

TOWN OF ALLENSTOWN
Zoning Board of Adjustment
16 School Street
Allenstown, New Hampshire 03275
December 09, 2020

CALL TO ORDER

The Allenstown Zoning Board of Adjustment virtual meeting of December 09, 2020 was called to order by Chair Keith Klawes at 6:38 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, Diane Butler, James Butler, Michael Albert, Chris Bennett, Michael Abbott, Adam Gelinas, Danielle

OLD BUSINESS/RECIPT OF APPLICATIONS & PUBLIC HEARING

- **Continue from 11.11.2020 – ZBA Case # 2020-08 – 1 Allenstown Road (Map 108, Lot 005)**
Zoned: B (Business) – Requesting to sell cars

Mr. Butler stated that they have no changes to present.

Mr. Pitaro made a motion to enter into 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 asked if they should go through the criteria again.

Mr. Pitaro said that should not be necessary because all criteria were deemed to have been met at the previous meeting.

Ms. Baxter agreed.

Chair Klawes shared with the members the Town Attorney's response to the question about whether variances and special exceptions go with the property or the owner. The answer was that they go with the property.

Mr. Pitaro said that he stopped by this business today and saw about 30 cars parked with plenty of space. He said that he feels good about this application after making this visit.

Mr. L'Heureux noted that, with a special exception, there are no specific rules or conditions.

Mr. Gryval asked fellow members to keep in mind the spirit of the ordinance, and the fact that Allenstown does not want to look like a town to the south. He said the owners are doing a good job now, but we don't know what will happen in the future. When these lots are full, he said, it is okay, but when they are vacant, there is trash blowing around.

Chair Klawes said that it is correct to think about the future. He stated that responses to all nine criteria must be 'yes.'

Mr. Pitaro stated that he respectfully disagreed. He said that it must be a plurality. He said that he emphatically believes in the spirit of the ordinance. The business is recessed behind the gas station.

Mr. Gryval said that he disagrees because the applicant may eventually own the gas station. He said there have been multiple motor vehicle accidents there, and the added traffic would be terrible. This doesn't fit the small-town community we are striving for.

Mr. L'Heureux stated that it would not have been put in as a special exception if the town didn't want it.

Ms. Baxter said she agreed with Mr. Pitaro because you can't see the lot from the road. She said she doesn't think that area would be changed because of granting this special exception.

Chair Klawes said that someone is always slamming on their brakes there, and he does believe there is a traffic issue. Vehicles have been sold there illegally, he stated, because, per the Town Attorney, where they are shown is the place of sale, no matter where the paperwork is signed. The traffic is going to increase when the sales are legal and they can advertise.

Mr. Pitaro made a motion to leave 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.

Mr. Pitaro made a motion to approve the application, Case #2020-08, allowing 30 cars on the lot at any given time.

No second was offered.

Mr. Pitaro made a motion to approve the application, Case #2020-08, allowing 15 cars on the lot at any given time. Ms. Baxter seconded the motion.

Mr. L'Heureux stated that the number is arbitrary.

Mr. Pitaro said that the owners could ask for more at a later date.

Mr. Gryval stated that this is opening up the area to look like Main Street in Hooksett.

Chair Klawes said that he tended to agree.

Ms. Butler said that 15 is not expanding. A cap was never an issue before we came. We are taking the brunt.

Chair Klawes said that the Town's cap is zero. He added that the ZBA is not bound by precedent or previous decisions.

Mr. Gryval stated that the ZBA cannot vote in a way which ties the hands of future boards.

Chair Klawes offered an amendment to Mr. Pitaro's motion, saying that vehicles could be placed no further than 100 feet from the Complete Auto repair shop in any direction. Mr. Pitaro seconded the amendment.

Chair Klawes said this would tighten up the area, but people would still be able to see the vehicles for sale.

Mr. Pitaro offered an amendment stating that vehicles could be placed no further than 120 feet from the Complete Auto repair shop so that a car or two could be displayed near the road. Ms. Baxter seconded the motion.

Mr. Pitaro noted that this is a huge lot.

Mr. Gryval said he has severe traffic concerns and 100 feet is safer. Placing cars right on the road is excessive.

Mr. Butler said it seems 'over excessive' to limit the number of feet.

Chair Klawes called for a vote on the amendment to limit the placement of vehicles on the lot to 120 feet from the Complete Auto Repair shop.

Dawna Baxter - Aye

Jeff Gryval - Nay

Matt Pitaro - Aye

Matt L'Heureux - Nay

Keith Klawes - Nay

Motion failed (2-3).

Ms. Baxter made a motion to approve the application, Case #2020-08, allowing 15 cars on the lot at any given time, placed within 100 feet of the Complete Auto Repair shop. Mr. Pitaro seconded the motion. A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval - Nay

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes - Nay

Voted in favor (3-2).

Mr. Pitaro made a motion to take a short recess at 7:37 pm. Ms. Baxter seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter - Aye

Jeff Gryval – No response

Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes – Aye

Voted in favor.

Mr. Pitaro made a motion to come out of recess at 7:41 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 – No response

Keith Klawes – Aye

Voted in favor.

Chair Klawes asked for a moment of silence for newly-elected House Speaker Richard Hinch, whose passing at the age of 71 was reported this evening.

- **Continue from 11.11.2020 – ZBA Case # 2020-10 – 66 School Street (Map 109, Lot 011)**
Zoned: B (Business) – Requesting to sell more than five (5) cars

Chair Klawes stated that this item was tabled at the last ZBA meeting so that they could seek legal guidance on an issue.

Mr. Bennett stated that the barrier which had been in the wrong location has been moved and the number of vehicles for sale has been adjusted to five (5). He said that Mr. Gelinas has measured the parking spaces and redrawn a map of the property to scale. The parking spaces are all at least ten feet wide. Mr. Bennett said they met with the Fire Chief and asked him for his thoughts on safety measures they could take. He said they recently had a minor fire emergency, and the fire truck was able to pull in and set up without a problem. He said the Chief advised them to have their egress points protected and to place bollards on the east side of the lot.

Ms. Baxter noted that parking spaces must be 20 feet long, as well as 10 feet wide.

Mr. Pitaro asked if the applicants own all of the buildings, including Subway.

Mr. Bennett responded that they do. He referenced an email from the Fire Department which he thought the ZBA had been copied on.

Ms. Baxter said she had not seen it.

Mr. Pitaro asked the applicant if they had considered taking down the Martel building. He also asked if they had an office.

Mr. Bennett responded that they have an office on the west side of the lot.

Mr. Pitaro asked how many cars they would like to have in that area, in a 'perfect world' scenario.

Mr. Bennett said they could have 14 on that side.

Mr. L'Heureux said that he had checked the property and it didn't look tight. He said it was easy to get in and out. He noted that they already have a special exception and are not looking for a variance.

Mr. Pitaro made a motion to enter deliberations. Mr. Gryval seconded the motion.
No vote was taken on this motion.

Chair Klawes went through the criteria for a variance.

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

The applicant's response: By providing good quality used vehicles, we will be serving the community, not harming it.

Mr. Gryval said that he disagrees because tenants to the south and east may not like living next to a used car lot. There will be an impact on property values, he said. In the original hearing, a close abutter to the north was opposed to this.

Chair Klawes called for a roll call vote on this criterium.

Dawna Baxter - Nay

Jeff Gryval - Nay

Matt Pitaro - Nay

Matt L'Heureux - Aye

Keith Klawes - Nay

Motion failed (1- 4).

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

The applicant's response: Because the major tenant, Martel's, has vacated the premises, along with a residential renter, there has been an opening of additional parking spaces. These new spaces will complement this business.

Mr. Gryval said that there will be an impact.

Chair Klawes agreed.

Chair Klawes called for a roll call vote on this criterium.

Dawna Baxter - Nay

Jeff Gryval - Nay

Matt Pitaro - Nay

Matt L'Heureux – Aye

Keith Klawes - Nay

Motion failed (1- 4).

3. The enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction

- a. as applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment.**

The applicant's response: Nothing is changing from the original approval except for additional spaces to be used for auto sales.

Mr. Gryval stated that this is a huge change.

Chair Klawes called for a roll call vote on this criterium.

Dawna Baxter - Nay

Jeff Gryval - Nay

Matt Pitaro - Nay

Matt L'Heureux – Aye

Keith Klawes - Nay

Motion failed (1- 4).

- b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance.**

The applicant's response: Permission for USE has already been granted.

Chair Klawes called for a roll call vote on this criterium.

Dawna Baxter - Nay

Jeff Gryval - Nay

Matt Pitaro - Nay

Matt L'Heureux – Nay

Keith Klawes - Nay

Motion failed (0-5).

- c. If relieved by a variance, they will not inure public or private rights of others.**

The applicant's response: Martel's parking needs were fluid and created traffic. Even with more parked cars for sale, traffic would not increase. They are simply for viewing, and when needed, they will be moved or test-driven one car at a time.

Chair Klawes stated that he believes the public will be injured, with more cars, more people and more traffic flow. The parking lot will have lights and the business will be open later at night.

Mr. Pitaro asked who objected to the original petition.

Chair Klawes said that John, the owner of the yellow building, a restaurant, objected.

Chair Klawes called for a roll call vote on this criterium.

Dawna Baxter - Nay

Jeff Gryval - Nay

Matt Pitaro - Nay

Matt L'Heureux – Aye

Keith Klawes - Nay

Motion failed (1- 4).

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

The applicant's response: We will be able to put forth our maximum efforts to run a meaningful and lasting business in the community.

Mr. Gryval stated that the petitioner could find tenants, and this issue has nothing to do with our decision.

Chair Klawes stated that there are opportunities to rent to other businesses or to residents.

Mr. Gryval stated that financial hardship is not relevant.

Chair Klawes called for a roll call vote on this criterium.

Dawna Baxter - Nay

Jeff Gryval - Nay

Matt Pitaro - Nay

Matt L'Heureux – Nay

Keith Klawes - Nay

Motion failed (0-5).

Mr. Pitaro Their response indicates that they want to conduct a tax revenue-producing business for the town.

Chair Klawes said that the ZBA does not take finances into consideration.

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

Mr. Gryval said that this proposal goes against the thinking of the town in that used car lots are contrary to the spirit of the ordinance.

Chair Klawes called for a roll call vote on this criterium.

Dawna Baxter - Nay

Jeff Gryval - Nay

Matt Pitaro - Nay

Matt L'Heureux – Aye

Keith Klawes - Nay

Motion failed (1- 4).

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

Chair Klawes called for a roll call vote on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux – Aye

Keith Klawes - Aye

Motion carried unanimously (5-0).

Ms. McKenney stated that she had not seen the Fire Department report. She said she thought they were going to have an engineering report on the parking; going in and out from and to Route 3 should be a right turn only because of the volume of traffic. She added that she understood that the residential tenant had been evicted.

Mr. Bennett said that was not true. He added that he wished Martel had stayed.

Mr. Gryval made a motion to grant the variance to the terms of Article VIII, Section 802 for Case 2020-10. Ms. Baxter seconded the motion.

Mr. Gryval made a motion to move the question to a vote (end discussion). Chair Klawes seconded the motion.

Chair Klawes called for a roll call vote on the motion.

Dawna Baxter - Nay

Jeff Gryval - Aye

Matt Pitaro - Nay

Matt L'Heureux – Nay

Keith Klawes - Aye

Motion failed (2- 3).

Mr. Pitaro offered an amendment to the motion, allowing ten (10) vehicles to be for sale at any time and restricting the placing of vehicles to the front of the garage and a specifically designated quadrant. Mr. L'Heureux seconded the motion.

Mr. Pitaro said he did not know how to word the motion regarding the designated area for the placement of vehicles.

Mr. Gryval asked why they were continuing the discussion.

Chair Klawes said that the applicant had received a written notice from the Town for having too many cars for sale and had been known to move things around after being instructed about placement.

Mr. Bennett asked to have Ms. Danielle Jordan. He said she is their industry expert and consultant from NHADA.

Chair Klawes responded that the time for input from the public and the applicant was before deliberation.

Mr. Bennett said they were not finished yet.

Chair Klawes said that he asked the applicant if they had more input.

Mr. Bennett said no, you didn't. Rewind the tape. I strongly disagree as a taxpaying citizen.

Mr. Bennett said this is the third meeting for him, and normally the Chair asks for additional comments before deliberation. He said he was waiting out of respect.

Chair Klawes said that Ms. Jordan could speak.

Ms. Jordan asked if Allenstown had anything in its Town Charter that states that the applicant is limited to five (5) cars on the lot at one time. She said that NHAA says that nowhere in NH law is there anything which limits the quality or quantity of vehicles the dealer can have on a lot or on the internet.

Chair Klawes said the Town does not allow used car lots. This is a special exception, he said, that was granted, based on five (5) cars. According to our Town Attorney, he said, the ZBA is within its rights to grant this special exception, based on five (5) cars for sale, and that includes internet listings.

Ms. Baxter said that when she filled out the license for this applicant, there was a question from the State about whether this was a variance and if there were limitations. She stated that she put in the limit of five (5) cars.

Ms. Jordan said that the NH Auto Dealers, along with the DMV and NH State Police Troop G have stated that the lot owned by ABGAS and the internet are two (2) separate entities. We can have 100 cars for

sale on the internet if we want to, she claimed. There is nothing the State of NH is going to say to us, she said, that states we cannot have that.

Chair Klawes stated that they will let the Code Enforcement Officers and the State take that up. That's got no bearing on this case right now, he said.

Ms. Jordan said that she was just stating that they would like proof that says, by Allenstown's Town Charter, they can't have more than five (5) cars.

Chair Klawes stated again, the special exception was for five (5) cars.

Ms. Jordan said she understood, but NH Auto is saying if you can't come up with that proof that per square foot, we can't have this many cars on our space, per Town Charter, you can't dictate to us that we can't have more cars. I understand it's a special variance...

Chair Klawes said he would suggest...

Ms. Jordan asked if she could finish her sentence.

Chair Klawes said no. He suggested that, when the owners get concerns from our Code Enforcement Officer, they can appeal at that time, taking any action they need to take.

Ms. Jordan stated that they could have 100 cars in the inventory of their website going forward.

Chair Klawes responded that, according to the Town Attorney, they could not. If that happens, he said, and the Code Enforcement Officer...

Ms. Jordan stated that the Town Attorney can say what they want...

Mr. Pitaro asked Ms. Jordan to hold up and told her she was out of order.

Ms. Jordan said she could not finish her sentence.

Mr. Pitaro said that the Board understands the points of the applicant, and is now moving on.

Mr. Bennett said that it is funky that zoning says no auto sales because Section W has auto sales as a permitted use.

Ms. Baxter said that it goes by zoning.

Mr. Bennett said that all of this is a learning process, and by no means at any time is he trying to not work with the Town. He said that was a huge misunderstanding about the barriers, and when they realized they were out of line, they moved them back right away. We have got to have extra cars coming in, he said. It is part of the business. With only five (5) cars on the lot, it is not feasible to run a business.

We want to continue to work with the Town, he said. This is my hometown. I don't want anyone to struggle. We lost a massive commercial business.

Mr. Pitaro said that if the Board denies this application, ABGAS is not prevented from going through this process again, with different parameters. He said the application needed to be retooled.

Chair Klawes stated that they had a motion and a second, and asked if the Board was ready to vote.

Chair Klawes called for a roll call vote on the request from...

Dawna Baxter - Nay

Jeff Gryval - Nay

Matt Pitaro - Nay

Matt L'Heureux – Nay

Keith Klawes - Nay

Motion failed (0-5).

Chair Klawes stated that the variance is denied. He suggested that the applicant retool the application. He added that the way he was treated by their 'expert' doesn't bode very well, when it was an attack versus trying to have a conversation. We received legal advice, he said, and it is what it is.

NEW BUSINESS/RECEIPT OF APPLICATIONS & PUBLIC HEARINGS

None.

UNAPPROVED & UNSIGNED MINUTES

- November 11, 2020

Mr. Gryval made a motion to approve the minutes of the November 11, 2020 meeting as written. Mr. L'Heureux seconded the motion.

Chair Klawes called for a roll call vote on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

Matt Pitaro - Aye

Matt L'Heureux – Aye

Keith Klawes - Aye

Motion carried unanimously (5-0).

CORRESPONDENCE & OTHER BUSINESS

Chair Klawes said that he spoke with Town Attorney Sharon Somers and Planning Board Chair Mike O'Meara. Ms. Somers is willing to conduct a joint workshop with the ZBA and the Planning Board. It will be held at the Community Center sometime in January or February. The consensus of the Board was

that this is a good idea and February would be better than January. The members agreed that a Wednesday evening beginning at 6:30 pm would be fine.

Mr. Pitaro said that he wants to verify that if one criterium fails, the request fails.

Mr. Gryval said that he should check the State RSA zoning regulations.

ADJOURNMENT

Mr. Pitaro made a motion to adjourn at 8:55 pm. Mr. Gryval seconded the motion.

Chair Klawes called for a roll call vote on the motion.

Dawna Baxter - Aye

Jeff Gryval - Aye

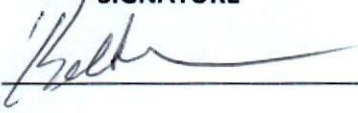


Matt Pitaro - Aye

Matt L'Heureux - Aye

Keith Klawes - Aye

Motion carried unanimously (5-0), and the meeting was adjourned.

ZBA
SIGNATURE PAGE
DECEMBER 09, 2020

SIGNATURE	MEMBER	DATE
	Keith Klawes, Chairman	6/23/21
	Dawna Baxter, Secretary	6/23/21
_____	Jeff Gryval, Member	_____
	Matt Pitaro, Member	6/23/2021
_____	Matt L'Heureux, Vice Chair	_____