

TOWN OF ALLENSTOWN
Zoning Board of Adjustment
16 School Street
Allenstown, New Hampshire 03275
November 11, 2020

CALL TO ORDER

The Allenstown Zoning Board of Adjustment virtual meeting of November 11, 2020 was called to order by Chair Keith Klawes at 6:33 pm.

Chair Klawes made the following statement regarding the virtual 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. Note, when you log into the video of the meeting, you will see the name of Town Administrator Derik Goodine on the screen. The conference link, which is the official platform, is #881 5329 4417, password 111120. For Facebook Live, tune into the Town of Allenstown Facebook 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 Allenstown Zoning Board page, attached to the agenda of the meeting. If anyone has a problem, please call 207-595-0310 or email 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 conference call fails to work. The meeting may be paused if the video links fail and a quorum of the Zoning Board is needed on the conference call. Please note that all votes taken during this meeting shall be done by roll call, beginning with a roll call attendance.

Chair Klawes called for the Pledge of Allegiance, noting that this is Veterans Day and they should honor and thank all veterans and those serving.

ROLL CALL

Present on the Board: Dawna Baxter, Keith Klawes, Jeffrey Gryval, Matt Pitaro, Matt L'Heureux

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

Others present: Sandy McKenney, BOS Chair; Diane Butler, James Butler, Peter Arvanitis, Michael Albert, Chris Bennett, Michael Abbott, Adam Gelinas

OLD BUSINESS/RECIEPT OF APPLICATIONS & PUBLIC HEARINGS

None.

NEW BUSINESS/RECIEPT OF APPLICATIONS & PUBLIC HEARINGS

- **ZBA Case # 2020-08 – 1 Allenstown Road** (Lot 108, Map 005), **Zoned:** B – Business
Exception: Auto Sales (*Article VIII, Section 802-d*); ***Requesting to sell cars***

Mr. Butler, Owner of Complete Auto, said that this property has been selling cars for 30 years, and the town has always said it is okay. He said that he never had the form that the State of NH requires for a state license. He just needs the form, he said, and he is proposing no changes to the property. He has been renting an establishment in his hometown of Northwood, and although it is in a residential zone, he is allowed to sell cars there. He does the paperwork there when he sells a car in Allenstown because that is where he has a license to do so.

Mr. Gryval asked Mr. Butler about the number of cars at the property.

Mr. Butler said it ranges from two to 30. With COVID, he said, there is not a lot going on now. He averages 10 to 20 cars.

Chair Klawes asked how he is selling cars without a license.

Mr. Butler responded that others have just done it, but he wants to do it legally.

Ms. Butler said that the public won't see 30 cars; only a few are near the road.

Mr. Pitaro asked if the volume of business is unchanged with this request.

Mr. Butler said the volume is the same.

Mr. Pitaro asked if he is affiliated with John's Trucks.

Mr. Butler said no, they rent from me.

Ms. Baxter asked if Mr. Butler does vehicle repairs.

Mr. Butler said that is the majority of his business.

Chair Klawes asked where he gets the cars that he sells.

Mr. Butler responded that he gets them mostly from in town, from repair customers.

Ms. Baxter asked if these are consignment sales.

Mr. Butler responded no, that he buys the vehicles, fixes them, inspects them, and sells them warrantied for the street. He said he has been doing this for ten years, but has wasted \$100,000 because he has to bring his customers to Northwood to complete the paperwork.

Mr. Arsenault asked about the number of vehicles the applicant wants to sell, with signs in the window.

Mr. Butler said he wants to sell 30, but that he always has extras, and might sell one without a sign if someone is interested.

Chair Klawes asked how many parking spaces he has, including John's Trucks, GMS Hydraulics, and Complete Auto.

Mr. Butler said there are about 100 spaces.

Mr. Pitaro said his understanding is that the applicant is looking for a 'zoning okay' from the town so it can be passed along to the State. He asked what the applicant needs from the State.

Mr. Butler said he is looking for a dealership license for Allentown.

Mr. Pitaro asked about his operation in Northwood.

Mr. Butler said he has only three cars there now, and that business has fallen off dramatically because of COVID. He said he wants to let Northwood go, but can't until he has that piece of paper from the State, the dealership license. He said that the property was in bad shape when he bought it, and he has cleaned it up a lot.

Mr. Gryval made a motion to enter deliberations. Ms. Baxter seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor.

Chair Klawes told the members that the applicant answered "No Change" to all nine of the questions regarding a special exception. He said that something has been going on. They are not in compliance with Allentown zoning.

Mr. Arsenault stated that he is happy that Mr. Butler came forward with an application. He said this is a non-conforming operation, and his role is to sign off on the State permit, as he has in the past. He said

this is a reasonable request, and he would ask the Chair to sign off on the plan which allows the applicant to have 30 vehicles for sale. The permission must be tied to the plan, he said.

Chair Klawes asked the applicant why he did not come forward before now.

Mr. Butler said he asked every year and was always told 'no.' He said there was one member of the ZBA with whom he did not get along, and he couldn't afford to prepare a site plan. Recently, he spoke with Ms. Baxter and she mentioned the possibility of a special exception.

Mr. Gryval asked if they could go through the questions.

Mr. L'Heureux stated that, based on what is going on in that area, this is reasonable, and there is nothing in the Zoning Ordinance about the number of vehicles. It is up to us, he said. It should be based on the applicant's plan. I agree with Mr. Arsenault, he said.

Chair Klawes said they would go through the nine items, to all of which the applicant has responded "No change."

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

Chair Klawes polled the Board regarding the first item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Abstain
Chair Klawes Agree

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 storage of equipment, vehicles or other materials**

Chair Klawes polled the Board regarding the second item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Abstain
Chair Klawes Agree

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

Chair Klawes asked how this could be determined without a traffic study.

Ms. Baxter noted that there could be less traffic because there would be no trips to Northwood to do paperwork.

Mr. Gryval said the business shouldn't be operating at that location. It is illegal now. This does not meet the spirit of the ordinance.

Mr. Pitaro asked if there is a state tax on the sale of vehicles. He said he was not fully versed on the law, but that the zoning laws were carefully crafted for a reason. He hypothesized that Mr. Butler might have five customers on a busy Saturday and asked if there is a rest room, a waiting room, adequate sewer and drainage. He said that Allentown is one of the most well-preserved mill towns in the country.

Mr. Gryval said that the applicant is selling cars here and signing the papers elsewhere.

Ms. Baxter said this special exception has been granted to others in the area.

Mr. Gryval said his concern is that a vehicle comes in as a repair and goes out as a sale. How does Mr. Arsenault enforce this and meet the spirit of the ordinance?

Ms. Baxter said they are required to have a plan.

Chair Klawes said that each decision stands on its own merit; there is no precedent rule.

Mr. L'Heureux noted that they have two more cases tonight which are similar.

Mr. Pitaro asked why there are three at the same time.

Ms. Baxter said it just happened.

Chair Klawes said they are separate owners.

Mr. Pitaro said they are all looking for the same exception.

Chair Klawes asked the applicant what percentage of his business is sales.

Mr. Butler responded that 95% of what he does is repairs. He said he has sold only one car this month; pre-COVID he averaged five per month. He said he has 2,700 customers, mostly local. Usually, their car doesn't pass inspection, so they come to buy a car from him.

Chair Klawes polled the Board regarding the third item.

Dawna Baxter	Agree
Jeff Gryval	Disagree
Matt L'Heureux	Agree
Matt Pitaro	Abstain

Chair Klawes Agree

Mr. Pitaro raised a point of order. Items 1-9 are for discussion, he said. Isn't it the vote at the end that matters?

Mr. Gryval said he believed the applicant has to satisfy all nine.

Chair Klawes said that was correct.

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

Chair Klawes polled the Board regarding the fourth item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Abstain
Chair Klawes Agree

5. **No significant increase of stormwater runoff onto adjacent properties or public ways**

Chair Klawes polled the Board regarding the fifth item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Abstain
Chair Klawes Agree

6. **In an appropriate location for the proposed use**

Mr. L'Heureux stated that the space occupied has been accepted. There are three garages.

Chair Klawes polled the Board regarding the sixth item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Abstain
Chair Klawes Agree

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**

Chair Klawes polled the Board regarding the seventh item.

Dawna Baxter	Agree
Jeff Gryval	Disagree
Matt L'Heureux	Agree
Matt Pitaro	Abstain
Chair Klawes	Agree

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

Mr. Gryval said he disagrees because the ordinance was crafted for a reason.

Ms. Baxter said there is no visual problem because the parking is in the back.

Chair Klawes noted that the people buying cars are already customers of the applicant. He asked if any advertising is done.

Mr. Butler said he advertises rarely.

Mr. Gryval noted that the business might be sold and operated differently.

Ms. Baxter said the residents were not being given enough credit. She said that stipulations could be made.

Chair Klawes polled the Board regarding the eighth item.

Dawna Baxter	Agree
Jeff Gryval	Disagree
Matt L'Heureux	Agree
Matt Pitaro	Abstain
Chair Klawes	Agree

9. Requirements set forth in the ordinance for the particular use permitted by special exception

Chair Klawes confirmed that there are no requirements set forth in the ordinance.

Chair Klawes polled the Board regarding the ninth item.

Dawna Baxter	Agree
Jeff Gryval	Agree
Matt L'Heureux	Agree
Matt Pitaro	Abstain
Chair Klawes	Agree

Mr. Pitaro asked the applicant if the area is mainly dirt-covered.

Mr. Butler said the driveway and customer parking area are paved.

Ms. Butler said there is a gate where the unpaved area begins.

Chair Klawes asked if the special exception can be for this owner only.

Mr. Gryval said that is a question for the Town Attorney.

Mr. Arsenault stated that the Butlers own the entire parcel, and they have a limit of 30 cars. He said they could address a change of ownership when and if that happens.

Mr. Pitaro asked the applicant if 30 cars is enough.

Mr. Butler said it is perfect.

Chair Klawes said that if the applicant sells between one and five cars per month, that is 12 to 60 per year. He asked if 30 is excessive.

Mr. Butler said he doesn't want any controversy.

Mr. Arsenault said this is easily enforceable.

Chair Klawes asked Mr. Arsenault a question. 'If we vote no, is he prevented from continuing selling cars there?'

Mr. Arsenault said yes, it is non-conforming.

Mr. Pitaro made a motion to return to public session. Mr. Gryval seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor.

Mr. Pitaro made a motion to grant the applicant, Complete Auto, a special exception. Ms. Baxter seconded the motion.

Chair Klawes made a motion to table this motion for 30 days to allow time to get legal advice on the issue of whether the special exception can be granted to the current owner and his business plan, not to the property.

Mr. Gryval said he agreed with tabling the motion, and that he would be more inclined to support the application after getting legal clarification.

Chair Klawes amended his tabling motion to say that the motion would be tabled for no more than 30 days. He suggested that the motion could be removed from the table and voted upon at the December 9, 2020 ZBA meeting, and sooner if possible. Ms. Baxter seconded the motion as amended.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor.

Mr. Arsenault told the ZBA members that a special exception could be granted to the applicant and not the property only of the applicant had a disability.

Chair Klawes called for a recess at 7:51 pm.

Chair Klawes reconvened the meeting at 7:59 pm.

- **ZBA Case # 2020-09 – 47 Allentown Road** (Lot 109 108, Map 011), **Zoned:** B – Business
Exception: Auto Sales (*Article VIII, Section 802-d*); ***Requesting to sell cars***

Mr. Arvanitis stated that he was present to assist the applicant, Michael Albert, with his presentation.

Mr. Albert stated that the only change he is proposing is the installation of two overhead doors for a garage. He said he has approval to have 12 cars on the property. The garages are only for the repair and cleaning of his own cars, he said; he is not planning to do inspections at this time but might in the future.

Ms. Baxter said there are 13 spaces, one for an employee.

Mr. Gryval asked the applicant if he owns the property.

Mr. Albert said he has a Purchase & Sales agreement, which is subject to his obtaining a license to sell cars.

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

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor.

Chair Klawes began the deliberation with the first of the nine items to consider.

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

Chair Klawes said he disagrees with this item because going from a hair salon to car sales introduces potentially toxic materials and/or hazardous activities.

Chair Klawes polled the Board regarding the first item.

Dawna Baxter Disagree
Jeff Gryval Disagree
Matt L'Heureux Disagree
Matt Pitaro Disagree
Chair Klawes Disagree

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 storage of equipment, vehicles or other materials**

Chair Klawes polled the Board regarding the second item.

Dawna Baxter Disagree
Jeff Gryval Disagree
Matt L'Heureux Disagree
Matt Pitaro Disagree
Chair Klawes Disagree

Mr. Pitaro made a motion to vote on this application, since all members disagreed with the first two items. There was no second to the motion.

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

Chair Klawes asked the applicant if a traffic study had been conducted.

Mr. Albert responded no. He said that six customers each hour drove to and from the hair salon.

Chair Klawes polled the Board regarding the third item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Abstain
Chair Klawes Agree

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

Chair Klawes polled the Board regarding the fourth item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Disagree
Chair Klawes Agree

5. **No significant increase of stormwater runoff onto adjacent properties or public ways**

B. Arsenault stated that there is no change to the drainage plan for the existing hair salon, so this is okay.

Chair Klawes polled the Board regarding the fifth item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Agree
Chair Klawes Agree

6. **In an appropriate location for the proposed use**

Chair Klawes said that this is a small car lot with one-way traffic. It is easy to get in and out.

Mr. Gryval said he disagrees because the zoning ordinance doesn't allow used car sales at this location.

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Chair Klawes polled the Board regarding the sixth item.

Dawna Baxter Disagree
Jeff Gryval Disagree
Matt L'Heureux Disagree
Matt Pitaro Disagree
Chair Klawes Disagree

7. **The proposed use shall not be detrimental to the use or development of adjacent or neighboring properties**

Chair Klawes polled the Board regarding the seventh item.

Dawna Baxter Agree
Jeff Gryval Agree
Matt L'Heureux Agree
Matt Pitaro Abstain
Chair Klawes Agree

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

Mr. Gryval stated that he strongly disagrees. The ordinance was designed to protect Allenstown's small-town character.

Chair Klawes polled the Board regarding the eighth item.

Dawna Baxter	Disagree
Jeff Gryval	Disagree
Matt L'Heureux	Disagree
Matt Pitaro	Disagree
Chair Klawes	Disagree

9. Requirements set forth in the ordinance for the particular use permitted by special exception

Chair Klawes polled the Board regarding the fifth item.

Dawna Baxter	Agree
Jeff Gryval	Agree
Matt L'Heureux	Agree
Matt Pitaro	Agree
Chair Klawes	Agree

Chair Klawes made a motion to return to public session. Mr. Gryval seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor.

Mr. L'Heureux made a motion to approve the special exception for 47 Allenstown Road. Mr. Gryval seconded the motion.

Mr. Gryval stated that this application is contrary to the ordinance for multiple reasons. The zoning ordinance attempts to preserve the attract-ability and feel of this small town. It is important to keep this one use out.

Mr. Pitaro noted that all nine of the criteria were not met.

Chair Klawes called for a roll call vote on the motion to approve the special exception for 47 Allenstown Road.

Dawna Baxter - Nay

Jeff Gryval - Nay
Matt Pitaro - Nay
Matt L'Heureux - Nay
Keith Klawes – Nay
The motion failed.

Chair Klawes said that a Notice of Decision would be prepared, and he will sign it tomorrow.

- **ZBA Case # 2020-10 – 66 School Street** (Lot 109, Map 011) **Zoned:** B – Business
Variance: Auto Sales (*Article VIII – Section 802.d*)
Requesting to sell more than five cars

Mr. Bennett, Mr. Abbott and Mr. Gelinas introduced themselves to the Board.

Mr. Bennett stated that they currently are able to sell five cars under the special exception granted them. Given that Martel's is no longer there, they would like to be able to sell more than five cars, he said. With Martel's, he said that sometimes there were four vans coming and going. Eighteen wheelers had to have space to back up. In addition, the tenant is moving out, creating two additional parking spaces. Their cars move one at a time, he said, and he presented a map of the parking lot.

Ms. Baxter asked about the size of the parking spaces.

Mr. Bennett said they average seven feet. He said that his map (sketch) shows 33 parking spaces. Front/right: 7, with 2 behind; Front/center: 3; 2 for customers; 2 to 4 on the side; tenant spaces in the back; Martel's retail side: 1 big space; 8 small spaces. He said the unsightly dumpster had been moved.

Mr. Arsenault said that the town ordinance requires ten feet for a parking space.

Chair Klawes asked how many cars they have for sale now.

Mr. Bennett responded that they have five for sale.

Chair Klawes said that he checked their website today and it offers eight cars for sale. He said he also went to talk with their salesman three hours ago, and he confirmed that there are eight cars for sale.

Mr. Abbott said that they have five cars for sale and others that aren't lettered for sale.

Chair Klawes said it seems like a 'shell game.'

Mr. Abbott said they have not sold any cars yet.

Chair Klawes said that the barrier had been moved 20 feet, and Subway has lost one of its spaces.

Mr. Pitaro asked why the special exception granted only five spaces.

Mr. Gravel said safety was the key issue.

Mr. Goodine stated that fire trucks need to have access and that handicapped accessibility is required.

Chair Klawes made a motion to table this application for 30 days, allowing time to check on requirements for fire/rescue and handicapped accessibility, and to obtain legal advice. Mr. Gryval seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Abstain

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor.

Mr. Arsenault cited the zoning ordinance requiring parking spaces to measure at least 10 by 20 feet.

UNAPPROVED AND UNSIGNED MINUTES

Mr. Pitaro made a motion to approve the minutes of the September 23, 2020 ZBA meeting as written.

Ms. Baxter seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor.

Ms. Baxter made a motion to approve the minutes of the October 28, 2020 ZBA meeting as written. Mr.

Pitaro seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor.

Mr. Gryval suggested that the chair or vice chair of the Planning Board be invited to the next ZBA meeting.

Chair Klawes said that was a great idea, and he asked Ms. Baxter to reach out to the Planning Board chair and invite him or his vice chair to the December 9th meeting.

Ms. Baxter asked if all of the cars in the lot are registered or if they need to be.

Mr. Goodine said that not more than two can be unregistered unless the business is a dealership, per page 58 of the zoning ordinance.

ADJOURNMENT

Chair Klawes made a motion to adjourn at 9:03 pm. Ms. Baxter seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted unanimously in favor, and the meeting was adjourned.

**ZBA
SIGNATURE PAGE
NOVEMBER 11, 2020**

SIGNATURE	MEMBER	DATE
_____Yes-Via roll call Voice Vote__	Keith Klawes, Chairman	12.09.20__
_____ Yes-Via roll call Voice Vote _	Dawna Baxter, Secretary	12.09.20_____
_____ Yes-Via roll call Voice Vote _____	Jeff Gryval, Member	12.09.20_____
_____ Yes-Via roll call Voice Vote ____	Matt Pitaro, Member	12.09.20_____
_____ Yes-Via roll call Voice Vote ____	Matt L’Heureux, Vice Chair	12.09.20