



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

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**MEETING MINUTES of Thursday, March 8, 2018**

**CALL TO ORDER**

The Zoning Board of Adjustment Meeting for March 8, 2018 was called to order by Mr. Hetu 7:02p.m.

**MEMBERS PRESENT**

James Hetu  
Pat Heffernan  
Jason Rokeach  
Deidre Benjamin  
Scot Palmer  
Phillip Boncer

**OTHERS PRESENT**

Jim Pritchard  
Bingham Bosen  
Jennifer Gibbs  
Roberta Maxfield  
Cyndi Hetu

The Chair informed Ms. Gibbs they were going to wait for Mr. Boncer to arrive to do her hearing so she would have a full board.

**REVIEW AND APPROVE LETTER TO BOARD OF SELECTMEN**

The Chair asked the members for their opinion on the letter he drafted and if they felt the tone was appropriate. Mr. Rokeach said he was content with the tone and he had a few grammatical changes. Mr. Heffernan thought it was well stated with what they were trying to convey. The Chair explained he was going for a tone of working with them.

Motion. Mr. Heffernan made a motion to accept the letter to the Board of Selectmen as edited. Mr. Palmer seconded the Motion. There was no additional discussion.

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

**REVIEW AND APPROVE CHANGES TO THE RULES AND PROCEDURES**

The Chair stated they wanted to make some clarifications in the rules and procedures. He asked Mr. Heffernan to explain what he and Mr. Pritchard had been working on. Mr. Heffernan had commented at the last meeting they can change the rules to what they want and was surprised there wasn't something in there stating they have an obligation to help the applicants. He wrote his thoughts on it and Mr. Pritchard worked on it, cleared up some grammar, and some legal definitions and cases.

The Chair explained the main changes are in the assigned tasks for secretarial assistant and what they are directing any person in the position to do. He asked if there were any concerns with the language. He said they got a little wordy on Part III Sect 3 because they felt citing case law and reasoning would be important future understanding.

Mr. Palmer asked if the highlighted section is what was being added. The Chair said yes and anything highlighted and crossed out is coming out.

The Chair pointed out the add-ins for Part XI and XII which is what Mr. Heffernan added. The purpose being to clarify they want to be able to help an applicant who comes to the Land Use office.

Motion. Mr. Palmer made a motion to accept the changes to the Rules and Procedures dated March 5, 2018. Mr. Heffernan seconded the Motion. There was no additional discussion.

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

The Chair asked Mr. Pritchard to go through the changes to the applications.

Mr. Pritchard explained on page 2 there is a change to the Variance Form only “has the zoning administrator decided that the proposed use needs a variance?” This is because the Board of Adjustment doesn't have authority to grant a variance except upon appeal of a decision from the Administrative Officer. It is stated in the Pittsfield Zoning Ordinance which comes from case law Stone vs. Craig.

The Chair asked if he thinks the addition on is necessary because they may get an application where they check no. Mr. Pritchard replied it has happened and described litigation when the Dear Meadow Road Association needed a variance and the ZBA didn't have jurisdiction to make an administrative decision on it. He reiterated this was only for variances.

The Chair said the next change was on page 6. Mr. Pritchard said it used to be page 6; however, the changes made on page 8 & 9 bumped the page. He said page 7 used to say the board's secretarial assistant or the Zoning Administrator; however, there is no reason for the zoning administrative officer to do this. Something may be filed with the zoning officer if the secretarial assistant is not available. He explained the way it works now is it

gets put on his desk for initial review and he's the one who puts the copy of the image of the check there.

Mr. Pritchard explained this relates to one of the rules changes. He discussed how the rules said (prior to the changes voted on at this meeting) the secretarial assistant was supposed to help the zoning administrator which was not correct. It was when they were thinking Mr. Pacheco was going to be the zoning administrator and he (Mr. Pacheco) would help Mr. Pritchard with his job.

Mr. Pritchard discussed the changes on page 8 which were meant to clarify the secretarial assistant is the one who types up the notice. He said the paragraph on the bottom of page 8 is to provide a list of things likely to be applicable in an appeal to the Zoning Board of Adjustment guiding them to the particular laws in preparation of the application to the Board.

Mr. Pritchard said page 9 is the filing instructions and help for applicants. Mr. Heffernan wrote the paragraph on Help for Applicants which is now Article XII of the Rules and Procedures. Mr. Pritchard thinks it will work better to point people to the laws and tell them if they need further assistance the secretarial assistant is available.

Mr. Pritchard said the other forms have similar changes with the except of the one change in relation to the variances.

The Chair said he thinks this is getting them more where they wanted.

Motion. Mr. Heffernan made a motion to amend the application for variance. Mr. Palmer seconded the Motion. There was no additional discussion.

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

Motion. Mr. Rokeach made a motion to amend the application for special exception. Mrs. Benjamin seconded the Motion. There was no additional discussion.

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

Motion. Mr. Rokeach made a motion to amend the notice of administrative appeal. Mr. Palmer seconded the Motion. There was no additional discussion.

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

**NH OFFICE OF STRATEGIC INITIATIVE CONFERENCE**

The Chair asked Mr. Pritchard what the date was for having to register by. Mr. Pritchard said he didn't know when the deadline now. The Chair asked the members if they are interested in going to contact Mr. Pritchard and he will help them. Mr. Pritchard found the due date and informed the board it would be April 20, 2018. He can help them register or they can register themselves. He explained they need to select which lecture they want to attend.

## **REVIEW AND APPROVE THE MINUTES**

The Chair said he would give everyone time to read them since they just received them today.

Motion. Mr. Rokeach made a motion to approve the minutes for February 22, 2018. Mr. Heffernan seconded the Motion. There was no additional discussion.

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

Mr. Boncer joined the meeting at 7:29pm.

## **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 public hearing. Mr. Heffernan recused himself. The Chair sat Mrs. Benjamin and Mr. Palmer.

The Chair said he wanted to give Ms. Gibbs an opportunity to speak now that they have everyone here. Mr. Boncer said he has read all the minutes. Ms. Gibbs said if they have read all the minutes then they should be fine.

The Chair opened the hearing to the public.

Mrs. Maxfield, 28 Loudon Road, expressed her opinion the ZBA uphold the Board of Selectmen's decision not to allow a dorm unit in this building. She explained apartment units have almost ruined the town because there are so many of them. If they allow for one they know what is going to happen; if they open the flood gates they will come in.

The Chair closed the hearing to the public.

The Chair informed the members the notice of decision is on page 3 of their package. He explained they need to decide on the Select Board's decision that because "watchman's quarters" are not listed in the zoning ordinances they are not allowed by right and thus

would require a variance in order to procure one. The members agreed it is what the Board of Selectmen has ruled.

The Chair said the question is Ms. Gibbs is appealing while “watchman’s quarters” are not specifically in the zoning ordinances it is an accessory dwelling units which are in the zoning ordinances. Ms. Gibbs is asking them to uphold she has the right to have the watchman quarters because an accessory unit is allowed by right in the property.

Mr. Rokeach’s understanding of the argument is not necessarily an accessory dwelling unit is permitted by right but an accessory use is permitted directly by right when otherwise not explicitly defined and it is not explicitly defined an accessory dwelling unit is prohibited. The Chair agreed it was a better stating of the argument.

The Chair opened it to the board for discussion.

Mr. Palmer asked where the Board of Selectmen came up with this is not a dwelling unit. He believes it is kind of forcing someone to do more work than they need to. He said if the applicant has to go through all this stuff to get it done and if they need someone to be there (at the property) than they need someone there. The Chair explained the decision is this is a watchman’s quarters and it is not in the zoning ordinances thus they would have to ask permission for it. The zoning ordinances outline what they can do without asking permission for it.

Mr. Rokeach said the argument he understood from Mr. Anderson is they perceived this as a principal use and not an accessory use.

Mr. Palmer’s understanding on an accessory dwelling unit is a person has to reside at the address. The Chair said it was the potential to reside at the address. Mr. Palmer responded it says in their ordinances the person has to reside there in order to have an accessory dwelling unit. Mr. Rokeach read the ordinance “principal use means a use on a lot where the use is conducted is not occasioned by or not subordinate to any other use conducted on the same lot.”

The Chair asked do they consider the watchman’s quarters an accessory to the business themselves. He thinks the Board of Selectmen’s argument the watchman’s quarters could exist as an apartment if the business went away.

Mr. Boncer commented he thinks it is the crux of the questions because would the employee live there if he wasn’t working there. The Chair stated the minute the occupant of the watchman’s quarter no longer works for the business then it loses its accessory status.

Mr. Boncer asked if they can put in conditions the person who resides there works at the business. The Chair replied the way this is structured their only job is to review what is in front of them; what is currently being done. He said there is potential if there were changes to what is being done the Select Board would receive a complaint and making a ruling on it in which case it could be appealed again. He feels strongly when they make a

decision yes or no to an appeal they need to state clearly why. He explained if they were to say yes to the current hearing then they need to explain why and also the same if they were to say no.

Mr. Rokeach said the argument presented is this qualifies as an accessory unit and it is his understanding (of the zoning ordinances) in order for it to qualify as an accessory dwelling unit it must qualify as a dwelling unit and in order to qualify as a dwelling unit it needs to have food, storage and cooking equipment, bathroom facilities with washbowl and toilet, at least one area for eating and at least one area for sleeping. He doesn't recall an area for food, storage and cooking presently. The Chair explained there is a kitchen area but it is not part of the watchman's quarters.

Mr. Rokeach asked they can't place restrictions on this. The Chair replied they cannot.

The Chair asked if the members believe it to be a dwelling unit. Mr. Rokeach believes it is not without food, storage, and equipment. Mr. Boncer asked if they had a mother-in-law living in a separate area without a kitchen and she shared the common kitchen area would it be an accessory dwelling unit. The Chair doesn't believe it would be.

Mr. Palmer explained they would have to increase the area of the watchman's quarters in order to incorporate what it says in the zoning ordinances. The Chair asked Ms. Gibbs if there is a door separating the kitchen area from the watchman's quarters. Ms. Gibbs said there are two doors separating the areas. The Chair commented the potential for the area to become a dwelling unit is there.

Mr. said it seems to him if the cooking and food storage is in the same structure and directly accessible it should qualify to the idea someone could live there becoming a dwelling unit which could become an accessory dwelling unit. He does not see it has to be a contiguous space with nothing else in it.

The Chair stated the question they are dealing with is the potential versus the current use. Potentially it could be a dwelling unit if they were to break it up (as Mr. Boncer discussed) however, at that point it is not a dwelling unit.

The Chair stated the concern is the decision of a dwelling unit by its potential and the appeal they are being given is as it is currently. Mr. Boncer asked if the employee is storing their food there. Ms. Gibbs said it was.

Mr. Rokeach asked if it is not a dwelling unit then what it is according to the zoning ordinance. The Chair responded it would be an accessory use to the property. Mr. Rokeach asked if it doesn't line up with anything in the ordinance than accessory use it permitted by right. The Chair commented he was correct; however, they haven't gotten to the accessory part yet. Mr. Rokeach stated they would first be looking at does it align with any other use in the table and then if not is it an accessory use or principal use.

Mr. Rokeach stated in his opinion it does not align with an accessory apartment because an accessory apartment is an accessory dwelling unit in a house defined as a detached dwelling.

The Chair asked Mr. Boncer if it is a dwelling. Mr. Boncer said yes. Mrs. Benjamin is not convinced it is as it has been presented. Mr. Palmer said no. Mr. Rokeach said no. The Chair said he think it is not a dwelling unit.

The Chair asked since they agreed four to one it is not a dwelling unit do they feel it is an accessory use of the property at 44 Loudon Road. He said it cannot be any of the other items on the Table of Uses in the zoning ordinances.

Mr. Rokeach asked if it can be an accessory use and still be another form of use, for example an accessory dwelling unit is an accessory use. The Chair responded yes however, accessory dwelling units are called out on the table.

Mr. Palmer asked someone to read accessory use from the table. Mr. Rokeach read “accessory use means a use that is occasioned by, subordinate to and on the same lot as the principal use.” Mr. Palmer asked what they consider a principal use under an accessory use. Mr. Rokeach read “principal use means a use that on the lot where the use is conducted is not occasioned by or not subordinate to any other use conducted on the same lot.”

The Chair explained they need to decide the principal use which is whatever the primary purpose of the lot is. He explained an accessory use would be something which is subordinate to the primary use. The question is what is subordinate. He said there is case law that has been determined when the accessory use has taken over the primary use and is no longer subordinate to the lot. The question becomes if the car dealership goes completely away can the watchman’s quarters exist on its own.

Mr. Boncer thinks that because they decided it is not a dwelling unit points to it being subordinate and it can’t be on its own. The Chair said the other fact is the user was to be an employee of the business which is stated in the application. If the user was be to an employee and the business goes away they can’t have an employee of the business anymore.

Mr. Rokeach doesn’t agree with the notion it has to be an employee of the business, however, currently it is and if that changes, they will all be back here. The Chair said if the reason they give for voting in favor was because of the employee of the business than it is possible it would come before them if things changed.

Mrs. Benjamin asked if they could put a stipulation on it. The Chair said they could state they are granting the appeal because it was an employee. Mrs. Benjamin thinks it makes a lot of sense because it currently is being used by an employee but there is nothing saying the next owner could use it differently. The Chair cautioned against going based on the potential.

Mr. Rokeach said the fact it is an employee makes it more obvious to him the use is accessory in nature.

The Chair asked the members if they were in agreement the nature of the property in the current use and because of the employee and the watchman's quarters it makes its nature subordinate to the primary use of the property. Mr. Boncer said in this current use yes.

Mrs. Benjamin asked if the application states it is being used by the employee. The Chair said the application states how it is being used. Mrs. Benjamin explained she wants something to tie back their reasoning for their decision. The Chair said they could include it in their reasoning if they were to vote in favor of it. He asked again if they agree the use is subordinate to the primary use of the property because the use is an employee of the business. All the members agreed the use is subordinate to the primary use.

The Chair said the next question becomes is the watchman's quarters, being an accessory use, on the Use Table anywhere which won't allow it to be an accessory use.

Mr. Boncer read part of the application where it states "the residential occupancy of the watchman's quarters is occasioned by the business use of the building as an automobile dealership because only an employee can use the watchman's quarters and the resident employee stays in the watchman's quarters to provide security for the business and to attend to the occasion customer."

The Chair asked if there is anything on the Use Table which will restrict them from considering it an accessory use. Mr. Rokeach reviewed the list and he couldn't find anything. Mr. Boncer asked if it would fall under the third one "accessory use, accessory structure or other accessory object not explicitly regulated." The Chair said that is the question they are trying to determine. He asked if there somewhere else where it is explicitly regulated. Mr. Boncer said he doesn't see anything.

Mrs. Benjamin thinks all they can do is make a decision based off of how it is currently being used. She agreed with the Chair they should word their decision in a way if things changed it would be very apparent of why they made the choice they made. Mr. Boncer doesn't see anything else on the list which explicitly addresses it.

The Chair asked what other factors, besides the employee, they want to state in their decision. Mrs. Benjamin said they want to factor in the current use. The Chair suggested the size of it and the fact it is incorporated in the rest of the building and not sectioned off from the rest of the building. Mr. Boncer also suggested the fact it is not a dwelling unit therefore it is an accessory unit.

The Chair asked Mr. Boncer if he believes it is an accessory use of the property in question. Mr. Boncer said yes, Mrs. Benjamin said yes, Mr. Palmer said as it stands right now he agrees, the Chair said yes and Mr. Boncer agreed as well.

Mr. Palmer asked if something were to happen with the dealership would this go away. The Chair explained they are like a court would be in that the judge does not go around looking for violations. It would be the Select Board as the Zoning Administrator who would do it. The Town could enforce it if they see a major change.

The Chair asked if an employee occupied the watchman’s quarter of the same size but it had a separate entrance would it still be an accessory use. The members said it would.

Motion. Mr. Rokeach made a motion to grant the appeal with reasoning as follows;

Given that the so-called ‘watchman’s quarters’ does not currently have food storage and cooking equipment, we find that it does not meet the definition of ‘dwelling unit’ and therefore cannot meet the definition of ‘accessory dwelling unit. Given that the occupant is an employee of the business renting the property and the space allocated is small in contrast to the space used for the main purposes of the business, we find that it is an ‘accessory use’. Given that there is no other use in RSA 3.b.6 of the Zoning Ordinance with a definition this use meets, we find it to be an “accessory use, accessory structure, or other accessory object not explicitly regulated,” which is permitted by right. Mr. Palmer seconded the Motion. There was no additional discussion.

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

The Chair informed Ms. Gibbs there is a 30 day appeal period where there could be a motion for rehearing and they will send them a Notice of Decision. He thanked her for her patience in dealing with them.

**ADJOURNMENT**

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

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

The Vice Chairman adjourned the meeting at 8:20pm.

APPROVED: April 12, 2018

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JAMES HETU, CHAIRMAN

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DATE

## Notice of Decision

On March 8, 2018, pursuant to RSA 674:33, I, (a), the Pittsfield Zoning Board of Adjustment granted an appeal of an administrative decision of the Pittsfield Board of Selectmen holding that the zoning ordinance prohibits a 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.

The board of adjustment decided as follows:

Given that the so-called watchman's quarters does not currently have food storage and cooking equipment, we find that it does not meet the definition of "dwelling unit" and therefore cannot meet the definition of "accessory dwelling unit." Given that the occupant is an employee of the business renting the property and that the space allocated is small in contrast to the space used for the main purposes of the business, we find that it is an accessory use. Given that there is no other use in the zoning ordinance, article 3, section 3, (b), (6), with a definition that this use meets, we find it to be an accessory use, accessory structure, or other accessory object not explicitly regulated, which is permitted by right.

The applicant's name and address is Jennifer Gibbs, 156 Charles Street, Rochester, NH 03867.

The vote to grant the administrative appeal was yes: 5, no: 0, and abstaining: 0. Board of adjustment members voting to grant the administrative appeal were James Hetu, Deidra Benjamin, Phil Boncer, Scot Palmer, and Jason Rokeach.

The board of adjustment may reconsider this decision, upon the board's own motion or at the request of any aggrieved person, within 30 days after the date when the board voted the decision (March 8, 2018). (74 Cox Street v. Nashua, 156 N.H. 228, 931 A.2d 1194 (2007).) Within 30 days after the date when the board voted the decision (March 8, 2018), the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor. (RSA 677:2.) Any person aggrieved by the decision may appeal the decision to the superior court according to RSA 677:4 within 30 days after the date when the board voted to deny the motion for rehearing. For the purposes of saying who may appeal the decision to the superior court according to RSA 677:4, "person aggrieved" includes any party entitled to request a rehearing under RSA 677:2. (RSA 677:4.)

April 12, 2018

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James Hetu, chair  
Pittsfield Zoning Board of Adjustment