



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

MEETING MINUTES of Thursday, October 25, 2018

CALL TO ORDER

The Zoning Board of Adjustment Meeting for October 25, 2018 was called to order by Mr. Hetu 7:09p.m.

MEMBERS PRESENT

James Hetu
Scot Palmer
Brigham Bosen
Pat Heffernan
Jason Rokeach

OTHERS PRESENT

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

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

Other Public Officials: Carl Anderson, Selectman and Clayton Wood, Planning Board.

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

REVIEW AND APPROVE MINUTES

Motion. Mr. Palmer made a motion to approve the minutes from September 27, 2018. Mr. seconded the Motion. There was no additional discussion.

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

The Chair said there is one edit for the October 11, 2018 on page 3, second to last paragraph. The sentence currently reads “it was added so towns could do exactly what Pittsfield is trying to do” they need to add the word “not” after “so towns could”.

Motion. Mr. Bosen made a motion to approve the minutes October 11, 2018 as amended. Mr. Palmer seconded the Motion. There was no additional discussion.

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

HEARING 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 board they are in discussion as they have already taken public input.

Motion. Mr. Heffernan made a motion there was no regional impact. Mr. Palmer seconded the Motion.

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

The Chair asked Mr. Rokeach if he was up to date on the minutes from last meeting. Mr. Rokeach said he wasn't and took some time to review the minutes.

The Chair explained there was a question of the illegality of the ordinance brought up. He wants to make a determination on it first and then if they determine it is legal turn to the merits of the application.

Mr. Bosen said after further research of the NH Practice Land Use and Zoning, he doesn't think it is illegal. The merger of substandard lots since 2010 amendment has left questions. It is clearly stated that it is common practice still as the merger is contingent upon the agreement of the landowner.

The Chair asked if they agree the Pittsfield Zoning Ordinance doesn't force the landowner to merge of the lots; that it is voluntary on behalf of the landowner.

Mr. Heffernan agrees it is voluntary but doesn't think it is right. If he merges them and then wanted to sell a piece to someone he would have to go through the subdivision all over again. He doesn't think it's right or fair.

The Chair wants to get through the illegally part. Mr. Heffernan said he doesn't think it is legal because they are being forced to merge the lots in order to do anything. The Chair responded the law leaves the path forward up to the property owner. Mr. Heffernan said the law says they have to merge it if they want to do anything with it. He doesn't think there is any way the applicant can bring it into conforming lot because he's on a class VI road. The Chair said he could bring it more into conformance if he had the driveway go to either of the class V roads. Mr. Heffernan said the chances of the applicant doing so are near impossible. Mr. Heffernan said the previous Select Board said it was okay so he shouldn't have to do it again.

Mr. Palmer said at the last meeting he asked about having the lawyer being asked about this. The Chair informed the Board that the Select Board and town lawyer decided to act as an interested third party and took away their unbiased opinion giving so they were not able to ask the town attorney. Mr. Heffernan said the attorney has an opinion on this so he thinks it has some weight here. The Chair said the attorney represents the Select Board who has come down pretty firmly in one camp in this position. Mr. Heffernan asked if they asked the attorney the same question would they get the same answer. The Chair said the attorney himself said "reasonable minds can disagree" so he agrees there is some question to this.

Mr. Bosen doesn't like the law either but Concord, Manchester, and Portsmouth all have it. Mr. Heffernan said they still have it but they can't enforce it. Mr. Bosen said that was incorrect. The Chair said there has been no ruling one way or the other.

Mr. Heffernan asked about the RSA "no city, town, country, village....may merge existing lots or parcels except upon the consent of the owner."

Mr. Palmer asked how the ordinance reads on it. The Chair read page 55 of the Zoning Ordinance Article 4 Sect 5(b) Requirements for Development on a Nonconforming Lot; "the subject lot has not been contiguous to any other lot under common ownership since the date when the subject lot was first nonconforming or since the effective date of this condition March 14, 2017, whichever is later."

The Chair gave the board members an example of an ordinance which would make the ordinance illegal under the RSA in question. He discussed the Gilford Ordinances automatically merging of two lots. Pittsfield Ordinance does not force automatic merger of the lot. There was an amendment to the RSA 674:39aa which allowed for the undoing of all the automatically merged lots.

The Chair said the Gilford ordinance makes it very clear that is what they were trying to prevent with RSA 674:39a. Pittsfield ordinance does not automatically merge the lots;

the right to buy or sell a nonconforming lot or the contiguous property lies solely in the discretion of the property owner. The Pittsfield ordinances say if you want to develop the nonconforming lot they have to merge it with the existing lot under common ownership. The choice of what to do with the property still lies with the property owner. The property could stay the way it is today.

Mr. Bosen spoke of the first case after the amendment (Roberts v. Town of Windham) where the citizen had voluntarily merged the lots. The petitioner agreed to merge some of the lots and the Supreme Court upheld the decision saying he had voluntarily merged the lots.

The Chair said Concord, Manchester, Portsmouth, and Derry all have ordinances identical to Pittsfield Zoning Ordinances. This ordinance has been enforced this year, Bob Elliot, voluntarily merged his lots earlier this year. He said to toss it out in this case when it has already been applied to someone reeks of a double standard.

Mr. Heffernan said Mr. Elliot had to merge to sell to someone else; so it was a forced merger. The Chair explained he wanted to sell it so he had to merge it just like in this case.

The Chair took a vote on the reasoning that it is not illegal. Mr. Bosen, the Chair, Mr. Rokeach agreed it is not illegal. Mr. Palmer said he was not sure. Mr. Heffernan said he thinks it is illegal because it is flawed.

Mr. Palmer said he doesn't understand it. The RSA is forcing someone to do something. The Chair said it is the same as being forced to have a setback. There was further discussion of the RSA and requirement to merge the lots.

Motion. Mr. Rokeach made a motion to move forward with this case under the presumption the Pittsfield Zoning Ordinances are valid under state law. Mr. Bosen seconded the Motion. There was no additional discussion.

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

The Chair read criteria A not contrary to the public interest. He said the town adopted the ordinances as they are currently written in 2017. Mr. Bosen said that is the public interest. The Chair said the town voted by 2/3 margin to adopt the ordinance. He asked if granting the variance be contrary to it.

Mr. Heffernan doesn't see any problem with it. He doesn't see what they adopted as a hurdle. He believes it is not contrary to public interest. The Chairs' only issue is the town voted for the ordinance. Mr. Heffernan said if everyone in town was interested in it why only nine people here at the hearing. It can't be too contrary to public interest or the

public would be here. The only public that will know about it are the board members, tax collectors, and Mr. Konopka.

Mr. Palmer doesn't see how it harms the public. The variance won't endanger anyone in the public. He asked aren't they here to make a judgement on it by granting a variance. The Chair responded the variance is a release value to the people in town.

Mr. Bosen said the public interest is the zoning ordinance but this is the release value. His only concern is if it is not a buildable lot how they can grant a variance. He asked about the building permit and state fire code. If a building permit can't be issued how they can grant the variance. The Chair said because they are granting relief from this clause of the ordinance.

The Board agreed it is not contrary to public interest.

The Chair read criteria B the Spirit of the ordinance is observed. Mr. Heffernan said it falls in the spirit as the application says "due to remaining a single family home on two plus acres of land."

The Chair read the purpose of the Article 4 in the zoning ordinances "purpose of Section 4 is to codify the NH State laws for nonconforming uses, to encourage the discontinuance of nonconforming uses, to encourage the elimination or reduction of nonconformance and of nonconforming lots, and to provide for the continuance of lawfully established nonconformance if the transition to conformance is unreasonable."

Mr. Bosen said it is the opposite of the spirit of the ordinance. The Chair thinks they could argue in order to provide for the continuance of lawfully established nonconformance if the transition to conformance is unreasonable they can continue having the established nonconforming lot. The question of it becomes the development of the lot. The lot itself can stay as it is now and is protected.

Mr. Rokeach thinks the transition to conformance is unreasonable and comes with a certain amount of risk of merging the lots and then not being able to subdividing them again. It is clear in the prior discussion that the transition from nonconforming to conforming is unreasonable.

The Board agreed it is in the spirit of Article 4.

The Chair asked about the practical effect of the development of the lot on the class VI road and frontage requirement in regards to the spirit of ordinance. Mr. Rokeach asked how this is waiving the frontage requirement. The Chair said because they would waive the nonconforming requirement on a lot that is nonconforming because of the frontage.

The Chair said the frontage requirements Article 3 Sect 4(c)3. He explained the variance is from the requirement of having to merge to develop and the practical effect is that they would be granting the right to develop on a class VI road. Mr. Rokeach doesn't

understand the linkage and why the practical effect would allow it. The Chair responded said because they are allowing development on a nonconforming lot. The lots' conformance is the fact that it doesn't have frontage. He asked do they consider the frontage requirement with the spirit of the ordinance or not.

Mr. Heffernan said the previous Planning Board already approved the lot. Mr. Bosen said the law changed in 2010. That is why there is a time limit requirement. Mr. Rokeach said it still requires a building permit. Mr. Bosen said a building permit cannot be issued if it is not conforming if it doesn't mean State fire code. Mr. Heffernan said that is not their fight. Mr. Rokeach said they wouldn't be saying it can't be developed; they would be saying that one requirement [frontage] would be waived.

The Chair asked if they agree it is not in the spirit of Article 3 Sect 4 (c) 3. Mr. Bosen said no.

Mr. Heffernan doesn't think the frontage is a concern.

Mr. Rokeach thinks if the variance is applying only to the portion that is requiring it to not be under the same ownership then they are not interfering with the ordinance in regards to the fire code. The Chair said the idea is to reduce nonconformance. Mr. Rokeach said it is part of it but it is also balanced out by the later part of that section. The Chair said the spirit of the frontage requirement still comes into play because that is what they are trying to reduce; they are trying to reduce the nonconformance of the frontage requirement.

The Chair expressed concern with development on a class VI road has to do with the emergency responders themselves as they are the type that go into a situation. If they have to make a choice between aiding someone in need or doing the smart thing and following procedures in place they might decide to run into the burning building. Then if they have to send someone in to help those people aren't they tossing the general welfare purpose of the ordinance out the window.

Mr. Palmer said the owner would sign a waiver. The Chair said family of the fire fighter didn't sign a waiver. Mr. Palmer responded if it's too dangerous they won't go in there. Mr. Heffernan said they have common sense and won't go into a building if they can't get in safely. He spoke of a fire on Main Street where they didn't go in.

The Chair asked why they should put them in the position to take that risk. Mr. Heffernan said they don't have an argument in that fight. The Chair responded it is their fight because their job is to promote general welfare. Mr. Heffernan said he spoke to the Fire Chief and there is no problem getting the road down there. He feels the guy who is going to build the house will make it safe to get vehicles up the property.

Mr. Konopka submitted a signed letter from Mr. Bachelor.

The Chair asked does it meet the spirit of the ordinance. Mr. Rokeach, Mr. Heffernan, Mr. Palmer said yes. Mr. Bosen said No.

The Chair read criteria C substantial justice is done. Mr. Heffernan said he agrees with the application “remaining a single family house in a rural zone. “ The Chair said it is not a single family house; it is a nonconforming lot in the woods. Mr. Heffernan said single family homes are supposed to be in a rural zone. He can’t see anything unjust.

The Chair explained the substantial justice done is if they didn’t grant the variance would the harm to the applicant outweigh the benefit to the public of rejecting the application. Mr. Heffernan said it is not only Konopka but the Courchene as well that some injustice that would be done. Mr. Palmer said the benefit to the town is they would get full tax values to the town. The Chair said they are not supposed to consider the taxes in this. Mr. Heffernan said justice will be done.

Mr. Palmer asked what they mean by town’s loss. The Chair said it would be an increase in nonconformance. Mr. Palmer said they would have to give everyone a variance for a nonconforming lot and every one of them might be different because a variance is different in each case. The Chair the said the reason for the nonconformance could be different.

The Chair asked the Board if they feel the benefit to the town (gains in public safety and reduction of the nonconformance) outweighs the loss to the applicant. Mr. Bosen, Mr. Rokeach, and Mr. Heffernan said yes. Mr. Palmer abstained.

The Chair read criteria D values of surrounding property diminished. All agreed.

The Chair read criteria E literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For this subparagraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area. They would have to numerate the special conditions.

Mr. Bosen doesn’t see the hardship.

Mr. Rokeach said the history of ownership would be the special condition. He believes it satisfies the Clause A “no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of the property” because it is intended to be sold to the owner occupied single family property. The Chair asked couldn’t it be applied to every nonconforming lot in town and how it makes it special. Mr. Rokeach said it is not applied to every property. The Chair said every nonconforming lot is like that and is not unique.

Mr. Rokeach asked what the purpose of the contiguous lots ordinance in the first place. The Chair said the purpose was to reduce nonconformance in the town. Mr. Bosen said it was his understanding it was to close the loophole of selling to someone, improving the

property and having it sold back to the original owner. Mr. Rokeach agreed and said it is not the scenario in this case.

Mr. Palmer read RSA 13 Unnecessary hardship “to establish unnecessary hardship, applicants must prove (1) a zoning restriction as applied to the property interferes with their reasonable use of the property. Considering the unique setting of the property and its environment, (2) no fair and substantial relationship between the general public purposes of the ordinance or the specific restrictions of the property, and (3) the variance would not injure the public or private rights of others.”

Mr. Heffernan thinks it meets the purpose of unnecessary hardship based on what Mr. Palmer just read. He said they are trying to get a waiver from the ordinance and the RSA is saying it is a hardship if they do that. Mr. Rokeach thinks the second and third part of the RSA is clear. He thinks the first part and the special condition of the property setting. The Chair said nonconforming of ordinance can't be special condition or every property asking for a variance would apply. Mr. Bosen agrees.

The Chair read Criteria E (b) “if the criteria in subparagraph one is not established an unnecessary hardship will deem to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area the property cannot be reasonably used in strict conformance of the ordinance, then a variance is therefore necessary to allow reasonable use. Mr. Rokeach said that is what Mr. Bosen was getting at. Mr. Bosen doesn't see the hardship.

Mr. Heffernan said the difference in the other properties was the size. The Chair said he thought they were similar sizes.

Mr. Lefevre asked if they could take a five minute break. The Chair said they were almost done.

Mr. Rokeach asked what RSA Mr. Palmer was reading from. Mr. Palmer said it was RSA 674:33 XIII (page 413 second paragraph from the bottom).

The Chair called a recess at 8:45pm.

The Chair called the meeting back to order at 8:48pm.

Mr. Lefevre they would like to withdraw their application. They appreciate all Zoning Board's efforts and deliberations.

PITTSFIELD SELF STORAGE'S APPLICATION FOR A VARIANCE FROM PITTSFIELD ZONING ORDINANCE, ARTICLE 3, SECTION 3, (B), (2), USES PERMITTED AS SPECIAL EXCEPTIONS, TO CONSTRUCT A SELF-STORAGE FACILITY CONSISTENT WITH A PLAN PREPARED BY JEFFREY LEWIS, P.E., OF NORTHPOINT ENGINEERING, LLC, WITH FOUR SIMILAR BUT SEPARATE MULTI-LOCKER SELF-STORAGE BUILDINGS AS FOUR PRINCIPAL BUILDINGS WITH NO ON-LOT OFFICE SPACE AND WITH ADMINISTRATION FROM OFF THE

LOT, TAX MAP R-15, LOT 30, ON HIGH STREET IN THE LIGHT INDUSTRIAL/COMMERCIAL ZONING DISTRICT. THE FOUR PROPOSED STORAGE-LOCKER BUILDINGS ARE PROPOSED ON A LOT ABUTTING A LOT, TAX MAP R-15, LOT 30-1, WITH AN EXISTING SELF-STORAGE FACILITY THAT THE APPLICANT OWNS AND PROPOSES TO USE TO ADMINISTER THE FOUR PROPOSED STORAGE-LOCKER BUILDINGS INITIALLY, AND THE PURPOSE OF THE VARIANCE IS ENABLE THE APPLICANT TO SELL THE FOUR PROPOSED STORAGE-LOCKER BUILDINGS AWAY FROM EXISTING SELF-STORAGE FACILITY. A. DETERMINATION OF POTENTIAL REGIONAL IMPACT. B. MERITS REVIEW WITH A PUBLIC HEARING.

Mr. Bosen recused himself.

The Chair asked for a reason of recusal. Mr. Pritchard said Mr. Bosen doesn't have to give his reason or recuse himself. Mr. Cronin asked the reason if he would be willing to share. Mr. Bosen said no.

Motion. Mr. Heffernan made a motion there is no regal impact. Mr. Palmer seconded the Motion. There was no additional discussion.

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

Mr. Cronin introduced himself, Mr. Lewis of Northpoint Engineering and Mr. McDonough, property owner. He discussed the prior hearings regarding the applicant. The overriding concern related to abutters and whether Ms. Ward would have standing as a direct abutter and asked for the case to be reheard which is when he got involved in the case. They did not challenge the Board's desire to have a rehearing at that time. They did have concerns with the Board getting legal opinions from an unauthorized attorney that did not have the power to give legal opinions and felt there was some interference with the Board's independence in the process.

Mr. Cronin explained they requested a continuance of the Special Exception and filed a request for Variance at that time. The variance request was based on the primary accessory structure in the ordinance and thought to keep the lot independent, with the four buildings, they would seek a variance from the terms of the ordinance that requires a primary accessory building. During that process, Mr. Pritchard said they could not do that because they were seeking a variance to the special exception. He did not agree with that position; the reasons and conditions are in the special exception and they weren't seeking any waiver of those provisions. They decided to keep the case open because they had a number of people who had given testimony and by doing so they would incorporate their statements on the record.

Mr. Cronin said even though they didn't agree with it, they decided to follow Mr. Pritchard's directive to the ZBA they apply for a general variance to allow this use with the four buildings that are similar and there wouldn't be any designation of whether one was primary or accessory. He hopes they can proceed with the variance application with

a complete reservation of rights. If it is acted on favorably those other two applications would become moot. If the Board doesn't look on the application favorably they would move then to consider the other two applications and get the relative votes on those.

Mr. Lewis showed the Board a site plan of the property. Mr. Cronin spoke of Mr. McDonough's intentions to expand the storage. He explained the property is bounded on one side by a highway, across the street from a cemetery, and boarded on both sides by self-storage usages. Self-storage use is allowed by special exception. Mr. McDonough desires to build out because there is demand for it. The modern trend is many of these units are operated without an office. They are remote operated or there is a kiosk.

Mr. Cronin said the variance will not be contrary to the public interest. The Supreme Court has ruled that the public interest and spirit of the ordinance prongs can be determined together. They have addressed them in the narrative provided independently. One of the ways they can satisfy the two prongs is if variance is granted it will not alter the character of the neighborhood. It is very rare that an applicant comes in for a variance for a project and it is bounded on both sides by the use.

Mr. Cronin said one of the other issues in the variance test is whether the character of the neighborhood is altered. He said one of the things that is important to consider is benchmark. There could many more uses allowed for in the ordinances which would be egregious. He read from a paragraph of a letter from Mr. Weidacher of KW Metropolitan " ...based on my 35 years as a licensed real estate broker, managing over 400 licensees, it is my professional opinion the value of surrounding properties will not be diminished if the variance is granted. Moreover, character of the neighborhood will not change if a variance is granted. Route 28 is a busy commercial highway with road noise and heavy traffic. Due to traffic, residential use is not the preferred option. The cemetery will have the greatest exposure to the lot and it is apparent the cemetery will not suffer any detrimental impacts. This use is consistent with the adjacent storage facilities. Sincerely, Bill Weidacher. "

Mr. Cronin said the substantial justice test is will the harm to the public if granted be greater than the applicant if denied. They don't believe there will be any harm because it is a passive use for this site. There were some concerns of noise issues which have been addressed. Ms. Ward had other concerns and Mr. McDonough and Ms. Ward had a discussion after the last hearing to resolve those issues. They would be willing to have a voluntary condition to address additional landscaping.

Mr. Cronin said with regard to harm to the public there has been prior testimony from others who were in support of this use. It would add to the commercial tax base as well as have no police or school impact. It is adjacent to another property he [Mr. McDonough] owns and pays taxes on it. There is demand for this type of use in this town.

Mr. Cronin said since the Symplex case the hardship test softened significantly. He referred to Justice Cortin who said the old hardship test was too rigid which led to a

trilogy of cases with Symplex. If they followed it by the letter of the law no one would ever be entitled to get a variance. If they look at the property it has special conditions. It is bounded on both sides by storage uses and also bounded on both sides by uses not suitable to build on. When they look at the specific terms of the ordinance and its application to this case, why would there be concern of a storage facility without a primary building. He spoke of 603 Storage who has several locations without a primary building. If they look at these facilities without a primary building, it would not make any difference to the health, welfare, and safety of the community.

Mr. Cronin said if they look at the second prong of the criteria it is the use a reasonable one. He can't think of another more reasonable use. He thinks the procedure is consistent with what the Board wanted.

Mr. Lewis asked if they have the letter from 603 Storage. Mr. Palmer said they do.

The Chair asked the Board if they have any questions.

Mr. Heffernan asked about the concern about the mobile home and cars parked out back. Mr. Cronin said it is not on the lot and doesn't think it is relevant. He believes Mr. McDonough and Ms. Ward came to an agreement on those issues.

The Chair opened the hearing for public input.

Mr. Pritchard asked about the description from Mr. Cronin regarding a kiosk and he doesn't see it on the plan. The Chair said there was a possibly it would be administered by a kiosk or offsite facility.

Ms. Ward said she did meet with Mr. McDonough and they discussed doing work with the property boundaries between her property and the property abutting hers. She explained they discussed putting up some shrubs. She would rather not have the vehicles there because she sees them when she drives down Route 28 not her house. She doesn't think they were supposed to be there according to their site plan. The discussion they had was how to make it not visible. The Chair said they are not the enforcement arm. It falls to the Select Board and its representatives.

The Chair asked if the shrubs and landscaping goes through, does she have any issues with the variance. Ms. Ward said they did figure out the noise. She is not excited about having more storage there but it is a matter of Mr. McDonough being willing to work with her. The facility on the application doesn't have as much of an impact as the one right next door to her. She said to answer the question [from the Chair] it depends on rather it is a separate lot or is the same. The Chair asked if she has seen what is being proposed. Ms. Ward said she has. A lot of the issues she had were with the current property.

Mr. Cronin said he is willing to put it on the record Mr. McDonough is willing to continue to work with Ms. Ward.

Mr. Heffernan wanted to make sure Ms. Ward is on board with this. The Chair asked if there is outside storage on the new lot. Mr. Lewis said no.

Mr. McDonough said he gave Ms. Ward his cell phone number so if anything happens in the future they can resolve it. They discussed the landscaping and possible fencing to make the vehicles not visible. He wants to be a good neighbor to Ms. Ward.

The Chair closed the hearing to the public.

The Chair asked about the kiosk and if there is any reason they can't fit someone that considers it a primary building. It could be a shed or a room used as an office. Mr. Cronin said the kiosk would be more functional because it would be a self-service way for people to access the units.

The Chair expressed concern if there is no primary building then what could prevent the subdivision of the lot amongst the buildings to sell the building to another party. Mr. Cronin said the law already addresses the concern of the future sale without the primary building. Regardless of what those buildings are called, they are on a separate lot. They cannot sell one of those buildings. They would have to sell them all or they would violate the state statute which says they can't sell an independent building on a lot unless the lot is subdivided. This would then require them to come back and subdivide the building and then meet the subdivision requirements which they can't do.

The Chair opened discussion with the Board.

Mr. Heffernan said he understands the applicant wants to build four storage units on a lot he owns and there is not much more to it than that. He is good with that.

The Chair asked Mr. Palmer if he had the ordinance in question for the primary lot. Mr. Rokeach said they are waiving the primary structure. Mr. Pritchard offered to print off the first few pages so they can see exactly what they are siting for the variance. The Chair asked him to do so.

Mr. Cronin said the application tracks consistently with Mr. Pritchard's memo where he said they couldn't get a variance from the condition of a special exception. He agrees it is a correct statement of the law. Mr. Pritchard had said they needed to apply for a general variance from the table of uses because it didn't define storage usages with specificity which is what they did.

The Chair read criteria A it is not contrary to public interest.

Mr. Rokeach expressed concern with stewardship of the property of outdoor storage on the other lots and it sounds like the applicant is willing work with that. There is no outdoor storage on this property. He doesn't think there is any remaining concern. The Chair agreed. Mr. Palmer agreed with Mr. Rokeach since there is no outside storage.

There is nothing in the ordinance saying they can't have a public storage unit. The Chair said it is allowed in this zone with a special exception.

All agreed not contrary to public interest.

The Chair read criteria B the spirit of ordinance observed.

The Chair said only concern is with waiving the primary building. He would prefer to have one. Mr. Palmer asked how the other towns are doing it. The Chair said he doesn't know. Mr. Heffernan said 603 Storage has them all over the place with kiosks and nobody is there. He asked what they need a primary building for. The Chair responded it is so the other buildings are subordinate to it. He doesn't want to expand nonconformance.

The Chair asked the applicant if it would be reasonable to put a condition for a kiosk. Mr. Cronin said they can't use why the variance is sought as a basis for denial. The Chair said he agreed but the issue is the ordinance requires a primary building on every lot. Mr. Cronin said that is why they are asking for a variance. The Chair said they are asking for a variance from the table of uses. Mr. Cronin said if they need to do it, they will do a kiosk.

Mr. Rokeach asked if there is anything unique about a single building. Mr. Cronin said he is not sure which building a kiosk would work on. Mr. McDonough said the electric would come to the first building. The Chair asked how the other buildings are subordinate to the primary building. Mr. Cronin said because they are dependent on the first building for electricity.

The Chair asked if they would be amendable for a change from four primary buildings to a primary building with electricity and the other buildings being subordinate. Mr. Cronin said if they all the first building the primary building by having the electrical then they meet the requirement and the variance is moot because they satisfy the criteria for a special exception. The Chair agreed but he is looking for a primary building.

Mr. Cronin said if they would want to rely on the record they created and they said the electricity coming into that building would be primary then they believe they would meet the criteria for the special exception. He said they would identify the building as primary on the plans.

Mr. Palmer asked if they can talk about the original vote on the special exception and wasn't it on the two buildings. The Chair said they were talking about combining the two properties but they are not doing that now.

The Chair asked Mr. Cronin if they want to go forward with the variance and the primary building. Mr. Cronin said he thinks they are almost there with the variance so if they wanted to put the condition of the kiosk they can go forward. The Chair responded he doesn't want to do the kiosk. If they identify a primary building and the others are

subordinate to it so they have a unified lot with a primary building he's happy. Mr. Cronin asked that it is clearly stated on the record that the ZBA is the arbiters of the zoning ordinance and interpret what primary and accessory for subordinate means because he doesn't want to have issues with the Planning Board.

Mr. Rokeach said part of the point of the variance is to waive the requirement of the building. The Chair said the concern was letter "c". Mr. Rokeach said letter "c" is not what the application was for. The Chair responded if they can identify a primary structure they are reducing nonconformity. Mr. Rokeach said this is proposing adjustments to the table of uses for a variance from the table of uses so it doesn't require a special exception. if it doesn't require a special excretion then look at letter "c".

The Chair asked when the applicant goes to the Planning Board, if there is not a principal structure identified, even if he doesn't need the special exception won't he get hung up. Mr. Cronin said as long as the ZBA makes it clear, the Planning Board can't impeach their decision. If the ZBA grants a variance it is a non-issue.

The Chair asked the Board if they have a problem with them designating the front building as the primary building. Mr. Rokeach said no, because if the building with the electricity is the primary building then the cleanest, least burdensome approach is the special exception.

The Board reviewed the definition of principal use building. The Chair said the key to the principal versus accessory dynamic is those other buildings can't exist without the principal use building. The electrical in the first building accomplishes that.

The Chair asked if there are any other concerns with a special exception if they have a principal building. Mr. Heffernan said if the principal structure is the only thing holding up the special exception will this satisfy everything. The Board members agreed.

The Chair continued the variance hearing.

Motion. Mr. Rokeach made a motion to table variance at hand. Mr. Palmer seconded the Motion. There was no additional discussion.

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

ITEM 6: CONTINUE CONSIDERATION OF THE PITTSFIELD SELF STORAGE APPLICATION FOR SPECIAL EXCEPTION FOR THE SELF STORAGE FACILITY IN ACCORDANCE WITH THE ZONING ORDINANCES ARTICLE III SECTION 3(B)II & VI AND ARTICLE VI SECTION 2 & 3 FOR FOUR MULTIPLE BUILDINGS AND ASSOCIATED DRIVEWAYS, PARKING, DRAINAGE AND STORMWATER MANAGEMENT INFRASTRUCTURE ON HIGH STREET TAX MAP R-15, LOT 30 THE LIGHT INDUSTRIAL/COMMERCIAL ZONING DISTRICT TO BE

ADMINISTERED BY THE EXISTING SELF STORAGE FACILITY THAT THE APPLICANT OWNS IN THE ABUTTING TAX MAP R-15, LOT 30-1.

Mr. Cronin said this is the request for special exception which was initially looked favorably on. They ask to be consistent with the original application with no merge of the property and the primary building would be designated as the building where the electrical service enters the property and will note that on the plan identifying it as the primary structure. He would reference all the arguments and records on the variance hearings and the prior special exception hearings.

Mr. Rokeach asked Mr. Cronin if by primary building they mean principal building. Mr. Cronin said yes. Mr. Lewis said the application will be managed by the existing adjacent property reserve the right to be managed offsite.

The Chair opened to the public.

The Chair closed to the public.

The Chair read criteria A the use will not be detrimental or offensive to the neighborhood.

Motion. Mr. Palmer made a motion that the use will not be detrimental or offensive to the neighborhood because the two adjacent properties used in the same way and it will not increase any detriment by adding a third property. 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; Mr. Rokeach – Yes; and Mr. Bosen - Recused. The Chair declared the Motion passed.

The Chair read criteria B “the use shall not diminish values of surrounding properties.” Mr. Palmer said they are the same thing so it will not. The Chair said there will be no outside storage.

Motion. Mr. Palmer made a motion that the use shall not diminish values of the surrounding properties as the use is the same as the properties surrounding it. 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; Mr. Rokeach – Yes; and Mr. Bosen - Recused. The Chair declared the Motion passed.

The Chair read criteria C “use parking needs, access ways shall not be a nuisance or serious hazard.” He said there is sufficient room on the site for parking needs.

Motion. The Chair made a motion that the use parking needs shall not be a nuisance or serious hazard to pedestrian or vehicle traffic as there will be sufficient room on site for

the parking needs. Mr. Rokeach seconded the Motion. There was no additional discussion.

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

The Chair read criteria D “ the use shall have adequate utilities and facilities to ensure the proper operation of the use.” He said the plans as draw sufficiently allow for the operation of the self-storage unit as demonstrated by the adjacent property currently operating. Mr. Rokeach said also with the evidence submitted by 603 Storage about it being administered remotely and doesn’t require an office onsite in order to be a successful storage operation.

Motion. Mr. Rokeach made a motion that the use shall have adequate utilities and facilities to ensure proper operation of the use because the plans sufficiently allow for the operation of self-storage as demonstrated by the adjacent property and the evidence provided by 603 Storage which show an office onsite is not required in order to have a successful storage operation. Mr. Heffernan seconded. There was no additional discussion.

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

The Chair read criteria E “the use shall satisfy all special exception permitted conditions in Article VI Section III Conditions for all Special Exceptions.

Motion. The Chair made a motion that the use shall satisfy all special exception permitted conditions in Article VI Section III: Conditions for all Special Exceptions. Mr. Rokeach seconded the Motion. There was no additional discussion.

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

Motion. Mr. Rokeach made a motion to accept the Pittsfield Self-Storage application for special exception for the self-storage facility in accordance with the zoning ordinances Article III section 3(b)ii & vi and Article VI Section 2 & 3 for four multiple buildings and associated driveways, parking, drainage, and storm water management infrastructure on High Street Tax Map R-15, Lot 30 the light industrial/commercial zoning district to be administered by the existing self-storage facility that the applicant owns in the abutting Tax Map R-15, Lot 30-1. 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; Mr. Rokeach – Yes; and Mr. Bosen - Recused. The Chair declared the Motion passed.

Mr. Cronin deemed the other two applications for variance are deemed moot. The Chair offered to keep them open for 30 days pending a motion for rehearing.

MEMBERS CONCERNS

Mr. Bosen rejoined the meeting.

Mr. Palmer asked about getting members to join the Zoning Board. Mr. Heffernan said he has a potential alternate. Mr. Palmer asked if they are going to place an ad in the Suncook Sun. The Chair said there has been a lot going on behind the scenes which they are not privy to.

The Chair addressed the Select Board inappropriately interfering with the ZBA meetings, nonpublic sessions with the Select Board with applicants who have come before the ZBA, and letters sent at the last minute. He has been inundated with those issues which is why he has not gotten an article in the paper.

The Chair said there are two letters sent to him at the last minute which he can forward to the members. He was not trying to hide them but they were inappropriate to the Board's proceedings. The Board members asked for him to forward the letters. Mr. Palmer asked how they deal with that. The Chair said short of voting people out of office he has no idea.

Mr. Bosen expressed concern with some people saying some nasty things and trying to bait him into saying something. The Chair said a lot of things went off the rails concerning one of the applications which was highly inappropriate and puts them in the cross hairs and makes them have to be the bad guys. Mr. Bosen said if they wanted to approve it they should have just not sent it to the ZBA.

PUBLIC INPUT

Mr. St. George said it was unprofessional towards Pittsfield Self-Storage being bounced around so many difference directions and it could have been solved with the special exception. The Chair said the issue on their end was the burden of proof is on the applicant and had the applicant come up with the idea on the front end they wouldn't have been here. Mr. St. George said the applicant and the Board were lead in different directions. Mr. Bosen said they did try to help and they were resistant.

Mr. St. George said they were told if they merged the lot they would be all set. He said it doesn't seem inviting from a business owner in this town. He is not saying it is easy from the Board's end. He doesn't know how it gets simplified but it needs to be easier. The Chair said the other part of this is both the cases haven't had anyone on the other said so it appears the other side is being taken by the Board. They are trying to protect the rights of both sides.

Mr. St. George said he has heard arguments in different ways that read several ways into the ordinance and it is just the way the Board decides to read them. They could look at it as why they can make it versus why they can't make it.

Mr. St. George said the Board gets legal advice that is not actually from legal and he is not sure if that is helpful either. The Chair said he would agree with him if they had an attorney representing the Board and they don't.

Mr. Pritchard said he had encouraged Pittsfield Self-Storage to get help from him to smooth the process and they refused. He thinks it is why this has taken so long.

Mr. Pritchard said Mr. Cronin called them the Kings of the Zoning Ordinance which might be locally sort of true; however, they are not kings of subdivisions. The Board was dancing around the issue but the problem is the way the buildings are laid out is a building site subdivision. He sent them a memorandum which clearly lays out the rules for grandfathering. Whether the subdivision has occurred there is the Planning Board's call not the ZBA. He would have suggested to the applicant to have a conceptual consultation with the Planning Board prior to this.

ADJOURNMENT

Motion. Mr. Palmer made a motion to adjourn. 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; Mr. Rokeach – Yes; and Mr. Bosen - Yes. The Chair declared the Motion passed.

The Chair adjourned the meeting at 10:14pm.

APPROVED: November 29, 2018

JAMES HETU, CHAIRMAN

DATE