



**TOWN OF PITTSFIELD
ZONING BOARD OF ADJUSTMENT
TOWN HALL, 85 MAIN STREET
PITTSFIELD, NH 03263**

MEETING MINUTES of Thursday, February 8, 2018

CALL TO ORDER

The Zoning Board of Adjustment Meeting for February 8, 2018 was called to order by Mr. Hetu 7:01p.m.

MEMBERS PRESENT

James Hetu
Pat Heffernan
Scot Palmer
Jason Rokeach
Deidre Benjamin
Cyndi Hetu, Minutes Clerk

EXCUSED

Phillip Boncer

OTHERS PRESENT

Jim Pritchard
Carl Anderson
Jennifer Gibbs
Roberta Maxfield
Gary Gauthier
Ron Sayres
Rick Gibbs

The Chair informed Ms. Gibbs they would only be able to sit four members tonight and asked her if she wanted to move forward with the four members. Ms. Gibbs said she would like to wait for a full board.

REVIEW AND APPROVE MINUTES

The Chair called for a motion on the June 17, 2017 minutes. Mrs. Hetu stated the date should actually be June 29, 2017 and the motion needs to be as amended.

Motion. Mrs. Benjamin made a motion approve the minutes of June 29, 2017 as amended. Mr. Palmer seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. Hetu – Yes; Mr. Heffernan – Yes; Mr. Palmer– Yes; Mr. Rokeach – Abstained; and Mrs. Benjamin - Yes. The Chair declared the Motion passed.

Motion. Mr. Rokeach made a motion to approve the minutes of January 11, 2018. Mr. Palmer seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. Hetu – Yes; Mr. Heffernan – Yes; Mr. Palmer– Yes; Mr. Rokeach – Yes; and Mrs. Benjamin - Abstained. The Chair declared the Motion passed.

PUBLIC HEARING ON AN APPEAL OF AN ADMINISTRATIVE DECISION OF DWELLING UNIT INSIDE THE AUTOMOBILE DEALER BUILDING AT 44 LOUDON ROAD, TAX MAP R-34, LOT 18-1, IN THE LIGHT INDUSTRIAL/COMMERICAL ZONING DISTRICT.

The Chair reopened the discussion regarding the appeal of the administrative decision of dwelling unit inside the automobile dealer building at 44 Loudon Road, Tax Map R-34, Lot 18-1, in the Light Industrial/Commercial Zoning District. He apologized to Ms. Gibbs for not having a full board and informed her Mr. Boncer should be back soon for them to have a full board.

Mr. Pritchard suggested they continue the hearing to a future date and do another continuance at that time rather than posting it in the Suncook Sun and incurring an expense. The Chair stated his concern was giving notice to the public. He asked Mr. Pritchard what their next meeting would be. Mr. Pritchard stated it would be February 22, 2018. The Chair stated they would continue it to February 22, 2018.

The Chair asked Ms. Gibbs if she had anything new to add to the discussion. Ms. Gibbs stated she did not have anything new.

Mr. Heffernan recused himself from the discussion.

The Chair asked the Board if they had any additional questions or discussion. Mr. Palmer asked what the criteria is for this hearing. The Chair explained their criteria is whether or not the use Ms. Gibbs is asking for is allowed according to the letter of the Zoning Ordinance. He stated the BOS has determined it is not allowed according to the Zoning Ordinances so by right Ms. Gibbs should not be able to use it. He stated the criteria is not like when they have a special exception or variance.

Ms. Gibbs stated she found the original plans for the building and asked the Board if they have a need for them. The Chair asked if the building had been altered from those original plans. Ms. Gibbs stated they had not. The Chair determined they did not need the plans.

The Chair opened the discussion to the public.

Mr. Pritchard, 25 Governors Road, stated he made a statement in rebuttal to the BOS which he submitted to the BOS and asked the Board to attach it to the minutes of this meeting. He offered to answer any questions about the statement. He commented in the minutes from January 11, 2018 he didn't see Mr. Anderson identified as a Selectman and Mr. Anderson had said so at the meeting. He asked they add that to the minutes as well.

The Chair asked the Board members if they all had a copy of Mr. Pritchard's statement. All members responded they had a copy.

Mr. Pritchard stated he thinks his statement speaks directly to Mr. Palmer's question of what criteria they were using. He read the definition that a dwelling unit must satisfy three conditions; the use of the dwelling unit must be occasioned by the principal use, the use of the dwelling unit must be subordinate to the principal use, and the dwelling unit must be on the same lot with the principal use.

The Chair asked if anyone on the Board had any questions regarding the submission. There were no questions.

The Chair stated in regards to the minutes they state Mr. Anderson wanted to explain his reason for the decision the BOS came to so it is implied he is a Selectman. He asked if anyone wanted to change the minutes. Mr. Pritchard stated he wasn't asking them to change the minutes.

Mr. Anderson, 50 Leavitt Road, Selectman and member of the Zoning Administrators, stated the question needing to be answered is whether or not the accessory dwelling unit is subordinate to the principal use and it is a subjective question in this regard. He gave examples of various town buildings which have dwelling units which are subordinate to the main use. He stated when they consider the use as a residence of someone's domicile it elevates the use, in his opinion. He stated if the residence can still be in use without the business he doesn't know what recourse they could have. He stated it comes down to what is subordinate and what is not and it was the Zoning Administrator's judgement that a full-time residence is not subordinate to the principal use.

The Chair stated the employee in question had said he lived in Rochester and asked Mr. Anderson if he found that to not be true as he didn't know what the BOS was presented. Mr. Anderson stated they were going by Dr. Barksdale's response to the complaint they received. He stated Dr. Barksdale wrote the employee was not allowed to live there and would not be living there. Mr. Anderson stated he doesn't know where the employee lives and the BOS's position is no one should be living there. He stated if someone needs to stay overnight every now and then they could pull out a cot and it would be subordinate to the use.

Mr. Pritchard stated Mr. Anderson is making the same point he made repeatedly at the last meeting. He stated if the accessory dwelling unit is used for transient lodging only

and if someone were to live there full-time than it becomes a principal dwelling unit. He stated the definition of accessory dwelling unit contradicts Mr. Anderson's statement. He read the definition "dwelling" means a building or part thereof that is designed or used principally for residential occupancy by one or more human beings. Where the term "residential occupancy" is used in relation to either "dwelling" or a term defined as a type of dwelling, the term "residential occupancy" excludes occupancy in accommodations that are principally for transient lodging. He stated based on Mr. Anderson's argument that no dwelling unit could be an accessory dwelling unit; however, municipalities must permit them as "mother-in-law" units. He stated this dwelling unit has half the area the State law says municipalities must allow.

Ms. Gibbs informed the Board Dr. Barksdale has written another letter regarding the salesperson living there. The Chair stated if she wanted to submit the letter as part of the record she could do so. Ms. Gibbs submitted a copy of the letter to the Board. The Chair asked if the letter had been submitted to the Town yet. Ms. Gibbs stated she is not aware if it has been submitted to the Town. The Chair expressed concern the letter is on two pages and it was not submitted to the Town and stamped by the front desk. Ms. Gibbs stated Dr. Barksdale is available by phone if they have any questions.

The Chair asked the Board if they mind if he follows up with Dr. Barksdale regarding the letter. The Board agreed to have the Chair call Dr. Barksdale. Mr. Palmer asked if this letter was written after the last meeting. The Chair stated the letter was written two days after the last meeting.

The Chair read the letter dated January 13, 2018 to the Board;

"It has come to my attention that the Selectman's letter of decision that I received dated December 12th was missing information that I should have been given in order to respond accurately. I would like to clarify some facts.

The employee of Hometown Auto Sales, LLC that the Selectman believe has or had been living at the business has a legal residence in Rochester. The conversation that I had with the gentleman was simply to share the letter I received from the town selectmen. At the time he explained that he had been spending some nights at the building not only to provide extra security for the building (which I am highly in favor of) but also to attend to business that must be done during the night. He offered to give me a copy of his lease agreement and we left it at that.

In my letter to the Selectmen, I said that the "Tenant" would be "finding a different domicile." At the time of that statement I had not looked at the zoning table for 44 Loudon Road. After reviewing not only the zoning table but the zoning laws, I found that the employee of Hometown Auto Sale is in fact well within the zoning laws to spend overnights at the business in the "accessory dwelling unit" and it is not considered his "permanent domicile" as he is working while at the building (awake or asleep).

Located within the building at 44 Loudon Road (since it was built in 1985) is a room located in the rear of the building that has a place of rest, refrigerator, cooking appliance and storage cabinets for food. There is also a bathroom connected to the room that has a shower, washbowl, toilet and locker. This space was used continuously since the building was built by both the Doctors and staff when it was Pittsfield Medical Center.

By definition the zoning law allows an “accessory dwelling unit” at 44 Loudon Road and such is in place and remains in place therefore for the Selectmen to rule that the employee of Hometown Auto Sale was in some way using the “accessory dwelling unit” against zoning code is false and therefore my letter to you in response to your decision should be stricken from the record.

I am 100% in favor of Jennifer Gibbs moving forward with the appeal for “watchman’s quarters” aka “Accessory Dwelling Unit” as reflected by my signature on the appeal paperwork which she has submitted to the zoning board.

It is my desire to have the zoning board look closely at the Selectmen’s ruling of December 12th as it goes against the zoning table and zoning laws that govern my building. Furthermore, it is my understanding that the building is also in a grandfathering situation as the zoning look effect in 1988 and the building, as I have stated above, was built in 1985. Respectfully submitted, John Barksdale. “

Mr. Palmer asked about the comment of it being grandfathered. The Chair stated he doesn’t want to go into grandfathering just yet as the question before them is whether or not it is allowed by right.

Mrs. Maxfield, 28 Loudon Road, asked to read her thoughts on the situation. She read “The purpose of this meeting appears to be watchman’s quarters versus an apartment. An apartment is considered to be one’s domicile and the definition of a domicile is where a person primarily resides. The watchman in question lives at 44 Loudon Road. He stated that he is not there every night and sometimes goes to Rochester. Every one of us who live in an apartment or house can certainly leave for a night if we choose however, we always return to our place of residence. We all know the old Medical building has plumbing and bathroom facilities already installed so when you add a refrigerator, microwave, bed, couch, and tv you certainly have a small efficiency apartment.

What happens if this apartment variance is approved and the current watchman decides he doesn’t want to be here anymore? The car dealership could already have a salesperson with a wife and kids and they tell him that they have a great deal for him; live in Pittsfield with your family with no travel to work and the bus stops right at the door so kids can go to school.

I am sure that we would all agree we need new business in town but this car dealership brings nothing beneficial to our town; no jobs, no nothing. It doesn’t even help our tax base because the town is already receiving tax money on this property. However, an apartment building would definitely impact our taxes in a negative way. It is certainly a

great location for a car dealership to be adjacent to a highway. In this case you only have to drive a few feet off the highway, look and see nothing you are interested in and drive right back to the highway without ever driving to our Main Street and supporting our town. The future of Pittsfield depends on new businesses coming to town and offering new jobs. Hopefully the new owners will care enough about the town and support it and become involved in making it once again a great community to work and live in.

In my opinion, you are making a huge mistake for the taxpayers in Pittsfield if you allow this variance. They have certainly not been friendly neighbors and refuse to follow the rules they don't like. When the watchman was questioned about the living quarters he lied and said the Town had given permission which was false. He also warned his neighbor that he better get off his property and stay off or there would be trouble.

The letter from Dr. Barksdale which was read at the last meeting stated 'living quarters were not allowed at this building' but they ignored the letter and continued to live there.

As you all know this is a large building for only one small area to be used. What are their plans for the rest of the building? Looking at their history so far they will do whatever they want in the building without any authorization from the town. Their motto seems to be catch me if you can. Before you cast your vote, please consider the impact your decision will have on the town and don't burden the Pittsfield taxpayers with another apartment building" She stated if they allow this variance than others will spread out all over the place.

The Chair clarified this is an administrative appeal of a decision by the BOS that it is not allowed by right. He stated if they were to agree with the BOS than Ms. Gibbs could apply for a variance to ask for permission to do it anyways. He stated at the moment they are just deciding rather it is allowed by right.

Ms. Gibbs asked if she can speak to the letter. The Chair stated she can speak in reference of the letter but needs to direct it to the Board.

Ms. Gibbs stated she is a new business in town. She worked in the town and is very involved in the town. She explained she has been doing her best to grow the business and bring more business to the town. She tried to bring business to town by referring people to Main Street while waiting for their cars to be worked on. She stated she encourages people to do things in the town when they are there. She stated it is her hope that as they grow they can give back and sponsor local teams.

Mr. Anderson stated it was suggested by Mr. Pritchard that any input or statements by himself or the Zoning Administrators should be thrown out due to their lack of being attorneys and he would argue one of Mr. Pritchard's statements favorly compared what Hometown Auto wants to have with an accessory apartment. He stated this has nothing to do with an accessory dwelling unit and has no bearing on the Hometown Auto use.

Mr. Pritchard stated he would like to make a correction to Mr. Anderson's comment as he doesn't remember saying his comment should be thrown out because he wasn't an attorney. He stated he said his assertion that someone living in there full-time elevates it to a principal dwelling unit. He stated the ordinance says every type of dwelling is a place for a person to live full-time.

Mr. Sayres, 36 Loudon Road, explained in his profession he is on call 24/7 and needs access to his phone, notes and files, and leave at a moment's notice. He stated he doesn't need to stay in his office 24/7 and he makes due with what he needs to do. He stated he has his equipment with him and does it from home. He stated this is a car dealership and the same thing can apply to them. He asked what the difference is between doing it at home versus staying at the dealership.

Ms. Gibbs responded in their business they have a banking license and because of the information they have and the sensitivity of the information they cannot take it offsite. She stated they have paperwork which has to be faxed over when dealing with different time zones and they cannot remove it from the dealership or access it remotely.

The Chair closed public input and asked if there were any additional questions from the Board. There were no additional questions.

The Chair stated they would continue the hearing until February 22, 2018.

Mr. Heffernan rejoined the Board.

MEMBERS CONCERNS

Ms. Gibbs stated she had the phone number for Dr. Barksdale. Mrs. Hetu warned not to give the information over the minutes or it would become public record.

ADJOURNMENT

Motion. Mr. Heffernan made a motion to adjourn. Mr. Palmer seconded the Motion. There was no additional discussion.

A Roll Call Vote was taken: Mr. Hetu – Yes; Mr. Heffernan – Yes; Mr. Palmer – Yes; Mr. Rokeach – Yes; and Mrs. Benjamin - Yes. The Chair declared the Motion passed.

The Vice Chairman adjourned the meeting at 7:46pm.

APPROVED: February 22, 2018

JAMES HETU, CHAIRMAN

DATE