

TOWN OF ALLENSTOWN  
Zoning Board of Adjustment  
16 School Street  
Allenstown, New Hampshire 03275  
September 23, 2020

**CALL TO ORDER**

The Allenstown Zoning Board of Adjustments virtual meeting of September 23, 2020 was called to order by Chair Keith Klawes at 6:34 pm.

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 #810 3731 2385, password 092320. For Facebook Live, you can tune into the Town of Allenstown Facebook page and look for the LIVE video there. We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the Town of Allentown Zoning Board page attached to the agenda for the meeting. If anyone has a problem, please call 207-595-0310 or email [d.goodine@allenstownnh.gov](mailto:d.goodine@allenstownnh.gov). In the event the public is unable to access the meeting, it will be adjourned and rescheduled. The meeting will only be adjourned if the video links fail and a quorum of the Zoning Board is needed on the conference call. Please not that all votes taken during this meeting shall be done by roll call.

Chair Klawes called for the Pledge of Allegiance.

**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

Others present: Gerard Kabanda, applicant; Sandy McKenney, abutter; Tom Zajak, Project Manager, Civil Engineer, Hayner/Swanson; John Cronin, Counsel for Brady Sullivan, Cronin, Bisson & Zalinsky, PC; Chris Lewis, Project Architect for Brady Sullivan

## **OLD BUSINESS/RECIPT OF APPLICATIONS & PUBLIC HEARINGS**

- **ZBA Case #2020-05 – 21 Main Street ((Lot 105, Map 112-156) Zoned: Residential  
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 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 have his case heard by a full ZBA Board of five (5) members, and that only four (4) ZBA members were present. He also told him that he would need three (3) votes in the affirmative.

Mr. Kabanda, the applicant, stated that he was willing to proceed with only four members.

Chair Klawes stated that the applicant has slightly fewer than the 30,000 square feet required for the three units on the property. There are two units in the main building and a third apartment in a separate building on the property, which has its own property card.

Mr. Arsenault stated that he walked through the main house and found fully-renovated kitchens and bathrooms in both apartments. He said he didn't review the third apartment, which is not in the main building.

Chair Klawes read from Mr. Arsenault's report, which stated that he visited the property on September 21<sup>st</sup> and found three separate entrances for the three units. He asked if the work done on the property was approved, permitted work, and if it was safe with the proper fire exits.

Mr. Kabanda said yes.

Mr. Arsenault said that the apartment identified as 21A has a door and a porch off the driveway and large windows which could be escaped from in the event of fire. He said he has a concern about the second floor because the required second point of egress goes down stairs and into a dilapidated barn.

Chair Klawes asked if this is a safe second point of egress.

Mr. Kabanda stated that it is a 36" wide door with stairs going to the garage and then outside.

Mr. Pitaro asked if a privacy wall separates the two units or if there is a common area.

Mr. Arsenault affirmed that it is a solid barrier. It was a door and is now a wall.

Ms. McKenney said that there are four children in the family, and they play in an attic space on the third floor with only one way out.

Mr. Kabanda said It is a sort of hang-out place with only one way out.

Mr. Arsenault said he does not recommend using the attic as living space.

Mr. Kabanda said there are two windows in the attic.

Chair Klawes asked Mr. Arsenault for his professional opinion regarding safety.

Mr. Arsenault said that the construction is of quality, noting that the applicant is in trades and did the work himself. He said he does have concern about using the third floor. The dilapidated barn, which is the second point of egress, is a nightmare, and could be easily shored up.

Ms. McKenney said the door to the second floor is a piece of plywood.

Chair Klawes asked if this was acceptable, per the building code.

Mr. Arsenault said that the bedroom on the first floor goes with the second-floor apartment. It is typical of the architecture of the era when the structure was built, before fire rated doors were used or required. He said he would like to see fire-rated sheetrock separating the units.

Mr. Kabanda said he does not think there is any plywood. He used 2 by 6 boards and sheetrock on each side with insulation between. He said he had pictures which could be shown. He painted it light green, he said, and there is no plywood anywhere in his house.

Mr. Pitaro made a motion to enter deliberations. Ms. Baxter 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 4-0.

Ms. Baxter stated that they received the sewer and water statement from Mr. Arsenault, saying that it is okay as it is.

Mr. Pitaro said he was inclined to approve the multi-family request.

Chair Klawes said that he also was inclined to grant the variance, but would like to give the applicant 30 days to bring the units up to code for a multi-family, with proper egress and fire-rated sheetrock between the units.

Mr. Arsenault said that requiring fire-rated sheetrock could be a hardship. He said we don't know what is behind the walls. He suggested that he and the applicant could meet at the dwelling with the Fire Department to check on the egress to the dilapidated barn.

Mr. Pitaro said they should take into consideration the time that the house was built. He asked the applicant how long this has been a two-family house.

Mr. Kabanda said that his tenant moved in on June 6<sup>th</sup> of this year.

Ms. Baxter said she agreed with Mr. Pitaro. We don't know what is behind the walls, she said. As long as the occupants could get out in an emergency, it should be okay.

Chair Klawes said he would like to amend the motion to grant the three-unit variance with the agreement of the applicant that the building would be brought up to code.

There was no second.

Mr. Pitaro said the applicant will take care of it himself. It will come naturally, he said, and he favors the variance for a two-unit building.

Chair Klawes said he disagreed because there is difference between a single-family house and a multi-unit one. He reminded the Board that the applicant has a 29,800 square-foot lot.

A roll call vote was taken on the motion.

Dawna Baxter – Aye

Matt Pitaro – Aye

Matt L'Heureux – Aye

Keith Klawes – Nay

The motion carried 3-1.

Chair Klawes said they would next take up the request for a variance from Dimensional Restrictions - Article VII Section 703.g. He said the applicant would like to take down the barn and construct a two-car garage with an apartment above each stall. This would give him five units, with less than 30,000 square feet, where the requirement would be a 50,000 square foot lot.

Ms. Baxter made a motion to enter 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 4-0.

Mr. Pitaro stated that he is not inclined to grant the variance.

Mr. L'Heureux said that this is a residential district, which allows up to four units. Going to five units would make this a commercial property.

Chair Klawes said he is not in favor of granting this variance.

Mr. Pitaro and Ms. Baxter agreed with Chair Klawes.

Chair Klawes asked for a motion stated in the positive, instructing the members to vote nay if they wished to deny the variance.

Ms. Baxter made a motion to grant the variance. Mr. Pitaro seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter – Nay

Matt Pitaro – Nay

Matt L'Heureux – Nay

Keith Klawes – Nay

The motion failed (0-4) and the variance was denied.

## **NEW BUSINESS/RECEIPT OF APPLICATIONS & PUBLIC HEARINGS**

### **▪ ZBA Case #2020-06 – 25 Canal Street (Map 111 Lot 003) Zoned: Industrial/SVID**

**Variance: Supplemental Regulations (Article XI- Section 1112.i) parking space dimensions are proposed to be 9-ft wide where the town minimum of 10-ft wide is required.**

Mr. Cronin, attorney for Brady Sullivan, stated that he has been involved with this project from its inception. The project will take the property known as China Mill from its current state of disrepair to 150 first-class, mill-style apartments. He said that this is a major undertaking, similar to many such renovations done by Brady Sullivan throughout New England.

Chair Klawes asked how many additional parking spaces would be available if this variance is approved.

Mr. Cronin responded that the plan is for 260 parking spaces, allowing 1.75 spaces per apartment. The Allenstown ordinance, he said, requires only one space per apartment. Complying with the ordinance would mean a loss of 30 (10%) of the spaces. He added that it is unique that the size of parking spaces is dictated in an ordinance. He said that Manchester generally allows 8.5 feet of width. Many communities allow nine feet.

Chair Klawes said that this is not a big deal. He said he checked with some of the town departments and boards involved with this redevelopment, and there does not seem to be a problem with allowing the parking spaces to be nine feet wide.

Mr. Pitaro asked how the spaces are measured in relation to the painted line.

Mr. Zajak, Project Manager, said that the spaces are measured from the center of one painted line to center of the next one. The lines are four inches wide.

Ms. Baxter asked about the width of the parking spaces at other Brady Sullivan developments.

Mr. Cronin said that in Manchester, they are 8.5 feet wide.

Mr. Lewis, Architect for Brady Sullivan, said that the width of 8.5 feet is not uncommon. Some interior spaces are eight feet wide.

Mr. L'Heureux made a motion to enter deliberations. Ms. Baxter 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 4-0.

Mr. L'Heureux made a motion to approve the Variance from Supplemental Regulations Article XI – Section 1112.i, allowing parking spaces to be nine feet wide where the town minimum is ten feet. Ms. Baxter 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 4-0, and the variance was granted.

Chair Klawes informed the applicant that there is a 30-day appeal period.

#### **UNAPPROVED & UNSIGNED MINUTES**

Mr. Pitaro made a motion to approve the minutes of the August 12, 2020 meeting as written. Ms. Baxter 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 4-0.

Mr. Pitaro made a motion to approve the minutes of the June 30, 2020 meeting as written. Chair Klawes seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter – Aye  
Matt Pitaro – Aye  
Matt L'Heureux – Abstained (not a ZBA member at the time of this meeting)  
Keith Klawes – Aye  
The motion carried 3-0 with one abstention.

Mr. Pitaro made a motion to approve the minutes of the June 24, 2020 meeting as written. Ms. Baxter seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter – Aye  
Matt Pitaro – Aye  
Matt L'Heureux – Abstained (not a ZBA member at the time of this meeting)  
Keith Klawes – Aye  
The motion carried 3-0 with one abstention.

Ms. Baxter made a motion to approve the minutes of the April 22, 2020 meeting as written. Chair Klawes seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter – Aye  
Matt Pitaro – Abstained (not a ZBA member at the time of this meeting)  
Matt L'Heureux – Abstained (not a ZBA member at the time of this meeting)  
Keith Klawes – Aye  
The motion carried 2-0 with two abstentions.

Mr. L'Heureux made a motion to adjourn at 7:54 pm. Ms. Baxter 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 4-0, and the meeting was adjourned.

**ZBA**  
**SIGNATURE PAGE**  
**SEPTEMBER 23, 2020**

<b>SIGNATURE</b>	<b>MEMBER</b>	<b>DATE</b>
____Yes-Via Roll call Voice Vote____	Keith Klawes, Chairman	11.11.20____
____ Yes-Via Roll call Voice Vote ____	Dawna Baxter, Secretary	11.11.20____
_____	Jeff Gryval, Member	_____
____ Yes-Via Roll call Voice Vote ____	Matt Pitaro, Member	11.11.20____
____ Yes-Via Roll call Voice Vote ____	Matt L’Heureux, Member	11.11.20____