



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

MEETING MINUTES of Thursday, October 11, 2018

CALL TO ORDER

The Zoning Board of Adjustment Meeting for October 11, 2018 was called to order by Mr. Hetu 7:05p.m.

MEMBERS PRESENT

James Hetu
Scot Palmer
Brigham Bosen
Pat Heffernan

EXCUSED

Jason Rokeach

OTHERS PRESENT

Pittsfield Residents: Norma Konopka, Larry Konopka, Dan Schroth, Fred Hast, Brenda Courchene, and Matt St. George.

Others Present: David Lefevre of Tarbell & Brodich, P.A.

Other Public Officials: Gerard LeDuc, Selectman.

Pittsfield Staff: Jim Pritchard, Zoning Secretary and Cyndi Hetu, Minutes Clerk.

REHEARING OF THE APPLICATION OF MIKE AND BRENDA COURCHENE AND LARRY AND NORMA KONOPKA FOR A VARIANCE FROM PITTSFIELD ZONING ORDINANCE, ARTICLE 4, SECTION 5, (B), REQUIRING THAT A NONCONFORMING LOT RECENTLY CONTIGUOUS TO OTHER PROPERTY UNDER COMMON OWNERSHIP MUST HAVE BEEN MERGED IN ORDER TO BE DEVELOPED, WITH THE PURPOSE OF THE VARIANCE BEING TO PERMIT TAX MAP R-16, LOT 3-3, ON GRANNY WHITE ROAD, A CLASS VI HIGHWAY, IN THE RURAL ZONING DISTRICT, TO BE SOLD AWAY FROM OTHER PROPERTY CURRENTLY UNDER COMMON OWNERSHIP AND THEN HAVE A SINGLE-FAMILY DWELLING BUILT ON THE SEPARATED NONCONFORMING LOT.

The Chair informed the applicant they only have four voting members and gave them the option to move forward tonight or wait until they have five members. Mr. Konopka said he would like five but they will proceed at this time.

Mr. Lefevre of Tarbell & Brodich, PA, introduced himself to the Board and that he will be representing Mr. Konopka. He informed the Board he will be recording the meeting even though he knows the Board is probably recording the meeting themselves. He doesn't want to go over everything the Zoning Board has heard before. He asked the Board to take notice of everything that happened previously and have it be part of the record of this hearing. The Board did not have any objections.

Mr. Lefevre gave the Board his professional history including working with municipalities for almost 20 years and being on the Zoning Board of his own town.

Mr. Lefevre informed the Board he would like to address a couple of preliminary issues with the Board. He would also like to provide the opportunity of resolving this case without the need of resorting to the actual variance application.

Mr. Lefevre addressed concerns of Mr. Pritchard's comments to the Board on August 23, 2018 after the Board had granted the variance and his client had left. He found them unacceptable and a violation to his client's right to due process. He spoke of the need for standing to file a motion to rehear and Mr. Pritchard does not have standing to do so. The Chair stated Mr. Pritchard did not file the motion for rehearing and asked why they are discussing this. Mr. Lefevre responded there is a process to be followed and that person needs to submit a motion for rehearing. The Board allowed Mr. Pritchard to have a private audience with the Zoning Board. The process is supposed to include notice to his client. This process is contrary to what is supposed to happen. It is his client's position that this process was flawed, unfair, and offends every notion of due process and he agrees with his client.

Mr. Lefevre said they have to have standing for motion to rehearing and to participate in the public hearing. He referenced RSA 676:7 which allow "the Board to hear nonabutters who can demonstrate they are affected directly by the proposal under consideration." Abutters can come to testify but not just anyone can come in. A nonsufficient standing is someone who is a taxpayer in town, general interest in the town, a town employee, someone on another Board in town, etc. Mr. Pritchard does not have standing in this case. If Mr. Pritchard plans to testify the Board needs to have him demonstrate to the Board he has standing and the Board needs to determine that he does. It is their position Mr. Pritchard doesn't have standing and they object to him speaking.

The Chair asked about Mr. Wood and Mr. Gauthier's comments during this "private audience" when this was done at public input at a public hearing. Both Mr. Wood and Mr. Gauthier spoke against the actions of the Board. He is trying to understand why Mr. Pritchard's comments have been isolated. Mr. Lefevre responded he chose to speak about Mr. Pritchard's comments but if others spoke as well then that was inappropriate as well. Mr. Bosen said they were in a meeting and had not adjourned. Mr. Lefevre said he is trying to draw attention to the mistakes the Board made and he is going to give the Board an opportunity to fix it.

Mr. Lefevre explained after the applicant had left, they allowed people to continue to debate about what the Zoning Board did and why it wasn't proper. That is the stuff for a motion for rehearing.

Mr. Lefevre brought up concerns of Mr. Pritchard unauthorized practicing of law. He is considering advising his client to file a complaint with the NH Attorney General's Office as what Mr. Pritchard is doing is unacceptable. Someone doesn't just have to be an attorney to go to court. This is a quasi-judicial board; you have to be an attorney to appear and represent someone other than themselves. It is their position to object to Mr. Pritchard appearing as someone providing legal advice and engaging in the unauthorized practice of law.

Mr. Lefevre would like to talk to the Board about resolving the application without acting on the variance application.

Mr. Lefevre said one of the representations brought to the Board last time is that there is no state law that protects nonconforming law. He stated that is not true. The issue is not the piece of property; the issue is Mr. Konopka owns a piece of property next door so the ordinance requires him to merge it.

Mr. Lefevre distributed copies of the statute RSA 674:39(a) Paragraph I. He paraphrased the statute "no town may merge preexisting subdivided lots or parcels except upon the consent of the owner". The statute was amended in 2010 to add that sentence. It was added so towns could not do exactly what Pittsfield is trying to do. The Pittsfield Zoning Ordinance violates the state law. There is also a statute that allows for lots that had been merged to be unmerged.

The Chair asked where in the zoning ordinance requires them to merge the two lots. Mr. Lefevre replied their ordinance says he can't develop his property unless the lots are merged. The Chair agreed. Mr. Lefevre said it requires the lots to be merged in order to be developed. The Chair said that would be separate from requiring the lots to merge; it would be a willful merger of the lots if he would like to develop.

Mr. Lefevre disagreed with the Chair. He explained there is no distinction with requiring someone to merge so they can develop their property. He said state law prohibits the requirement of merging lots. The Chair replied they are not forcing him to merge the two lots unless he wants to develop them. Mr. Lefevre said they are requiring a property owner to merge those lots in order to develop them. That is forcing them to merge without their consent which is not permitted.

Mr. Lefevre said the Board has the ability to decide rather or not a variance is even needed. He referenced RSA 674:33 II giving them authority to do so. There is a fundamental problem with the zoning ordinance. There is a nonconforming lot provision but for the fact it is owned in common ownership would be fully developable. They have the authority to make the decision that no variance has to be granted in this case and declare the variance application mute. If the Board is concerned about setting precedence this property this case is unique. He asked if the Board would be willing to enter into order that no variance is needed.

The Chair expressed concern with the lot being a nonconforming lot to start with therefore it would need a variance to develop on a class VI highway anyway. Mr. Lefevre disagreed. He explained they would not need a variance because it's a lawful nonconforming lot meaning by definition it doesn't meet some criteria (i.e. frontage).

Mr. Lefevre explained the way the ordinance is written, Dimensional restrictions and frontage "except as provided in Article 4 it has to have frontage." He read Article 4 "a nonconforming lot may be developed with structures if the lot satisfies criteria A-E." Mr. Lefevre said the reason zoning ordinances have nonconforming lot provisions are because it is a constitutionally based issue. They protect the property right to build on the lot.

Mr. Lefevre said the variance that is required is the merger of two lots which is the problem with the Pittsfield Zoning Ordinance because it can't do that per the state law.

The Chair asked how you confront the abandonment issues with the nondevelopment of this lot. Mr. Lefevre said he doesn't think it has been abandoned. Looking at the subdivision plan and the approval by the Planning Board, everything that is required to be done was done.

Mr. Bosen asked if there were road upgrades in the plan. Mr. Lefevre said no there were not. The only thing required was to get permission from the Select Board to build on a Class VI.

Mr. Lefevre thinks the Board has the authority to say no variance is required under the uniqueness of this case. He thinks there is genuinely a problem with the zoning ordinance in that it violates state law. Rather than the Board having to take a position on that, the Board can take the position of no variance in light of the state law.

The Chair asked Mr. Lefevre if he is asking the Board to set aside the variance in its entirety. Mr. Lefevre said that was correct. The Zoning Administrator could have done that in the first place and as this is an appellate court, the ZBA has the authority to do so as well.

The Chair brought it back to the Board for discussion.

Mr. Bosen said he would like to research the documentation Mr. Lefevre provided as part of it is cut off. Mr. Palmer said he had the next page and it read “no city, town, township, village, or district can merge existing subdivided lots or parcels except upon the consent of the owners.”

The Chair called a short recess at 7:41pm.

The Chair called the meeting back to order at 7:43pm.

Mr. Bosen repeated his concerns and need to further research. He doesn't believe the ZBA has the power to say no variance needed but it can grant variances, special exceptions, and when required appeals.

The Chair expressed concern is waving a rather large requirement without having reviewed the underlying documentation. Mr. Lefevre is asking them to make a decision absent that evidence.

The Board agreed to allow Mr. Lefevre to speak to the previous comments.

Mr. Lefevre said the issue is the Zoning Administrator said there is one problem is the zoning ordinance provision requires a merger. The Chair said in the Zoning Administrator's review he does bring up the class VI frontage issue. Mr. Lefevre said the property fully conforms in the lot area. The nonconformity is that it doesn't have frontage on a class V or better. If it wasn't contiguous ownership they wouldn't even be here. There is only one provision he is talking about; the zoning provision that says they have to merge the lots to make it buildable. There is one statute saying they can't require them to merge the lots. The ZBA can decide on the front end that a variance is not necessary.

Mr. Heffernan said based on 674: II he doesn't think it is a reasonable ordinance. Going back to when it was subdivided the Planning Board, surveyor and everyone else said he could do it. If it was developed right after that there would be a house on the property. He thinks the applicant should be able to walk out of here with an okay to build it.

Mr. Lefevre said Mr. Heffernan's position is why the state law changed and the ordinance violates the state law. Mr. Heffernan believes they have the responsibility, obligation and the authority to grant this.

Mr. Heffernan doesn't agree with the Zoning Administrator's call that they can't get a building permit. The Chair asked Mr. Heffernan what is wrong with the Zoning Administrator's reasoning. Mr. Heffernan doesn't think it is right. He thinks because it is based on the lot merger the Zoning Administrator said no when the lot merger is not a good law. Mr. Bosen agreed; if the 674:39 is accurate. The Chair said the town is saying they can't build on it unless you merge it. Mr. Heffernan said it's a catch twenty-two situation.

The Chair said if this lot was standing on its own, on a class VI road, the Building Inspector wouldn't issue a building permit anyway. Mr. Lefevre said he would still need to go to the Selectmen to get a building permit. Mr. Heffernan said he they just did that for another gentleman.

Mr. Heffernan said Mr. Pritchard gives them a lot of information and whether he is acting as a lawyer or not it is up to them to make their own decisions. In this case Mr. Pritchard gave them a lot of information but he thinks Mr. Konopka is right.

The Chair asked Mr. Heffernan if he deems the lot to be abandoned with the time and changes in the law. Mr. Heffernan said no.

The Chair said it may not be a good law but as ZBA it is their job to determine the law as they have it and what they have has not been ruled illegal and they should enforce it as is. Mr. Heffernan thinks they are going to end up in court if they enforce it.

Mr. Palmer asked how it pertains to the RSA. The Chair said the law doesn't force them to merge the two lots. It is the same thing they were running into with the self-storage case. The argument could be made it is a voluntary merger, which the lawyer said in that case, if they want to operate in a particular way. They are saying if they want to develop it that is how they should proceed. Mr. Bosen thinks it is doing the chicken before the egg.

Mr. Lefevre said the law allows for development on nonconforming lot unless it is contiguous. When they give someone no choice at all it is compulsion.

The Chair said it is very clear that lots that don't have the minimum lot frontage no use shall be permitted. Mr. Lefevre replied except as provided under Article IV for a nonconforming lot.

The Chair asked the board members if they believe they need a variance. Mr. Heffernan said no because the merging of the lot is a chicken and egg thing and putting them in an unreasonable position. The Chair said that would be an answer for hardship for the variance and doesn't see why they wouldn't require a variance. Mr. Heffernan said the applicant has gone through this already with the Planning Board. The Chair stated the Planning Board can't grant a variance.

The Chair asked Mr. Palmer what he thinks. Mr. Palmer said he doesn't know. Mr. Bosen agreed he isn't sure himself. Mr. Palmer said it sounds like the ordinance is conflicting to what the state has. The Chair asked Mr. Palmer if it is their place to change it. Mr. Palmer replied no. He thinks it is something the town has to vote on changing.

The Chair said he doesn't have an issue with the theory of the proposed project. His issue is that he is strictly against a judicial activist change to the law and that is what he told the townspeople he was going to not do when he asked them to vote for him. He would much rather go through the process and stay within the law as it is currently written. Mr. Palmer asked if they would have to go to court for this because of what the state law says. The Chair said that is up to Mr. Konopka. He would like to discuss the variance merits first but yes, potentially anything can end up at the Superior Court.

Mr. Lefevre suggested they go through the variance criteria and if they decide to grant the variance they can ignore his first request.

Motion. Mr. Hetu made a motion to turn down the request to proceed without a variance. Mr. Bosen seconded the Motion.

A Roll Call Vote was taken: Mr. Hetu – Yes; Mr. Palmer – Yes; Mr. Heffernan – No; and Mr. Bosen - Yes. The Chair declared the Motion passed.

Mr. Lefevre commented in regards to the statement of judicial activism and not being the ones to change the zoning ordinances. The ZBA is allowed to change the zoning ordinance as it is exactly what they do when an applicant comes before them.

Mr. Lefevre spoke regarding the unnecessary hardship and the special circumstances of the property. The property is abundant with special circumstances for all the reasons they have discussed. It is a legal nonconforming lot of record and satisfies all of the zoning ordinances. When it was subdivided it met all the requirements. It fully conforms but for the frontage. Except the fact his client owns the property next door it would be a fully buildable property. There are a multitude of special circumstances that distinguish this property from other properties.

The Chair asked Mr. Lefevre if he thinks the circumstances make it different from other nonconforming properties. Mr. Lefevre said he just went through all the reasons it is unique. It is a legal nonconforming lot of record. It is a fully conforming lot but for frontage. It would be fully buildable but for the fact his client owns the property next door. When the Planning Board approved the subdivision; all those reasons made it unique.

Mr. Lefevre spoke of no fair and substantial relationship. The Board needs to be aware of what is the purpose of the zoning restriction they are talking about. The purpose is not getting emergency services or public safety issue. He referenced section 2 of Article 4 which says “the purpose of this Article is to discontinue nonconforming uses, provide for the transition from nonconformance to conformance, and provide for the continuances of lawful conformance if the transition from nonconformance to conformance is unreasonable.” The purpose of the zoning ordinance is not about public safety; it is to take nonconforming lots and make them conforming. The question becomes is there any relationship between that purpose and that parcel and there is not because it violates state law. They have to look at when the property was subdivided. There is no fair or substantial relationship between the purposes of the ordinance.

Mr. Lefevre spoke of the second part of the hardship criteria rather use is reasonable. He thinks on its face the use is reasonable. There are no issues on the condition of the road. He read a letter from Mr. Bachelor stating he has inspected the road and the condition of the road is adequate to allow usage of the road for access to the lot. As part of the building permit there will be notice of limits of municipal responsibility.

Mr. Lefevre spoke of the criteria contrary to public interest and the spirit of the ordinance. The public interest is not to require a merger. The public interest is stated in the state law; the town can't require a merger without violating the state law. The spirit of the ordinance violates the state law through requiring property owners to merge the nonconforming lot.

Mr. Lefevre said granting the variance would not alter the appearance of the neighborhood. There will be notice of limits to municipal responsibility and the town will not have the liability for not being able to access the property. He said the town will still try to get access to the property if there is a fire issue but they are not liable if they cannot access it.

Mr. Lefevre spoke of the substantial justice criteria is, in his opinion, the equities of the case. This is the criteria where things come into play like Mr. Konopka doing what he needed to do to lawfully approve this lot. He provided a letter from Mr. Fitzgerald, former Building Inspector, and dated September 14, 2018 explained he had advised Mr. Konopka, in 2004, the rights couldn't be taken away once he had the subdivision was recorded.

Mr. Bosen asked about the RSA with the five year limit on that. Mr. Lefevre said RSA 674:39 talks about making the improvements on a subdivided road and work needs to be started within two years. Mr. Bosen asked if the previous Building Inspector should know that instead of telling him they wouldn't be taken away. Mr. Lefevre said once a subdivision is done there is nothing left to do. He would have told the town if there was a subdivision which wasn't built out the Planning Board would have to revoke the approval but in this case everything that needed to be done has been done.

Mr. Lefevre thinks substantial justice is done because it favors Mr. Konopka to build on it.

Mr. Lefevre spoke of the criteria diminish property values and the criteria being satisfied as well. It will not have a negative effect on property values. There is nothing about requiring a merger or not requiring a merger that will have implications on property values.

Mr. Palmer asked about the RSAs requiring a waiver for fire safety and the court said they can't do that. Mr. Lefevre said RSA 671:41 talks about no building permits on a lot unless the street giving access to the lot is placed on various places such as a class VI highway. He explained there is a document Notice of Limits of Municipal Responsibility.

Mr. Bosen asked about case *Vachon v. New Durham* where they explain the waiver is irrelevant to town liability. Mr. Lefevre said he has had the Supreme Court affirm that position in *Robertson vs. Hudson II*. If there is a fire, the fire department has to try and get out there. If for some reason they can't because it hasn't been maintained the town will not be responsible.

The Chair asked about the safety of the public servants going out there to respond if there is a class VI road not drivable. Mr. Lefevre said that is a building issue not a zoning issue. It is the Board of Selectmen's call. Fire Department people know when to take risks and when not to.

Mr. Bosen asked if this goes to the Selectmen for the building permit. The Chair said it goes to Building first and then Selectmen if needed. Mr. Lefevre said he was granted permission by the BOS to build on December 23, 2003 but never pulled a building permit.

Mr. Heffernan said if someone gets hurt on the job it doesn't matter if they are on Main Street or out in the woods. There is some common sense to this when determining safety. He thinks it is a moot point for the fire business. If they can get in they will and if they can't they won't.

The Chair opened the hearing to the public.

Mr. Pritchard said he was singled out for comments made at a public hearing. The first amendment gives him the right to say anything he wants during a time of public input. He referenced a situation in 2012 with the Planning Board, which Mr. Heffernan was on, it was determined when they put Public Input on the agenda they create a first amendment protected forum where a person can say anything they want.

He addressed the comments of unauthorized practice of law. He brought up the case *Smugala vs. Town of Hooksett* who was represented by a nonlawyer person.

Mr. Lefevre asked what is the basis for Mr. Pritchard participation in this hearing and if he has standing. If the Board decides Mr. Pritchard does not need to assert the basis for his standing they can do that. He asked the Board make that finding. The Chair said they offer a public comment section at every hearing from any citizens of the town and to change that practice now would be inadvisable. Mr. Bosen and Mr. Palmer agreed with the Chair.

The Board motioned to allow Mr. Pritchard to issue public comment. Mr. Bosen, Mr. Palmer and Mr. Hetu were in favor. Mr. Heffernan abstained.

Mr. Lefevre asked the Board if their decision was to allow Mr. Pritchard to testify without demonstrating he has standing. The Chair said they are allowing him to issue public comment as long as he is a member of the Town of Pittsfield. Mr. Lefevre asked they are deeming his standing to exist by virtue of being a resident of the town. The Chair said that was correct.

Mr. Pritchard read RSA 676:7 “The Board shall hear all abutters and holders of conservation, preservation, or agricultural preservation restrictions desiring to submit testimony and all nonabutters who can demonstrate that they are affected directly by the proposal under consideration. The board may hear such other persons as it deems appropriate.” There is no standing necessary here. He thinks it is appropriate that he speak after Mr. Lefevre went on and on about his comments at the prior hearing. He referenced case Smagula vs Town of Hooksett where Ms. Smagula was represented by a non-lawyer and town of Pembroke has their secretary do the same thing the ZBA do what they have asked him to do.

Mr. Pritchard said there has been much discussion on RSA 674:39a and what it doesn’t allow. The Chair had mentioned this being an issue in the last case. He read NH Practice which states “the statute does not appear to prevent a municipality from requiring a property owner to merge contiguous lots it merely states the municipality itself may not merge them.” This is what the Chair has been saying all along.

Mr. Pritchard spoke of the comment made earlier of not allowing someone to build on a preexisting lot would be a taking. He read statements from Mr. Roy, a former Chief Counsel to NH Municipal Association and ZBA member in Lebanon [taken from NH Grandfathered –The Law of Nonconforming Uses & Vested Rights],

There is a popular myth that the owner of any substandard lot (lot which is smaller than, but pre-dates, the current zoning lot size or frontage requirement) is “grandfathered” for any and all uses allowed in its zoning district. This belief is mistaken. Substandard lots are not covered under the doctrine of nonconforming uses. That doctrine protects on existing uses, not hypothetical future uses of a vacant lot. When the term “grandfathered” is applied to a substandard lot, that term is being extended beyond its normal meaning.

Substandard Lots (c) Takings. The third legal right protecting a substandard lot is that the owner cannot be deprived of the viable economic use of the property. Yes, even though prospective uses of a substandard lot are not protected by the doctrine of nonconforming uses, they are protected against a “taking,” even in the absence of any “lot-of-record” clause in the ordinance. But, contrary to the myth, the “takings” clause does not guarantee that every lot, no matter how small or inadequate, has a right to at least one permanent single-family dwelling:

For example: (i) In Trotter v. City of Lebanon, 117 N.H. 148 (1977), the owner was denied a building permit for a lot on a Class VI road. The Court said there was no “taking,” and that the owner had “carelessly purchased this problem.”

In Sprague v. Acworth, 120 N.H. 64 (1980) the Court upheld a variance to build on a substandard lot, which contained a condition that the dwelling would be for seasonal use only.”

Mr. Pritchard stated the Court in *Trottier v. Lebanon* said the purpose was to provide safe passage of emergency vehicles. In the town of Epsom, the Supreme Court upheld a zoning position in the Town of Epsom that said they can't build on a lot that didn't meet the standard frontage requirement. On the comments on RSA 674:39 saying they can't do it, NH Practice has a contrary view on it.

Mr. St. George said the town has practiced allowing building on class VI roads for years. He thinks it would be beneficial for the property. The town permitted this to happen last year. The Chair said he is referring into True Road.

Mr. Schroth said they have already granted the variance and they should grant this variance as it is the right thing to do. He thinks they spend too much time listening to Mr. Pritchard. The Chair clarified they have not granted a variance; the subdivision was granted.

Mrs. Konopka said the town is revenue strapped and the town realizes a total of \$5.00 from the lot. If the lot was allowed to be developed the town would get more revenue from it then it is now.

Mr. LeDuc said the Zoning Board doesn't deal with nonconforming lots, the Planning Board does. The Planning Board granted the subdivision years ago and the requirements were met. He believes they should grant the variance. The Chair asked Mr. LeDuc if the Planning Board put forward the new ordinance. Mr. LeDuc said that is correct.

The Chair asked Mr. LeDuc if he knows why they came up with this ordinance. Mr. LeDuc said he was not on the Planning Board at that time.

Mr. Hast said they have granted at least five parcels to build on class VI roads. He has spoken to surrounding towns and they all do the same thing. He knows of people who will not come into the town because they have a bad reputation in town. There have been a lot of new ordinances in the last several years.

The Chair closed the hearing to the public.

The Chair asked the Board for any further comments before opening to the applicant. There were none.

Mr. Lefevre said there is a reason the practice of law is regulated. It is regulated so people don't quote it and take it out of context. He objects to Mr. Pritchard appearing in that capacity.

The Chair asked the Board how they wanted to move forward. He suggested they get a legal opinion from the town attorney.

The Chair suggested they continue the hearing so he can get a legal opinion so they can continue their discussion. Mr. Heffernan thinks they should vote on it. Mr. Bosen agreed with the Chair to get legal opinion.

Mr. Palmer said some of the questions he had were answered by Mr. Lefevre and is with Mr. Heffernan on this because there is an RSA that says they can't do it. The Chair asked if it makes sense to get a legal opinion of the correct way to do it because it appears the town's law contradicts the state law. Mr. Palmer said yes it makes sense to ask the town attorney.

Mr. Lefevre asked how the Board will conduct the next meeting because right now they are in deliberation and there wouldn't be opportunity for input by the applicant unless the Board asks for it. The Chair stated that was correct.

Mr. Lefevre further asked the Board to have the next hearing on October 25, 2018 because of the clock beginning on an appeal. The Chair asked Mr. Pritchard if there was another open Thursday before November 8, 2018. Mr. Pritchard said there is not because it is the Conversation and Planning Board scheduled times.

Motion. Mr. Hetu made a motion to continue the hearing to October 25, 2018 and request an opinion from the town at RSA 674:39a the requirement that the town cannot force a merger versus the zoning ordinances that do not allow. Mr. Bosen seconded the Motion. There was no additional discussion.

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

PUBLIC INPUT

Mr. LeDuc asked the Chair if he has had any direct communication with Chairman Allard in the last 24 hours. The Chair said yes. Mr. LeDuc asked what they pertained to. The Chair responded to this particular case. Mr. LeDuc said he believed there was communication between Attorney Serge and the Select Board in regards to the decision. The Chair said there were pieces of it in the communication. Mr. LeDuc was not pleased that the Chair did not bring it up to this Board and he will be bringing it up to the Select Board.

Mr. LeDuc asked the Chair how the Board directly communicates with each other. The Chair responded through email. Mr. LeDuc asked what type of email; personal. The Chair said everyone's personal emails are on file. Mr. Pritchard clarified the Board does

not communicate with each other outside of a town meeting. The Board goes directly through him. Mr. LeDuc will be making the recommendation at the next Select Board that all boards have a town email because it is in violation of RSA 91a.

Mrs. Courchene asked if after the preceding on October 25, 2018, do they have to wait another 30 days. The Chair said yes there is a 30 day appeal process for that decision. Mr. Heffernan asked who is entitled to appeal this. The Chair said it would have to be someone with standing.

Mr. St. George asked wasn't the variance approved. The Chair said yes and then there was a rehearing. He explained the Board voted by a majority decision to rehear it.

Mr. Hast asked who had asked questions regarding the case. The Chair said Mr. Palmer and Mr. Bosen had some questions and the Board voted to rehear the application. Mr. Hast expressed further concern of Mrs. Courchene statement of having to wait so long for a decision due to the continuance.

Mr. Schroth said he is going to do everything he can to do away with the zoning ordinance because the Board is doing everything they can but it is not helping.

Mr. Pritchard said a lawyer told him opinions of lawyers don't count unless the Supreme Court says it does.

ADJOURNMENT

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

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

The Chair adjourned the meeting at 7:43pm.

APPROVED: October 25, 2018

JAMES HETU, CHAIRMAN

DATE