



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

MEETING MINUTES of Thursday, June 28, 2018

CALL TO ORDER

The Zoning Board of Adjustment Meeting for June 28, 2018 was called to order by Mr. Hetu 7:09p.m.

MEMBERS PRESENT

James Hetu
Jason Rokeach
Scot Palmer

OTHERS PRESENT

Jim Pritchard
Donna Ward

REVIEW AND APPROVE THE MINUTES

Motion. Mr. Rokeach made a motion to approve the minutes for May 10, 2018. Mr. Palmer seconded the Motion. There was no additional discussion.

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

After the meeting, recording secretary Cyndi Hetu made the following addition to the minutes of May 10, 2018:

Agenda item 4, page 4, decision on Pittsfield Self Storage special exception:

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

MOTION FOR REHEARING THE APPLICATION FOR SPECIAL EXCEPTION FOR SELF STORAGE FACILITY ON HIGH ST, TAX MAP R15 LOT 30 IN THE LIGHT COMMERCIAL ZONING DISTRICT.

The Chair explained the purpose of the meeting was the reasons to rehear it not rather the special exception should be granted or not.

Mrs. Ward explained she filed for a motion to rehear because she didn't get any notice of the hearing. As far as she understands when they were first developing just the lot next

door they (the applicant) was saying she wasn't an abutter but as soon as the lots merged she became an abutter and she should have been notified. At that point she should have been noticed however, she wasn't and she wasn't able to give her opinion on it.

Mrs. Ward said she got notice the last time they expanded the lot so she assumed she would get notice this time as well.

Mr. Pritchard clarified for the Chair this is not a mandatory hearing therefore they are not required to take public input if he doesn't want to. The Chair said he was going to take it anyways.

The Chair asked the Board if they had a chance to read the letter from Pittsfield Self-Storage attorney. The Board took time to read the letter.

Mrs. Ward said she was not saying she is complaining about not having notice of the lots being merged. She is saying she should have been made aware at the time of the merge. The Chair asked she is saying she should have been notified once the lots were merged. Mrs. Ward agreed because at that point she became an abutter.

The Chair opened the hearing to the public.

Mr. Carver, No Worry Storage Depot St in Pittsfield, said the application for special exception in 2015 lists that they are going to utilize the current locations facilities, labor, water, etc. and it would have no impact on the future lot. It is already assumed he is using the lot as one lot regardless of whether she needs to be noticed when there is a combination.

Mr. Carver said RSA 672:3 talks about direct abutters but it also says "if your land will be directly affected by the proposal under consideration you are also an abutter." She has a right to have that on it because Mr. McDonough went all the way with his engineers to utilize the current location and just that current location has a special exception.

The Chair explained in 2018 he is applying for a special exception for the second lot. When the special exception was granted it was done conditionally on the merger of the two lots because that lot couldn't stand alone as proposed. This is where Mrs. Ward says she is an abutter.

Mr. Carver said Mr. McDonough had every intention of using the space in his application and he failed to notice her.

Mr. McDonough , Pittsfield Self-Storage, said the intent initially was not to merge the lots and the lot doesn't abut with Mrs. Ward. It wasn't until after a conversation with Mr. Pritchard regarding having multiple primary buildings the Board felt the lots needed to be merged. He thinks the original notice about the lot shouldn't have gone to Mrs. Ward because she is not an abutter of the property.

Mr. Carver explained construction includes electricity from one lot to another which they intended to do since day one therefore, she should have been noticed.

The Chair closed the hearing to the public.

Mrs. Ward feels it may have been intentional they didn't notice her.

Mr. Rokeach asked part of this hinges on the notion it is an approval for the merged lot versus the new lot. The argument presented before was RSA 672:3 which is an abutter can mean anybody who's property is directly affected by it. The RSA is only for consideration not notification. He asked Mrs. Ward to elaborate on how she feels the special exception would impact her experience where she currently is. Mrs. Ward said it would be all of the issues she addresses in the letter. She explained it would be more noise, junk, vehicles, eye sore, and just having twice as much as her current complaints. She also doesn't believe they need that much storage.

Mrs. Ward explained she can see everything going on over there because they don't have the adequate screening from her property. She also spoke of bottle rockets going off on Sunday afternoon, people working on their cars and things being stored.

The Chair stated there are two parts to this. He wanted to start with the first part of should Mrs. Ward have been noticed when they decided to merge the lots.

The Chair asked Mr. Pritchard what the specific town abutter notification rules are. Mr. Pritchard said he will get the book and find out.

The Chair said it was his understanding they were not responsible to notify her for the initial application for Lot 30.

Mr. Pritchard read RSA 676:7 (I) "Prior to exercising its appeals powers, the board of adjustment shall hold a public hearing. Notice of the public hearing shall be given as follows: (a) The appellant and every abutter and holder of conservation, preservation, or agricultural preservation restrictions shall be notified of the hearing by verified mail, as defined in RSA 451-C:1, VII, stating the time and place of the hearing, and such notice shall be given not less than 5 days before the date fixed for the hearing of the appeal."

Mr. Pritchard read RSA 672:3 "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration."

Mr. Pritchard explained they have to determine what is the land under consideration and then who's land adjoins that land.

The Chair asked if the Board was in agreement that given the provision of the original application for Tax Map R-15, Lot 30, Mrs. Ward would not qualify as an abutter that would be required to be noticed. The Board agreed.

The Chair read the motion from the prior meeting “Mr. Rokeach made a motion to grant the special exception for application for self-storage facility on High St, Tax Map R15 Lot 30 in the light commercial Zoning District conditional on the merger of Lot 30-1 and Lot 30.”

The Chair asked the Board if by making it conditional did they expanded the land under consideration from Lot 30 to Lot 30 and Lot 30-1. Mr. Palmer agreed. Mr. Rokeach disagreed because there was already an approved exception for Lot 30-1. When they spoke about the actual grounds, it was only on Lot 30.

Mr. Palmer believes once they merge the two properties, Mrs. Ward becomes an abutter now that it is one piece.

Mr. Rokeach asked what the precedent is for when there is an exception approved on a property and another property is merged onto it. The Chair said he doesn't know and thinks it would be something worth looking into. He asked Mr. Pritchard if the newly merged property would get the special exception. Mr. Pritchard thinks this may have to be a situation where the Board has to decide it.

Mr. Pritchard thinks the argument Mrs. Ward and Mr. Carver have is it is an expansion and he believes the applicant described it that way with the Planning Board. The issue is whether or not an expansion from the original one is separate from the new one. He thinks the Board has to decide it.

Mrs. Ward asked how the original lot being approved for a special exception has bearing on her status of an abutter. The Chair explained the Board agreed she is not an abutter for Lot 30 as the application was proposed. He thinks an argument could be made she is an abutter legally but they were not required to notify her.

The Chair explained the question is when they made the approval for Lot 30 conditional on its merger with Lot 30-1 did they make her conditionally an abutter. Mrs. Ward was not following how the previous special exception would make a difference on her abutter status. Mr. Rokeach said it was whether the special exception was made to just Lot 30 or it if was the combination of the two lots.

The Chair said he agrees with Mr. Palmer on this because they made the special exception conditional on the merger of the two lots it is an expansion and any expansion it would require a new special exception. Mr. Rokeach asked where it is outlined in the RSAs.

Mr. Pritchard said the statute on site plan approval talks about if they are expanding use they have to get site plan approval.

Mr. Pritchard read RSA 674:43 “A municipality, having adopted a zoning ordinance as provided in RSA 674:16, and where the planning board has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units.”

Mr. Rokeach said it doesn't stipulate that it is required. Mr. Pritchard said it is an enabling statute. He said the Planning Board site plan regulations do require it though.

The Chair explained his opinion is they are expanding the use of Lot 30-1 and the expanded use is not covered by Lot 30-1's original special exception and by making the new special exception conditional they are giving a special exception to Lots 30 and 30-1.

Mr. Rokeach sees it as a lot of gray area and sees the burden of proof on the appellant and to him it hasn't been completely proven. This doesn't require three board members to vote an approval to rehear it. Mr. Pritchard said it does.

The Chair said since it is a gray area and if it comes down to it , they can rehear it in the exact same manner as they did before. He asked if there was any harm in rehearing it. Mr. Rokeach said the ordinance stipulates the burden of proof is on the appellant.

The Chair asked if they do not see it as an expansion because they are expanding the use of Lot 30-1. Mr. Palmer said they voted on it as an expansion. Mr. Rokeach reread the motion made showing they did not vote on it as an expansion.

Mr. Rokeach asked if the wording fundamentally wrong. The Chair would argue yes because they can't grant a special exception to half the property and given that would it be grounds for rehearing.

The Chair offered they continue this to the next meeting so they can have time to review the lawyer's letter and review the Zoning Ordinances.

Mr. McDonough asked if it is continued, will there be another public input at that meeting. The Board agreed public input would be allowed as long as it focuses on the motion to rehear. Mr. McDonough said the intent would be once the Planning Board approves it, the lots would be merged.

Motion. Mr. Palmer made a motion to continue the hearing to the next meeting, July 12, 2018. Mr. Rokeach seconded the Motion. There was no additional discussion.

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

Mr. McDonough said he received a text from his attorney who doesn't feel this was a notice of public hearing and had he known he would have been here to speak. It should have been properly noticed so they knew there would be public input. Mr. Pritchard asked Mr. McDonough if he got notice when he sent it out. Mr. McDonough stated he didn't. Mr. Pritchard will check his email to see whether he attempted to notify him.

MEMBERS CONCERNS

Mr. Palmer asked if they have done anything about new members. The Chair asked Mr. Bosen if he is eligible yet. Mr. Bosen said he is eligible now but he has a pending Purchase and Sales agreement with Mrs. Ward's services so he would have to recuse himself. The Chair would like to get him on because they have another hearing they could use him for.

Mr. Palmer asked if they can talk about Mrs. Ward's application some more. The Chair stated he would rather do it at the next meeting.

Mr. Pritchard showed the Board he did send notice to Mr. Lewis, Mr. McDonough, Mr. Grant, Mrs. Ward and others. He did not send notice to the lawyer because he is familiar with lawyers charging for everything and figured it was for Mr. McDonough to ask Mr. Lewis to attend. He was not given instructions to include the lawyer on everything.

Mr. Pritchard also said he never received the letter from the lawyer which is why the Board didn't receive it.

The Chair asked Mr. Pritchard if they can appoint Mr. Bosen tonight.

Motion. Mr. Palmer made a motion to appoint Brigham Bosen to the open seat on the Zoning Board of Adjustment. Mr. Rokeach seconded the Motion. There was no additional discussion.

The Chair instructed Mr. Bosen to meet up with Mrs. Anthony before the next meeting to get sworn in.

The Chair asked Mr. Pritchard if Mr. Bosen has to recuse himself if they decide to rehear the Pittsfield Self-Storage. Mr. Pritchard said he does.

Mr. Rokeach thinks part of the way they approved the special exception was unclear in regards to whether it was applied to the one property or the two properties. He said if they are going to require modifications to the property lines, they need to be clear in the future as to what the special exception will apply to.

Mr. Pritchard suggested if they feel the motion was badly worded they can grant a rehearing to make the motion clearer. The Chair said he wants to have that in writing for the next meeting. Mr. Pritchard asked if they want him to email out the case which describes this. The Chair said yes, and to send it to anyone included in the case.

There was further discussion of Mr. Pritchard sending out notice to the applicant. He asked for guidance on rather he should sent it to the lawyer or not. The Board instructed Mr. Pritchard to continue sending notifications to the property owner and let him forward it to the lawyer.

PUBLIC INPUT

N/A

ADJOURNMENT

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

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

The Vice Chairman adjourned the meeting at 8:16pm.

APPROVED: July 26, 2018

JAMES HETU, CHAIRMAN

DATE