.

Yes, as stated, neighbors have been advised. All paperwork required by the Town has been submitted – I's have been dotted and T's crossed.

3. Substantial justice is done.

All information requested has been submitted. Abutting neighbors advised research has been done. Every attempt to ensure a fair and final decision have been made.

4. The values of surrounding properties are not diminished.

And the structure will be constructed in a tasteful and property enhancing manner.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

Given the site layout and restrictions, this is the only way this building can be constructed. Existing neighbors have been consulted with no negative feedback. The building can only add value to our property and surrounding properties.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

There were no questions from the Board and no one spoke in favor or in opposition to the case.

Member Glisson summarized the case as follows: **Case 21-31-Z** A request has been made for a **Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units “A”**. The Applicant stated that he would like to use the space above the garage as an ADU as opposed to be wasted space. No one spoke for or against the case.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:32 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

1. The variance will not be contrary to the public interest.

Member Glisson said that it will just be another level above the garage.

2. The spirit of the ordinance is observed.

Alternate Member Miner said that the Applicant will be putting the space to use.

3. Substantial justice is done.

Chairman Kudrick said that the Applicant will have a building and is putting a unit on top of it.

4. Property values are not diminished.

Chairman Kudrick said that no diminished value was brought to the Board's attention.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

Chairman Kudrick said that he did not see any problems with hardship.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

MOTION: Member Carlucci moved to approve **Case 21-31-Z, a Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units "A"**, for a 1200 sq. ft. ADU over a proposed new garage at 135 Tina Drive as presented with the following condition: (1) The applicant must follow all federal, state, and local regulations. Seconded by Member Paradis.

VOTE:	B. Kudrick – Y	R. Bourque – N	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO APPROVE CASE 21-31-Z, A VARIANCE UNDER ARTICLE IV USE REGULATIONS § 143-18.1 ACCESSORY DWELLING UNITS "A", FOR A 1200 SQ.

FT. ADU OVER A PROPOSED NEW GARAGE AT 135 TINA DRIVE AS PRESENTED WITH THE FOLLOWING CONDITION: (1) THE APPLICANT MUST FOLLOW ALL FEDERAL, STATE, AND LOCAL REGULATIONS PASSED ON A 4-1 VOTE.

Chairman Kudrick opened the public hearing at 7:34 pm.

Case 21-32-Z A request has been made for a **Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units “B”**. The applicant, Jules Pellerin, of 135 Tina Dr., is requesting a **Variance** to construct an ADU over a proposed new garage which will be detached from the single-family dwelling, where ADU’s that are attached or within, only, are allowed. The property is located at 135 Tina Dr., Map 266, Lot 85-35, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Jules A. Pellerin
135 Tina Drive
Pembroke, NH 03275

Property Owner(s): Jules and Lisa Pellerin

Property Address: 135 Tina Drive
Pembroke, NH 03275

Tax Map 266, Lot 85-350 R-1A Medium Density-Residential District

Present: Jules Pellerin

Alternate Member Miner read aloud the case.

Again, the Board agreed that it would not be necessary for Chairman Kudrick to read through the rules.

As requested by Chairman Kudrick, the Applicant read the application aloud:

Please give a detailed description of your proposal below.

To receive a zoning variance for a 32’ x 40’ “detached” garage with a 1200 sq. ft. ADU on the second floor. Due to site and setback restrictions, this is the only way we can construct the proposed building.

1. The variance will not be contrary to the public interest.

All existing neighbors have been notified with none raising any concerns. The building will not be visible from the street so it will not have an effect on passing traffic.

2. The spirit of the ordinance is observed.

All required paperwork has been filed. All existing neighbors have been consulted. Emphasis has been placed on detail and every attempt to “dot I’s and cross T’s” has been made.

3. Substantial justice is done.

All neighbors have been notified. All required paperwork, has been filed. A complete survey has been completed and corner markers have been placed for proposed footprint of the suggested building.

4. The values of surrounding properties are not diminished.

The building will be constructed tastefully with emphasis on blending in with the existing home.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

Due to site size and configuration, this is the only spot the proposed structure can be built. All neighbors have been advised with none having concerns. This has been our dream for years and these variances are the only way we can make this happen.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

There were no questions from the Board and no one spoke in favor or in opposition to the case.

Member Glisson summarized the case as follows: **Case 21-32-Z A** request has been made for a **Variance under Article IV Use Regulations § 143-18.1 Accessory Dwelling Units “B”**. The Applicant read through the criteria. The Board had no questions and no one spoke for or against the case.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:40 p.m.

Member Glisson read aloud the e-mail from Mr. Bacon to Town Counsel with regard to a detached ADU, dated December 29, 2021. She also read aloud Town Counsel's reply dated January 3, 2022.

Mr. Bacon referred to RSA 674:73 "Detached Accessory Dwelling Units. – A municipality is not required to but may permit detached accessory dwelling units. Detached accessory dwelling units shall comply with the requirements of, and any municipal ordinances or regulations adopted pursuant to RSA 674:72, IV through IX." He said that the regulation begins with IV, but RSA 674:72, III requires an interior door. He said that if the Board approved a detached ADU, then the interior door is moot. Mr. Bacon concluded that a detached ADU is allowed by the state but the municipality does not have to allow it but it can be done with a variance.

Member Carlucci said that he read the regulations and agreed with Mr. Bacon. A variance is required for a detached ADU since the Town's ordinance does not allow it.

Chairman Kudrick said that unless the state RSA specifically says that a detached ADU is not allowed, the municipality can give a variance to allow it.

Alternate Member Bourque said that Item C in the regulations requires an interior door which is different from the RSA, eliminating it by giving a variance on a detached ADU. He said that the Town does not have anything in their regulations determining whether or not a detached ADU is allowed. In his opinion, the Board cannot take a variance against it when it is not listed in the regulations. He said that the Board also has the same problem with Item G (utility service for both units).

ZONING BOARD MEMBER DELIBERATIONS:

1. The variance will not be contrary to the public interest.

Member Carlucci said that the Board has not heard anything from abutters.

2. The spirit of the ordinance is observed.

Chairman Kudrick said that he is going by what Town Counsel said. On a side note, Chairman Kudrick said that Alternate Member Bourque may want to bring detached ADUs to the attention of the Planning Board who may want to work on language for the Town's ordinance.

3. Substantial justice is done.

Chairman Kudrick said that Town Counsel gave their approval.

4. Property values are not diminished.

Chairman Kudrick said that there is no evidence of such.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Chairman Kudrick said that there is hardship of the lot.

(A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

MOTION: Member Calucci moved to approve **Case 21-32-Z**, the variance for a detached Accessory Dwelling Unit above a garage at 135 Tina Drive with the following conditions: (1) Applicant to follow all local, state, and federal regulations; (2) There shall be only one electrical meter, water meter, and sewer meter for both units as stipulated in §143-18G; and (3) the property owner must occupy one of the units. Seconded by Member Paradis.

VOTE:	B. Kudrick – Y	R. Bourque – N	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO APPROVE CASE 21-32-Z, THE VARIANCE FOR A DETACHED ACCESSORY DWELLING UNIT ABOVE A GARAGE AT 135 TINA DRIVE WITH THE FOLLOWING CONDITIONS: (1) APPLICANT TO FOLLOW ALL LOCAL,

STATE, AND FEDERAL REGULATIONS; (2) THERE SHALL BE ONLY ONE ELECTRICAL METER, WATER METER, AND SEWER METER FOR BOTH UNITS AS STIPULATED IN §143-18G; AND (3) THE PROPERTY OWNER MUST OCCUPY ONE OF THE UNITS PASSED ON A 4-1 VOTE.

Chairman Kudrick opened the public meeting on Case 21-25-Z at **7:56 pm.**

He removed Alternate Member Bourque as a voting member and appointed Alternate Member Chase to vote on the next case.

Case 21-25-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, G, Side Setback.** The applicant, Anthony Petrillo, of 403 Pembroke St., is requesting a variance to leave his already built shed, which is 1' from the side setback where 15' is required. The property is located at 403 Pembroke St., Map 565, Lot 108, in the R-1A Medium Density-Residential District, and is owned by the applicant.

Applicant: Anthony J. Petrillo III
403 Pembroke Street
Pembroke, NH 03275

Property Owner(s): Anthony J. Petrillo III

Property Address: 403 Pembroke Street
Pembroke, NH 03275

Tax Map 565, Lot 108 in the R-1A Medium Density-Residential District

Included in the Member Packets: Fee Schedule Worksheet; Abutters List Report.

Present: Anthony J. Petrillo III

Alternate Member Miner read aloud the case.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application 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.

He stated that anyone wishing to speak must first 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 its approval.

As requested by Chairman Kudrick, the Applicant read the application aloud:

Please give a detailed description of your proposal below.

I am requesting a variance for Article 5, Section 143-21, which states no structure within 15 feet of a property line. My request is to have a lean-to in order to store winter weather equipment (snow blower, shovels, etc.) as well as trash and recycling receptacles. The lean-to currently ends within 1 foot of my property line. As the project to build the lean-to was progressing, the contractor recommended that he build a free-standing structure rather than attaching the lean-to to the garage, as he had originally planned. I agreed to that change, and requested that he add doors on the front (street side) and back (yard side) of the lean-to. As part of the lean-to, he had intended to simply replace the stockade fencing that had already been used as a fence in the location with new stockade fencing, but chose to use a more weather resistant material instead. He already had a fence there which opened from side yard to the back. I thought it would be helpful to store my shovel, snowblower, etc. to save the integrity of the equipment, I put a double fence.

1. The variance will not be contrary to the public interest.

The request is not contrary to the public interest for the following reasons:

- a. The structure is well built and looks orderly
- b. Other nearby residences also have structures near or on the property lines, so this structure will not appear out of the ordinary.

2. The spirit of the ordinance is observed.

The spirit of the ordinance, which I assume is intended to preserve the look and feel of the neighborhood, is observed in the high-quality construction and finish of the structure. I am also using the structure to conceal the equipment I need in the winter. The equipment would otherwise be stored on my driveway, where people would see it. I believe the structure adds to the sense of order in the neighborhood by concealing my machinery.

3. Substantial justice is done.

Substantial justice is done with this variance by creating an orderly look to my residence. The orderly look of my residence adds to the appeal of the neighborhood, benefiting all residents.

4. The values of surrounding properties are not diminished.

The value of surrounding properties may in fact be increased, not decreased, by the addition of the lean-to by creating a feeling of symmetry and order on my property.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

The proposal is a reasonable one in that it leaves my property looking well cared for, and it acknowledges the need for machinery in the winter to remove snow.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

No one spoke in favor of the applicant.

Alternate Member Miner read aloud a letter dated December 23, 2021 from Ryan and Emily Kosowicz in opposition to the case.

Chairman Kudrick stated that the shed was built without a permit and that it is against State law to shed water onto someone else’s property.

Mr. Petrillo said that he took water run-off into consideration and that there is no issue.

Mr. Bacon said that it is not just the eaves dripping, it is the runoff from the roof that pools at the bottom and it is a downgrade to the neighbor’s driveway.

Chairman Kudrick also pointed out that if there was a fire on his property, it would be very difficult for the Fire Department to get equipment behind his house, although his major concern is that no permit was pulled, encroachment on the side setback, and the potential water issue.

Member Carlucci said that, although he did not go onto Mr. Petrillo’s property, it looked like the Applicant had space in the rear of the property for a shed.

Mr. Petrillo said that there is a shed in the middle of the back yard. He wanted the shed to be near his driveway so he would not have to snowblow a trail on the grass, and open a gate in order to snowblow his driveway.

Member Carlucci said that the Board has an obligation to make sure that people are safe and no harm comes to their property.

The Applicant said that the structure is not on a foundation. It is not a permanent structure.

The Applicant said that the shed is approximately 13' x 8'.

There were no further questions from the Board and no one spoke in favor or in opposition to the case.

Member Glisson summarized the case as follows: **Case 21-25-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, G, Side Setback.** The Applicant read through the criteria. No one spoke in favor. One abutter wrote a letter to the ZBA against the shed stating concerns with runoff and placement inside a setback. Chairman Kudrick reminded the Applicant that he needs a permit to build, and that no water can go onto someone else's property from the lean-to. The Applicant stated that he observed no runoff and did not see any issues. The Building Inspector also stated that any runoff is considered illegal and not allowed by Town and State code. The Applicant also did not get a variance to build the shed in the setback. Member Carlucci asked about room in the back of the property and the Applicant stated that he placed the shed toward the front due to accessibility for the snowblower. The shed can be moved. It is not attached to anything. Member Bourque asked questions about a sufficient fire break.

The Applicant and the Board had no further comments.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 8:22 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that the building is taking up the entire setback. There is also the possibility that water could get onto the neighbor's property considering how close it is.

Alternate Member Miner pointed out that the neighbor's garage looks like it is one foot off the fence and is a much larger building than the Applicant's shed. He asked if Mr. Petrillo could install a gutter on the shed and direct the water away from the property line.

Member Carlucci said that he is not as concerned about the water issue as fire. The garage North of the Applicant could have been built pre-zoning and §143:3's purpose is to protect against fire not diminished value.

Member Carlucci said that the contractor is the one who pulls the permit and he had an obligation to build the shed in accordance with the ordinance.

Chairman Kudrick said that . . .

1. The variance will not be contrary to the public interest.

Member Carlucci said that it is contrary to the public interest of the abutting neighbor.

2. The spirit of the ordinance is observed.

Member Carlucci said that §143:3 is not observed and is a fire concern.

3. Substantial justice is done.

Chairman Kudrick said that the entire structure is within the entire setback.

4. Property values are not diminished.

Chairman Kudrick said that there is no evidence of diminished property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Chairman Kudrick said that he has a hardship of the land because it is a very small lot.

(A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

MOTION: Member Carlucci moved to approve **Case 21-25-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, G, Side Setback** at 403 Pembroke Street where the shed is in the setback. Seconded by Member Paradis.

VOTE: B. Kudrick – N W. Chase – N D. Carlucci – N
 N. Glisson – N P. Paradis – N

MOTION TO APPROVE CASE 21-25-Z, A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, G, SIDE SETBACK AT 403 PEMBROKE STREET WHERE THE SHED IS IN THE SETBACK WAS DENIED ON A 5-0 VOTE.

IV. Approval of Minutes – December 27, 2021.

MOTION: Member Carlucci moved to approve Meeting Minutes of December 27, 2021 as amended. Seconded by Member Glisson. Unanimously approved.

V. Other Business/Correspondence

In response to Alternate Member Bourque's question, Chairman Kudrick clarified that it has been the past practice of the Zoning Board, that if any one of the 5 criteria of a variance or any one of the 9 criteria of a special exception fails, then the variance or the special exception fails.

A letter of Request for a rehearing was received from Robert Best of Sulloway & Hollis, representing William Evans for Case 21-21-Z and Case 21-22-Z.

Chairman Kudrick said Town Counsel felt that the Board did not do a good enough job in denying the case. He said that if the Board votes to rehear the case, Town Counsel would attend a non-public session prior to the rehearing and then would attend the rehearing. Chairman Kudrick said that the Board has experienced this before and the Attorney wrote the motion.

MOTION: Chairman Kudrick moved to rehear Case 21-21-Z. Seconded by Member Carlucci.

VOTE: B. Kudrick – Y W. Chase – Y D. Carlucci – Y
 N. Glisson – Y P. Paradis – Y

MOTION TO REHEAR CASE 21-21-Z PASSED ON 5-0 VOTE.

Chairman Kudrick said that if an application is brought before the Board for 101 units, the Zoning Board must approve the project for 101 units. From that point, the application would go before the Planning Board which then scrutinizes the wetlands, roads, and other conditions that the Zoning Board does not have the authority to look at. Based on the findings, the

Planning Board can alter the number of units built, even though 101 units were approved by the Zoning Board.

Alternate Member Bourque said that, if the lot is perfect, the Planning Board cannot change the number of units. If the applicant cannot meet the Site Plan Regulations for 101 units, the applicant would have to reduce the number of dwelling units. He said that the restrictions of the property such as wetlands, wetland buffers, outcroppings of ledge, grades greater than 25%, would be the only things that would restrict the number of dwelling units that the applicant could build. He said that the Planning Board cannot arbitrarily change the number of units that the Zoning Board approved.

With regard to the Evans rehearing, Chairman Kudrick said that they will be coming back at the next meeting. Abutters should be re-noticed. He suggested that Mr. Bacon speak with the Planning Director to make sure that the notifications are done correctly.

Chairman Kudrick said that there will be a nonpublic session at 7:00 pm and the regular meeting will begin at 7:30 pm.

VI. Adjournment.

MOTION: Alternate Member Bourque moved to adjourn the meeting at 9:00 pm. Seconded by Member Carlucci.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary