

**TOWN OF ALLENSTOWN  
Zoning Board of Adjustment  
Allenstown Town Hall –16 School Street  
Allenstown, New Hampshire 03275  
February 9, 2022**

**Call to Order**

The Allenstown Zoning Board of Adjustment Meeting of February 9, 2022 was called to order by Chair Klawes.

Chair Klawes called for the Pledge of Allegiance.

**Roll Call**

Present on the Board: Diane Adinolfo, Keith Klawes (Chair), George Lemire, Matt Pitaro, Steve LaPorte

Allenstown Staff: Derik Goodine, Town Administrator

Also present: Jack Hepburn, Attorney for the Applicant, Paul Stauffacher (Applicant), Kris Erkkila, Brian Arsenault, Code Enforcement Officer (virtually), Michael O'Meara (virtually). Aaron Firman joined at 6:38 pm.

**Old Business/ Receipt of Applications & Public Hearings**

- **REHEARING- Variance Application: Jack D. Hepburn, Attorney on behalf of Paul Stauffacher, ZBA Case #2021-04-91 Pinewood Road (Lot #105, Map #003); Zone District: CLI- Commercial / Light Industrial**

Chair Keith Klawes asked the applicant to state their application.

Attorney stated that the board was familiar with the case.

Attorney Hepburn said that the Applicant is seeking a variance to allow a single family residence on their property which is zoned commercial but is not allowed by the zoning ordinance. He said before they go through the five variance criteria, we are going to propose something a little differently than we have in the past and wants to seek a variance to allow for the residence to ask for a condition that the Applicant subdivides off a small residential lot to have to go in front of the Planning Board contingent on the subdivision plan being approved by the Planning Board. He would carve out a small residential lot and leave a commercial lot which they think this will alleviate the public's concerns about losing commercial land.

Mr. Arsenault said he was concerned that it was not posted properly on the public hearing notice because they are asking for a subdivision of the 36 acres and also a single-family home. Attorney Hepburn said they

are not asking for a subdivision but said it is a good option for the Board to consider. Attorney said it is done all the time in the state of NH. He said they would need to go in front of the Planning Board for that. Mr. Arsenault said there is no plan in front of them to show where they want to possibly subdivide the land. Attorney Hepburn said that a condition would be placed that they need to prepare something, put it in front of the Planning Board and then return to the Zoning Board to confirm.

Chair Klawes respectfully disagreed with that statement because he has dealt with variances in the past that went to the Planning Board and did not come back to the Zoning Board. Chair Klawes explained that his concern is that you are requesting a condition of getting a subdivision and that because this is a rehearing, some of the board members have not been on the board since the beginning and you have to bring the whole testimony forward now. Because this is a rehearing, what has happened up until today has not happened. Attorney stated he understood. The Attorney said they could remove their request for a condition, and move forward seeking a variance without seeking a condition.

Attorney Hepburn said they will start with the 5 variance criteria. For each variance, we want to start by going back and pointing out with each criteria that we feel the Board has misapplied the criteria.

Chair Klawes apologized for the interruption and asked that the Applicant state that he is authorizing his attorney to speak on his behalf for this case. Mr. Stauffacher said he gives Attorney permission to speak on his behalf.

Chair Klawes asked the Attorney to read the application into the record. The Attorney asked why it was necessary.

Attorney Hepburn asked the board to make a motion to incorporate the application into the record. Chair Klawes asked a second time that the application be read into the record.

Mr. Hepburn requested a Motion to incorporate the Application into the record. Mr. Pitaro so moved, Mr. Lemire seconded the Motion.

Roll Call vote was taken.

Keith Klawes- No

Diane Adinolfo- No

Matt Pitaro- Yes

George Lemire- Yes

Steve Laporte-No

Motion was denied 3-2.

Attorney Hepburn read the Application into the record.

62           **APPLICATION FOR A VARIANCE**

63           **Property Involved with Application for a Variance**

64           The subject property consists of 36 acres of undeveloped land, situated on Pinewood Road in  
65           Allenstown, NH (hereinafter the "Property"). The Property is identified as Lot 3 on Tax Map 105. The  
66           current owner of the Property, Paul R. Stauffacher, acquired title from Dan and Pamela Stauffacher by  
67           deed dated April 23, 2021 and recorded April 27, 2021 at Book 3735, Page 2330 of the Merrimack  
68           County Registry of Deeds.

69  
70           **Proposal**

71           The Applicant wishes to construct a residence on the Property, despite the fact that the Property is  
72           zoned Commercial/Light Industrial (sometimes hereinafter abbreviated as "CLI"). The Applicant  
73           encloses a septic plan for the proposed residence, entitled "Plan of Site Development and Effluent  
74           Disposal System" prepared by Richard J. Kohler, dated March 29, 2021. Said plan is attached hereto as  
75           "Exhibit A."

76           **Abutting Properties**

77           See attached abutter list.

78           **Zoning Issues**

79           The zoning ordinance provisions at issue here are Article V, § 504, and Article X, § 1001 of the Town of  
80           Allenstown Zoning Ordinance ("Ordinance"). §504 provides, "Any use which is not expressly permitted  
81           in a zone shall be deemed forbidden in the zone." Article X sets out the uses that are permitted in the  
82           Commercial/Light Industrial Zone. § 1001 does not expressly permit the construction of a residence in  
83           the zone.

84           Accordingly, the Applicant is requesting a variance from the prohibition of constructing a residence in  
85           the Commercial/Light Industrial Zone in order to permit him to do so.

86           **Criteria for Granting a Variance**

87           The criteria that must be met in order to obtain a variance are set forth in RSA 674:33-1(b). This statute  
88           allows the Zoning Board of Adjustment to grant a variance if:

- 89           1.       The variance will not be contrary to the public interest;
- 90           2.       The spirit of the ordinance is observed;
- 91           3.       Substantial justice is done;
- 92           4.       The values of the surrounding properties are not diminished; and

5. Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. The statute defines "unnecessary hardship" as follows:

"unnecessary hardship" means that, owing to special conditions of the Property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the Property; and

(ii) The proposed use is a reasonable one.

**Facts to support this request:**

**1. and 2. Granting the Variance is Not Contrary to the Public Interest and is Consistent with the Spirit of the Ordinance**

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance. Farrar v. City of Keene, 158 N.H. 684 (2009). Accordingly, these factors are considered together in this application.

The spirit and intent of § 504 and Article X, while not explicitly stated, can be presumed to center on the desire to segregate different uses in different parts of the community. Article X, § 1003, which lays out "uses not permitted" in the Commercial/Light Industrial Zone, establishes that no land, building, or premises may be introduced into the zone for a purpose that is "injurious, noxious or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise or other cause." The Ordinance seeks to promote the safety and wellbeing of the community while avoiding inconsistent Property uses that are likely to lead to community issues such as traffic, noise, pollution, and disputes between landowners.

To be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. *Id.* See also Chester Rod and Gun Club, Inc. v. Town of Chester, 152 NH 577 (2005). In determining whether the grant of a variance would violate basic zoning objectives, it is appropriate to examine whether it would alter the essential character of the locality or threaten the public health, safety or welfare. *Id.*

In this particular case, the Applicant proposes to construct a residence on his Property in accordance with all of the dimensional, frontage, and setback requirements of the Ordinance (see Article X, § 1003). Granting the variance would not alter the essential character of the locality, as several of the abutting parcels of land contain residences, despite similarly being located in the CLI Zone. Further, the public's health, safety and welfare will not be threatened as a result of the residential construction. In almost all respects, a residential use of the Property will have a net positive on the community when considering public health, safety and welfare. Additionally, a residential construction will not pose issues that are sometimes associated with commercial developments, such as added traffic, noise, and pollution.

The construction of a residence will cause none of the negative consequences that Article X attempts to protect against (uses that are injurious, noxious or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise or other cause — see § 1003).

Accordingly, the variance in this particular case is justified because it is not contrary to the public interest, and granting the variance is consistent with the spirit of the ordinance.

All variances violate the strict terms of the Ordinance. By saying that a variance request fails the "public interest" and "spirit of the ordinance" criteria simply because the proposed use is prohibited by the Ordinance would be a tautology, and a misinterpretation of these criteria. Using that logic, no variances could ever be granted, as these criteria would never be satisfied. Instead, the Board must ask whether the requested variance is consistent with the *spirit*, and not the letter, of the Ordinance.

### **3. Substantial Justice Would be Done by Granting the Variance**

The guiding rule for this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. *Harborside Associates LP v. Parade Residents Hotel LLC*, 162 N.H. 508 (2011). In evaluating this standard, the Zoning Board must look at whether the Applicant's proposal is consistent with the area's present use.

The area's present use is a mixture of commercial and residential properties. Nine abutting parcels contain residences. Accordingly, there is no gain to the general public in preventing the Applicant's proposed residential construction as there will be no change to the area's present use. The loss to the Applicant in preventing him from constructing a residence on his land is substantial, and therefore outweighs the non-existent gain to the general public.

Additionally, the Applicant plans to run his general contractor business through the Property. The Applicant intends to construct a shop on the Property that will house stock for various construction projects, and use the Property as a de facto "headquarters" of the business. It is reasonable and commonplace for an individual to run a business out of their home. When considering this proposal from the public's perspective, it will be in the public's interest to allow both a residence and commercial activities on Applicant's Property in the Commercial/Light Industrial Zone, rather than the Applicant attempting to run his business out of a home in a residential zone. While both of the aforementioned scenarios would require a variance, siting a residence in the CLI Zone will result in no harm to the public.

Precluding the Applicant from making one of the only viable uses of his Property (constructing a residence), in an area where nine abutting parcels already contain residences, would be an injustice.

### **4. There Will be No Diminution of the Value of Surrounding Properties**

The only change in neighborhood resulting from the Applicant obtaining the requested variance will be the introduction of a single family home on a 36 acre parcel of land. Nine abutting parcels already contain residential homes despite being located in either the CLI or Industrial Zone. Siting a single family residence on the Property is consistent with the uses enjoyed by several lots in the immediate area. The Applicant's proposed construction is not contrary to the public interest and does not alter the essential character of the locality or threaten the public health, safety or welfare, as further explained herein. Applicant's property will still be zoned Commercial/Light Industrial, and Applicant therefore will retain the ability to attempt to develop the property commercially in the future. Accordingly, the building of a residence will not, in any way, negatively impact the value of surrounding properties.

175  
176 **5. Literal Enforcement of the Provision of the Ordinance Will Result in an Unnecessary**  
177 **Hardship**

178 Pursuant to RSA 674:33-1(b), "unnecessary hardship" means that, owing to special conditions  
179 of the property that distinguish it from other properties in the area:

180 No fair and substantial relationship exists between the general public purposes of the ordinance  
181 provision and the specific application of that provision to the property; and

182 (ii) The proposed use is a reasonable one.

183 There is no substantial relationship between the general public purpose of the Ordinance and the  
184 specific application of the Ordinance to the Property here involved because any purported  
185 purpose of the prohibition of residences in the Commercial/Light Industrial Zone has already been  
186 undermined by the fact that there are several residences already allowed in the zone. Of the  
187 parcels that abut the Applicant's Property, nine of them contain residences. Accordingly,  
188 preventing the Applicant from constructing a residence on his Property would result in an  
189 unnecessary hardship in light of the Town's allowance of his neighbors to do the same.

190 One additional residence will not trigger the harms addressed by the Ordinance, and will in no way,  
191 as previously discussed, alter the character of the neighborhood. Accordingly, there exists no fair  
192 and substantial relationship between the general public purposes of the Ordinance provision at  
193 hand and the specific application of that provision to the Applicant's Property. In light of the  
194 foregoing, it is appropriate to grant the variance because doing so would be "more considerate of  
195 the [Applicant's] constitutional right to enjoy property." Simplex Technologies, Inc. v. Town of  
196 Newington, 145 N.H. 727 (2001).

197 Furthermore, the Applicant's proposed use is a reasonable one. As previously discussed, there are  
198 residences on nine abutting parcels, none of which, to the Applicant's knowledge have created  
199 issues with neighbors or the Town. The Applicant's proposed residence will comply with all of the  
200 dimensional requirements applicable to the CLIE Zone (see § 1004), and will result in none of the  
201 community issues prohibited in §1003. The Applicant's proposed use therefore, is reasonable.

202 The specific conditions of the Applicant's Property further strengthen the argument that literal  
203 enforcement of the Ordinance would result in an unnecessary hardship. The topography and a  
204 layout of the parcel (specifically the quantity and location of wetlands and the floodplain on a  
205 portion of the Property), make the Property not viable from a commercial perspective. As the  
206 wetlands are dispersed throughout the parcel, it is a hardship to the Applicant to forbid him from  
207 enjoying a use that the land will allow, especially considering that the proposed use is consistent  
208 with the surrounding properties and will cause none of the issues that the Ordinance aims to  
209 prevent.

210  
211 **Summary With Respect to Variance Request**  
212

213 The Applicant meets the requirements for the granting of a variance with respect to the  
214 construction of a residence on the Property as described in the above narrative. Permitting the  
215 residence to be built as requested by the Applicant is reasonable. Granting the variance would not  
216 alter the essential character of the locality. The area's present use is a mixture of commercial and

residential properties. Additionally, the public's health, safety and welfare will not be threatened as a result of the proposed residential construction.

Additionally, the Applicant is willing to accept a condition that only one residence be permitted on the Property, so as to maintain the Property's (limited) commercial potential. Respectfully submitted Paul Stauffacher.

The abutter listed was read as follows:

#### Abutter List

The following is a list of the Tax Maps and Lots of the parcels that abut Mr. Stauffacher's property (Tax Map 105, Lot 3):

- Subject Property: Tax Map 105, Lot 3. Current Owner: Paul R. Stauffacher, 730 Borough Road, Pembroke, NH 03275.
- Tax Map 105, Lot 4. Current Owner: MRF RE Holdings, LLC, 11519 Kingston Pike, Suite 305, Knoxville, TN 37934.
- Tax Map 105, Lot 38. Current Owner: Casella Waste Management, Inc., c/o Harding & Carbone, Inc., 1235 North Loop West, Suite 20, Houston, TX 77008.
- Tax Map 105, Lot 39. Current Owner: Elizabeth A. Keniston, Trustee of the Elizabeth A. Keniston Trust, 106 River Road, Allenstown, NH 03275.
- Tax Map 105, Lot 40. Current Owner: Robert H. Marier, Jr., 120 River Road, Allenstown, NH 03275.
- Tax Map 105, Lot 41. Current Owner: Phillip B. and Lynn M. Plourde, Trustees of the Phillip B. and Lynn M. Plourde Revocable Family Trust, P.O. Box 96, Suncook, NH 03275.
- Tax Map 410, Lot 1. Current Owner: Paul and Pamela Vezina, 124 River Road, Allenstown, NH 03275.
- Tax Map 410, Lot 2. Current Owner: Todd D. and Jacquelyn D. Fredriksen, 126 River Road, Allenstown, NH 03275.
- Tax Map 410, Lot 3. Current Owner: Catholic Bishop of Manchester, c/o Diocese of Manchester, 153 Ash Street, Manchester, NH 03104.
- Tax Map 410, Lot 19. Current Owner: Hunter Judd, 109 River Road, Allenstown, NH 03275.
- Tax Map 104, Lot 1: Bobcat Realty Trust c/o Suncook River Family Camp, 147 Middle Road, Deerfield, NH 03037.
- Tax Map 104, Lot 3. Current Owner: Town of Allenstown, 16 School Street, Allenstown, NH 03275
- Tax Map 104, Lot 5. Current Owner: Jessica R. Caputo and Christopher A. Betts, 15 Fanny Drive, Pembroke, NH 03275.
- Tax Map 104, Lot 7. Current Owner: Debra L. and Christopher W. Gagnon, 11 Fanny Drive, Pembroke, NH 03275.
- Tax Map 104, Lot 8. Current Owner: Thomas A. Gagnon, 92 Pinewood Road, Allenstown, NH 03275.

Brian Arsenault pointed out that the Attorney was added to the list. Jack Hepburn, Capital St. Concord NH 03301

Jack Hepburn, Esq. said when going through the variance material, they want to point out some ways that they feel that the Board has misapplied the criteria. He said regarding the first two criteria, the Board has used the rationale that it was voted on my tax payers in 1978 to zone commercial and the public has an interest in maintaining that. He said that is not a valid argument in the State of NH. Attorney Hepburn said the questions that the Board needs to ask itself is whether granting the variance

259 would 1) alter the essential character of the neighborhood, 2) threaten the public health, safety and  
260 welfare and 3) otherwise injure public rights. He said they haven't heard anything from the Board  
261 regarding #2 as there are no other residences abutting it anyway. He said the character of the  
262 neighborhood will not be changed because it has become defacto mixed use with more residences than  
263 commercial lots. He said public rights would not be harmed as they are not changing the zoning.

264 Attorney Hepburn said the substantial justice factor where the Board needs to weigh the harm to the  
265 Applicant if the variance is denied to the gain for the public if the variance is denied. He said they feel  
266 based on the arguments that were just raised, they see no gain to the public aside from the 1978  
267 argument. He said the harm to the Applicant is clear and apparent and feels that they have satisfied  
268 the substantial justice prong.

269 Attorney Hepburn said that the Board previously cited to the fact that when Mr. Stauffacher purchased  
270 the property, he was aware of the zoning, and NH Law is very clear that that is not a dispositive factor and  
271 should not foreclose him on getting a variance.

272 He said previously the Board said that absent expert testimony, they are not in a position to decide if there is  
273 going to be a reduction in neighboring property values. He said from the Allenstown Town website, expert  
274 testimony is not conclusive. They ask that the Board consider this based on their own knowledge of the area  
275 that the proposal will not change the character of the neighborhood, as there are more residences than  
276 commercial businesses. He said putting a residence on one portion of a 36 acre will not reduce the value of  
277 the properties.

278 Attorney Hepburn said with regard to hardship criteria, he thinks it is important for the Board to consider  
279 what this criteria is asking. He said it is not asking about possibility or impossibility of the use of the property  
280 if it does not get a variance, but is it a hardship if he is not able to get the variance. He said they have  
281 submitted an email exchange with E.J. Thibeault and said that he essentially proved a point for them. The  
282 email reads as follows:

283 As I stated to you in our phone conversation, it will be difficult to get wetlands permits for any type of  
284 development we might do. It would also be quite time consuming and expensive.

285 Mr. Stauffacher is well aware of the challenges with the property he or any buyer would face.

286 We stay firm at our [sic] 350,000 offer, thanks for the response.

287 He said this Board has considered and discussed Mr. Stauffacher potentially selling the property, and in NH,  
288 the ZBA cannot consider this for the hardship criteria. He said hardship criteria is about how Mr. Stauffacher  
289 is using his property and is there a hardship.



290 He feels as though all of the variance criteria have been satisfied and would like to encourage the Board to  
291 consider his points and grant the variance. The Attorney feels that the variance criteria has been met and  
292 asks the Board consider that the rationale used in the past does not pass muster in the State of NH. He  
293 acknowledged that this is a rehearing and are asking to reconsider approving the variance.

294 Mr. Arsenault said he has a couple of other letters to be read into the record. They received a letter from  
295 Casella that said the following:

296 Casella Waste Management of Massachusetts, Inc. received notification of ZBA Case # 2021-04-91, and a  
297 potential change in the use of a parcel of land from commercial /light industrial to allow for the building  
298 of a residential structure. Casella owns Tax Map 105, Lot 38 and wants the Zoning Board and Applicant to  
299 understand the nature of the current use of the neighboring Casella property.

300 The Casella property located on Tax Map 105, Lot 38 is a permitted Solid Waste Transfer Station that is  
301 accessed along Lavoie Drive. The facility is permitted to accept 750 tons of municipal solid waste,  
302 construction debris, and recycling each day. Approximately 65-85 commercial motor vehicles enter and  
303 exit the facility on a daily basis. Part of the operation includes loading approximately 15 to 20, one  
304 hundred yard trailers a day and staging them along our access way which extends beyond Lavoie Drive.  
305 These operations occur Monday through Saturday.

306 I would be remiss not to share the details of the Casella daily operations with the Zoning Board and the  
307 Applicant as you make your decision concerning a potential zoning change for a property from  
308 commercial/light industrial to residential.

309 Mr. Arsenault also read the following from Aaron Firman an employee of Mr. Thibeault: (letter dated Jan 22,  
310 2022)

311 My name is Aaron Firman a resident of Allenstown for just over 4 years and I also operate a business in  
312 town, Allenstown Aggregate, Thibeault Corporation Owned.

313 I would like to express my opposition on the Applicants (Paul Stauffacher) request to place a single-family  
314 home on 36 acres of Commercial/Light Industrial (CLI) zoned land on Lot #105, Map #003e located at 91  
315 Pinewood Road, Allenstown, NH.

316 Allenstown NH is a small town that is in need of more commercial business to help relieve the taxes on  
317 the residents, by granting this request it will do no justice to the town and/or residents by eliminating one  
318 of the few commercial properties left in town.

319 This property was purchased by Dan Stauffacher, Paul's Father about 12 years ago and it was zoned CLI  
320 then. Paul had purchased the said property from his family knowing what it was zoned for. Also, the  
321 extent of the wetlands which was surveyed/delineated in 2007 for Dan Stauffacher. There should be no  
322 claim of hardship with all this being known.

323 Applicant states that there are multiple residential properties abutting his land and that is one reason to  
324 grant the variance. If you look throughout the town there are commercial properties with residential  
325 abutting them, you wouldn't allow a single family home be built in the Family Dollar Store parking lot if  
326 that building was ever sold or Aubuchon Hardware property. Which both are just some examples of the  
327 many properties that abuts residential properties.

328 By granting this variance, it will change the character of the land. As you start on Route 28 from Route 3  
329 and head east, there is commercial properties on the right side of the road all the way to this variance  
330 application, 91 Pinewood. The two properties just west of said property are commercial used land.

331 I was also involved in the offer to purchase this property with Thibeault Corp of NE. There was an original  
332 offer made to Dan Stauffacher in late 2020 of \$350,000 with conditions and after Thibeault had the  
333 wetlands delineated and quantified we reduced our offer. This was eventually declined as the property  
334 was sold to their son, Paul Stauffacher as he had planned to use this land himself.

335 Paul Stauffacher had reached out to the Thibeault Corp. late last September of 2021 and offered the land  
336 for sale at the amount of \$500,000 or \$675,000 with the modular home that is sitting on the property.  
337 This home as I speculate would be used if the variance application was to be granted. Mr. Stauffacher's  
338 final offer to Thibeault was for \$503,995, this breaks down to the land at \$350,000 and \$153,995 for the  
339 modular home. Thibeault decided the modular home wasn't something we wanted and made a final  
340 offer of \$365,000 for just the land. Mr. Stauffacher had declined our offer and stated the property is not  
341 for sale anymore.

342 I believe this property would be best suited for some commercial development and not a single family  
343 home in the middle of the usable land.

344 Please consider the town's economic development and the town's taxpayers when reviewing this  
345 request from Paul Stauffacher for a variance.

346 I have also sent over one of Thibeault Corp. possible development plans for this property. This just shows  
347 that commercial development is possible and the minimal wetland impacts. Yes, it would be costly and  
348 time consuming but not impossible. Sincerely Aaron Firman.

349 Kris Erkkila asked if they could read the email received from Aaron Firman sent with the letter. If not, she  
350 offered to read the letter to the board. She said it reads as follows:

351 Derik, please see attached letter in reference to ZBA case 2020-04. If this letter is okay, please submit it  
352 to the ZBA for Wednesday the 24<sup>th</sup>.

353 Ms. Erkkila wants to know why Mr. Firman is asking if this letter is okay. She read it from her phone and it  
354 read Derick please see the letter regarding **ZBA Case #2021-04-91 Pinewood Road (Lot #105, Map #003)**; .  
355 Let me know if this OK. She also asked who directed Mr. Firman to send the letter? She stated she does not  
356 ask if a letter is OK when submitting own opinion. Mr. Arsenault said he had no idea this letter was coming  
357 and he received it from Derik Goodine. Mr. Firman was asked to explain the reason for his letter. Mr. Firman

358 said he wrote this letter as a resident and he wasn't sure if he was able to submit such a letter and there was  
359 no other reason why.

360 Mr. Stauffacher said there has been knowledge the entire time that there was interest in the property. Ms.  
361 Erkkila implied that they are somehow connected to the Zoning Board.

362 Mr. Klawes said they have never had a case such as this one before.

363 Ms. Erkkila said she would like the public to be aware that while they are going through this sham, exactly  
364 where the burden lays and Allenstown's responsibility to vote people onto the Board who have an open mind  
365 and who are probably not doing shady things. Chair Klawes asked if Kris was accusing the Board of doing  
366 shady things?

367 Ms. Adinolfo said she takes offense to that. We live in Allenstown and volunteer our time in the best interest  
368 of everybody in mind and I will not be accused of doing shady things.

369 There was a discussion about minutes that were missing for far longer than Mr. Goodine has been with the  
370 Town. Ms. Erkkila said she asked to review a file and Mr. Goodine told her that there were not any permits in  
371 the file, but they were permitted to have a cow. He said he went the extra mile to find information she was  
372 looking for and that she is welcome to peruse the files herself.

373 Chair Klawes said they are getting off topic and that they should stop making accusations which is extremely  
374 unprofessional as the Board are only volunteers that try to do the best for the Town of Allenstown. Chair  
375 Klawes stated that he has no connection to anyone regarding Zoning issues. He went on to explain that the  
376 Board are not experts and we are doing the best we can. Mr. Arsenault said he has never spoken with Mr.  
377 Thibeault about purchasing the property. Chair Klawes said he would like to clarify that as part of the new  
378 school committee, he is aware that they had wanted to buy this property and that it was already under  
379 agreement.

380 Ms. Adinolfo made a Motion to go into deliberation. Mr. Lemire seconded the Motion.  
381

382 Roll Call vote was taken.  
383 Keith Klawes- Aye  
384 Diane Adinolfo- Aye  
385 Matt Pitaro- Aye  
386 George Lemire- Aye  
387 Steve Laporte-Aye  
388 Motion passed.

**Deliberations**

Chair Klawes said these two criteria are pretty similar. He said he doesn't know if he sees a reason on 1 and 2, to not go ahead to grant a variance but on #3, substantial justice, he doesn't feel he is convinced there is any evidence based on the testimony. For #4, value of surrounding properties, he doesn't believe there is evidence that any properties would not be diminished. He does not feel that the Applicant has gone ahead and provided testimony that there wouldn't be any unnecessary hardship. Based on that, Chair Klawes would not grant the variance.

Ms. Adinolfo said that she is not convinced that criteria #1 and #2 are met. She said that regarding the comments that there are 9 abutting properties that have residential homes, she is concerned about "cumulative impact" just because other people have done this, there comes a point where enough is enough and this property is 36 acres. There are other large properties and if the owners decided to build a home because it's been done on this 36 acres, it would not be in the best interest of the Town of Allenstown. She said we do not have information or evidence regarding diminished value of surrounding homes. Finally, she said that she doesn't see anything that is unique regarding this property that it would not be able to be used and for those reasons, she is not able to vote yes to grant the variance.

Mr. Lemire said the criteria for #1 and #2 were not met. He said that it was also not met with regarding to #3, substantial justice. Mr. Lemire said that he does not feel that it would diminish the value of surrounding properties so he would vote yes. He said for the 5<sup>th</sup> criteria, that would be a no as well.

Mr. Pitaro said during this deliberative session in his opinion, the Applicant met the criteria for all 5 based on the way it was presented and the arguments that the Applicant brings forward. This is not indicative of how he will vote.

Mr. Laporte said that he does not think they have met all 5 criteria.

Mr. Pitaro said as a clarification of procedure, approving the variance would give them permission to build a home and not change the zoning of the property. Truth be told, there is a modular home on the property but does not know the details. The man can build what he wants on his property legally or illegally. He has a large lot and down the road, other owners could remove the home if they wanted to. Mr. Pitaro also said that he does not believe that the traffic concerns that were brought up are valid. He said in terms of the abutters already having houses there, he just wants to build a home and not anything that is out of character to what is there.

Ms. Adinolfo made a Motion to come out of deliberation. George Lemire seconded the Motion.

427 Roll Call vote was taken.  
428 Keith Klawes- Aye  
429 Diane Adinolfo- Aye  
430 Matt Pitaro- Aye  
431 George Lemire- Aye  
432 Steve Laporte-Aye  
433 Motion passed  
434  
435 Mr. Pitaro made a Motion to grant the Applicant's variance for ZBA Case #2021-04, 91 Pinewood Drive,  
436 Lot 105, Map 003. Ms. Adinolfo seconded the Motion.

437 Roll Call vote was taken.  
438 Keith Klawes- No  
439 Diane Adinolfo- No  
440 Matt Pitaro- Yes  
441 George Lemire- No  
442 Steve Laporte-No  
443 Motion was denied 4-1.  
444  
445 Chair Klawes reminded the Applicant's that they have 30 days to appeal.  
446

447 **New Business**  
448  
449 None per Mr. Arsenault.

450 **Unapproved Minutes & Unsigned Minutes**

451 Mr. Arsenault asked if the Board could approve the minutes of January 26<sup>th</sup> when this case was granted for a  
452 rehearing.

453 Mr. Arsenault said that there was interest from an individual at the last BOS meeting to join the ZBA as an  
454 alternate.

455 Mr. Firman said he would be interested in joining the ZBA. Mr. Arsenault said the more alternates the better.

456 ○ **1/26/2022**

457 Mr. Lemire made a Motion to approve the minutes of January 26, 2022. Ms. Adinolfo seconded the Motion.

458  
459 Roll call vote was taken.  
460 Keith Klawes- Yes  
461 Diane Adinolfo- Yes  
462 George Lemire- Yes  
463 Matt Pitaro- Abstained  
464 Steve LaPorte- Yes  
465 Motion was passed 4-0.

466 **Correspondence and Other Business**

467  
468 None.

469 **Staff Update**

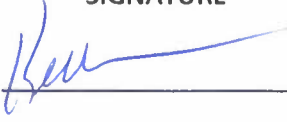
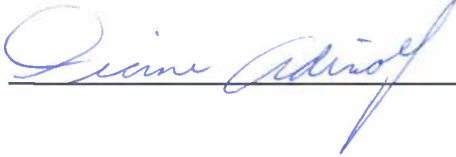


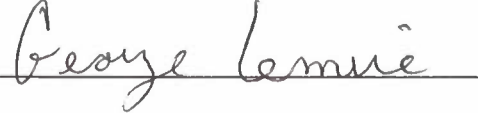
470 None.

471 **Adjourn**

472 Ms. Adinolfo made a motion to adjourn meeting at 7:50 pm which was seconded by Mr. Lemire. Roll call  
473 vote was taken.

474 Roll Call vote was taken.  
475 Keith Klawes- Yes  
476 Diane Adinolfo- Yes  
477 Matt Pitaro- Yes  
478 George Lemire- Yes  
479 Steve Laporte-Yes  
480 Motion passed 5-0  
481

Zoning Board of Adjustment  
SIGNATURE PAGE  
February 9, 2022

SIGNATURE	MEMBER	DATE
	Keith Klawes, Chairman	3/27/2023
	Diane Adinolfo, Member	23 Mar 2022
	Steve LaPorte, Member	
	Matt Pitaro, Secretary	3/23/2022
	George Lemire, Member	3/23/2022

