

**Town of Fitzwilliam**  
**Zoning Board of Adjustment**  
**March 24, 2020**

*Note: Due to the COVID-19 pandemic, the Zoning Board of Adjustment met remotely via phone/video conferencing, as allowed under NH Executive Order 2020-04, Emergency Order #12.*

**Members Present:** Dan Sutton, Acting Chairman; Chad Beede; Susan Massin; and Dan Baker, Selectmen's Representative.

**Members Absent:** Bob Handy, Vice Chair

**Staff Present:** Lori Nolan, Land Use Coordinator

**Guests Present:** Bob McGongale; Roderick Pierce

**Call to Order:** The Chair called the meeting to order at 7:00 PM.

**Public Hearing: Review of ZBA's Rules of Procedure**

Acting Chair Sutton opened the hearing and explained the need behind updating the Rules of Procedures. He also noted that the general procedure from the past is to hold two public hearings; the first hearing is to discuss and make changes to the rules, while voting on the changes would be made at the second hearing.

Discussion was held over "Officers – Clerk". Sutton advised that this officer's position was not used in the past, nor does the state require a clerk be elected. He suggested revising the section to appoint the Land Use Coordinator as the person holding the clerk duties. Beede suggested adding "or assigned designee".

Discussion then was held in regards to "Decisions". Sutton suggested 30 days as this was what the model rules of procedures used and is reasonable as the ZBA typically makes decisions within 7-10 days. Beede asked if the ZBA should spell out in detail what a decision (approval or denial) means. Sutton agreed with Beede's idea and suggested the ZBA have a template to follow on cases: Introduction; Findings; Decisions by the board; Notice of Appeal. Massin asked if decisions are typically made at the public hearings, why is 30 days required? Sutton explained at the decision is actually the written record. The 30 day timeline allows for the drafting and review process of the written record to take place.

Beede suggested that "Voting" be listed in order before "Decisions" as this is the natural and standard procedure.

Beede suggested adding "or Land Use Coordinator" to the "Voting" section to read: "*The chairperson may assign the task of drafting a motion to a board member or land use coordinator...*".

Baker suggested adding "or Land Use Coordinator" to the "Records" section to read: "*the records of the board shall be kept by the clerk or land use coordinator...*".

Nolan suggested replacing "community" with "Town of Fitzwilliam" under Members and Alternates section to read: "*Members must reside in the ~~community~~ Town of Fitzwilliam...*".

Sutton asked if any of the Board members had any further questions or comments. There being none, he closed the public hearing at 7:27 P.M.

**Public Hearing: Case #20-1 – Application for a Variance per Section 127-7 and 127-9 for Roderick and Alina Pierce** to allow a single family residence in a general business zone, located at Route 12 S., Tax Map 11, Lot 53

Sutton opened the hearing by introducing the board who were present to the applicant and explained that the ZBA has a required quorum but only three members are in attendance. An applicant has the right to be heard by a full board of five members or waive that right and continue the hearing. Sutton also explained that if the applicant chose to continue without a full board, the applicant can appeal but not on the basis that there was not a full board present. Pierce, the applicant, agreed and chose to continue with the hearing with three members present.

Sutton introduced the applicant – Rod Pierce – as a resident of Troy who has filed a variance in an industrial district for a residential house. This is an unusual case as this application was previously before this Board in 2016 (Case #10-16). The applicant was approved for the variance with no conditions but did not act on the variance within the required one year time period causing the variance to lapse. The applicant is now before the board requesting the variance be reestablished.

Sutton asked if the structure would be 50 ft wide; Pierce replied in the affirmative.

Sutton asked the height of the structure; Pierce was unsure but indicated it is a split-level house with typical construction. The terrain would make the structure look like a one-story house.

Sutton asked if the septic system approval is still valid; Pierce thought it was but it was discovered the approval lasted only four years, making the approval invalid. Sutton suggested that Carl Hagstrom (the septic system designer) renew the approval with the state and explained that this is typically a simple process. Sutton further suggested that having a valid septic system approval from the state could be a condition to the variance.

Beede asked the location of the well; Pierce indicated that it will be located approximately 25 feet to the back of the property on the south end of the building.

Sutton asked if any of the Board members had questions or comments. With there being none, he closed the public hearing at 7:44 P.M. and the Board entered into deliberations. He then read each of the five variance criteria and called for a vote on each one, as follows:

1. *The variance will not be contrary to the public interest.* Acting Chair Sutton referred to the 2016 Notice of Decision and noted there would not be substantial change to other uses in the immediate area. ***Unanimously passed.***
2. *The spirit of the ordinance is observed.* Acting Chair Sutton referred to the 2016 Notice of Decision and stated that the proposed use does not conflict. ***Unanimously passed.***
3. *Substantial justice is done.* Acting Chair Sutton referred to the 2016 Notice of Decision and stated that it is a small lot and an appropriate use. ***Unanimously passed.***
4. *There is no diminution of surrounding property values.* Acting Chair Sutton referred to the 2016 Notice of Decision and the board agreed. ***Unanimously passed.***
5. *Literal enforcement of the ordinance would result in unnecessary hardship.* Acting Chair Sutton referred to the 2016 Notice of Decision and agreed that the lot size does not lend itself to industrial use. This use can be considered appropriate. ***Unanimously passed.***

Acting Chair Sutton moved that all five criteria were unanimously passed by the Board. The variance was approved.

Sutton moved to include the following condition: Applicant will obtain an updated or renewed septic system approval from the State of New Hampshire. The board agreed unanimously.

Sutton asked the applicant if he was requesting the fees be waived for this hearing. Pierce indicated he would like the fees waived. Massin motioned to waive the ZBA Appeals fee of \$75.00, but still charge the other fees (notice filings) totaling \$64.50. Beede seconded. Motion passed unanimously.

### **Approval of Minutes**

The board reviewed the draft minutes from the ZBA meeting of December 10, 2019. Massin noted that she was a full member, not an alternate, at that meeting. Sutton corrected his statement from line 13 to read: *"He also noted that this application was previously before this Board, but needed Planning Board to review the wetland protection overlay district portion first."* Sutton also corrected one typo on line 37. Sutton motioned to accept the minutes with edits. Beede seconded. Motion passed unanimously.

### **Other Business**

Sutton motioned to thank Land Use Coordinator Lori Nolan for setting up the phone/video conferencing for the meeting. Massin seconded. Motion passed unanimously.

Sutton motioned to recommend Bob McGongale as a full member of the ZBA. Beede seconded. Motion passed unanimously.

With no other business to discuss, Beede motioned to adjourn the meeting. Massin seconded. Motion passed unanimously.

The meeting was adjourned at 8:02 PM.

Respectfully Submitted,  
Lori Nolan  
Land Use Coordinator

**Minutes approved as written on May 12.**