

TOWN OF ALLENSTOWN
Zoning Board of Adjustment
16 School Street
Allenstown, New Hampshire 03275
September 9, 2015

Call to Order.

The Allenstown Zoning Board of Adjustment Meeting for September 9, 2015 was called to order by The Chair at 6:32pm.

Roll Call.

Present on the Board: Eric Feustel, Diane Demers, Chris Roy, Roger LaFlamme, and Robert Bergeron.

Ex-Officio: N/A

Others Present.

Residents of Allenstown: Richard Dymont, Sharon Gelinass, Therese Florin, and William Gelinass.

Others Present: George Fredette, SFC Engineering & Partnership LLC and Paul Martin, Barlo Signs.

Other Public Officials:

Allenstown Staff: Shaun Mulholland, Town Administrator and Dana Pendergast, Building Inspector.

**Case# 2015-0005 Niyati Realty, LLC & SFC Engineering Partnership, Inc. 289 Pinewood Road
Lot# 409-032 Commercial Zone Variance Article VI Section 601**

Mr. Fredette of SFC Engineering introduced himself to the Board. He stated they are requesting a permit to construct and operation of a convenience store, filling station and restaurant in an area where these uses are not permitted.

Mr. Fredette pointed out a map of the lot site where they would like to put the businesses. He stated the lot was originally for residential use. He stated later the lot came off the tax rolls and it was sold to Niyati Realty by the Town of Allenstown. He stated Niyati Realty had purchased the property with the intent to put commercial buildings on it.

Mr. Fredette showed the Board the map which indicates the lot is outside of the industrial zoning but adjacent to it. He stated there are seven commercial uses within 800 feet of the lot. He stated the entire lot is 8.82 acres and has very favorable soil conditions on the lot.

Mr. Fredette stated they are proposing to build a 3500 square foot building which will house a restaurant and convenience store. He stated the restaurant would sell pizza and sandwiches with 10 seats inside. He stated there are also plans for a drive-thru coffee place. He stated there would be various pump islands which would be able to serve larger vehicles.

Mr. Fredette stated when they design the site they will be seeking state approval for environmental regulations, storm water management and leech fields. He stated DOT will be involved for the driveway configuration.

Mr. Fredette stated Niyati Realty has been in touch with Catamount Hill Cooperative Inc. to come to an agreement to share part of the driveway which would be possible through an easement. He stated they would give the Coop an easement out back which would give them access to their well.

Mr. Fredette stated the site plan will conform to all of the site plan regulations except Article VI Section 601 which is why they are before the ZBA asking for a variance.

The Chair asked Mr. Fredette about sharing the driveway with Catamount and it will enter onto Presidential Drive. Mr. Fredette stated it is correct and they would reconstruct it to have a divided access.

The Chair asked about the area between the convenience store, trailers and Catamount Hill looks to encroach. Mr. Fredette stated it is showing existing landscaping up there and they will be fortifying it so there is a vegetative structure. He stated there are structures very close to the line and it is the intent the vegetation on the Catamount side would remain and they would fortify vegetation on their side.

Mr. Roy asked what the proposed retaining wall. Mr. Fredette stated one proposed wall will be five to ten feet high and the other one will be about 13 feet. He stated the proposed site will be lower than the Coop.

Mrs. Demers asked if there was a separate entrance in the back of the lot. Mr. Fredette stated there is no entrance in the back.

Mr. Fredette stated there are five criteria for the variance which he would like to address. He stated the first criteria is the proposed use would not diminish surrounding property values. He explained the proposed use is adjacent to other commercial uses within this transportation corridor; the architectural style of the proposed development will be in the character of the other use in the area; the storm water management systems will protect the storm water runoff quality that contributes to the Suncook River; and adjacent residential uses will be adequately protected by vegetated screen and topography created by site construction.

Mr. Fredette stated the second criteria is granting the variance will not be contrary to public interest. He explained it will allow for expansion of retail facilities within the town to serve the needs of Allenstown's

community and visitors; the area of the proposed project has many commercial uses; it will increase the tax base of Allenstown; the project will meet or exceed other site design criteria – open space and yard setbacks; the proposed driveway entrance onto Pinewood Road to service this lot provides adequate sight distance in both directions; water supply and sanitary sewer infrastructure will be designed to support this proposed development; and storm water management systems will protect the storm water runoff quality that contributes to Suncook River.

Mr. Fredette discussed the three tests for unnecessary hardship; as applied to the petitioners property, the ordinance will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment; as specifically applied to the petitioner's property the ordinance has no fair and substantial relationship to the general purposes of the zoning ordinance; and if relieved by a variance, will not injure the public or private rights of others.

Mr. Fredette stated granting the variance will do substantial justice because it will increase the tax base for the town, will allow for the highest and best use of the property, it is not well suited for the primary uses which are permitted, a local business owner will be allowed to develop the property and represents economic development in Allenstown.

Mr. Fredette stated the proposed is not contrary to the spirit of the Ordinance because they are proposing a commercial use in a commercial area. He stated they are using Best Management Practices to maintain public health and safety.

Mr. Fredette stated he was advised more than once as the site is put together it may not conform to the sign ordinance. He stated should the project move forward they may be coming back looking for relief from the sign ordinance.

Mr. LaFlamme asked if there is still a lot of vegetation up there. Mr. Fredette stated he will be there on Friday and be able to tell them more after. He stated they will be having test specs done. He stated the record soiled indicates they are not going to find blench. He stated they are hoping to have very favorable soil conditions.

Mrs. Demers stated this is very similar to the gas station across the street other than the added seating and the drive thru restaurant. Mr. Fredette stated yes it is.

A resident asked what happens to the existing right away. Mr. Fredette stated unless the owner takes action it would remain.

A resident stated in order to have a shared driveway they will have to move Presidential which will make it a lot steeper than it is right now. She asked how they are going to fix it so those who live in the park can get out of the park. Mr. Fredette stated he is in communication with the Coop Board who will come to them will plans for the reconstruction. He stated they have to take the steepness out of it and will be addressing it so it isn't steeper. He stated they are going to incorporate all the stoppage, signage and safety features they can to accommodate the community.

A resident stated where the school buses stop right now there are a few cars which have to wait. Mr. Fredette stated they are speaking to the Coop about the school bus stop to try to fix the situation because they realize it will be difficult.

Mrs. Gelinas asked what the distance between the house on 287 Pinewood and the building. Mr. Fredette stated it is about 75 feet. She stated she is right up against 287 Pinewood and doesn't want to be 75 feet from the house there.

Mrs. Demers asked Mr. Fredette if they are encroaching on any property as far as the variance goes. Mr. Fredette stated they are not encroaching and there will be enough of a buffer to do vegetation screening.

Mr. Dymment stated the other side of the road is consistently commercial and industrial use. He stated all the way up Gilbert Road and Deerfield Road is open space and farming. He stated he doesn't think the open space and farming is irregular for what is there now. Mr. Fredette stated as they head North on Route 28 from the area it does appear to leave the commercial use area.

Mrs. Gilman asked what the proposed hours of operation and what is the buffer for the northern side. Mr. Fredette stated he believes the restaurant will be open from 6pm-10pm at night. He stated Mrs. Gilman's house seems to be a good distance away but he appreciates the concerns and he thinks it will be easily addressed.

A resident stated she doesn't understand the need for it since there is one right down the street.

Mr. Gelinas asked if they are going to do a lighting study, are they going to run the town water and what about oil spills. Mr. Fredette stated there is no plan to run town water. He stated the plan is for the well in the back. He stated they will be addressing the tanks with the state fire marshal's office to have the tanks in an area to prevent from spills.

Mr. Gelinas stated next door has a problem with their water and the wells aren't very far apart. Mr. Fredette stated they can't fix the problem but they will do what they can to help them protect the water.

Mrs. Florin, 5 Gilbert Road, expressed concern of the noise level. She stated right now if there is a light on in one of the houses they can see it from their yard. She expressed concern of the value of her property going down as well. She asked why they need another gas station and another convenient store when they already have them.

The Chair asked about the drive thru with an outdoor speaker and if it is going to be a loud speaker outside. Mr. Fredette stated there will be a sign with the speaker on it. The Chair asked how far the first property is from it. Mr. Fredette stated from building to building it's about 80 feet from Mrs. Gelinas' property.

Mr. Dymment stated in regards to the wells on the Catamount side the town must have an ordinance saying they can't build up to a certain distance on the well. Mr. Fredette stated it is the State which takes issue on it. He stated the requirement is a 200 foot radius from the well. He stated the site plan shows the protected radius. He stated he thinks the town would refer to State regulations. Mr. Dymment stated there will be a

thin vegetative buffer. Mr. Fredette stated the buffer will be about five to ten feet wide and about six feet tall. He stated it is a typical visual screen.

Ms. Gelinas asked how tall the building will be. Mr. Fredette stated it will be a single story building with a gable roof which will be about 18 to 20 feet tall.

Mr. Gelinas asked where the septic system will be going. Mr. Fredette stated it will be going out back. He stated it is pretty wet out back there. Mr. Fredette stated they have had the weather scientist out there and there are no significant wetlands.

Mr. Roy asked what Niyati Realty's plan was for the other building was. Mr. Fredette stated he doesn't own the property and the lease will be up soon.

Mr. Gelinas expressed concern about his house being worth nothing if these buildings go in. He stated he is also concerned about his well. He stated the gas tanks will be too close to his well. He stated he thinks they need to do a water study.

A resident asked if a traffic study has been done on the area. Mr. Fredette stated they haven't gotten there in the design yet but they could do it if necessary.

The Chair asked to see where on the map the existing entrance door [of the current gas station] is compared to the proposed entrance. Mr. Fredette stated it is about 600 feet down the road.

Mr. Gelinas asked what the process is for granting the variance. The Chair stated the committee votes whether or not to grant the variance. Mr. Gelinas asked if there are any studies done. The Chair stated they don't make any studies but they can request one to be made if the members desire. Mrs. Demers stated they go to planning after they come before the ZBA. Chief Pendergast stated the reason they are here tonight is for the ZBA to determine if it is acceptable to have this store in the zone. He stated there is other items in which the Planning Board addresses.

Motion. Mr. Roy made a motion to go into deliberation. Mrs. Demers seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. Feustel– Yes; Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

The Chair stated they cannot converse with the general public or the petitioner at this time. He stated every item has to receive three votes and if any item does not the variance will not be given.

The Chair asked the proposed use would not diminish surrounding property values. Mr. LaFlamme stated they know two of the properties will be affected. Mr. Roy stated he agrees.

The Chair took a roll call vote asking will the proposed use diminish surrounding property values. Mr. Roy, Mr. LaFlamme, and Mr. Bergeron all stated yes it will diminish the property values. Mrs. Demers abstained from voting.

The Chair asked granting the variance will not be contrary to public interest, is it in the spirit of the ordinance, is substantial justice done, is the value to surrounding property not diminished and does literal enforcement result in unnecessary hardship.

Mrs. Demers stated they are looking at the zoning and it's up to the Planning to determine everything else. She stated the issue she is having is its Route 28 and pretty much all the property nearby is industrial as far as the zoning goes. The Chair stated his theory is it is a domino effect; if they give it to them then they will have to give it to other properties. Chief Pendergast stated they are not changing the zoning, they are allowing a use which is not permitted. He stated they have to look at it on a case by case basis. The Chair stated he thinks granting the variance will be contrary to the overall public interest.

Mr. Bergeron stated it is unfortunate they have a big residential area on a commercial zoning area. The Chair stated Route 28 is not commercial; it is all open space and farming. Mrs. Demers stated there is a lot of industrial.

The Chair asked the Board if they agree or disagree with criteria #2 which states granting the variance will not be contrary to public interest. Mrs. Demers, Mr. Roy, Mr. Bergeron, and Mr. LaFlamme all stated they don't believe it is contract to public interest.

The Chair asked the Board if criteria #3a unnecessary hardship and if the unique setting of the property in the environment warrant permitting the activity in the zone. Mr. Roy stated it will cause hardship for a couple of the neighbors. The Chair stated he thinks this is referring unnecessary hardship to the applicant.

The Chair asked the Board about criteria #3b as specifically applied to the petitioner's property the ordinance has no fair and substantial relationship to the general purposes of the zoning ordinance. He asked if this is consistent with the general ordinance for open space and farming. The Chair stated he questions the statement it is not well suited for the primary use because there is a farm on the road.

The Chair asked the Board about criteria #3c if relieved by a variance, will not injure the public or private rights of others. He stated they had already decided it would affect the neighbors.

The Chair asked is there unnecessary hardship for the applicant if they did not grant the variance. Mr. Roy, Mr. Bergeron, and Mr. LaFlamme all stated no. Mrs. Demers stated she is still thinking it is so close to the other area. She voted yes.

The Chair asked criteria #4 granting the variance would do substantial justice. He stated they are not allowed to consider the tax impact on this. Mr. Roy voted no, the Chair, Mr. Bergeron, and Mr. LaFlamme abstained, and Mrs. Demers voted yes

The Chair asked criteria #5 proposed use is not contrary to the spirit of the Ordinance. Mr. Roy stated he is with Mrs. Demers on this because it fits the neighborhood but it does affect some of the neighbors. Mrs. Demers stated she thinks it should be dealt with at the Planning Board and not here. She stated everything the residents are having objections for are Planning Board issues. She stated they already have industrial property and a gas station in the area.

Motion. Mrs. Demers made a motion to come out of deliberation. Mr. Roy seconded the Motion.

A Roll Call Vote was taken: Mr. Feustel– Yes; Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

Motion. Mr. Roy made a motion to grant the variance for 289 Pinewood Road. Mrs. Demers seconded the Motion.

A Roll Call Vote was taken: Mr. LaFlamme –No; Mr. Bergeron – No; Mr. Roy – Yes; and Mrs. Demers-Yes; Mr. Feustel– No. The Chair declared the Motion failed.

The Chair informed Mr. Fredette he has 30 days starting tomorrow to appeal the decision to the Superior Court.

Case# 2015-0006 Barlo Signs 43 Allenstown Road Lot# 109-031 Commercial Zone Variance Article XI Section 1111

Mr. Martin of Barlo Signs introduced himself to the Board as the representative for Grossman Companies. He stated they are asking to replace an existing 4x6 foot illuminated sign with a 10x6 foot illuminated sign.

Mrs. Demers asked where 43 Allenstown Road is. Mr. Martin stated it is the Dunkin Donuts.

Mr. Martin stated he noticed there are signs around the area which are larger than what they are asking for. He stated they are asking for it because they want to add tenants on the sign and right now they are not able to do so. He stated they will be maintaining the existing setback of the sign.

The Chair expressed concern with how low it will be and will it obstruct visibility. Mr. Martin stated there will be eight feet of space from the ground up so it shouldn't obstruct the view.

The Chair asked how high a truck cab is. Chief Pendergast stated on average six feet. Mr. Martin stated the sign is 20 feet from the property line so he is quite sure cars will be able to see pass the sign.

Motion. Mrs. Demers made a motion to go into deliberation. Mr. Roy seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. Feustel– Yes; Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

Chief Pendergast stated the town sign ordinance allows for a sign up to 32 square feet and only one sign per piece of property. He stated there are multiply signs on the building however the ordinance doesn't address building signs.

Chief Pendergast stated the current sign is 24 square feet and the proposed sign is 60 square feet. He stated they are looking for one big sign and then multiple signs all in the same structure. Mrs. Demers asked if the 32 square feet is unreasonable. Chief Pendergast stated it is his opinion 32 square feet is unreasonable. Mr. Roy stated they are working on changing the ordinance.

Chief Pendergast stated he likes to recommend the sign doesn't exceed the ridge pole. Mrs. Demers asked if this sign will exceed the ridge pole. Mr. Martin stated it does not.

Mr. Roy asked about the signs on the building. Chief Pendergast stated they can change the face of the signs not the size of the signs. He stated the signs on the building have been there since before the zoning.

The Chair stated it is in their jurisdiction to say the signs have to come off the building and allow the new sign, if they wanted to.

The Chair asked what questions they need to consider on this. Chief Pendergast stated it is the same as on a variance.

Motion. Mr. Roy made a motion to come out of deliberation. Mrs. Demers seconded the Motion.

A Roll Call Vote was taken: Mr. Feustel– Yes; Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

Motion. Mr. Roy made a motion to grant the variance for the sign at 43 Allentown Road. Mrs. Demers seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. Feustel– Yes; Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

Review and Approve Minutes

Motion. Mrs. Demers made a motion to accept the minutes for July 22, 2015. Mr. Feustel seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. Feustel– Yes; Mr. LaFlamme –Abstained; Mr. Bergeron – Abstained; Mr. Roy – Abstained; and Mrs. Demers-Yes. The Chair declared the Motion passed.





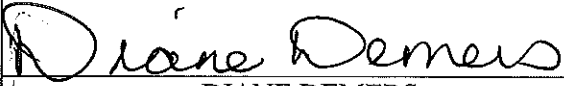
Motion. Mr. Roy made a motion to adjourn. Mrs. Demers seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. Feustel– Yes; Mr. LaFlamme –Yes; Mr. Bergeron – Yes; Mr. Roy – Yes; and Mrs. Demers-Yes. The Chair declared the Motion passed.

The Chair declared the meeting adjourned at 8:01pm.

TOWN OF ALLENTOWN
Zoning Board of Adjustment
MEETING MINUTES
September 9, 2015

Signature Page

Original Approval:	
	10/26/15
ERIC FEUSTEL	DATE
	10-26-15
CHRISTOPHER ROY	DATE
	10-26-15
ROBERT BERGERON	DATE
	10-26-15
ROGER LAFLAMME	DATE
	10-26-15
DIANE DEMERS	DATE

