

TOWN OF ALLENSTOWN
Zoning Board of Adjustment
16 School Street
Allenstown, New Hampshire 03275
March 9, 2016

Call to Order.

The Allenstown Zoning Board of Adjustment Meeting for March 9, 2016 was called to order by The Chair at 6:35pm.

Roll Call.

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

Others Present.

Residents of Allenstown: Sharon Gelinas, Teresa Gladu, Elizabeth Grosspeter, Mary Levy

Others Present: George Fredette, SFC Engineering Partnership Inc.

Other Public Officials:

Allenstown Staff: Dana Pendergast, Building Inspector.

Review and Approve Minutes

Motion. Mr. Roy made a motion to approve the minutes for October 27, 2015. Mr. Roger LaFlamme seconded the Motion. There was no additional discussion.

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

Motion. Mr. Roy made a motion to approve the minutes for December 8, 2015. Mr. Gryval seconded the Motion.

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

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

Mr. Fredette explained he was there to represent Niyati Realty regarding a variance request for a convenience store, filling station, and restaurant in open space and farming zone.

Mr. Fredette explained everything on the map which is shaded in purple is zoned industrial and everything else is zoned open space and farming zone. He stated the highlighted space is the property they are looking for a variance on. He stated in 2014, Niyati Realty purchased the 8.2 acres lot which is elevated above the road, flat area, and steep in the back.

Mr. Fredette stated the new plans added new information to address concerns brought up in September. He stated they also rotated the plan so they could see all of the improvements. He stated they are looking to improve the entrance at Catamount by creating a school bus turnaround. He stated he has heard about times when there were near misses. He stated when they were discussing this with Catamount Hill; they wanted to address a safety issue they had. He stated this is part of a negotiation Catamount Hill has with Niyati Realty.

Mr. Fredette stated they will have retaining walls on either side of the lot. He stated the walls will be about ten feet. He stated the site is lower than what is around it. He stated there will be landscaping on top of the walls which will create more of a buffer. He stated in the back there will be access up to the leach field and the wells. He stated it is not intended to be a public way. He stated at some point in the future, snowmobilers may be able to use the access way.

The Chair asked how many feet the variation lines on the map for the hill. Mr. Fredette stated each line is two feet.

Mr. Fredette stated the arguments he will represent tonight are new arguments to fill some of the holes they left back in September.

Mr. Fredette stated Criteria #1: the proposed use would not diminish surrounding property values. He stated the grading he just discussed creates a buffer for noise and for light. He stated there will be a ten foot grade difference along the dividing wall and a fence for safety. He stated Catamount Hill will not suffer diminish of property values. He stated the school bus turnaround will help them. He stated DES has encouraged Catamount Hill to protect their well with an easement. He stated Niyati Realty has agreed to grant them such easement.

Mr. Fredette stated there is an agreement which was signed between Niyati Realty and Catamount Hill which needs to be finalized by the Catamount residents.

Mr. Fredette stated there was a concern about neighboring wells. He stated DES has rules and regulations which protect wells. He stated the drinking water and ground water requires a setback of 250 feet to an underground tank. He stated the plan shows the position of the tanks outside the 250 foot radius. He stated they included DES fact sheets in the packet which discuss the steps they will be taking to protect the environment.

Mr. Fredette stated they have contacted Capital Appraisal Associates to offer an opinion of the property values and the impact to the neighboring homes.

Mr. LaFlamme asked where on the map the homes in question are located. Mr. Fredette showed the residence in front of the lot and one on Gilbert. The Chair stated the single family residence in proximity to the station.

Mr. Manias, Capital Appraisal Associates, stated he was not hired to determine what the values of the properties were. He stated his job was to ascertain whether or not the market supported a claim of diminish value or not. He stated they rely on market information in order come up with a conclusion which is supported by the data. He stated he has already submitted a letter with his findings.

Mr. Manias stated in the neighbor of subject there are 9,400 cars a day going according to DOT. He stated one of the things they look at is whether there would be an increase of traffic due to a use which would create an impact on surrounding properties. He stated the predominant uses in the neighbor are industrial and commercial. He stated the proposed use does not appear to create additional traffic over and above what goes by already.

Mr. Manias stated they also compare properties in a similar location to properties which are outside of the location in which the influence may or may not exist. He stated the packet he sent them includes six properties. He stated there is a page of comparable influences. He stated Comparable 1 is in Pittsfield off of Route 28 which is a very busy area with similar influences. He stated he compared the area to a property in a residential zone so he could isolate whether or not the commercial influence has a negative impact.

Mr. Manias stated the Comparable 2 and 2a are both located on Route 28. He stated there is a commercial influence surrounding the residential use on one property and a residential property for the other. He stated the adjusted values are within \$1,000. He stated it tells him the influence of the mobile home facility doesn't create a negative effect the market will recognize as significant.

Mr. Manias stated Comparable 3 has McDonalds and commercial influences. He stated he looked at Fox Club Terrace which is behind Fisherville Road. He stated the reconciled values are very close for the two locations.

Mr. Manias stated his job is to interpret the market and summarize what he finds. He stated if he found the properties supported a diminish property value, he would have told them.

Mr. Manias stated the Gelinas property is sheltered by trees all around. He stated there was concern about properties on Gilbert Road having a view of the gas station. He stated it is physically almost impossible. He stated they would have to look through a gravel pit and then through the Gelinas property. He stated they don't have a clear unobstructed view. He stated the access to the Gelinas property is from Gilbert Road not Route 28. He stated those were concerns he looked at to determine if there will be a diminish in value.

Mr. LaFlamme asked if the Gelinas property would become more valuable if the lot in question were approved as commercial. Mr. Manias stated it is a difficult question to answer. He stated they are still in the open space/farming district and would have to go through all the steps necessary first. He stated in some cases a commercial property can be worth more than a residential property.

Mr. Fredette stated Criteria #2: the variance will not be contrary to public interest. He stated in the packet there is a copy of a purchase and sale agreement when the town of Allenstown agreed to sell the property to Niyati Realty. He stated in the agreement there is provision which states "Justice will be served if the Buyer obtains the property and then, subject to obtaining land use approvals, provides economic development through the addition of approximately 10 jobs, a generation of approximately \$150,000 in payroll, improvements to the property of about \$500,000, such improvements understood to increase the property values."

Mr. Fredette stated Niyati Realty signed the purchase and sale agreement fully aware of the zoning district restrictions and fully aware one of the permitting steps would be to come before the ZBA for a variance. He stated Niyati Realty was also aware he had the support of government officials including the Economic Development Committee and the Board of Selectmen. He stated the proposal is consistent with the current Master Plan. He stated the current Master Plan recommends Allenstown capitalize on the potential tourism dollars Bear Brook State Park could bring by providing food and service kiosks.

Mr. Fredette stated the Chair had instructed the Board they should not consider the tax base increase because it is not appropriate. The Chair stated they are not permitted to make the argument. Mr. Fredette stated he respectfully disagreed with the instruction. He stated if this increases the tax base and offering economic development he offers it to the Board in respect. The Chair stated increase tax value is not something the ZBA is supposed to consider.

Mr. Fredette stated the variance will not be contrary to public interest because of the safety issue they are mitigating. He stated snowmobilers travel down Route 28 and cross the highway to the mobile station and the proposal would create a situation where they would not have to do it. He stated they would also not have to cross Presidential Drive.

Mr. Fredette stated the next part was three tests for hardship. He stated the allowed uses in the district are single family dwellings, farming, municipal recreation, a golf course and a family child care home. He stated physically the lot is challenged in the back with steep topography. He stated the property has access onto Route 28 through an easement on an abutting property to the North. He stated standing by itself, the only use the property could be would be a single family home. He stated the proposed use is a reasonable one. He stated there are other commercial uses in the area and it wouldn't be a negative impact.

Mr. Fredette read Mr. Manias' report which stated "The proposed variance for convenience store with gas stations and restaurant is similar to the one across the street. There does not appear to be an additional issue with the rights of quiet enjoyment that are significantly different than those that exist with the existing conditions in the neighborhood...The applicants have addressed the safety issues for traffic, egress, and even the bus stop in order to protect the residents."

Mr. Fredette stated the next part of hardship was specifically applied to the petitioner's property the ordinance has no fair and substantial relationship to the general purpose of the zoning ordinance. He stated the nature of the area along Route 28 within the open space and farming zone has evolved throw growth of the town and region. He stated it is now disengaged from the general purpose of the zoning ordinance.

Mr. Fredette stated the last part of hardship is if relieved by a variance, will not injure the public or private rights. He read Mr. Manias' report which stated "The proposed variance for the convenience store with gas tanks and a restaurant area is similar to one across the street...there does not appear to be any additional issues with rights of quiet enjoyment that are significantly different than those that exist."

Mr. Fredette addressed Criteria #4: Granting the variance would do substantial justice. He stated he believes economic development is in the public interest. He stated the purchase and sale agreement was transferred with the understanding and expectation of the development of a gas station and convenient store therefore it would be substantial justice to follow through on the agreement.

Mr. Fredette addressed Criteria #5: the proposed use is not contrary to the spirit of the ordinance. He stated they are mitigating existing safety concerns with the snowmobilers and the school bus stop. He stated the nature of the area has evolved and has changed.

Mr. LaFlamme asked how high the buffer will be on the retaining walls on both sides. Mr. Fredette stated the wall is about ten feet high and then the landscaping will be four feet high and will grow from there. He stated the top of the retaining wall would have a fence. The Chair asked if these are security thing as well. Mr. Fredette stated they are for safety reasons as well. He stated the fence will be at least four to five feet tall.

Mr. Gryval asked if the nearby properties will see the landscaping when they look at the building. Mr. Fredette stated he was correct. Mr. Gryval asked if the roof of the building will be about the height of the retaining wall. Mr. Fredette stated the pitched roof should be below the landscaping.

The Chair asked if there will be a drive thru on the property. Mr. Fredette stated there will be a drive thru around the back of the property. The Chair asked what the approximate distance would be from the speaker to the mobile homes in the park. Mr. Fredette stated it would be about 100 feet.

The Chair opened the discussion to the public.

Mrs. Gelinas stated she doesn't understand why they couldn't have bought property along the west side of Route 28 with the other commercial property instead of effecting the other residential properties along the area. She stated from the corner from her tenant's house to the corner of the proposed lot is 83 feet and from the corner of the house to the corner of the building is 93 feet. She stated the tenant doesn't know if he is going to stay there and she is concerned with getting someone else to rent it. She also expressed concern about having so many other gas stations in the area. She stated as far as the snowmobilers crossing the street, it happens throughout the State.

Mrs. Power asked what the plans for the store are across the street. Mr. Fredette stated the applicant leases the place and will be vacating it to open his own place. He stated the landowner will do what he wants with it. There was further discussion of the potential for two gas stations in the same area.

The Chair asked if the two stations are across the street from each other. Mr. Fredette stated he believes they are 800 feet apart from each other.

Elizabeth Grosspeter asked where the bus turnaround will be in relation to Presidential Drive. Mr. Fredette stated the bus turnaround will be in the area where the mailboxes are right now. He stated it is a somewhat paved area now. He stated they will make the area bigger and reroute Presidential. Elizabeth Grosspeter stated she has a difficult time getting up Presidential in the wintertime and expressed concern with it becoming steeper. Mr. Fredette stated he offer relief on

the steepness on it however, there will be a cul-de-sac. He stated they don't intend to make the road any steeper than it is right now. There was also discussion of the location of the mailboxes.

Mrs. Levy, a member of Catamount Hill, stated she is very opposed to this gas station. She stated if she was going to move into the mobile home park and saw the gas station, she would not move in there. She expressed concern of the gas tanks catching on fire and the harm it could cause to the mobile home park.

Mrs. Levy stated the membership of Catamount Hill took a vote to entertain the agreement. She stated they do not need the gas station next to the mobile home park.

Mrs. Gladu stated she is the first house on Gilbert Road. She stated she can see the Gelinas house and if there is a light on she can see it. She stated she moved from the city for country living. She stated they are still going to see the proposed wall through the trees. She expressed concern of having snowmobilers on both sides of her house because she abuts Bear Brook Park.

Mr. Gryval asked Mrs. Levy what she meant about being in the minority. Mrs. Levy stated when the membership took the vote to entertain this she doesn't think they considered what is going to come down the pipe with the gas station. She stated she doesn't think they realized there would be a wall, drive thru, lights, and diesel gas.

Mr. Gryval asked if after Niyati goes through the process, will the members get to vote on it again. Mrs. Levy stated they will get to vote on it again.

Mr. Roy asked Mrs. Levy what happens if the Catamount Hill board votes and says no. Mrs. Levine stated the Board is not the one which votes. She stated it is a community decision. She stated if this goes through the town committees, the Catamount Hill community still have a vote on this issue. She stated they are willing to entertain this but have not entered into the agreement. Mrs. Levy stated they have to have a quorum and majority vote to pass it.

Mr. Roy asked Mr. Fredette what they would do if the community voted no. Mr. Fredette stated they would have to withdraw the plan. The Chair asked if there is a curb cut directly on Route 28. Mr. Fredette stated there was a subdivision put together with an easement created to access part of the subdivision.

Mr. Fredette stated they had a meeting with the larger community of Catamount Hill and the majority did vote to proceed with the understanding they will take a final vote once there are final plans.

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

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

The Chair asked the Board if the applicant has proven the proposed use will not diminish surrounding property values. Mr. Gryval stated he thinks by bringing in an expert with a written testimony and presentation before the Board it would not diminish the property around the area. Mr. LaFlamme stated it was his only reason for not voting for it before but now there is an appraisal he is satisfied. The Board agreed the applicant proved the proposed use would not diminish property values.

The Chair asked the Board if the applicant had proven the granting of the variance will not be contrary to the public interest. Mr. Gryval stated he thought with all the similar activities going on in the area and the Catamount community agreeing to hear it he believes the public interest is met. The Chair asked about the people on Gilbert Road. Mr. Gryval stated there was no professional evidence to show the property would be diminished. Mr. LaFlamme stated the sign may interfere with the residences. Mr. Gryval stated the Planning Board has a strict regulation on signage. Mr. Roy stated the Planning Board would take the residents concern into consideration. The Board agreed the applicant had proven the granting of the variance will not be contrary to the public interest.

The Chair asked the Board if the applicant had met the tests of hardship. He read the first test “as applied to the petitioner’s property, the ordinance will interfere with the petitioner’s reasonable use of their property, considering the unique setting of the property in its environment for the following reasons.” He stated they have heard their arguments and asked if the Board feels the ordinance is interfering with the reasonable use of the property.

Chief Pendergast stated they are allowing a use which is not permitted in the zone. Mr. LaFlamme stated the owner could build a house on the property if he wanted to. He stated the petitioner knew it was zoned open space when he bought it.

Mr. Gryval stated there is nothing unique about the property and there are other businesses close to the property. He stated every piece of property could be used for something else. The Chair stated it could be used as it is. Chief Pendergast stated permitted uses in the area include single family houses, general farm and forestry, agriculture or nursery, municipal recreation, a golf course or a day care.

The Chair asked if granting the variance does substantial justice to the petitioner and to the abutters. Mr. LaFlamme stated they have a professional appraiser who said they would not be doing an injustice to the abutters.

The Chair asked if as specifically applied to the petitioner's property the ordinance has no fair and substantial relationship to the general purposes of the zoning ordinance.

The Chair stated his argument is they could apply this to every property as they work their way up Route 28. He stated at some point the town needs to decide if they need to rezone the area. Chief Pendergast stated they can't say rezone because they don't have the authority to do so. The Chair stated it has the net effect as changing the zoning. Chief Pendergast stated they are allowing a use on a property, they are not rezoning it. He stated the use goes with the property for the life of the property unless it is abandoned.

The Chair stated he thinks to the public, it would appear to be a commercial zone even if on paper it is not. He stated this same argument can be used. He stated they are not obligated to grant a variance just because the property next to them has a variance. Mr. Gryval stated if they took a person and stood them around the area they probably wouldn't say it was residential. The Chair stated he will not vote unless he has to break a tie. He stated there needs to be three affirmative votes.

The Chair asked if the proposed use is not contrary to the spirit of the Ordinance.

Motion. Mr. Roy made a motion to come out of deliberation. Mr. LaFlamme seconded the Motion. There was no additional discussion.

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

Motion. Mr. Roy made a motion to grant the variance for 289 Pinewood Road. Mr. LaFlamme seconded the Motion. There was no additional discussion.

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

The Chair explained to Mr. Fredette the motion has been granted. He stated there are 30 days starting tomorrow in which this could be appealed. Mr. Fredette asked if the appeal has to be based on matters of law or could the appeal be brought in on additional information. The Chair stated someone can ask for an appeal at any time. Chief Pendergast stated if the Board determined not to rehear the case it would go the Superior Court.

Mr. Gryval stated the next step for this is to go before the Planning Board. He stated for anyone who has concerns such as the lights and landscape then they should go to the meeting. He stated they can go on the town's website and subscribe to any announcements coming up which will tell them of the upcoming meetings.

Chief Pendergast asked if anyone had a chance to look at the rules he drafted. He stated he hasn't heard back from anyone. The Chair stated it was a long time ago but there were no objections. He stated they need to table to the next meeting.

The Chair stated Keith Klawes is now an alternate for the ZBA.

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. Bergeron – Yes; Mr. Roy – Yes; Mr. LaFlamme – Yes; and Mr. Gryval-Yes. The Chair declared the Motion passed.

The Chair declared the meeting adjourned at 8:15pm.

TOWN OF ALLENSTOWN
ZONING BOARD OF ADJUSTMENT
PUBLIC MEETING MINUTES

March 9, 2015

Signature Page

| Original Approval: | |
|---|--|
|  |  |
| ERIC FEUSTEL, Chair | DATE |
|  |  |
| CHRISTOPHER ROY, Member | DATE |
| | |
| ROGER LAFLAMME, Member | DATE |
| | |
| ROBERT BERGERON, Member | DATE |
|  |  |
| JEFF GRYVAL, Member | DATE |

| Amendment Approvals: | | |
|------------------------|-------------------------|-------|
| Amendment Description: | Approval: | Date: |
| | | |
| | ERIC FEUSTEL, Chair | DATE |
| | | |
| | CHRISTOPHER ROY, Member | DATE |
| | | |
| | ROGER LAFLAMME, Member | DATE |
| | | |
| | ROBERT BERGERON, Member | DATE |
| | | |
| | DIANE DEMERS, Member | DATE |