

TOWN OF ALLENSTOWN
Zoning Board of Adjustment
16 School Street
Allenstown, New Hampshire 03275
August 12, 2020

CALL TO ORDER

The Allenstown Zoning Board of Adjustments virtual meeting of August 12, 2020 was called to order by Chair Keith Klawes at 6:37 pm. He called for the Pledge of Allegiance.

Chair Klawes made the following statement regarding the virtual (electronic) meeting:

As Chair of the Allenstown ZBA, I, Keith Klawes, find that, due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12, pursuant to Executive Order 2020-04, this public body is authorized to meet electronically. Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are utilizing a conference call line, Zoom video conferencing, and Facebook Live for this electronic meeting. All members of the ZBA have the ability to communicate contemporaneously during this meeting through one of these platforms, and the public has access to the same – to listen and, if necessary, participate. Access the Zoom platform by dialing 603-485-7321, password 1234, or by clicking on the website link and typing it into your browser. You may need to download Zoom Software to participate. The conference link is #865 7504 1124, password 081220.

ROLL CALL

Present on the Board: Dawna Baxter, Keith Klawes, Matt Pitaro, Matt L'Heureux
Chair Klawes stated that Jeffrey Gryval is excused.

Allenstown staff: Derik Goodine, Town Administrator; Brian Arsenault, Code Enforcement Officer;
Kathleen Pelissier, Town Clerk

Others present: Gerard Kabanda, applicant; Sandy McKenney, abutter

SWEARING IN OF NEW MEMBER

Town Clerk Kathleen Pelissier administered the oath of office to new ZBA member Matt L'Heureux.

OLD BUSINESS/RECIPT OF APPLICATIONS& PUBLIC HEARINGS

None

NEW BUSINESS/RECIPT OF APPLICATIONS & PUBLIC HEARINGS

ZBA Case #2020-05 – 21 Main Street (Lot#105 Map#112-156) Zoned: Residential

Special Exception: Requesting Multi-Family Dwelling – (Article VII Section 702.i)

Variance: Dimensional Restrictions – (Article VII Section 703.g) All two (2) family dwellings, apartment houses and multifamily dwellings having Town water and sewer available shall have at least ten thousand (10,000) square feet of lot size for each dwelling unit.

Chair Klawes informed the applicant that he is entitled to be heard by a full Board of five (5) members, with only four (4) present at this meeting. He also informed the applicant that he would need three (3) affirmative votes.

Mr. Kabanda stated that he understood and would proceed without a full Board.

Mr. Kabanda stated that he has a large barn (57 X 30 feet) on his property which is in very bad condition and overrun with animals because of holes in the structure. It is 107 years old. He would like to tear it down because it is an eyesore and is collapsing. He said he was not able to sell his property last fall because of the barn. His plan is to construct two two-car garages on the same site, with one living space above each garage. One unit would have one bedroom and the other would have two. The total square footage would be 3,000, with both floors. In the house that he owns on the same property, he and his family live on the second floor and he has a tenant on the first floor. The tenant is a nurse from Maine who came to the area during the pandemic to work in Manchester. That was supposed to be temporary. He said that he built a wall to separate the two living spaces. He and his family use the front entrance and go up the stairs directly from the entrance. The tenant enters via a side door.

Mr. Pitaro asked about the total number of units proposed for the property.

Mr. Kabanda said that, in addition to his first-floor tenant and his own family, there is another unit in the back. If allowed to replace the barn with the two garages and living spaces, there will be a total of five (5) units.

Mr. L'Heureux asked if each unit in the house has its own kitchen and bathrooms.

Mr. Kabanda said that they do.

Mr. Goodine shared the floor plan supplied by Mr. Kabanda.

Ms. Baxter noted that the third apartment in the back has its own property card.

Mr. Kabanda said the first floor has large windows which could be used to escape in an emergency. The Fire Department has told him that this is okay.

Mr. Arsenault reported that the third apartment was established without a permit; the zoning allows only two-family homes in that area.

Ms. McKenney stated that Mr. Kabanda needs 50,000 square feet in order to have five apartments, but his lot is only 29,000 square feet.

Mr. Pitaro asked about the size of the first-floor apartment in the back.

Mr. Kabanda said it is about 1,100 square feet, with two bedrooms, a living room, dining room, bathroom, kitchenette and a large (16X16) deck. He said there is also a garage without a door.

Mr. Arsenault stated that each bedroom represents 110 gallons of sewer flow .

Ms. McKenney asked if the proposed garages were for one car.

Mr. Kabanda responded that each is a two-stall garage. Each stall is 24 X24 feet.

Ms. Baxter made a motion to enter into deliberations. Mr. L'Heureux seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - aye

Matt Pitaro – aye

Matt L'Heureux - aye

Keith Klawes – aye

The motion carried unanimously.

Chair Klawes stated that they would discuss the nine (9) criteria for a Special Exception under Article VII Section 702.1 for a Multi-Family dwelling.

1. No hazard to the public or adjacent property on account of potential fire, explosions, toxic materials or hazardous activity

All four Board members agreed that this would not be a problem in this situation.

2. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood due to the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust or other pollutants, noise, glare, heat vibration or unsightly outdoor storage of equipment, vehicles or other materials

All four Board members agreed that this would not be a problem in this situation.

Mr. L'Heureux noted that, according to HUD regulations, more than four units is classified as commercial.

3. No creation of a traffic safety hazard or unmitigated substantial increase in the level of traffic congestion in the vicinity

Mr. Pitaro asked about the parking of vehicles at the property.

Mr. Kabanda said that there are seven (7) parking spaces.

Chair Klawes asked about access points.

Mr. Kabanda said he has one driveway.

Ms. Baxter said this should have been classified as a multi-family dwelling a long time ago.

All four Board members agreed that there would be no traffic safety hazards.

4. No excess demand on municipal services, including but not limited to water, sewer, waste disposal, police and fire protection and schools

Chair Klawes said that the Board doesn't know the answer to this. He said he could not respond without checking on the situation with water and sewer at the property.

Mr. Pitaro and Mr. L'Heureux agreed with Chair Klawes on this point.

Mr. Arsenault said that the sewer line there, which is entering the main, is 100 years old. It would have to be determined if it is sized for three units.

Ms. Baxter pointed out that there are no new bedrooms. They could have one family there with ten children.

Chair Klawes asked if he could have been approved for multi-dwelling status.

5. No significant increase in storm water run-off onto adjacent properties or public ways

Mr. Arsenault said it should be determined how to handle rain events.

All four Board members agreed that increased storm water run-off should not be a problem.

6. In an appropriate location for the proposed use

All four Board members agreed that this criterion is met.

7. No adverse effect on the health and safety of residents and others in the area and the proposed use shall not be detrimental to the use or development of adjacent or neighboring properties.

Ms. Baxter stated that there are several multi-dwelling homes on the street.

All four Board members agreed that this criterion is met.

8. In the public interest and in the spirit of the ordinance

All four Board members agreed that this criterion is met.

9. Requirements set forth in the ordinance for the particular use permitted by a Special Exception

All four Board members agreed that this criterion is met.

Chair Klawes asked for a motion in the positive regarding the request for a Special Exception.

Ms. Baxter made a motion to grant the Special Exception for a Multi-Family Dwelling, Article VII Section 702.i. Mr. Pitaro seconded the motion.

Chair Klawes said he would like to amend the approval, making it contingent upon a statement of the sewer and water departments that this infrastructure is up to code and there will be no excess demand.

Mr. Pitaro made a motion to approve the original motion as amended. (There was no second to this motion.)

A roll call vote was taken on the motion as amended.

Dawna Baxter - aye

Matt Pitaro – aye

Matt L’Heureux - aye

Keith Klawes – aye

The motion carried unanimously.

Ms. Baxter said she would reach out to Jeff Backman at Allentown Sewer.

Mr. Pitaro motioned to tabling deliberation on the Variance request until the Special Exception is approved. Chair Klawes seconded the motion.

Chair Klawes noted that the two requests are interdependent; they need each other. He said there should be a separate application for the two apartments proposed to go over the garage. Without this exception, he said, the applicant is already in violation.

No vote was taken on Mr. Pitaro’s motion to table deliberation on the variance request.

Chair Klawes stated, after further thought, that they should proceed with a discussion of the variance issues, based only on the existing three-unit dwelling – not including the barn. The specific Variance is regarding Dimensional Restrictions, Article VII Section 703.g.

1. There will not be a diminution of value of the surrounding properties as a result of the granting of this variance.

Board members agreed that this is true because there are already multi-tenant dwellings on the street. There are at least three with four units.

2. The granting of the variance will not be contrary to the public interest.

Chair Klawes shared the applicant's response, which said that this does not affect the public because it is for his own use. He is not expanding the footprint.

Chair Klawes said he disagrees that this does not affect the public.

The Board members agreed that this is not contrary to public interest.

3. Enforcement of the zoning ordinance will create an unnecessary hardship.
 - aa. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

B. Arsenault said it will create an unnecessary hardship because the third unit already exists.

Chair Klawes said he did not agree with the applicant's hardship claim due to loss of rental income.

Mr. L'Heureux said that it is a reasonable use, aside from the income factor.

The Board members agreed that the situation creates unnecessary hardship.

- bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

Board members agreed that this criterion is met.

4. Through the granting of relief by a variance, substantial justice will be done.

Chair Klawes shared the applicant's response: He would like to be able to use his property as his neighbors use theirs.

Mr. Pitaro said they need to give weight to what the applicant has explained at this hearing, not just to what is in the application.

Chair Klawes reminded Mr. Pitaro that they are looking only at the existing home, not at the barn, at this point.

Mr. Kabanda agreed to have the language about the barn removed.

5. The use for which the variance is requested will not be contrary to the spirit of the ordinance.

Chair Klawes stated that he agrees with this statement as long as the verbiage regarding the barn is removed because the Board will deal with the proposed development to replace the barn separately.

The Board members agreed.

Ms. Baxter expressed concern that noticing a new hearing will cost the applicant \$400.

Mr. Arsenault said a continuation will not require re-noticing.

Mr. Pitaro made a motion for continuation of this hearing. Mr. L'Heureux seconded the motion.

A roll call vote was taken on the motion for continuance.

Dawna Baxter - aye

Matt Pitaro – aye

Matt L'Heureux - aye

Keith Klawes – aye

The motion carried unanimously.

Mr. Arsenault said that, if Mr. Kabanda has five units, he may be subject to HUD requirements and be required to install sprinklers in all of the apartments.

UNAPPROVED MINUTES & UNSIGNED MINUTES

None

CORRESPONDENCE & OTHER BUSINESS

None.

STAFF UPDATE

Chair Klawes welcomed Mr. L'Heureux as a new member of the Board. He added that Mr. Pelissier might be serving as an alternate if he can do so legally.

ADJOURNMENT

Mr. Pitaro made a motion to adjourn at 8:34 pm. Mr. L'Heureux seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - aye

Matt Pitaro – aye

Matt L'Heureux - aye

Keith Klawes – aye

The motion carried unanimously, and the meeting was adjourned.

ZBA
SIGNATURE PAGE
AUGUST 12, 2020

SIGNATURE	MEMBER	DATE
____ Yes-Via Roll Call Voice Vote-	Keith Klawes, Chairman	09.23.20 ____
____ Yes-Via Roll Call Voice Vote-	Dawna Baxter, Secretary	09.23.20 ____
_____	Jeff Gryval, Member	_____
____ Yes-Via Roll Call Voice Vote-	Matt Pitaro, Member	09.23.20 ____
____ Yes-Via Roll Call Voice Vote-	Matt L'Heureux, Member	09.23.20 ____