



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

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**MEETING MINUTES of Thursday, September 27, 2018**

**CALL TO ORDER**

The Zoning Board of Adjustment Meeting for September 27, 2018 was called to order by Mr. Hetu 7:15p.m.

**MEMBERS PRESENT**

James Hetu  
Scot Palmer  
Brigham Bosen  
Jason Rokeach  
Pat Heffernan

**OTHERS PRESENT**

**Pittsfield Residents:** Matt St. George, Donna Ward, George Sims, Rebecca Sims, and Marie Johnston.

**Others Present:** John Cronin, Cronin, Bisson & Zalinsky P.C.; Jeff Lewis, Northpoint Engineering; Michael McDonough, Pittsfield Self-Storage; Mark Murphy, 603 Storage; and Lee Carter, No Worry Storage.

**Other Public Officials:**

**Pittsfield Staff:** Jim Pritchard, Zoning Secretary.

**REVIEW AND APPROVE MINUTES**

Mr. Palmer said the roll call on adjourn motion for the September 13, 2018 minutes needed to be amended because Mr. Heffernan and Mr. Rokeach were not present that day.

Motion. Mr. Palmer made a motion to accept September 13, 2018 minutes as amended. Mr. Bosen seconded the Motion. There was no additional discussion.

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

## MEMBERS CONCERNS

The Chair asked the members if they received the brief Mr. Pritchard wrote about the hearings for tonight and if there was anything missing, should be fixed, etc. Mr. Bosen thought it was thorough. Mr. Rokeach said he liked it. The Chair asked Mr. Pritchard how long it took him and how difficult it was. Mr. Pritchard responded it took a while however, after doing this he felt he knew the case better therefore; it probably is a good thing to do.

The Chair asked in the long-run would this be something they could get an administrative assistant to do. Mr. Pritchard said he doesn't think so. He said he has read a lot of NH statutes and case law and they probably won't get an administrative person to do it. He thinks as long as they can do it, then they should do it.

Mr. Pritchard explained that not every application is the same. He said one would hope there won't be procedural concerns in most of them, the merits will be the same, and the comments on each of the conditions. He said the special exception was rather quick and the variance which took some time.

Mr. Heffernan joined the meeting at 7:21pm.

## **PUBLIC HEARING FOR APPLICATION OF PITTSFIELD SELF-STORAGE FOR A VARIANCE FROM PITTSFIELD ZONING ORDINANCE, ARTICLE 3, SECTION 3, (C), NUMBER OF PRINCIPAL STRUCTURES PERMITTED ON A SINGLE LOT, WITH THE PURPOSE OF THE VARIANCE BEING, FIRST, TO PERMIT THE CONSTRUCTION OF FOUR MULTI-LOCKER SELF-STORAGE BUILDINGS AS FOUR PRINCIPAL BUILDINGS TO BE ADMINISTERED FROM OFF THE LOT AND, SECOND, TO ENABLE THE APPLICANT TO SEEL THE FOUR PROPOSED STORAGE-LOCKER BUILDINGS AWAY FROM THE EXISTING SELF-STORAGE FACILITY.**

Mr. Bosen recused himself.

The Chair said they needed to determine if there was any regional impact. He did not see any regional impact outside of Pittsfield.

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

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

The Chair opened the hearing to the public.

The Chair asked the applicant if they are willing to proceed with only a four member board. Mr. Cronin said they were willing to proceed.

Mr. Cronin of Cronin, Bisson, and Zalinsky, introduced himself to the Board and briefly explained there was a public hearing for a special exception which was approved and then a request for rehearing. He said there were questions as to abutter status to an adjacent part of land at which time they did not reject to a rehearing. They did that because he was concerned about a condition of approval in the original special exception which had a condition to consolidate lots as appeared to be required. Under recent legislation in NH 674:39a it is not something a board can impose on an applicant. However, it is of no matter at this time because the board elected to have a rehearing.

Mr. Cronin said he brings this up because the memo and asked if the board members reviewed it before the hearing. He also asked if they usually get a memo of this length with the opinions in it with these cases. The Chair said they did review it before the hearing. He explained they requested Mr. Pritchard provide a brief laying out the arguments for the case because a string of missteps made due to a lack of understanding by the board. It was not meant to impose any decisions or tell the board what to do.

Mr. Cronin said he thinks it creates a problem for the board and for the town. The thrust of it seems to be a concern about seeking a variance for a condition of the special exception. He thinks Mr. Pritchard does an amazing job when he analyzing the cases and the law for someone who isn't a licensed lawyer. One of the dangers of unauthorized practice of law sometimes they don't have the full breath of the law.

Mr. Cronin said the concern about the variance not being allowed because it seeks to wave a condition of a special exception is mute because they have already agreed to rehear the case. When they get to the special exception they may want to talk about conditions or facilities they deem are adequate because that's conditions in the special exception. It leads down the path and taints the due process requirements of the variance because it's not correct as a matter of law and opinions of law should not be shared with them before the hearing.

Mr. Cronin explained the variance application was prompted by looking at the record in the prior special exception which was granted. He reviewed the ordinance and noted the ordinance does provide for the development of self-storage facilities in this particular zone by special exception. In the deliberations there were some questions of having multiple structures without a designation of a primary structure. This is an interpretation of the ordinance he believes conflicts with the glant of right to use for self-storage facilities because by their nature they are the type of buildings which abut the storage facilities.

Mr. Cronin tried to challenge himself to determine what the health, wellness, and safety benefit of designating one building as primary and the other as accessory. He had thought the easiest way to clean the mess up procedurally was to seek a variance. They are seeking a variance from the provision which prohibits multiple structures. Mr. Pritchard's analysis says each structure would need the proper frontage which he thinks the analysis is more akin to a single family use.

Mr. Cronin explained the five criteria, by order of the Supreme Court, is interpreted by the spirit and intent provision of the ordinance is one they look at together with the public interest prong. There are two prongs and he thinks Mr. Pritchard is correct there is a double standard. One of the prongs is if the variance is granted will it alter the essential character of the neighborhood. It will not alter the character of the neighborhood because there is a cemetery which wouldn't be influenced by this facility.

Mr. Cronin said the next criteria of diminish the value of surrounding properties. He said Ms. Ward has come and raised issues with this because of the adjacent use directly next to her property. If there are issues with that there are mechanisms in place to enforce it and the Planning Board always has revocation proceedings if necessary. He said if they look at the layout of the land and what is proposed there will be no negative impact to the surrounding properties.

Mr. Cronin explained they enlisted the services from KW Metropolitan , Mr. Weidacher, to render an opinion as to whether or not the use would diminish the surrounding properties. He read a letter from Mr. Weidacher which said;

*“Based on my 35 years as a real estate broker, managing over 400 licensees, it is my professional opinion the value of the surrounding properties will not be diminished if the variance is granted. Moreover, the essential character of the neighborhood will not change if the variance is granted. Route 28 is busy commercial highway with 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 that the cemetery will not suffer any differential impact. The use is consistent with any adjacent storage facilities.”*

Mr. Cronin said substantial justice is a subjective and balancing test. The court always struggles for what this means. The question is will there be harm to the public if this is granted that outweighs the harm to the applicant if not allowed. In this case the facility is being used and whether they designate one of the buildings as primary or put an office in the front won't have an impact on an abutter that might object. However, not allowing it will deprive the property owner of the use that is contemplated by the ordinance.

Mr. Cronin said since the Simplex case the hardship criteria has been relaxed. Justice Horton on the Supreme Court was a land use lawyer from Nashua and was the first one to voice some opinion that the standard of hardship test was wrong and should be reversed. That got to the legislature and has been relaxed. All they have to establish is if there is a fair relationship between the terms of the ordinance in its application to this property. If

they apply it to the lot and use, does it make sense? The relationship to this does not seem to advance any health, safety or welfare concern.

Mr. Cronin discussed the reasonable use criteria. He thinks the Board determined in their prior case that it is reasonable use. The use of the site for self-storage makes good sense for the location based on the surrounding properties and the way it is configured.

Mr. Cronin stated they think they meet all of the criteria for a variance and ask the Board to look favorably on it.

Mr. Cronin presented a letter which may be more germane to the special exception. The letter was from 603 Storage discussing the operation he has similar to this self-storage. He has many facilities that do not have a offices on site.. The current trend in his facility is it is managed remotely, have a perimeter fence that is coded, each unit has its own independent locker security, and sites are well lit and have remote visible security that function very well. It is a way to provide an affordable and manageable mechanism to people who have storage needs. He incorporated the prior minutes of the special exception.

Mr. Lewis, Northpoint Engineering, said this is the trend. In his office they do offices across New Hampshire. They do not have offices onsite and are involved remote administration. There is a larger facility in Alton under construction that doesn't have any onsite offices. The variance application is talking about requiring an office versus not requiring it.

The Chair opened discussion for the Board.

Mr. Heffernan asked about the new law NH RSA 674:39a and what it says. Mr. Cronin explained it is an unmerger provision. Historically, provisions were put in which zoning ordinance would allow merging lots under certain provisions. It became the standard in New Hampshire; a lot of people having lots that were not consolidated. There was a case that went up to the Supreme Court where Barbara Aichinger had two lots on Governors Island which didn't comply with the frontage ordinance. The legislature passed a statute (NH RSA 674:39a) which gave property owners to unmerge lots which were done without their approval or voluntarily.

Mr. Cronin said if that condition was on and there was no request for rehearing he could file a petition of quiet title and asked to have the condition removed because it violates the voluntary merger piece. In fairness to the Board, looking at the minutes, it could be argued by the town the condition was voluntarily. The Chair stated it started with the Planning Board and bounced back. Mr. Cronin said his client would like to address it squarely on its merits and let the Board makes its decision so there is a clear record.

The Chair opened the hearing to public input.

Mr. St. George, an abutter, doesn't see this as a bad thing for the neighborhood. He has self-storage on property that abuts it. He doesn't think it will hurt his property values and will be an asset to the town. It will be a source of property taxes without using services costing the town.

Mr. Carver, No Worry Storage in Pittsfield, has concerns of property values diminishing. He discussed valuing a business. They have 70,000 plus square feet of storage in Pittsfield which is about three times self-storage as any urban center in the country. He is not full and he suspects Pittsfield Self-Storage isn't. This property is highly visible from Route 28 and suggested other means of use on at the facility. If they add additional storage it will cause one of the storage businesses in town to go out of business much like the five pizza places they have in town at one time.

Mr. George Sims, Concord Hill Road resident, believes it is the type of industry they want in Pittsfield. He thinks there is a need and they don't have too many.

Mrs. Ward said she is not going to speak to the Board regarding her objections as they have heard them before. She believes the criteria talks about neighborhood values not just abutters. She is a little bit different than the other abutters in the neighborhood town. Pittsfield Self-Storage has been her neighbor since 2006 and they have not been a good neighbor to her. She spoke of a time where Pittsfield Self-Storage notified her they would be crossing her property line to put up a sign; they were not asking her permission just telling her. When the sign company showed up they put up the sign and demolished part of the stone wall which was the property line. That is a misdemeanor crime under RSA 472:6. She called the police twice that day asking to have Pittsfield Self-Storage have the sign company off her property. They were told they could leave their equipment there and not to pass over her property again. There was no vegetation buffer or ten foot buffer and she can see everything there from her residence. There is junk parked out in the snow storage area which she has provided evidence to the Board. She expressed further concern for Pittsfield Self-Storage not being a good neighbor to her.

The Chair asked Mrs. Ward if she still thinks putting another operation further away from her it will create more issues. Mrs. Ward said the Rustic Crust trucks come down her road and a lot of people try to avoid the light so she has a lot of traffic.

Ms. Johnston, the onsite manager of Pittsfield Self-Storage, has been there for 10 years and only had one interaction with Mrs. Ward. She was not there when they erected the sign so she had nothing to say about that. She explained it was during the Balloon Rally a few years ago and there were a lot of motor homes that showed up. The first night there was fifteen lots snapped but nothing was stolen. She informed Mrs. Ward what happened and that they had been in touch with the police.

Ms. Johnston said they have less than five percent vacancy and have not lowered the prices since she has been there.

The Chair asked how they use the current office. Ms. Johnston responded it is the base of operation where people come in to pay. The office is opened on a part-time basis and the hours of operation vary. She goes in every day to make sure nothing gets left out. They do not have anyone working on vehicles there. A lot of people have motorcycles or antique cars and sometimes they take them out but they are not allowed to block anyone in.

Mr. Rokeach asked what is in the snow storage area. The Chair explained the site plan has a snow storage area which will be converted to parking spots. Ms. Johnston replied there are parking spaces for vehicles. Mr. Rokeach asked if there is equipment or vehicles which are stored there for more than one or two nights.

Ms. Sims, Concord Hill Road, expressed concern for allowing businesses to come in and develop. They are not just Pittsfield; they have always been a tri-community. Having been involved with extended businesses like construction, people do not have barns for storage in these new homes. There is a need for this space and even though they are looking at the blueprint for Pittsfield, they need to look at the community. It is not going to have an impact on the school and town. Her son is buried at the cemetery in the neighborhood and it is peaceful. There is normal business traffic during the day.

Mr. Murphy, 603 Storage, has seven facilities and he doesn't have manned offices and they work well. He thinks they have a higher level of service than onsite office storages. They have one facility in Wakefield similar to the Pittsfield area of which they serve multiple towns in the area.

The Chair asked Mr. Murphy how customers get in touch with them and how the business operates. Mr. Murphy said there are signs on the site telling customers to call, text or email if they are needed. They are available from 8am-8pm. They can rent units as needed and have some ready to go. They complete the rental process over the phone with contracts in the units for customers to read and sign. They have been doing this for 15 years so they have perfected the process. Customers can do everything right over their website. He has not met most of his customers.

The Chair asked Mr. Murphy if a next door neighbor has an issue with one of the renters how they handle it if they are not there. Mr. Murphy responded it depends on the issue. They will call the police if it is elevated to that point and they are on call and can be there if there is an emergency.

Mr. Pritchard said Mr. Cronin suggested the reports he prepared for the Board were improper and might bias the Board. He referenced RSA 676 Section 5 gives the Board the right to a third party review. He explained, when asked by the Board to do this and Mr. Cronin was present at, he would follow the model Mr. Monahan uses and who does for several years and various other towns.

Mr. Pritchard said Mr. Cronin sighted RSA 674:39a and its prohibition on involuntary lot mergers. He read Mr. Laughlin's discussion of NH practices

*“While the plain language of RSA 674:39a gave property owners the right to merge contiguous lots, the Supreme Court in Sutton vs. Gilford held that nothing in its language precluded a town from automatically merging substandard lots pursuant to its zoning ordinance. Despite dealing with a case with very difficult facts, the Supreme Court’s treatment of the merging doctrine in Sutton vs. Town of Gilford was thoughtful, consistent with good planning principals and consistent with half century of zoning laws in NH. The legislature’s response to the issues in the Sutton case was none of the above. Laws 2010 Chapter 345 amended RSA 674:39a , so called the involuntary lot merger statute, by adding the following sentence: no city, town, township, or village district may merge preexisting subdivided lots or parcels except upon the consent of the owner.” Since this amendment will presumably only apply prospectively, the amount of mischief created by it may be limited. The law does not appear invalidate involuntary mergers that are deemed to have occurred by operation of the law prior to the effective date. Nor does it appear to prevent the municipality from requiring a property owner to merge contiguous substandard lots as a condition proceeding to develop the lots; it merely states that the municipality itself may not merge them.”*

Mr. McDonough, Pittsfield Self-Storage, apologized to Mrs. Ward and doesn’t know what he did over the years to be a horrible neighbor. He explained the buffer did get disturbed but from Pine St to the rear of the barn was kept intact. The site work guy did clear up the stone wall. He said it came up in a meeting early on which he apologized for and planted 30 saplings. As far as the signing company, he does not have any recollection of the call and would have asked permission. He said Mrs. Ward has never come to him directly. Mr. Pritchard had suggested Mr. McDonough and Mrs. Ward meet and try to come to an agreement but Mrs. Ward didn’t want to meet.

Mr. Pritchard said he was a little confused by Mr. McDonough’s comment and if he was supposed to broker a discussion. The Chair said he didn’t take Mr. McDonough was saying Mr. Pritchard should broker a meeting. Mr. McDonough said he didn’t think Mr. Pritchard was going to broker a meeting. Mrs. Ward said the date suggested for a meeting was not enough notice and then Mr. McDonough went on vacation. It is hard for her to meet with him because Mr. McDonough isn’t physically there.

The Chair asked Mr. McDonough if he has received the complaints Mrs. Ward had forwarded to the Board. Mr. McDonough said he has received them. The Chair asked if there is room to try and bridge the gap to get Mrs. Ward on board. Mr. McDonough said he hopes so. The Chair asked about the complaints of noise and the junk yard in the snow storage area. Mr. McDonough said he is not sure what the noise was. There shouldn’t be a dump truck coming to empty a dumpster because they don’t have one. Ms. Johnston is there on a day to day basis and knows more of what is going on.

The Chair asked about the junk storage in the snow removal area. Mr. McDonough said it is a paid outside storage area and there may be some not so nice vehicles stored there. He



can try to address it in a number of ways. He doesn't want to be a bad neighbor; he didn't realize it was Mrs. Ward they were upsetting until this whole thing got started. He is willing to work with her.

The Chair asked Mrs. Ward about the noise. Mrs. Ward said it is every Tuesday and Friday between 7:00am to 7:15am with a double truck and are there for a while.

The Chair asked if a fence would alleviate the storage issues. Mrs. Ward expressed concern with driving by there and it's seeing it every time she goes by. She thought they weren't supposed to have outside storage and didn't see outside storage in the site plan. There is a little bit of buffer but not much as they go further down. She thinks it will be more noise with the additional building.

Mr. St. George said he believes the noise is Waste Management leaving their dumpster on High Street twice a week. They are hauling two dumpsters in and shuffling them in town somewhere. They wanted to unload on his property and he told them no. Mrs. Ward said it is right in front of the storage facility. Mr. St. George said when the truck leaves it is not going very far. Mrs. Ward thanked Mr. St. George for the information. Mr. McDonough said he can call Waste Management. The Chair said it would be interesting to explore because of town safety.

The Chair closed the public input.

Mr. Cronin responded to Mr. Pritchard's comment saying he is not a third party by Mr. Pritchard's own omission as he is the board's secretary. In respect to his analysis of the merger, he agrees with Mr. Pritchard lots can't be merged without approval of the property owner.

Mr. Cronin addressed some of Mrs. Ward's concerns and that he is sympathetic to her having a house in a light industrial zone. Some of the things allowed in the zone under a special exception on the Table of Uses (airport, hospital, motel, personal service, sawmill, etc.), if they use it as a standard of variance then the storage facility is a benign use. It is easy to drift between the two hearings on the schedule. Most of the testimony was with respect to the existing facility and there are some mechanisms in place and Mr. McDonough and Mrs. Ward can get together to resolve some of the issues. It looks like one of the gentlemen who spoke solved one of the issues.

Mr. Cronin further spoke of the comments regarding outside storage and the site plan says there is no outside storage.

Mr. Cronin said the multiple storage facilities in the town is an outcome of capitalism and is not a base to suggest a diminished property values.

Mr. Cronin referenced the special exception application for purposes of the traffic analysis. It [the storage facility] is a very low traffic generator compared to other uses allowed without a special exception in the neighborhood.

Mr. Cronin asked that in their discussion, the Board take the information submitted and the testimony by the witnesses to approve the variance in their deliberative session.

The Chair expressed concern with keeping in the character of the neighborhood and not diminishing surrounding property values. He asked about anyone addressing any issues and the owner's ability to respond is strictly limited to the proximity to the site. Mr. McDonough is relatively local and response time would be quick and easy to do. However, if he was to sell the property to someone further up field the concern is the surrounding area would be affected by not having someone operating the facility.

Mr. Cronin said the zoning ordinance doesn't require an office. If there was an office there and staffed, it is unlikely the owners would want the staff to handle any significant problems such as neighbor issues. He gave an example of a client of his whom owns over 1,000 rental properties and very few have onsite managers. His client has the ability to dispatch the appropriate people at the appropriate times.

The Chair said his concern is the zoning ordinance does require a principal building on the lot.

Mr. Lewis said this issue came up at the Planning Board. It was suggested at the time that they merge the lots and have one building. They have discussed bridging the lots as well as putting an office on the property. There is no requirement to have a staffed office. It seems logical to have it done different as the trend is to have an offsite office. He thinks the variance is saying if they have two buildings they need an office but if they only had one they wouldn't.

The Chair closed the hearing to the applicant and opened it to discussion with the Board. He clarified they were discussing the variance and not the project as a whole in regards to the special exception.

The Chair asked if they can grant a variance at all. He asked if it is asking for a variance from a requirement for the special exception which they have been shown is not allowed; they can't grant a variance from a requirement from a special exception.

Mr. Rokeach asked the Chair if he is referencing the fact that it is a variance from the number of principal structures permitted on a single lot. The Chair said it is after the Table of Uses. Mr. Rokeach said it is not listed as a requirement for a special exception. The Chair said that is correct, except for the requirements for the special exceptions is that it conforms to the rest of the zoning ordinance which is the whole reason they are here.

Mr. Palmer read from the NH Practices law book in talking about variance from the terms of a special exemption "the question sometimes arises as to whether an applicant for a particular land use can obtain a variance from one term of the special exemption in order to qualify for special exemption. For example, if a zoning ordinance permits the stables

of two horses on a lot by special exemptions provide seven conditions were met including a requirement for two and a half acres, could the board of adjustment grant a variance to the landowner who had two acres and then special exemption if all of the other conditions were met. The short answer is no. But the applicant could seek a variance for the project overall rather than a special exemption.”

The Chair said this is what is prompting the question can they grant the variance specifically to allow the special exception process to go forward or does Mr. McDonough have to apply for a variance for the entire project. Mr. Palmer thinks he needs to apply for a variance for the project.

The Chair explained the question in the example is the two and a half acre rule was one of the conditions for having horses. This primary structure question is one of the general requirements of the ordinances not a specific requirement for a self-storage unit which is why they are having this discussion.

Mr. Rokeach said that was one of his questions; rather it is a requirement for the special exception or of the zoning ordinance in general. He thinks it is a requirement of the zoning ordinance in general but the special exception needs to otherwise comply with the zoning ordinances.

The Chair said if it is a requirement for the special exception to comply with all the zoning ordinances then they would reject the application for a variance, reject the applicant for special exception and then suggest the applicant reapply for a variance as a whole. The other option is if they determine it is a requirement for the zoning ordinance that they can ask for a variance from and then proceed as to whether it meets the requirements for a variance. They need to determine one way or the other.

Mr. Heffernan said it looks like there is too much ambiguity there and he thinks for the sake of saving some money on Mr. Cronin, it should be no and come back and get a variance. He thinks it is a good project and thinks the variance thing will clean it up nicely.

The Chair asked the board if he could open it back up and ask Mr. Cronin for an opinion.

Mr. Rokeach said he would like to see the rest of the section from NH Practices which Mr. Pritchard provided as part of his review. There is a section cut off and he would like to see the next page.

The Chair asked Mr. Cronin if they deny this and turn it back to them to ask for the variance on the entire project how it will hurt them. Mr. Cronin responded it is time and money. He thinks it is a more difficult standard for them to approve. He said Mr. Laughlin’s opinions are not the law. Pittsfield’s ordinance tells them exactly what the conditions are for a special exception and the section they talked about is not in there. They can’t deny someone from seeking a variance because they need a variance. It is up

to Mr. McDonough what his plans are if the Board denies it. The Chair agreed it would be much more difficult.

The Chair asked Mr. Palmer if he is on the same page as Mr. Heffernan. Mr. Palmer agreed with Mr. Heffernan on the variance.

Mr. Rokeach said the question is can they apply a variance against the zoning ordinance and then grant a special exception. The Chair agreed. Mr. Rokeach said if they say no, they can't and it has to be a variance for the entire project then it applies to everything. The question is rather they can grant the special exception against the modified zoning ordinance. The Chair asked Mr. Rokeach his opinion on it.

Mr. Rokeach said there is nothing in Article VI for any conditions for granting special exceptions that requires that it complies with the zoning ordinance. There is only "the use shall be in harmony with the general purpose and intent of the zoning ordinance." The Chair asked if he is saying yes. Mr. Rokeach said he thinks so but still wants to see that page.

The Chair asked if they can grant a variance for anything else such as a property not meeting the dimension of the requirements because it was too small, could they grant a special exception to allow development on that lot and then turn around and grant a special exception for putting a self-storage unit on it. The zoning ordinance is allowing the special exception therefore the lot should conform to the way it is zoned in the ordinance. He asked how they start manipulating what that zone is supposed to look like. Mr. Rokeach said it is the clause "the use shall be in harmony with the general purpose and intent of the zoning ordinances."

The Chair replied that is where he is having trouble getting to where they could apply a variance anywhere and then grant a special exception because the special exception assumes the lot would be in harmony with the zoning ordinances. Mr. Rokeach said with the general purpose and intent. The Chair said the Table of Uses says in a light industrial/commercial lot there can be a self-storage facility with a special exception assuming it would operate how the commercial zone is supposed to operate. If they mess with how they zoned it who says they would have allowed the use with a special exception. In which case, they would have to get a variance for the use in the area.

Mr. Heffernan said it's a chicken and egg thing so he isn't sure what to say about it. The Chair said he doesn't see how they can grant the variance and then grant a special exception for a use because the allowing for a special exception assumes the property met all the other zoning requirements. He is saying they can go anywhere with this and he can't see how they can manipulate the zoning ordinance and then assume that the Table of Use would stay consistent. He thinks the route to go is to deny the variance.

Mr. Rokeach thinks it is specifically referring to the conditions for granting a special exception which is not what they are discussing. In *Stone v. Cray* the court stated "besides those entitled to enact an ordinance, the Board of Adjustment may also decide

the conditions for granting an exception is held not to be in purview of the act.” They are not talking about granting a special exception or modifying the conditions that need to be fulfilled for them to grant a special exception. They are talking about modifying another portion of the zoning ordinance. If they were talking about anything in section six which outlines the requirements for a special exception then it would be a different story.

Mr. Rokeach is not reading anything saying they can’t approve a variance for something else that is not relevant to whether they can grant a special exception or not and then grant a special exception which is not dependent on a variance.

The Chair said variances go along with the property and if they grant it they could allow multiple uses (for example, multiple auto repair shops) in the area because there is no requirement for primary structure. Mr. Rokeach said the board of adjustment may attach case specific conditions. The Chair said he doesn’t see how they can grant the variance without taking into account there is a self-storage facility going into this position. Mr. Rokeach agreed. The Chair said the proper way to apply for that is to apply for a self-storage facility variance.

Mr. Rokeach said that would still need to provide an exception from the single principal building part. The Chair responded he is saying the variance should ask for a self-storage facility with no primary structure to grant this. Mr. Rokeach agreed that would also work and would be easier procedurally.

Mr. Rokeach said they can attach case specific adjustments but the applicant is not going to request that they attach a requirement to the variance. Mr. Cronin said they will stipulate to the condition that it only applies as long as it is operated as a self-storage facility in accordance with a plan the Planning Board may approve. The Chair understands what they are trying to do but he sees it as fundamentally changing the application which puts them into editing it on the fly. Mr. Rokeach replied if they applied with the intent of it being a self-storage facility, the Board would be attaching the condition that the variance applies only for self-storage facilities.

The Chair said he is still hung up on the variance for a special exception requirement.

Mr. Cronin said if they look at section six in Article II criteria “the use shall not diminish the value of the surrounding properties” and if they were asking for a variance from that then the argument would be valid but they are not asking for that. It is the same with condition one “the use shall not be detrimental to the character of the neighborhood.”

The Chair said his objection to this is the fact the usage chart was written assuming the lots were going to conform to the zoning ordinances in each of these districts. If the lot wasn’t going to conform who is to say the town would allow a special exception on it. He sees them writing zoning ordinances on it and that is where he gets hung up on it. Mr. Palmer said they don’t want to get into that.

Mr. Rokeach said it would be different if they were talking about something directly relevant whether they could apply the special exception. For example, if they were modifying the definition for a self-storage facility but they are not talking about doing anything like that. The Chair said they are modifying the number of principal structures permitted. It is a requirement they have to fulfill in order to grant the special exception. Mr. Rokeach disagreed with the Chair.

Mr. Rokeach read Article VI Section 3a “the use shall be in harmony with the general purpose and intent of the zoning ordinance.”

Mr. Cronin asked if, as there seems to be a debate among the members, they could table this deliberation, hear the special exception, talk to Mr. McDonough and see if he would stipulate the condition he maintains an office at the new facility. If they look at the special exception with the condition they may withdraw the variance because it would no longer be necessary. There seems to be a disagreement among two members and there are only four members. He would still want them to vote tonight but he doesn't know that continuing to argue will change anyone's mind.

The Chair asked Mr. Rokeach if they were to take a vote would he say yes they could fundamentally grant the variance because it is not a condition of the special exception. Mr. Rokeach said yes and Mr. Heffernan agreed. Mr. Palmer said he would say no and the Chair would say no.

The Chair called a five minute recess at 9:06pm.

The Chair called the meeting back at 9:17pm.

**REHEARING FOR THE APPLICATION OF PITTSIFELD SELF-STORAGE FOR SPECIAL EXCEPTION FOR THE SELF-STORAGE FACILITY ACCORDING TO THE ZONING ORDINANCE ARTICLE 3 SECTION 3B (2) AND (6) AND ARTICLE 6 SECTION 2 AND 3 FOR 4 MULTIPLE SELF-STORAGE BUILDINGS AND ASSOCIATED DRIVEWAYS, PARKING, DRAINAGE, AND STORM WATER MANAGEMENT INFRASTRUCTURE ON HIGH STREET TAP MAP R-15 LOT 30 IN THE LIGHT INDUSTRIAL/COMMERCIAL ZONING DISTRICT. TO BE ADMINISTERED BY THE EXISTING THAT THE APPLICANT OWNS ON AN ABUTTING TAX MAP R-15 LOT 30-1.**

The Chair asked if there was any regional impact.

Motion. Mr. Heffernan made a motion there was no regional 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 informed the board that during the break he spoke to his client about the hearing thus far. He mentioned his earlier statement that Mr. McDonough might be willing to do an office on the property but after speaking to Mr. Lewis, he was cautioned that may be rather expensive so he is not sure if his client would still be willing to do it.

Mr. Cronin said looking at the state of affairs on the variance if there was a vote it would probably be split which is a loss for them. His recourse would be to file an appeal, a motion for reconsideration which would cost the taxpayers a lot of money and wouldn't solve anything.

Mr. Cronin said he heard early in the deliberations a general variance would work. They will give that a try. They ask to continue the hearing and come back with the general variance for the project. The Chair asked if they are asking the Board to hear the special exception case without the office add on and with no variance. Mr. Cronin clarified to continue what is on the agenda because if they get the general variance then the special exception becomes mute. He thinks the appropriate recourse at this time would be for them to appeal the variance.

#### **REHEAR THE APPLICATION FOR SPECIAL EXCEPTION.**

The Chair opened the rehearing for special exception on the Pittsfield-Self Storage variance.

Mr. Cronin would like to table the rehearing and come back with a general variance but still not lose the rights and the record they have put forth. He asked the Board to continue the hearings for the two applications for 60 days and allow him to come back with a request for a general variance rather than going through reconsideration and appeal. If he is successful with the variance then the other two become mute.

The Chair asked why they wouldn't vote on rehearing of special exception since they have heard everything and it doesn't seem like anything new is coming. Mr. Cronin responded if they do a vote and it is denied then he would have to file a request for reconsideration and if that is denied he would have to appeal it. He would then join it with some other cases under Winslow for the coaching and involvement of Mr. Pritchard which gets ugly and he doesn't want to do. He would rather try to resolve this thing for everyone concerned and it seems the way to do it is to apply for a variance as a whole. If he goes down the appellate route they won't be able to hear the case as a whole because it would get moved to the Superior Court.

The Chair asked the Board what they thought of Mr. Cronin suggestion. Mr. Rokeach suggested they table the hearings given they are split. It would also be appropriate to seek the opinion of the town attorney if they were to vote on the hearings. He thinks what Mr. Cronin is proposing would hopefully resolve all of the outstanding issues and not force them to go down the procedural question.

The Chair asked if they should ask the town attorney about the procedural question.

Motion. Mr. Rokeach made a motion to table the application for special exception until they get an opinion from the town attorney. 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.

The Chair informed the applicant this would not be reopened until they have an opportunity to hear the variance on the overall project.

Mr. McDonough asked if the opinion letter from the town attorney would be made known to them. The Chair said it would be provided to them. Mr. McDonough said they may not need to come before them again. Mr. Cronin said he doesn't think they have enough time. The Chair informed them they would have the next hearing on October 25, 2018.

Motion. Mr. Heffernan made a motion to table the application for special exception to October 25, 2018 and seek an opinion from the town attorney. 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. Bosen rejoined the board.

#### **MEMBERS CONCERNS (CONT.)**

The Chair stated he also wanted to see them go through the appeals process to see what the legal opinion is on their memos.

The Chair wanted to discuss the memos Mr. Pritchard did. He liked them.

Mr. Pritchard expressed a strong exception to Mr. Cronin's suggestion he is not a third party view. He is not a voting board member or a third party; however, even if he was he could still do those memos. He quoted RSA 673 Sect 14:1 "reasons for disqualifications do not include knowledge of the facts involved gained in the performance of the member's official duties." The strategic initiative says they can come prepaid with all different motions and make all different preparations.

Mr. Bosen thinks it is important because some of these cases they come in not knowing what's going on. Going forward, he suggested they make sure there are no opinions just facts.

Mr. Rokeach expressed concern giving a legal opinion. Mr. Pritchard said he did not give a legal opinion. He gave them the background and the law.



Mr. Pritchard read Article 6 Section 2 Conditions for Special Exceptions in the Table of Uses and Districts says “every use that is of a type that Article 3 Sect 3(b)6 Table Uses and Districts lists within E Relative District shall be permitted in that district as a special exceptions upon the following conditions AND upon all other conditions in the zoning ordinances.” It seems they are struggling over all other conditions in the zoning ordinances are conditions on which a special exception is permitted. The word “AND” combines all other applicable conditions in the zoning ordinances with conditions A,B,C,D and E.

Mr. Rokeach said he was struggling with what is actually in the zoning ordinance. He doesn't think Mr. Pritchard quoted the RSA regarding the requirements for granting a special exception verbatim.

The Chair said he is most interested in at the moment is does the Board want Mr. Pritchard to continue writing the memos. Mr. Rokeach said he liked the memo and glad Mr. Pritchard brought things up; however there is a thin line of giving opinion and being presented with relevant case law and statute. He doesn't want to jeopardize anything by having someone who is not an attorney is giving a legal opinion.

Mr. Pritchard asked what he meant by giving a legal opinion.

Mr. Pritchard said he is not a decision maker and he can say anything he wants. The town attorney is also not a decision maker and can say what he wants. At the end of the day, the Board has to read the law and decide what it is.

Mr. Pritchard said in Shell Oil vs. Manchester they address this situation. He read Manchester Zoning Ordinance “if it [ Section 14(5)] creates an exception is the plaintiff automatically entitled to a permit on compliance on requirements set forth therein.” The holding in the court was yes they are automatically entitled to approval if he satisfies the conditions of the special exception.

Mr. Prichard said the section in Article 6 was rewritten to try to avoid what is happening now. The “and upon all other applicable conditions in the zoning ordinances” was not there before 2016. The Planning Board recognized without it if a person applied for a special exception and satisfied conditions A-E that use would be automatically entitled to approval and wouldn't have to comply with anything else, that is the nature of the special exception, which is why “and upon all other applicable conditions in the zoning ordinances” was added. Otherwise people would say they don't need to comply with the setbacks, multiple principle buildings, etc. because they are not conditions of the special exceptions.

Mr. Rokeach asked Mr. Pritchard to point him to the section he is referring to. Mr. Pritchard said it was on page 64.

The Chair asked the Board if they want to have Mr. Pritchard continue with the process. All the board members agreed to have Mr. Pritchard continue with the process.

**PUBLIC INPUT**

Mr. Cronin asked if this conversation was recorded. The Chair responded it was.

**ADJOURNMENT**

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

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

The Chair adjourned the meeting at 7:43pm.

APPROVED: October 25, 2018

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JAMES HETU, CHAIRMAN

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DATE