

TOWN OF ALLENSTOWN
Zoning Board of Adjustments
16 School Street
Allenstown, New Hampshire 03275
April 22, 2020

CALL TO ORDER

The Allenstown Zoning Board of Adjustments virtual meeting of April 22, 2020 was called to order by Chair Keith Klawes at 6:34 pm. Chair Klawes called for the Pledge of Allegiance.

Chair Klawes made the following statement regarding the virtual (electronic) 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, the 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 and typing it into your browser. If you have issues, please call Town Administrator Derik Goodine at 207-595-0301 or email him at d.goodine@allenstowntnh.gov. This is the Zoning Board's first time using a virtual platform, so we ask for your patience as we attempt to post visuals on the video screen. Everyone has the right to be heard.

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

Others present: Matthew Peterson, Keach-Nordstrom Associates; Christian Boysen, Optimus Senior Living; Melissa Clement & John Clement, abutters

NEW BUSINESS

ZBA Case # 2020-02 – Optimus Senior Living, 15 Pinewood Road; Zoned Commercial/Light Industrial; Map #109, Lot #17. Requesting the following three (3) variances:

- **Article X – Commercial/Light Industrial Zone** – Section 1004.a Dimensional Restrictions: The height of the building is proposed to be four (4) stories, which requires a variance.
- **Article XI – Supplemental Regulations** – Section 1113.1 & 5 Lot Access: Request for access on Chester Turnpike closer than 500 feet. Applicant is looking for about 225 feet and permission for two (2) curb cuts on Chester Turnpike within 225 feet of each other

- **Article XXV – Permanent Storm Water Management Ordinance** – complete section, since applicant will need State of NH Alteration of Terrain (AOT) and Wetlands permit, which address about 95% of these requirements.

Chair Klawes stated that this property is at the corner of Chester Turnpike and Route 28.

Mr. Peterson stated that he represents the applicant, Optimus Senior Living, regarding three variance requests for a proposed development at 15 Pinewood Road, Map 109, Lot 17 in the Commercial/Light Industrial zone. The property is comprised of a 12.9-acre lot, of which 4.67 acres (36%) is wetlands and the other 8.25 acres is upland. The topography on the site ranges from three to five feet above an existing wetland. Access to the site is off Chester Turnpike, and there is a 50-foot wetlands setback for the wetlands at the back of the property. He stated that there is another wetland which seems to be manmade, as it is built in a straight line. There is a culvert for draining runoff from Route 28 to the top corner and back to the wetland. The on-site wetland, he said, is natural and will be more valuable and has existed for many years. Mr. Peterson explained that they are in the conceptual phase of the project and do not have a full design yet. The plans call for 110 units for assisted living and about 97 parking spaces and a drive circulation around the building. Like other Optimus projects, this facility will offer three levels of care: senior living for those needing only a small amount of assistance, assisted living for those needing more help, and memory care for residents needing even more assistance. This development will have low traffic impact. Ambulances can be expected at the facility on an average of two to three times per week. Mr. Peterson said that they are proposing two access points because of the regular need for ambulances. The first access point would be from Chester Turnpike about 200 feet from Route 28, at the narrowest point of the wetland to minimize impact thereon. He said that their plan first called for 8,600 square feet, but after meeting with the Wetlands Bureau, they reduced it to 6,575 square feet. The second access point would be about 240+ feet back from the first one. There are three wetlands impacts, he said, because there is a lot of wetland on the site.

Mr. Peterson stated that the first variance relates to the height of the building and the number of stories. This is Article X – Commercial/Light Industrial, which says that ‘no structure shall exceed three (3) stories or 45 feet in height from the ground to the highest point on any one side, exclusive of accessory chimneys or accessory antennas.’ This building, he said, is the same as one they constructed in Connecticut. They are proposing a four-story building between 42 and 50 feet high. He noted that this is a residential building, and they already have a letter from the Fire Department saying they are not opposed to the project in terms of fire safety, as they already have buildings higher than 45 feet and a five-story building in the mill area. He said he would go through the criteria next.

1. **There will not be a diminution of value of the surrounding properties as a result of the granting of this variance because** the applicant is requesting that the Zoning Board allow a four-story building be constructed on a Commercial/Light Industrial parcel in the Town of Allenstown. The granting of this variance to allow the applicant to construct a four-story, 42-foot high building (from ground to gutter line) would not diminish surrounding properties’ values and actually by developing this undeveloped parcel, the surrounding properties will most likely increase in value, due to the use proposed and the architectural character of this application.

2. **The granting of the variance will not be contrary to the public interest because**, based on the enclosed letter of support from the Allenstown Fire Department, the applicant believes this request is not contrary to the public interest.

3. **Enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:** aa. **an area variance is needed to enable the applicant's proposed use of the property given special conditions of the property because**, as the Board can see from the existing conditions plan, there is very limited upland area to develop this parcel, and as such the applicant is requesting to add a story to the building and ask for a four-story building where three is allowed, to accommodate the demand for senior living units in the area, based on demographic studies; bb. **The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because**, based on the limited upland and the demand for senior housing in the area, the applicant has no other option to develop this parcel without asking for this variance. They would need multiple buildings on the site because of the three levels of care.

4. **Through the granting of relief by a variance, substantial justice will be done because** it would allow the applicant to construct its standard building and add needed senior living units for Allenstown.

5. **The use for which the variance is requested will not be contrary to the spirit of the ordinance because** the applicant believes that the reason to limit the number of stories to three is based on the ability of Allenstown's Fire Department to safely protect the tenants of any building, and based on the enclosed support letter from the Fire Department, the applicant believes this request is not contrary to the spirit of the ordinance.

Chair Klawes informed the applicant that they were entitled to be heard before a full Board of five members and had only four tonight. He added that they have not had a full board for years, and he apologized for not mentioning this earlier in the meeting.

Mr. Peterson said they were willing to proceed without a full Board.

Mr. Peterson next referred to the second variance request, Article XI, Supplemental Regulations, Section 1113.1 & 5 which state 'There shall be no less than 500 feet between access points serving a single lot after 2011' and 'proposed access driveways on "sideage" roads must be no closer than 500 feet from the nearest intersection'. He said the applicant wants an access point on Chester Turnpike about 225 feet from the intersection with Route 28. They also want two curb cuts on Chester Turnpike within 225 feet of each other. This is reasonable, he claimed, because of low traffic volume and the lack of large trucks going in and out. Only about 15 of the residents are expected to have vehicles. He said he would go through the criteria next.

1. **There will not be a diminution of value of the surrounding properties as a result of the granting of this variance because** the applicant's request for two driveway curb cuts along Chester Turnpike within 250 feet of each other and one within 500 feet of the main road, would not have any effect on surrounding property values as they don't create any negative building or site impacts that would affect surrounding property values.

2. **The granting of the variance will not be contrary to the public interest because** public interest would be to ensure safe access to and from any potential development, and with the proposed

driveways to be constructed on a side street and not on the main roadway system, the applicant feels that this request is actually in the public's interest, as well as having two points of access for a senior living facility that will require regular ambulance services. The more points of access, the less chance of circulation issues on site.

3. Enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction: **aa. an area variance is needed to enable the applicant's proposed use of the property given special conditions of the property because** the applicant is NOT ALLOWED to access the property from Route 28, the wetlands that exist on site, and the nature of the proposed senior housing use with access only from Chester Turnpike. These are a few of the special conditions of this property; **bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue because**, based on the limited access point the property has and the wetlands, the applicant has no other way to achieve safe access to the site.

4. Through the granting of relief by a variance, substantial justice will be done because it would allow the applicant to access the proposed development for the needed senior living units in Allenstown.

5. The use for which the variance is requested will not be contrary to the spirit of the ordinance because the applicant believes that the reason to limit the locations of driveways and sideage access is to ensure public safety while traveling to and from the development, and the applicant believes that the proposed locations of access for this development are not contrary to the spirit of the ordinance.

Mr. Peterson next referred to the third variance being requested, Article XXV, Permanent Storm Water Management Ordinance, complete section. This one is different, he said, and he wants to make it clear that they are not asking to adversely affect storm water runoff, groundwater recharge, or to not address storm water **runoff**. He said there are a lot of differences between State regulations and Allenstown's local ordinance on a couple of little things here and there. He said these are not important items. They would like to follow just one set of regulations by obtaining an Alteration of Terrain (AOT) permit from the State, he said, which governs larger projects, those over **100,000** square feet. He said they do not want to go away from Allenstown's regulations, but to have one, consistent manual. The purposes of the State regulations and the town ordinances, he said, are similar.

Mr. Peterson indicated the grading plan on the screen and stated that he met with the Technical Review Committee (TRC), about two weeks ago, which included Matt Monahan of the Central NH Regional Planning Commission; two engineers from Hoyle Tanner, the Fire Department, the Police Department, the Sewer Department, and the Water Department. He said that the Hoyle Tanner engineers explained at that meeting how the drainage is being addressed. He said there would be four catch basins around the building to collect pavement runoff, as well as roof drains which would also run to catch basins, then to a sediment bay, then drain into a wet pond, creating 30,000 square feet of wetlands on site. He said the site is three to five feet above the wetlands. They worked back through the drainage to determine the elevation of the building at 306.5 feet. It is 305 feet now. He said that the catch basins have sumps to collect sediment run off. The sediment basin will treat the water. The wet pond would meet all of the criteria for treatment, per DES. At the location for overflow parking, another pond would drain to the wetlands. He said he would go through the criteria next.

- 1. There will not be a diminution of value of the surrounding properties as a result of the granting of this variance because** the applicant is requesting that the ZBA allow them to design the storm water treatment facilities to NHDES standards instead of Town of Allenstown regulations to ensure proper design and implementation of storm water runoff from the proposed development and would not create a diminution of value of surrounding properties because it would still be designed to very stringent regulations.
- 2. The granting of the variance will not be contrary to the public interest because** the public interest in this article is to protect the natural features within Allenstown by ensuring proper storm water containment and treatment prior to discharge to existing wetland, which is the purpose of an AOT permit as stated: "The purpose of these rules is to implement the intent of RSA 485-A:1 to protect drinking water supplies, surface waters, and groundwater by specifying the procedures and criteria for obtaining permits required by RSA 485-A:17." As such, the applicant believes this request is NOT contrary to the public interest.
- 3. Enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction: aa. an area variance is needed to enable the applicant's proposed use of the property given special conditions of the property because** based on the existing wetlands on site, location of access points, existing topography, and the type of facility being proposed on site, the applicant needs relief from Article XXV in order to develop the site for the senior housing need in the area by one standard, and as such the applicant feels that this lot has many special conditions that require the applicant to request this variance; ; **bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue because,** based on the limited access points, the existing wetlands, and topography of the site, there is no other feasible way to develop the site for the senior housing project, and this is a reasonable request.
- 4. Through the granting of relief by a variance, substantial justice will be done because** it would allow the applicant to design and permit the site via one set of regulations and yield some needed relief from the requirement of the Zoning Ordinance.
- 5. The use for which the variance is requested will not be contrary to the spirit of the ordinance because** the applicant believes that the spirit of the ordinance is to protect natural features in Allenstown, which is the same purpose of NHDES, except that they are protecting all wetlands and rivers and ground water of the State of NH, and so the applicant believes this request is NOT contrary to the spirit of the ordinance.

Mrs. Clement asked why the ordinance limits buildings to three stories if the Fire Department's letter says safety is ensured if the building has four stories.

Mr. Gryval responded that the Fire Department's ladder truck has limited access to heights above three stories.

Mr. Goodine said that Allenstown actually does not have a ladder truck, but that Pembroke and Hooksett have 100-foot ladders and are available via Mutual Aid. He believes the Fire Chief is confident that he can protect the residents. He added that the building will have a full sprinkler system.

Chair Klawes read from Fire Chief Paul St. Germain's letter: "The Fire Department would not be opposed to the proposal of a four-story building on the matters of fire protection, as we already have a five-foot mill construction building in our town and structures in excess of 45 feet."

Mrs. Clement asked if the Fire Chief knows this is residential, not commercial, and that the residents are seniors.

Mr. Gryval said he echoes the concerns expressed by Mrs. Clement.

Ms. Baxter responded yes, the Fire Chief is fully informed, having attended the TRC meeting.

Mr. Peterson said that Mr. Boysen explained all of this to those attending the TRC meeting.

Mr. Clement stated that there are wetlands retention ponds at the back of his property. He asked where the water is discharged out of them.

Mr. Peterson said that there are two discharge points. There is a concrete basin in the middle of the wet pond with a one to three-inch opening to let water slowly back into the wetlands, away from the property of Mr. and Mrs. Clement.

Mr. Clement said that was not accurate. He said water from Spring Brook flowing toward Route 28 has caused erosion on his property.

Mrs. Clement added that, when it rains, all of their soil gets washed away.

Mr. Peterson said that this will be taken up at the Planning Board level and reviewed by the Hoyle, Tanner Associates engineers, DES and DPW. He said he was taking notes and that they did not have a full design yet.

Mr. Clement asked if he could guarantee that they would not be letting more water running through their property.

Mr. Peterson said that they can't increase one drop of water to the property of the Clements.

Mrs. Clement said her understanding is that the purpose of this hearing is to determine what regulations you will be adhering to. She asked how she and her husband would be notified of the Planning Board meeting.

Mr. Gryval asked if the Clements will be notified of the Planning Board meeting date.

Chair Klawes assured her that they would be notified.

Ms. Baxter said they would definitely be notified because the list of abutters for the Planning Board and ZBA is the same, and she will be sending out the certified notices.

Mr. Gryval asked if Hoyle, Tanner Associates has looked at the design and if a review from them had been received.

Mr. Peterson said they have only looked at a conceptual plan and have said the concept is good.

Mr. Gravel asked how the ZBA could grant this variance if Hoyle, Tanner Associates has not completed a review of a treatment plan and a plan for the storage of runoff.

Mr. Peterson explained that the variance is only to use the State regulations and not the Allenstown ordinance for the work. It is not asking which design will be used. This is a much longer process at the Planning Board.

Mr. Goodine said he had received two messages via Facebook: One says that turns onto Pinewood road should be limited to right turns. Another said that Chester Turnpike should be completely reconstructed. Mr. Goodine said this is an issue which has been discussed with the Highway Department, but he did not believe the applicant should be asked to do this, that perhaps they could do the section where their property is located.

Mr. Pelissier said that, regarding the second variance request, the issue of having a right turn only would be taken up by the Planning Board. He said Mr. Monahan realizes that they still must comply with the MS-4.

Mr. Gryval said he agrees with Mr. Pelissier regarding the MS-4 and would like the new Road Agent or the previous interim Road Agent to weigh in once they have a chance to review the area.

Mr. Goodine said he thought the second driveway would be for emergencies only.

Ms. Baxter said that it may be gated and used only for emergencies. The Fire Department, she said, liked the concept of two entrances.

Mr. Gryval said it was admirable to have two entrances, but the short distances from the corner and between the driveways are a potential problem.

Chair Klawes said he does not have as much concern as Mr. Gryval has.

Mr. Pelissier said that the first entrance matches the one across the street. In fact, the property across the street has an entrance that is only 125 feet from the intersection.

Chair Klawes said that the option of extending to River Road is problematic because it is already congested and people drive 50 mph there.

Mr. Clement asked about the setback from his property for the retention ponds. He asked why they would dig up all that good land and not use the wetlands in the middle of the property.

Mr. Peterson said there is no setback because it is not a building, but it will be five feet back, uphill to a berm and then to the detention pond.

Mr. Clement asked why they do not plan to use the existing wetlands.

Mr. Peterson said that has not been allowed for many years – at least ten and maybe 20 years. He said they would love to but cannot put untreated runoff into wetlands.

Mr. Clement asked where the excess dirt goes.

Mr. Peterson said they would remove it from the site. It can't be used for fill because it has too much organics in it. He added that the building setback is 15 feet, which is a Planning Board issue.

Chair Klawes made a motion to enter deliberations on these three variance requests. Mr. Gryval seconded the motion.

No roll call vote was taken on this motion.

Chair Klawes said they need a motion on the Article X – Commercial/Light Industrial Zone variance request. Section 1004.a Dimensional Restrictions: The height of the building is proposed to be four (4) stories; the ordinance allows only three stories.

Ms. Baxter made a motion to approve the first variance, allowing the building to be four stories and between 42 and 50 feet high. Mr. Gryval seconded the motion.

Mr. Gryval suggested that they did not have to go through all of the criteria since the Fire Department is satisfied.

Ms. Baxter added that Allenstown pays a substantial sum for Mutual Aid and rely heavily on their service. There is no one at the Fire Department after 5:00 pm.

Mr. Gryval said that the people at the Fire Department are professionals and they know their business.

A roll call vote was taken on the motion to approve the first variance.

Dawna Baxter – aye

Jeff Gryval – aye

Chad Pelissier – aye

Keith Klawes – aye

The motion carried unanimously.

Mr. Gryval made a motion to approve the second variance request, allowing the first access point to be less than 500 feet from the Route 28 intersection and the second access point to be less than 500 feet from the first. Ms. Baxter seconded the motion.

Mr. Gryval said that he is a little concerned about reducing the distances between the two driveways and between the first driveway and the intersection. He said he would feel better if the Road Agent took a look at it. He asked if anyone else had looked at it.

Chair Klawes said they had nothing from the interim or current Road Agents.

Mr. Goodine said that no one mentioned it at the TRC meeting.

Mr. Pelissier said that the line of site could be an issue, and both Police and Highway should look at it. It is a straight road, so that is not a concern. The ordinance says there must be 500 feet between them, but there are many in Town with entrances within 50 feet.

Mr. Gryval said the ordinance now exists so they don't make the same mistakes again.

Ms. Baxter stated that the TRC was favorable toward the whole plan. Regarding the two entrances, the first is a better access point to the building. The applicant is not able to gain access from Route 28 and doesn't want a River Road access, which would cross numerous wetlands.

Chair Klawes commented that there is not a lot of traffic at the proposed access sites.

Ms. Baxter said that Matt Monahan of the Central NH Regional Planning Commission said the overall plan is good because wetlands are being avoided.

Mr. Gryval said that the ordinance requiring 500 feet is for safety. Because others have been allowed to vary from that is not a reason to grant this.

Chair Klawes said they would go through the five criteria.

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

The Board members unanimously agreed that this criterion is met.

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

Mr. Pelissier said that having two entrances is necessary. He said he shares some of Mr. Gryval's concerns and they need to look at it.

Mr. Gryval agreed with Mr. Pelissier. He said he would like the engineers the Road Agent, and the Police to review and comment on this.

Mr. Peterson suggested approving this variance with the condition of a favorable review from Hoyle, Tanner Associates, the Police Department and the Road Agent, saying he would rather have a continuance or a conditional approval than a denial.

Mr. Pelissier said they could do that or have a continuation.

Mr. Gryval said he agrees with Mr. Pelissier, and it is probably okay because it looks fairly straight.

3. Enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction: aa. an area variance is needed to enable the applicant's proposed use of the property given special conditions of the property; bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue.

Mr. Gryval asked if the entrance could be moved back to meet the 500-feet requirement.

Ms. Baxter said if it were moved back, they would not have a second entrance and they would have to go through wetlands.

The Board members unanimously agreed that this criterion is satisfied.

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

The Board members unanimously agreed that this criterion is met because of needing two driveways.

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

Mr. Pelissier said that, without looking at it, he can't say. It goes back to #3, he said.

Ms. Baxter rescinded her second to the motion to approve this variance.

Mr. Gryval rescinded his motion to approve this variance.

Mr. Gryval made a motion to approve this variance with the condition that the new Road Agent and Police Chief present a favorable review. Mr. Pelissier seconded the motion.

A roll call vote was taken on the motion to approve this variance with the condition stated.

Dawna Baxter – aye

Jeff Gryval – aye

Chad Pelissier – aye

Keith Klawes – aye

The motion carried unanimously

Ms. Baxter made a motion to approve the third variance, allowing the applicant to use only the State of NH AOT and wetland approval procedures and not the Town of Allenstown ordinance. Mr. Pelissier seconded the motion.

Mr. Gryval asked if they had anything from Hoyle, Tanner Associates or the TRC on this.

Chair Klawes said they had not, and he suggested approving this on condition as well.

Mr. Gryval stated that the Town ordinance fits the individual needs of Allenstown. Without clarity about what they are foregoing, he said, it could be a mistake. The State has one size fits all regulations. He said they need to be directed by what Allenstown has done and learned via the Planning Board and the flooding they have experienced.

Mr. Pelissier said he agreed with Mr. Gryval and asked what the five percent was avoiding.

Mr. Gryval said it was an innocuous statement because there is no plan.

Mr. Peterson said they don't have a plan.

Mr. Pelissier said they could come back with to explain what part of the town ordinance they are avoiding.

Mr. Gryval said he would be glad to make a motion for a continuance, with a time certain to come back.

Mr. Peterson said that would work for them.

Chair Klawes suggested that they come back for the May 27th or June 10th meeting.

Mr. Peterson said they would prefer the June 10, 2020 date.

Ms. Baxter made a motion to continue item XXV until June 10, 2020. Mr. Gryval seconded the motion.

A roll call vote was taken on the motion to continue until June 10, 2020.

Dawna Baxter – aye

Jeff Gryval – aye

Chad Pelissier – aye

Keith Klawes – aye

The motion carried unanimously.

Ms. Baxter said that she would send out the notice of decision.

Chair Klawes informed the applicant of the 30-day appeal period.

ELECTION OF OFFICERS

Mr. Gryval said that the election of officers should be done right after the Town Meeting.

Ms. Baxter said the Board is fine as it is.

Ms. Baxter made a motion to nominate Keith Klawes as Chair, Chad Pelissier as Vice Chair, and Dawna Baxter as Secretary. Mr. Gryval seconded the motion.

A roll call vote was taken on the motion.

Dawna Baxter – aye

Jeff Gryval – aye

Chad Pelissier – aye

Keith Klawes – aye

The motion carried unanimously.

ADJOURNMENT

Ms. Baxter made a motion to adjourn at 8:23 pm. Mr. Pelissier seconded the motion.

A roll call vote was taken on the motion to adjourn.

Dawna Baxter – aye

Jeff Gryval – aye

Chad Pelissier – aye

Keith Klawes – aye

The motion carried unanimously, and the meeting was adjourned at 8:23 pm.

ZBA

SIGNATURE PAGE

APRIL 22, 2020

SIGNATURE	MEMBER	DATE
_____ Yes-Via Roll Call Voice Vote -	Keith Klawes, Chairman	____ 09.23.20
_____ Yes-Via Roll Call Voice Vote -	Chad Pelissier, Vice Chairman	____ 09.23.20
_____ Yes-Via Roll Call Voice Vote -	Dawna Baxter, Secretary	____ 09.23.20
_____ Yes-Via Roll Call Voice Vote -	Jeff Gryval, Member	____ 09.23.20