



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

MEETING MINUTES of Thursday, January 11, 2018

CALL TO ORDER

The Zoning Board of Adjustment Meeting for January 11, 2018 was called to order by Mr. Hetu 7:03p.m.

MEMBERS PRESENT

James Hetu
Pat Heffernan
Scot Palmer
Jason Rokeach

EXCUSED

Phillip Boncer
Dedrie Benjamin

OTHERS PRESENT

Jim Pritchard
Carl Anderson
Jim Allard
Jim Adams
Carol Richardson
Jennifer Gibbs
Roberta Maxfield
Gary Gauthier
Ron Statis

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 stated Mr. Heffernan is going to recuse himself. He explained to Ms. Gibbs it is their practice to allow the applicant to have a full member board as they only have three members tonight. He stated their next available meeting would be February 8, 2018. He stated she needs three affirmative votes to have it go through. Ms. Gibbs stated she would like to have the February 8, 2018 meeting. The Chair stated they will go through everything and take public input but they will not be voting on anything tonight.

The Chair stated he is going to sit Mr. Palmer as a voting member of the Board.

Ms. Gibbs stated she is asking the Zoning Board of Adjustment to reverse the Board of Selectman's decision that the Zoning Ordinance prohibits the small living space, which has been called the watchman's apartment, in the old medical apartment that she is using for a automobile dealership. The Board of Selectmen decided the Zoning Ordinance prohibits the small living space because, according to the minutes, the Board of Selectmen cannot find an entry in the use table for a watchman's apartment. The Board of Selectmen apparently did not recognize that the watchman's apartment is an accessory dwelling unit that is an accessory to the automobile dealership. How the watchman's apartment meets the Zoning Ordinance definition of accessory dwelling unit and how this accessory dwelling unit is not one of the explicitly regulated accessory uses are spelled out in the Notice of Appeal on the pages inserted after page 3, she can go over this information if the Board has questions on it.

Ms. Gibbs stated it appears to her that the BOS looked in the use table for the specific term of "watchman's apartment" and did not find it. She stated if so, then this is much like an owner of a single family dwelling wanting to build a tool shed and being denied because the term tool shed is not in the use table either but everyone knows that a tool shed is an accessory outbuilding and as such is permitted by right in all zoning districts. The same is true of an accessory dwelling unit that is an accessory to business use as her watchman's apartment is.

The Chair asked for a copy of the opening statement by the end of the night. He asked Mrs. Gibbs to go through everything pass page three. He stated he wanted to go through her answers for questions c and d of the application.

Mrs. Gibbs stated question c is the description of the order or the decision being appealed. She stated she has attached a copy of the BOS decisions.

The Chair stated question d is the order of decision was made in error and should be reversed for the following reasons. Mrs. Gibbs read her response as follows

"The BOS decision is erroneous and should be reversed because the existing watchman's quarters are a type of use listed in the table of uses and districts, namely the watchman's quarters are an accessory use accessory structure or other accessory object not explicitly regulated which the Zoning Ordinance permits by right in all zoning districts (Zoning Ordinance Article III Sect IIIb:vi). The watchman's quarters are an accessory dwelling unit fully contained in and thus attached to a principally nonresidential building for an automobile dealership. She stated by her letter dated December 14, 2017, which is attached, Town Administrator Ms. Marston acknowledged that the watchman's quarters are a dwelling unit.

Mrs. Gibbs stated the Zoning Ordinance defines an accessory dwelling unit as a dwelling unit whose residential occupancy is occasioned by and subordinate to a principal use and is on the same lot as the principal use. She stated the watchman's quarters meet the

definition of accessory dwelling unit. She stated the residential occupancy of the watchman's quarters is occasioned by the business use of the building as an automobile dealer because (1) only employees of the business can stay in the watchman's quarters and (2) the resident employee stays in the watchman's quarters to provide security for the business and to attend to an occasional customer who are in a different time zone who need attention during the middle of the night.

Mrs. Gibbs stated the watchman's quarters are subordinate to the business because the watchman's quarters are small compared to the rest of the building. She stated the attached drawings of the building and supporting calculations show that the watchman's quarters occupy only 331 square feet compared to the 4,830 square foot building. She stated the watchman's quarters are on the same lot with the business because the watchman's quarters are wholly within the building that houses the business. The watchman's quarters have never been and will never be rented.

The Chair opened it to the Board for questions.

Mr. Palmer asked why they are calling it "watchman's quarters" rather than accessory dwelling. Mrs. Gibbs stated she was told by Ms. Marston that it would be referred to as a watchman's quarters. She stated when she was told it was not a zoned use and she should ask for a variance she found it is actually called an accessory unit.

Mr. Rokeach asked if there is a picture of the actual quarters. The Chair showed Mr. Rokeach the map of the unit. He asked what exactly is in those quarters. Mrs. Gibbs showed the Board the main room, a contained room and a bathroom. The Chair asked if there was a bed or would be. Mrs. Gibbs pointed out where the bed was and that it was all contained. Mr. Palmer stated it is 12.9 feet by 15.8 feet.

The Chair asked if these are the original drawings for the building. Mrs. Gibbs stated it is the original drawing from 1985. Mr. Rokeach asked if there is food storage and cooking equipment. Mrs. Gibbs pointed out where it would be. The Chair asked if it is separate from the watchman's quarter. Mrs. Gibbs stated it can be separate from the watchman's quarter.

Mr. Palmer asked if there is a sprinkler system or any kind of fire retardant. Mrs. Gibbs stated it does not.

The Chair opened it to the public. He asked for members to say their name and address.

Mr. Anderson of 50 Leavitt Road had a statement prepared which he would like to read and have entered into the minutes. He stated he would like to explain his reason or the decision the Select Board came to. He asked if he could address Ms. Gibbs directly. The Chair stated they need to address everything to the Zoning Board directly.

Mr. Anderson read a letter received by Ms. Marston from the owner of 44 Loudon Road, Mr. Barksdale;

“Dear Ms. Marston, Regarding complaints regarding tenant living at the property at 44 Loudon Rd. The owners were not aware that the tenant was living at the property. I have advised the tenant that he is not authorized to live at the property and he assures me that he will cease to live there and has moved to a different domicile. Please advise if this response is not acceptable. Sincerely, John Barksdale.”

Mr. Anderson stated it clearly states it was a living situation.

Mr. Anderson read from parts of a statement regarding the matter;

“The Appeal of the decision by the Zoning Administrators (the Board of Selectmen) should be denied. The true description of the proposed use fails the requirements of “ACCESSORY DWELLING UNIT”. The misnomer “watchman’s quarters” in this case is a reference used by the appellant to describe residential use in a portion of a commercial building where the space was stated on the original medical facility blueprint as library/lounge and on the tax card as lounge. When being considered as potentially an “ACCESSORY DWELLING UNIT” the use does appear to be “occasioned by” a Principal use, as claimed by the appellant. However the use fails the other necessary component for qualifying as “accessory dwelling unit” because it is not “subordinate to the Principal Use. The term ‘subordinate’ is not defined in the Zoning Ordinance, therefore the Webster’s Dictionary definition would apply; ‘low, or lower in rank; less important, secondary.’ Subordination in this case would therefore be determined by use not square footage as claimed by appellant. The true residential use was/is that of full time primary residence/domicile (as noted in letter from Dr. Barksdale to Ms. Marston), which is a non-allowed use in the C/LI zone except in the case of Dwelling Above Business. The fact that the dwelling unit was being used as a residence clearly indicates that the use need not rely on the automobile dealership to be capable of supporting a stand-alone use that would be non-allowed according to the ordinance, and would constitute a new use, not a continued non-conforming use.

The appellant also states that the “watchman’s quarters have never been and will never be rented” which is factually incorrect because the entire property is leased/rented by Hometown Auto from the owners Pittsfield Medical Associates. If the ZBA permits a rented residential dwelling in this case, the dwelling would likely be licensed by the HSA and thus the entire premises, including all attached space, would have to be inspected by HSA and comply with its codes. The only allowable residential use that includes a full time residence situation in the C/LI Zone is “Dwelling Above Business” which also most closely describes the actual use of the property at 44 Loudon Rd.

Alternatively, if the ZBA grants the Appeal and considers the use to be accessory dwelling unit, it should be with the recognition that by extension this vaguely described use could also allow for the actual construction and occupancy by more than one “employee” and their families of multiple, free standing “accessory dwelling units”. This could conceivably include single family, duplex, and multi-family “dwellings” on the same lot, any of which could fall under the umbrella of “accessory dwelling unit” as long as the occupancy was occasioned by the principal use, thus opening the door to other

partners, sales people or watchmen to also be provided accessory dwelling units. These uses would take place on the same lot with one or more principal uses, almost certainly Commercial, in any zone within the town. Granting the appeal would open the door for residential/domicile use to be considered “subordinate”. Such use is in conflict with the Master Plan and the spirit of the Zoning Ordinance.”

Mr. Anderson stated he was not going to read through the path that they could easily follow to arrive at the conclusion to justify additional accessory dwelling units.

Mr. Anderson continued to read his statement;

“The appellant’s claim that if the Zoning Board of Adjustment finds that the watchman’s quarters are not an ‘accessory use, accessory structure, or other accessory object not explicitly regulated’, then the watchman’s quarters are permitted as a nonconforming use that pre-existed the Zoning Ordinance does not apply because all use has been discontinued for more than a year and would require a variance to be resumed.

Alternatively, the use of the so-called “watchman’s quarters” as it was used by the medical offices prior to zoning (“the doctors used the quarters for occasional overnight stay when necessary for the medical practice”) would continue to be an allowed use today as a true accessory dwelling unit and therefore no finding of non-conforming use would apply. The use as a full-time residence is a new use.

It should also be noted that a waiver of site plan review by the Planning Board was granted based on incorrect information, and had site plan review taken place this matter may have never come before the ZBA. In support of this claim consider these statements taken from the Planning Board minutes, either of which have forced denial of the waiver;

- (1) In her site plan review waiver request, Jennifer Gibbs stated that the building was 2500 sq. ft. The administrative appeal subsequently states that the building is actually 4,380 sq. ft. She also stated that she plans “a maximum of 35 cars for sale” and she also states that she “counted 30 off-street parking spaces.” Mr. Pritchard said that the Zoning Ordinance requires the automobile dealership to have 13 off-street parking spaces and no more discussion from the Planning Board regarding parking is noted in the minutes except a comment that some cars might be parked ‘on the grass’, despite the potential for there to be up to 18 too few parking spaces to accommodate the cars “for sale” and the required parking spaces in the Zoning Ordinance.
- (2) In her waiver request Ms. Gibbs stated that the security lighting would be those lights already in place on posts, and that the light/glare would not affect the neighborhood. The light cast from this method of lighting is far different than the type of glare and the direction cast from the security lighting on the wall of the building currently directed at the residential area abutting Hometown Auto. Ms. Gibbs also stated that she would have security lights on all night, at which point Mr. LeDuc and Mr. Pritchard said ‘that the area is not

residential' which is clearly untrue, given that the closest abutter is a single family residence, as is approximately half the immediate neighborhood.

Granting the appeal of the Zoning Administrators decision would be an incorrect interpretation of both the word and intent of the Zoning Ordinance that could have far-reaching and unintended consequences. The simple and correct answer to Ms. Gibbs situation would be to apply for a Variance of the second story requirement for Dwelling Above Business to be allowed on the first story and if granted, to apply for a Special Exception to allow Dwelling Above Business in the C/LI zone, with appropriate conditions attached.”

The Chair asked Mr. Anderson what the date was for Planning Board meeting he referenced. Mr. Anderson stated he believes it was the February meeting. The Chair asked Mr. Pritchard to find a copy of the minutes from the Planning Board to put in their package. Mr. Anderson found a copy for the ZBA.

Mr. Pritchard of 125 Governors Road he thinks the ZBA should grant this petition. He reminded the Board that the order before them tonight is a pure question of law and not about whether it is right. He stated their only function is to decide whether or not the living space meets the definition of accessory dwelling unit. He stated Mr. Anderson acknowledged that Ms. Gibbs has proven it is occasioned by business use; however, he contends that it was not subordinate. He stated Mr. Anderson cited a dictionary definition on subordinate; however, the case law on accessory use says subordinate requires it to be minor. He thinks the fact that it occupies less than one tenth of the used business space it is minor to the business use and it is clear it is on the same lot.

Mr. Pritchard stated the Zoning Ordinances has as number of accessory uses listed in the table. He stated two of them are accessory dwelling units; one is the accessory apartment (aka “mother-in-law apartment) which this is not. He stated the other one is a detached accessory dwelling unit. He stated he created the use classifications himself. He explained when he created them he was aware accessory dwelling units for business units were possible and saw nothing in the predecessors Zoning Ordinances that would suggest they should be prohibit. He stated the Comprehensive Revision of 2016 intended not to change meaning and since there was nothing in the prior Zoning Ordinance to justify setting out this type of accessory dwelling unit as being somehow prohibited it was left as one of the unregulated types. He stated he thinks they should consider the fact there are two types of the accessory dwelling units spelled out and this is not one of them. He stated he thinks Ms. Gibbs has proven the four issues she needs to as a matter of law to require the ZBA rule in her favor.

Mr. Garrett Gauthier of 36 Loudon Road stated he has no problem with them being there; however, the watchman is also the salesperson. He stated the salesperson told him they had minutes that allow him to stay there. He explained there is a light coming from 44 Loudon Rd which lights up his entire property. He expressed concern for the excessive light and the fact that it lights up other homes in the area. He stated the area is safe and doesn't think they need a watchman for the property.

Mr. Heffernan stated the lighting is an entirely different thing and the ZBA should not be focusing on this. He stated he is working on negotiating something for the lighting issues.

Mr. Pritchard agreed with Mr. Heffernan that the lighting has nothing to do with the appeal and that the town doesn't have a lighting ordinance. He stated he is hearing a lot of argument it is not a good idea to allow this apartment and cautioned the Board to not legislate from the benches. He stated if this accessory apartment is not a good idea then they should bring it before the Planning Board and ask them to amend the Zoning Ordinance so this type of dwelling unit is separately regulated. He stated it would be a mistake to try to correct this judicially.

Mr. Saris of 36 Loudon Road asked in regards to the amount of time the business is used during the day versus time the watchman's quarters are used and what would be considered minor and what is subordinate. Mr. Pritchard stated the person who stays in the living space is an employee and is performing business functions when he is there and the apartment is being used at the same time.

Mr. Anderson stated the argument does come down to whether or not the apartment is subordinate or is another principal use. He stated if the actual use was watchman's quarters where the employee takes a short nap before going on his next watch then it is a watchman's quarters; otherwise it is another principal use. He stated if they were to approve the employee living there full-time that would create a full-time domicile residence and therefore not be subordinate to the business itself.

Mr. Boylston of Charles Street, Rochester NH stated he was the employee in question. He stated he lives in Rochester and stays at the business sometimes because it is easier. He explained there are times when he needs to be there earlier in the morning to take calls from Dubai.

Mr. Adams 35 Leavitt Road of the Select Board stated they can't make it any clearer Pittsfield is wide open for business but it needs to conform with those there already. He stated if they allow this to happen, there is enough room in the union block to put 20 apartments there. The Chair stated they need to direct everything to the Board.

Mr. Pritchard stated Mr. Anderson's argument is it is not subordinate when indeed it is subordinate. He stated Mr. Anderson stated earlier "if the business fails, Bob Shagnon will still be there." He stated this is not the case because the only person who can be there is the employee and if the business goes away then the resident goes away.

Mr. Boylston of Rochester, NH stated the gentleman behind him said it will make their lives miserable and asked what that is all about. The Chair stated everything needs to be directed to the Board. Mr. Adams stated he had said certain developments could make lives miserable. He stated he was talking about the general development when they have commercial and residential mixed throughout the town.

Mr. Anderson stated he believes his argument makes it not subordinate because this apartment would make it domicile.

Mr. Pritchard stated an accessory dwelling unit means a dwelling unit and if they look it up in the Zoning Ordinance, a dwelling unit that is designed as the living quarters for one family with certain amenities. He stated it is explicit in the definition in the accessory dwelling unit is someone resides there and Mr. Anderson seems to be arguing that because someone lives there it is a principal dwelling place.

Mr. Anderson stated the fact that someone can live there as a family is part of the dwelling description so there would be nothing to prohibit anyone to the use and that use is much closer to Dwelling Above Business than it is accessories. He stated he would think the clear path would be to have a variance to have the Dwelling Above Business on the first story.

Mr. Allard of 540 Tilton Hill Road and Selectman stated it seems if the application had come in as a request for a variance than this hearing would be unnecessary.

Mrs. Richardson of the Board of Selectman stated she doesn't think this was adequately addressed at the Planning Board and she doesn't think it should have gotten this far.

Mr. Pritchard stated the Board of Selectmen seems to be suggesting this should have been addressed as a variance. He stated to Mr. Allard's comment that it should have been a routine variance application, there is no such thing as a routine variance. He stated every variance case is unique because every application must show that are special conditions of the property that distinguish the property from other properties in the area. He stated if this is something already allowed under the Zoning Ordinances they don't want to burden the owners with having to come in and prove special conditions of the property.

Mr. Pritchard stated if the Zoning Ordinance allows it but it's a bad idea the Board of Selectmen can come before the Planning Board and explain why it is a bad idea.

The Chair closed it to the public. He asked Ms. Gibbs if she had any other comments in response to what has been said.

Ms. Gibbs stated in order to do the appeal she had to have Dr. Barksdale sign the appeal so she does have his blessing. She stated she had a long conversation with him and he would feel more comfortable with someone being there overnight. She also explained she did not ask for a variance because the use she is going for is allowed in the Zoning table.

Ms. Gibbs asked if she has an employee working at her building is it not under her discretion to assign the hours they work. She stated they are not an 8-5pm business hour's operation. The Chair stated they are not going to rule on that one way or the other.

Ms. Gibbs stated she is not going to address the lighting issue at this point. She stated she worked at the building for 20 years and knows the town. She stated she is here to do a

good job, run a good business and make the townspeople happy. She stated she is very vested in the town. She stated she is not only growing her business but also other businesses in the town.

Mr. Rokeach stated his question is what actually in the Zoning Ordinance. He asked if there an area for eating within the unit. Ms. Gibbs stated there is an area and she could move the refrigerator back in there. She stated when she worked in the building the refrigerator was in there.

The Chair asked about the letter from Dr. Barksdale and his comment about the tenant. He asked if Dr. Barksdale misunderstood the situation. Ms. Gibbs stated that was correct. She explained in the beginning there was a lot of work to do so he was staying there more often.

The Chair stated he would like to continue this meeting at a later date when there is a full board. He asked Ms. Gibbs if February 8, 2018 would work for her. Ms. Gibbs stated that would be fine.

The Chair asked Mr. Gauthier if he brought a document today (referencing letters from the abutters) and if they would like it entered into the minutes. Mr. Gauthier stated it was just for them to read and didn't need to be entered into the minutes.

MEMBERS CONCERNS

Mr. Palmer asked what is happening with Mrs. Rollins position. The Chair stated Mrs. Rollins moved out of town and is no longer qualifies to serve on the Board. He stated because of the proximity to the elections his thoughts were to leave it vacant. He stated they do need to deal with having a Vice Chair in place.

ADJOURNMENT

Motion. Mr. Rokeach 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; Mrs. Rollins– Yes; and Ms. Benjamin - Yes. The Chair declared the Motion passed.

The Vice Chairman adjourned the meeting at 8:03pm.

APPROVED: February 8, 2018

JAMES HETU, CHAIRMAN

DATE