

TOWN OF ALLENSTOWN

Zoning Board of Adjustments
16 School Street
Allenstown, New Hampshire 03275
March 8, 2017

Call to Order

The Allenstown Zoning Board of Adjustments was called to order by Chair Eric Feustel at 6:35 pm.

Roll Call

Present on the Zoning Board of Adjustments: Eric Feustel, Chair; Chris Roy, Vice Chair; Roger Laflamme; Jeff Gryval; Keith Klawes.

Others Present

Allenstown Staff: Dana Pendergast

SFC Engineering Partnership: George Fredette

Chair Feustel said we are here to hear Case #2017-0001, Niyati Realty, which is seeking to build a convenience store, restaurant and filling station on Route 28, also known as 289 Pinewood Road, also known as Route 28. He asked Mr. Pendergast to explain the purpose.

Mr. Pendergast stated that an item was missed in the original variance because this property is in an aquifer overlay protection district, which requires a variance for a gas station.

Mr. Fredette, representing Niyati Realty, stated that this is the same plan which the Board looked at in March of 2016, calling for a convenience store, a small restaurant and a gas station. There is a common drive that this facility would share with Catamount Hill. This is Presidential Drive and this would be reconfigured in this situation here, with this facility occupying this lot. There is a bigger picture here of it just in the neighborhood showing where this lot is in respect to the zoning districts. As Mr. Pendergast explained, this is the same facility, except we asked for a variance to be within the farming and open space district. There was a misinterpretation; this also needs a variance to belong in the ground water overlay protection district. I'd like to begin by addressing the five criteria.

1. Not contrary to public interest.

The development will satisfy the New Hampshire Department of Environmental Services' setbacks for water wells. That's one of the things we are trying to protect. There is a private water well to the north side and a public water well to the south and west. We maintain the setbacks as prescribed by DES for those. You have a ground water protection district, but at the State level they have designations of aquifers, and those aquifers, which I am going to show you later, are called the GAA and GA2, in this

particular case. From the State point of view, a facility like this would not be able to be positioned in those aquifer areas. But we, in fact, are 2,000 feet away from the GAA and 800 feet away from the GA2. In addition, there are best management practices that will be implemented. There are several of them that will be used to keep this development safe and the environment protected. Stormwater management systems will be put in place to protect the stormwater quality, which eventually makes it down along Pinewood and crosses under and exits into the Suncook River. Those are all designed and actually are under review with the Town consulting engineer now. And then we point out that it will not be contrary to public interest because indeed there will now be a gas station on the northbound lane, which would be convenient for people to select where they are going to be gasing up. This is not a destination; it is something people drive by. This is not contrary to public interest because there was a P & S signed in 2014, a portion of which said justice will be served if the buyer, Niyati Realty, obtains the property and, subject to obtaining approvals, provides economic development to the town via the addition of approximately ten jobs, generating approximately \$150,000 annually in payroll, and property improvements of approximately one half of a million dollars. That was part of the agreement made for the purchase of this property. Lastly, it was pointed out previously when we were here a year ago that this is consistent with the 2003 Allenstown Master Plan, which recommended capitalizing on the asset Allenstown has with Bear Brook State Park, to take advantage of potential tourism dollars. And I think we are doing that.

2. Spirit of the ordinance

The spirit of the ordinance would be observed because locally, we are implementing a stormwater management plan which is required according to your local rules. We will be putting a pollution prevention plan together, again, according to your rules. We are putting a spill prevention control and countermeasure plan together for DES review, and a source control plan. That is DES regulations. All of these plans are essentially looking at the same thing – different aspects of it – all to protect the environment. We are going to meet or exceed all DES site design criteria. Again, I point out that we are in the spirit of the ordinance because we don't encroach within state ground water boundaries of the GAA or GA2 districts. All of the stormwater management systems I just talked about are looking to protect surface water, ground water and the Suncook River.

3. Substantial justice will be done

One, this will increase the tax base in Allenstown. Two, this will provide for the highest and best use of the property. Three, this will consummate the P & S struck with the landowner. Four, we think this area of Route 28 is prime for commercial development because of what surrounds it.

4. Surrounding values

Values of surrounding properties will not be diminished because of the nature of the immediate area. There are other commercial properties in the area that surround this. We are going to take advantage of an existing perpendicular cut so that there won't be additional intersections on Route 28. We are meeting all of the well setbacks, the storm water management systems are going to be in place and the

issue of diminished property values was tested in our previous variance application to you, where there was a report presented by Capital Appraisals Association where they represented to this Board that there would be no diminishing of property values.

5. Hardship

For the purpose of this paragraph, unnecessary hardship means only the special conditions of this property that distinguish it from other properties in the area. This property is well-suited for use as a gas station. The lot is encumbered physically by steep topography at the rear, making the very front of the lot the area that has development potential. It is not well-suited for a single family home, which is a permitted use in this district. I repeat that this commercial use would be the highest and best use of the property. The regulations say no gas stations in the overlay district, but we do, and I will point out to you that we meet all setbacks for private and public wells. Again, we are not encroaching on GAA and the GA2 districts and all of those plans that I mentioned before are in place. The proposed use is a reasonable one because all precautions which should be taken are being taken, and I want to outline some of those. In a summary of a source control plan, we point out that in the design of the gas station there are many safeguards that are put in place. This has a canopy, and the fueling area has a concrete floor and a positive limiting barrier. Those are the ridges that you see around the perimeter of the concrete pad when gasing up. In the event of a leak, any liquids would be contained within that positive limiting barrier. Fuel transfer happens within a designated area that is sloped so that there is no stormwater running through it. Snow areas will be designated so that the snow melt isn't running through where it could carry away any fuel spill. All of the underground tanks and piping are double-walled and electronically monitored in the space between the two walls, so that we will know ahead of time if there is any compromise of the containment area. Regarding the fill works where vehicles are filled, there is a spill box associated with each one of those when they pick up the cover and they put their hose in to fill the tanks. So, in the process of putting in or taking out the hose, any drips would be contained within there. There are overfill protection valves and overfill-preventing hose nozzles for when it is being dispensed to the car. There are dry wave hose breakage spill prevention mechanisms. The floor port is designed so that filling can only occur within the positive limiting barrier and no one can fill a car outside of the positive limiting barrier. Spill prevention control and containment measures also require staff training so that everyone knows how to handle any emergency that might happen.

I'm going to look at this from another perspective. I have just addressed the five criteria. I am going to look at Allenstown. In Allenstown, gas stations are allowed in three districts – business, commercial and industrial. Those districts make up 985 acres of land. The ground water protection overlay district overlays 70% of those three districts. That includes 100% of the industrial district along River Road and up in the Granite Street area. When you look at this map, there is no area along Route 28, Pinewood Road, where a gas station could be permitted because the overlay district wipes them all out. There is no lot on Route 28 that has frontage where a gas station could be permitted. I'm sure it was an unintended consequence, but this would suggest that there could not be gas stations there. The only place where a gas station could be allowed is the first 2,000 feet of Route 3. Now, the Town ordinance says you can't have a gas station in the ground water protection overlay district – well-intended –

because you are protecting that valuable resource. There is one consequence. There is no area where a gas station would be permitted now. Looking at State regulations, I refer to the GAA and GA2 districts. Working with the US Geological Society, the New Hampshire DES has identified potential aquifers called GAA, GA2 and GA1, and they value these. GAA is the most valuable. There is a GAA district in Allenstown – right here. Here is our site right here – over 2,000 feet away. The GA2 district is a third tier, again, a valuable aquifer area, and that is 800 feet away. This proposal is not in one of those critical areas, and at the State level, they do not say ‘no’. They tell us how to do it, for these protections in place protect the environment, and it is a safe thing to do. That is what we are doing, and we are complying with all of the State regulations. We are asking you for a variance to allow this to occur. Rely upon State regulations for all of those plans that I told you we are putting together. We have put the spill prevention containment control report in Allenstown before. We intend to bring one together there, so that, in fact, the intent, the spirit of the ordinance, would be maintained to protect the ground water protection district. Lastly, we have contacted DES to make sure we are looking at all of the right things, and they have affirmed that the location we have is not encroaching within any of the areas that they are concerned with. We have maintained the wellhead setbacks; of course that is important too. We are 250 feet from a private well and 500 feet from a public well. With that, I conclude my presentation. If you have any questions, I would be happy to try to answer them in our appeal for a variance.

Chair Feustel asked if there were any public comments.

There were none.

Chair Feustel asked if there were questions from the Board.

(UNKNOWN SPEAKER) asked if it was possible to put in monitoring wells to make sure, on a periodic basis, that the aquifer is not being impacted.

Mr. Fredette responded yes. In my presentation I said there is a double-wall containment system so that there is a tank that holds the petroleum and an outer tank. The area between is being monitored, so in fact they would be aware before anything would happen beyond that. It is continuously being monitored electronically. That is the current technology.

Chair Feustel stated we could make the monitoring well a condition of the variance.

(UNKNOWN SPEAKER) stated my well is going to be 250 feet from your gas tanks, because if it's not, I will be out there. In Pembroke, if this was a Merrimack aquifer, it would not happen.

(UNKNOWN SPEAKER) stated a lot of these safety measures that you've talked about, the spill prevention plan and all of that stuff, is that part of the general presentation made to us? Do we have copies of that?

Mr. Pendergast responded that hasn't been generated. That's a Planning Board issue and will come through the Planning Board. That's one of the criteria that they have to meet for the Planning Board. That has to be submitted to me and approved prior to approval by the Planning Board.

(UNKNOWN SPEAKER) said so, before it got Planning Board approval, those things that he mentioned as far as the safety, the protection plans, the training of employees...

Mr. Pendergast stated clearly the training of the employees won't happen until the place is built. The spill prevention plan and all of that must be submitted to me for approval, as a condition for approval by the Planning Board and DES.

Mr. Fredette stated I described to you the elements that are part of the plan, and as Mr. Pendergast said, that plan is generated for review at the State and his office.

Chair Feustel asked where are you with the approval for the variance for the joint driveway?

Mr. Fredette responded we got approval from this Board in March of 2016. After that we went back to Catamount Hill Coop on June 11th where they affirmed cooperation with the project. Currently there is a proposed easement that their attorneys are reviewing, the easement for the driveway, and a second easement to go around your well, to protect your well.

(UNKNOWN SPEAKER) stated I have one other question. Now, on the traffic studies, does that stay in Planning, like the widening of Route 28 in the passing lane there?

Mr. Fredette responded that they haven't made application to New Hampshire DOT. We were ready to but took this detour to come back here.

On motion of **(UNKNOWN SPEAKER)** duly seconded by **(UNKNOWN SPEAKER)** it was voted to enter deliberation.

Chair Feustel asked Mr. Pendergast to find out the specifications for open space and farming. He asked Mr. Pendergast to project for the Board what the zoning regulation is on that.

Mr. Pendergast responded this has nothing to do with open space and farming. This is the aquifer protection district.

Chair Feustel asked aren't gas stations expressly prohibited? I'd like to see that in writing.

Mr. Pendergast responded prohibited: the use of gas stations in the aquifer protection overlay district; now, the prohibited uses are the development of a solid waste landfill...

Chair Feustel stated that's what I'm asking you to project. I want to see exactly what the wording is on that.

Mr. Pendergast stated it just says what the district is. It gives you the boundaries. Item "H" prohibits the development and operation of a gas station.

Chair Feustel stated that seems inflexible to me – prohibited.

Mr. Pendergast stated you can receive a variance for it. That is why they are here.

Chair Feustel stated by giving a variance, we are not saying any future applicant...

Mr. Pendergast stated no, we deal with these on a case by case basis.

Chair Feustel stated we can grant this and not grant somebody else the same thin.

Mr. Pendergast stated because you get into the spirit of the ordinance, which addresses overcrowding. We could say we don't want five gas stations on this section of the road.

Chair Feustel asked the gas station that is already there, how was that granted?

Mr. Pendergast responded that they did not have an aquifer overlay district 30 years ago. As Mr. Fredette pointed out, this district covers a large area of Town.

Chair Feustel asked how that was addressed by the Planning Board? We didn't make any changes to that.

Mr. Pendergast stated I would assume that the aquifer protection district wasn't something someone pulled out of their back pocket. We've met with the hydrologist from the town, from Pembroke Water Works. They looked at this because we wanted them to weigh in on it. It's outside of their wellhead, outside of their collection area, so they didn't really have anything to weigh in on it. The aquifer protection district has been there for a while. The reason for it is to protect your resources. As Mr. Fredette pointed out, there are systems in place that we need to consider.

On motion of **(UNKNOWN SPEAKER)**, duly seconded by **(UNKNOWN SPEAKER)**, it was voted to come out of deliberation.

Chair Feustel called for a vote on each of the five criteria.

(UNKNOWN SPEAKER) made a motion to approve the first criteria; The Variance will not be contrary to the public interest. The motion was duly seconded by **(UNKNOWN SPEAKER)**.

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

Mr. Roy – yes; Mr. Laflamme – yes; Mr. Gryval – yes; Mr. Klawes – yes; Chair Feustel – yes.

(UNKNOWN SPEAKER) made a motion to approve the second criteria; The spirit of the Ordinance is observed. The motion was duly seconded by **(UNKNOWN SPEAKER)**.

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

Mr. Roy – yes; Mr. Laflamme – yes; Mr. Gryval – yes; Mr. Klawes – yes; Chair Feustel – yes.

(UNKNOWN SPEAKER) made a motion to approve the third criteria, Substantial Justice is done. The motion was duly seconded by **(UNKNOWN SPEAKER)**.

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

Mr. Roy – yes; Mr. Laflamme – yes; Mr. Gryval – yes; Mr. Klawes – yes; Chair Feustel – yes.

(UNKNOWN SPEAKER) made a motion to approve the fourth criteria; Values of surrounding properties will not be diminished. The motion was duly seconded by **(UNKNOWN SPEAKER)**.

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

Mr. Roy – yes; Mr. Laflamme – yes; Mr. Gryval – yes; Mr. Klawes – yes; Chair Feustel – yes.

(UNKNOWN SPEAKER) made a motion to approve the fifth criteria; Literal enforcement of the provisions of the ordinance would result in unnecessary hardship (Section A)owing to the special conditions of the property that distinguish it from other properties in the area. The motion was duly seconded by **(UNKNOWN SPEAKER)**.

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

Mr. Roy – yes; Mr. Laflamme – yes; Mr. Gryval – yes; Mr. Klawes – yes; Chair Feustel – yes

On motion of **(UNKNOWN SPEAKER)**, duly seconded by **(UNKNOWN SPEAKER)**, it was voted to approve this variance.

Mr. Fredette said thank you very much.

Chair Feustel noted that there is a 30-day limit for appeal.

On motion of **(UNKNOWN SPEAKER)**, duly seconded by **(UNKNOWN SPEAKER)**, it was voted to adjourn at 7:16 p.m.

 7/12/17

ERIC REUSTEL, Chairman, Allenstown Zoning Board of Adjustments

