

TOWN OF ALLENSTOWN  
Zoning Board of Adjustments  
16 School Street  
Allenstown, New Hampshire 03275  
October 25, 2017

**Call to Order**

The Allenstown Zoning Board of Adjustments meeting of October 25, 2017 was called to order by Chair Feustel at 6:37 p.m.

Chair Feustel called for the Pledge of Allegiance.

**Roll Call**

Present on the Board: Keith Klawes, Dawna Baxter, Jeff Gryval, Chad Pelissier and Eric Feustel

**Others present**

Mark Sargent, Richard D. Bartlett & Associates, LLC; Mark Taylor, Rehab Association of New England; Craig Keeler, Fairway Real Estate; Mark Noel, abutter

**OLD BUSINESS/RECEIPT OF APPLICATIONS & PUBLIC HEARINGS**

Chair Feustel stated that the Board would be addressing the application of Richard D. Bartlett & Associates, LLC (applicant) and Rehab Associates of NE (owner) for a variance for a single-family residential development (Variance-Article IX, Section 901) for the parcel at the corner of River Road & Dodge Road (Map 410, Lot 12), which is currently zoned industrial.

Mr. Sargent of Richard D. Bartlett & Associates said that he was present to represent the owner of the property at the corner of River Road and Dodge Road (Map 410, Lot 12), in a quest for a zoning variance. The 58.6-acre parcel is in an industrial zone and the owner would like a variance to develop lots for single family residential use. He noted that the property is bound on the south by Boat Meadow Brook and there is an area which has been classified by the DES as wetlands. Parts of the parcel are in a groundwater overlay protection district. There is no direct access to Route 28, and there is no municipal sewer and water. Because of these factors, the owner believes the property is more suited to residential than industrial use. The proposal is for 14 lots varying in size from .93 to 1.92 acres; each has more than 200 feet of frontage. Lot 15, a much larger parcel, would be retained by the owner, under this proposal.

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Mr. Keeler of Fairway Real Estate said that he and Jim DiStefano met with Town officials about a year ago, proposing that a residential development would be in keeping with the neighborhood. There is

industry there, but not large facilities. It would be difficult to sell this as industrial or commercial property because of the lack of municipal sewer and water. It would be a boon to the tax base.

Mr. Sargent addressed the five criteria for a variance, per Allentown ordinance. Criteria 1. A. a. says that denial of the variance would result in unnecessary hardship to the owner because of special conditions of the property that distinguish it from other properties in the area. The response of the petitioners is as follows: "This large tract of property has frontage on River and Dodge Roads in an area of Town that is predominately residential. The property is not serviced by either municipal water or sanitary sewer and does not have direct access to NH Route 28 which creates a hardship to develop this property for industrial type uses." Criteria 1. A. b. says that no fair and substantial relationship exists between the general purpose of the Zoning Ordinance and the specific restrictions on the property. The response of the petitioners is as follows: "The proposed residential use of the property would be in harmony with the abutting residential and agricultural uses; introduction of industrial uses would seem to be counterintuitive and disruptive to the neighborhood." Criteria 2 says the granting of a variance will not be contrary to the spirit and intent of the Ordinance. The response of the petitioner is as follows: "The ordinance is intended to create development that is conducive to other use in the proximity, have proper access and municipal services. This site lends itself to residential use rather than industrial due to the lack of the aforementioned." Criteria 3 says authorization of a variance will not be contrary to the public interest. The response of the petitioner is as follows: "Granting of the variance will allow a use of this property which is more conducive to abutting uses and therefore will not have a negative impact to the neighborhood and local traffic." Criteria 4 says that authorization of a variance will result in substantial justice. The response of the petitioner is as follows: "The granting of the variance will permit the use and development of this property in a manner consistent with abutting uses and will not overburden the parcel or adjacent roads. Criteria 5 says that authorization of a variance will not diminish the value of surrounding properties. The response of the petitioner is as follows: "As stated previously, the proposed residential use is consistent with other uses in this area; the parcel will be sized consistent with current residential zoning requirements and will not produce the type of traffic impact that an industrial use would."

Chair Feustel noted that the wetlands have been delineated on the plan presented. He asked if there was flood potential.

Mr. Sargent responded that some potential exists, as indicated.

Chair Feustel said that this is a Planning Board issue anyway.

Mr. Klawes asked how the marshy land might affect installation of septic systems and wells. The soil is poorly drained.

Mr. Sargent said that Lots 10, 11 and 12 were most apt to be challenging but that there is ample room for septic on those lots.

Mr. Keeler said that the size of the septic system is based on the number of bedrooms; these will be two or three-bedroom home, not four or five.

Mr. Noel said that his business abuts the proposed subdivision and asked how it might affect the value of his property.

Ms. Baxter asked about the situation if Mr. Noel sells his property and the new owner wants to continue the business.

Chair Feustel said this would have no effect on the zoning of Mr. Noel's property.

Mr. Sargent said that Mr. Noel has been encroaching on this property, using a little less than a half of an acre to park vehicles. The owner plans to offer this parcel to Mr. Noel, if he wishes to have it.

Mr. Noel said that everyone knows what the mobile home parks have done to the tax base. If each of these new homes has the average 2.3 children, 30 more children would have to be educated.

Chair Feustel said that the ZBA needs to address the permanent removal of this land from the industrial zone. Residential property never pays for itself in tax revenue

Ms. Baxter asked if Dodge Road was maintained by the Town or if Billy Gelinas did.

Mr. Pelissier responded that it this section is maintained by the Town.

Mr. Gryval asked how this development will affect Mr. Noel's business.

Mr. Sargent said that he didn't know, but that purchases would be made with knowledge of the situation.

Mr. Keeler said that it might bring Mr. Noel more business.

Mr. Noel stated that his business is not an automobile garage, but it could be.

Mr. Pelissier speculated that the homeowners might later complain about commercial/industrial activity, as has happened in other situations. He said that there is a recycling business there, a welder, and a car restoration business.

Mr. Noel said that Advanced Excavation travels those roads with their 18-wheelers.

Mr. Keeler said that they have taken a lot of these things into consideration. He expects these to be small homes for first time buyers. There is a terrible housing shortage, and with the groundwater situation, residential makes more sense than an industrial development.

Chair Feustel asked if the developer would be willing to limit the number of bedrooms as part of an agreement to grant the variance.



Mr. Keeler said that would not be a problem and made a lot of sense.

Chair Feustel asked if two-bedroom homes were marketable because they were not when he was a first-time home buyer in 1980.

Mr. Keeler said that a lot of people are downsizing.

Mr. Klawes asked if this property was in an area a specific lot size is required.

Mr. Sargent said these lots are 40,000 square feet with 200 feet of frontage, and so they conform to Town requirements.

Ms. Baxter asked about the timeframe for completing the project.

Mr. Keeler responded that if the market is good, it could be one to two years, but if not, it could be three.

Mr. Klawes asked if they would wait to build until having buyers or would they build some homes first.

Mr. Keeler responded that they might approach a local builder who would buy lots and build on them. Or, they might just sell lots and let the new owner make plans for building.

Mr. Noel asked about the assessed value of this property.

Mr. Sargent said that it was \$176,500.

Mr. Noel asked how much they would charge for a 40,000-square foot lot.

Mr. Keeler responded \$20,000 to \$25,000.

Ms. Baxter commented that this was low.

Mr. Klawes asked if they were all buildable lots.

Mr. Sargent responded that they meet or exceed Allentown's requirements.

Mr. Klawes asked if someone might buy two lots and build a larger home.

Mr. Keeler said that the variance could stipulate that that wouldn't be allowed.

Chair Feustel said that in that case, they would have to come before this Board for permission.

Mr. Keeler said that they envisioned homes between 1,600 and 1,700 square feet.

Chair Feustel referred to the large area behind the development - some wetlands, some not. He asked the petitioner if they were looking for a variance for the entire parcel to be residential.

Mr. Keeler said he would defer to Mr. Sargent, but said that developing that area was not economically feasible because of the cost of roads.

Ms. Baxter asked about a right of way for the back property.

Mr. Sargent responded that it has frontage, and to the left is a fifty-foot strip to get to it.

Mr. Noel asked why they were not proposing larger lots.

Mr. Sargent said that they were only looking for a change in use tonight. Bigger lots would be a Planning Board issue.

Mr. Keeler told Mr. Noel that these lots are all larger than his.

Mr. Klawes asked Chair Feustel what would happen in the event that someone wanted to have a home business in this subdivision.

Chair Feustel responded that the variance goes with the property; they would need ZBA approval. He noted that the zoning is still industrial.

Mr. Sargent said that he thought a home business would be permitted.

Mr. Keeler said he didn't have a crystal ball, but that the lack of water and sewer makes this unlikely.

Chair Feustel said that the large lot could be a warehouse.

Mr. Keeler said that would not happen because of the cost of the road.

Mr. Klawes stated that economic times change, and the real estate market does as well.

Chair Feustel asked if the petitioner might agree to a conservation easement for the rest of the property.

Mr. Sargent responded that they would not.

Ms. Baxter asked if the Town could rezone the back portion after the development is completed.

Chair Feustel noted that at one time it was zoned residential.

Mr. Gryval said that changing the zoning would require a vote of the Town residents at a Town meeting.

Mr. Keeler said that what makes the most sense, especially because of the groundwater overlay protection district, is development that does not create hazardous waste.

Mr. Klawes countered that businesses don't always have hazardous waste.

Mr. Keeler said that they could not build the hospital because there was no municipal sewer or water.

Mr. Gryval said that the purchaser knew that at the time.

Mr. Klawes stated that 75% of New Hampshire is serviced by wells, not public water. A lot of businesses in the State do not have municipal sewer and water. He continued, asking what will happen to the land in the back.

Chair Feustel proposed requiring a buffer between the residential development and the land in the back, perhaps 200 feet as is required for cluster developments. He asked if they would object to that.

Mr. Taylor, the developer, said that a 200-foot buffer is reasonable.

Mr. Sargent said that there is lots of natural buffer already.

Chair Feustel noted that Lot #11 is mostly wetlands.

Mr. Sargent said that it still meets the requirements for a lot.

Ms. Baxter asked if the buffer would be 100 or 200 feet.

Chair Feustel said that 100 feet is about one third of a football field. He then informed the petitioners that their plan is now the property of the Town. He also said that his intent is to do justice to the future owners, to protect them.

On motion of Mr. Klawes, duly seconded by Ms. Baxter, it was voted to enter into deliberations.

Chair Feustel asked the Board members to consider item 1 A a. of the criteria.

Mr. Gryval said that he, respectfully, does not see hardship. They knew there was no municipal water or sewer when they purchased the property long ago.

Mr. Pelissier said that going toward Epsom, businesses such as Wendy's and Dunkin' Donuts operate with wells and septic systems.

Mr. Gryval said that the same is true on the 3A side of Hooksett.

Chair Feustel asked the Board members to consider item 1 A b. of the criteria.



Mr. Klawes said that there is already mixed use in the area, so it doesn't matter. He asked if this refers to the specific property being considered or the whole area.

Mr. Gryval said that they should be looking at the whole area, yet the petitioner only addresses residential and agricultural, not industrial and commercial.

Ms. Baxter said that she and others in the area would like to see residential development there. She said that Casella is an eyesore. Pine Haven is a good facility.

Chair Feustel asked the Board members to consider item 2 of the criteria.

Mr. Pelissier stated that the area is zoned industrial, with lots of commercial/industrial activity. He mentioned a welding operation, a recycler, and an automobile restoration facility.

Mr. Klawes said that the spirit has changed over the years. The zoning was changed from residential to industrial, apparently to accommodate a rehab hospital, a project which did not come to fruition. He asked if it would be possible to find out if the change was actually made for the rehab facility project.

Chair Feustel stated that he would prefer to have the Town vote to change the zoning rather than grant a variance. He said he assumes there was a petition at the time of the zoning change. He asked Mr. Taylor if he could provide information about the events at the time of the zoning change.

Mr. Taylor, representing the owner, said he thinks the property was a farm at one time.

Mr. Gryval stated that the Town wants the zoning to be industrial.

Mr. Klawes asked if the Town voted to change the zoning to industrial because of the plans for the rehabilitation hospital. He said that perhaps the Board could not answer to the spirit of the ordinance and need a continuation to find out.

Chair Feustel said he doubts that a reason was given.

Ms. Baxter said that they probably expected tax revenue from the construction and the rehab facility would fit in nicely.

Chair Feustel said that they could not second guess the voters; therefore, the Town should vote again.

Mr. Gryval said that this discussion had encouraged him to look at this in a different way.

Chair Feustel asked the Board members to consider item 3 of the criteria.

Mr. Gryval said he agrees that the proposal is not contrary to the public interest.

Chair Feustel said that a residential development never pays for itself in tax revenue.

Mr. Klawes said that they should not assume that the development would add 30 students to the school system. He noted that no abutters are present, other than Mr. Noel.

Chair Feustel asked the Board members to consider item 4 of the criteria. He said that substantial justice is done, especially with the buffer. However, later someone could merge two or three lots and open a business.

Mr. Klawes said that they would have to come before the ZBA.

Chair Feustel said they would only need a lot line adjustment.

Mr. Gryval said that lot lines are considered by the Planning Board and very few requests are denied. The zoning is still industrial.

Ms. Baxter said that perhaps this issue should go back to the Town, to see if the voters want the area to be zoned residential.

Mr. Gryval said that the voters deserve an answer from the ZBA. This should not be passed off to the Town. Furthermore, the petition of a property owner, a resident, or the Planning Board would be needed to bring this to the Town meeting in March.

Mr. Klawes asked if they could stipulate that the 14 lots be residential.

Chair Feustel said he did not know.

Mr. Pelissier asked if, by doing that, they would be changing the zoning.

Mr. Gryval said that a residential development is not consistent with the abutters, who are mostly commercial. It depends on which part of the road you look at.

Ms. Baxter noted that there is a difference between an industrial operation like Casella and a small commercial business.

Chair Feustel said that hypotheticals do have relevance because the variance goes with the property.

Chair Feustel asked the Board members to consider item 5 of the criteria.

Ms. Baxter said that the value of surrounding properties would probably increase because of the new homes.

Chair Feustel said that he agrees.

Mr. Gryval asked what this development might do to the market value of Mr. Noel's business.



Mr. Pelissier said that it should have no effect. The quality of his business determines his market value.

Mr. Klawes agreed that the quality of Mr. Noel's business was more important.

Chair Feustel said that he agrees there would be no effect.

Mr. Gryval said that he disagrees.

On motion of Mr. Klawes, duly seconded by Ms. Baxter, it was voted to return to public session.

Mr. Klawes asked if the buffer should be included in the motion.

Chair Feustel advised that it could be added as an amendment.

Mr. Klawes moved to approve the application for a variance. The motion was seconded by Mr. Gryval.

Ms. Baxter said they might need a buffer.

Mr. Klawes said it should be around all of the lots; some natural buffer exists.

Mr. Gryval said they should keep in mind that they make the lots deeper.

Mr. Pelissier said he did not think a buffer was needed if any lot could be industrial.

Mr. Klawes asked how close to the property line an industrial building could be

Chair Feustel responded 20 feet.

Mr. Gryval said that setbacks for industrial are different and are not large.

Chair Feustel said he may have misspoken. He said that, based on what Mr. Sargent said, a 100-foot buffer is reasonable. It protects all concerned.

Mr. Pelissier asked how you protect them from each other.

Mr. Klawes noted that the back lot could be something big.

Chair Feustel asked if a smaller buffer would be better.

Mr. Pelissier responded that no buffer was needed. He said that you can't limit what's going to happen forever.

Mr. Klawes asked Mr. Pelissier if the buffer on the back was going to change his vote.

Mr. Pelissier said that he does not want to restrict anyone when he doesn't think it is necessary.

Mr. Klawes made this motion to amend the original motion as follows: "Lot 15 will adhere to a 100-foot building setback from Lots 1-14."

The motion was seconded by Mr. Pelissier.

Mr. Gryval and Mr. Pelissier voted nay; Mr. Klawes, Ms. Baxter and Chair Feustel voted yea. The motion carried.

There was a consensus not to limit the number of bedrooms or the size of homes.  
A vote was taken on the original motion to approve the variance.

Mr. Gryval and Mr. Pelissier voted nay; Mr. Klawes, Ms. Baxter and Chair Feustel voted yea. The motion carried.

Chair Feustel stated that the decision could be appealed within 30 days.

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

Chair Feustel noted that the December 14, 2016 minutes have not been completed.

On motion of Mr. Gryval, duly seconded by **(inaudible and not repeated by the Chairman)**, it was voted to approve the minutes of the September 5, 2017 meeting.

Mr. Gryval asked if arrangements have been made to get the Town Counsel, Sharon Summers, back to educate the Board. She offered to do that gratis. He said she could advise them about how they should be looking at requests; what they should or should not take into consideration.

Mr. Pelissier said that there is a specific and clear checklist. It was assembled by Mr. Pendergast.

Mr. Gryval said that personal feelings should not be considered.

Chair Feustel said that he did not think he possesses that checklist.

Ms. Baxter said that she could send it to all Board members. She added that she is new to this process and any type of guidance would be helpful.

Chair Feustel said that members are prohibited from voting yes just to increase tax revenue.

Mr. Gryval said that this a difficult board on which to serve because it is important to be legally correct. If any of the five criteria are not met, they should vote no.

Mr. Pelissier agreed, saying that feelings should not come into play.

Chair Feustel cautioned the membership regarding illegal meetings -discussing these cases with other Board members outside of the public hearing.

On motion of Ms. Baxter, duly seconded by Mr. Gryval, it was voted to adjourn at 9:16 p.m.



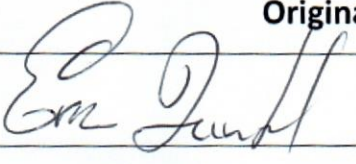
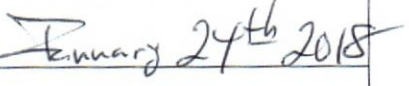
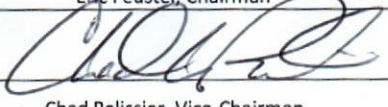
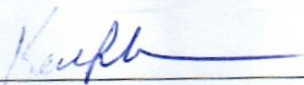
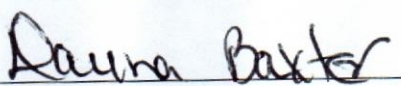
TOWN OF ALLENSTOWN  
ZONING BOARD OF ADJUSTMENTS  
PUBLIC MEETING MINUTES

October 25, 2017

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**Signature Page**


**Original Approval:**

	
Eric Feustel, Chairman	DATE
	1/24/18
Chad Pelissier, Vice-Chairman	DATE
Jeff Gryval, Member	DATE
	1-24-18
Dawna Baxter, Member	DATE
	1-24-18
Keith Klawes, Alternate	DATE

TOWN OF ALLENSTOWN  
ZONING BOARD OF ADJUSTMENTS  
PUBLIC MEETING MINUTES

October 25, 2017

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<u>Eric Feustel, Chairman</u>	<u>DATE</u>
<u>Chad Pelissier, Vice-Chairman</u>	<u>DATE</u>
<u>Jeff Gryval, Member</u>	<u>DATE</u>
	
<u>Dawna Baxter, Member</u>	<u>DATE</u>

<u>Keith Klawes, Alternate</u>	<u>DATE</u>