

TOWN OF ALLENSTOWN  
Zoning Board of Adjustment  
16 School Street  
Allenstown, New Hampshire 03275  
October 27, 2015

**Call to Order.**

The Allenstown Zoning Board of Adjustment Meeting for October 27, 2015 was called to order by The Chair at 6:24pm.

**Roll Call.**

Present on the Board: Eric Feustel, Diane Demers, Chris Roy, Roger LaFlamme, and Robert Bergeron.

Ex-Officio: Jeff Gryval

**Others Present.**

Residents of Allenstown:

Others Present: George Fredette, SFC Engineering & Partnership LLC.

Other Public Officials:

Allenstown Staff: Dana Pendergast, Building Inspector.

**Review and Approve Minutes**

The Chair stated Mr. Roy asked for the correction “Board of Adjustment” not the “Board of Selectmen”. Mrs. Demers stated she fixed it as well as the order of the vote on the Niyati Reality case.

Motion. Mr. Roy made a motion to accept the minutes for September 9, 2015 as accepted. Mrs. Demers seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

**Case# 2015-0005 – Request for Rehearing Niyati Realty, LLC & SFC Engineering Partnership, Inc. 289 Pinewood Road Lot# 409-032 Commercial Zone Variance Article VI Section 601**

The Chair stated they are here to discuss the possibility of rehearing the Case 2015-0005. Chief Pendergast stated this is for them to read into record the letter from Mr. Fredette. He stated Mr. Fredette can't present any evidence. He stated it is for the Board to determine whether or not to have a rehearing.

The Chair read a letter from Mr. Fredette requesting a rehearing. The letter read the following:

“Mr. Feustel:

On behalf of Niyati Realty LLC, SFC Engineering Partnership, Inc. requests a hearing of the variance application previously considered on September 9, 2015. This request is presented in accordance with the provisions of NH RSA 677:2.

The Zoning Board of Adjustment denied the request for a variance to the terms of Article VI section 601 of the Zoning Ordinance of the Town of Allenstown to permit the construction and operation of a convenience store, filling station, and restaurant in the Open Space and Farming Zone, where these uses are not permitted.

Should the re-hearing be granted, we will present the following information:

- (a) A copy of an agreement with the Town will be presented that demonstrates that this project is a cooperative effort with the Town of Allenstown. The property was transferred to the current landowner with the understanding and expectation that it was to be developed as a convenience store, filling station, and restaurant. Substantial justice will be done with the granting of this variance.
- (b) We will demonstrate that the proposal will not diminish surrounding property values with the following new information:
  - a. We will depict site design elements that will mitigate the concerns stated in abutters' testimony that this proposed use will diminish surrounding property values, specifically light and sound pollution, and threat to groundwater.
  - b. Expert testimony from Capital Appraisal Associates, a NH certified appraiser.
  - c. Catamount Hill Cooperative will not only avoid suffering diminution of property values, but benefit from the project because they will (a) acquire a required well protection easement, (b) enjoy the safety benefit of a relocated school bus stop, and (c) enjoy increased safety with better access to the store for daily needs.
  - d. We will demonstrate that this project affords protection in accordance with NHDES Env-Wq 1008.07 (a) to existing wells on adjacent properties to the north and south of the proposed development.

- e. We will demonstrate that the proposed project will not alter the essential character of the neighborhood.
- (c) We will demonstrate that the proposed is in the public interest with the following new information:
  - a. The chairman’s instruction that the board members should not consider “increasing the tax base” is not appropriate.
  - b. The project will provide economic development for Allenstown through the creation of approximately 10 jobs, the generation of approximately \$150,000 in annual payroll, and an increase in property value. The Economic Development Committee and Board of Selectmen endorse these advantages.
  - c. The proposal helps Allenstown capture potential tourism dollars by capitalizing on the location near the access to Bear Brook State Park to (Master Plan 2003)
- (d) We will demonstrate that this proposal is within the spirit of the ordinance because it will promote health, safety and general welfare of the community because:
  - a. This project will mitigate an existing safety concern with snowmobilers who cross Route 28 on foot and on their sleds to get fuel and food at the existing gas station by providing those services on the east side of Route 28
  - b. This project will mitigate an existing safety concern by moving the school bus stop onto Catamount Hill Coop property and off of Route 28
- (e) We will demonstrate that the proposal will suffer hardship in accordance with the tests outlined in the following new information:
  - a. We will demonstrate that the character of the area, defined by traffic volumes and the existence of nearby commercial properties-which includes a commercial gravel excavation operation-defines this site, and therefore the proposed use is a reasonable one, and that the purpose of the ordinance is not frustrated by granting of this variance.
  - b. We will demonstrate that the ordinance interferes with the reasonable use of the property considering the unique setting of the property in its environment.

We reserve our right to amend this petition at a later date in accordance with NH RSA 677:4 because draft minutes were not available at the time that this request for re-hearing is filed.

Signed by George Fredette, PE SFC Engineering Partnership Inc.”

Motion. Mr. Roy made a motion to go into deliberation. Mrs. Demers seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

Mr. LaFlamme stated Mr. Fredette mentions the economic impact however they are not allowed to consider the economic impact in our decision. The Chair stated in his opinion the statement in the letter about the economic development is false. Mr. LaFlamme stated his objection is the impact of the houses nearby and the appraiser giving an opinion. The Chair stated if they want to bring in expert opinion they can.

Mr. LaFlamme stated he [the applicant] bought the property with the understanding he would be able to put a piece of commercial property and he should have known he bought property in open space and farming.

Mr. Gryval stated it is not exactly what happened. He explained the town had a piece of property they sold when they thought it would provide economic return to the town. He stated it was the feeling of the BOS it wouldn't affect any of the neighbors since there were so many other commercial pieces next to the property.

Mr. Gryval stated he was ill at the last ZBA meeting which is why Mrs. Demers voted in his absence. He stated she will continue to do so since she has heard all the testimony. He stated he was shocked to hear the variance wasn't granted.

Mr. Gryval stated he got the feeling there were some things the Board may want to reconsider as well. The Chair stated no one told them about the deal the town had made with Niyati Realty. He stated if it was an issue they should have **some** to the ZBA first. Mr. Gryval stated they had a certain amount of work which needed to be done to be sure they could do what they wanted to do on the property. He stated they were very clear the BOS was separate from the ZBA. He stated they were dealing with the State on driveway access, Catamount Co-op, and the school bus stop issue. The Chair stated the bus stop is something which has always been on there. Mr. Gryval stated there is going to be more space for the school bus to pull off.

Mr. LaFlamme asked about one of the abutter's mentioning a well. Chief Pendergast stated the wells are on Catamount property. He showed them the location of the wells on the plans. Mr. Gryval stated it is the state of NH which governs where filling stations can go in proximity to the wells and they have no problem with it. The Chair stated he is more concerned with the abutters' proximity. Mr. Gryval stated if anything was to leak it will go downhill not up.

Mrs. Demers stated her opinion is Route 28 is one of the only areas for commercial property. She stated it is right on the border of commercial properties. She stated it will be on a major roadway and not in the middle of residential property.

The Chair asked at what point are they changing the zoning. Chief Pendergast stated they are not changing the zoning they are allowing additional use to the property. The Chair stated it is

effectively no longer open space or farming; it's semantic. Mr. Gryval stated every time the Board grants a variance they are **severing** the zoning laws.

The Chair stated on a property on something like this he would be more than willing to bend on an in home business. He stated philosophically this is the kind of place he would like to see a borderline use not a gas station, restaurant or drive-thru.

Mr. LaFlamme stated Route 28 is definitely commercial property. He stated 20 years ago they gave a variance to make the park residential.

The Chair stated the question before them is in the letter have they given the Board reason to rehear the case. Mr. Roy stated yes. Mr. LaFlamme stated if they are going to bring in the appraisers to build a case then they could rehear it.

Motion. Mr. Roy made a motion to come out of deliberation. Mrs. Demers seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

Motion. Mr. Roy made a motion to rehear Case #2015-0005. Mrs. Demers seconded the Motion.

Mr. Gryval stated he thinks it is wise to rehear the case because if they think they didn't have everything at the time it will allow them to hear it.

A Roll Call Vote was taken: Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

Chief Pendergast stated the applicant requested a November 25, 2015 meeting if it is possible. The Board discussed meeting on December 9, 2015. Mrs. Demers stated she cannot be there on December 9, 2015.

The Chair informed Mr. Fredette if they don't have a full board present at the rehearing they have the option of postponing at the time however they need to have three affirmative votes.

Mr. Fredette asked if there is a timeframe to rehearing the meeting. Chief Pendergast stated it is thirty days to have a meeting to determine if they will rehear the case. Mrs. Demers stated they are outside of the 30 days by going to December 9, 2015. Mr. Fredette stated they are not under a timeframe and will work with the Board to meet whenever they can. Mr. Roy asked if they can do the meeting on December 8, 2015.

The Chair asked if a room is available for December 8, 2015. Mrs. Demers stated they can get them a room. The Board discussed changing the meeting nights to Tuesdays so Mrs. Demers could be available.

The Board determined to rehear the case on December 8, 2015 at 6:30pm.

A resident expressed her frustration with the Board rehearing the case. The Chair encouraged her to come to the rehearing and voice her opinions at the meeting.

Motion. Mr. Roy made a motion to adjourn. Mrs. Demers seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

The Chair declared the meeting adjourned at 6:55pm.

October 27, 2015

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**Signature Page**

<b>Original Approval:</b>	
ERIC FEUSTEL, Chair	DATE
CHRISTOPHER ROY, Member	DATE
ROGER LAFLAMME, Member	DATE
ROBERT BERGERON, Member	DATE
DIANE DEMERS, Member	DATE

**Amendment Approvals:**

<b>Amendment Description:</b>	<b>Approval:</b>	<b>Date:</b>
	ERIC FEUSTEL, Chair	DATE
	CHRISTOPHER ROY, Member	DATE
	ROGER LAFLAMME, Member	DATE
	ROBERT BERGERON, Member	DATE
	DIANE DEMERS, Member	DATE