

**Kingston Planning Board
Public Hearing**

**Joint Hearing
Zoning Board of Adjustment**

April 18, 2017

The Chairman called the meeting to order at 6:45 PM. There were no challenges to the legality of the meeting.

Members in attendance:

Glenn Coppelman, Chair
Peter Coffin, V. Chair
Carol Croteau
Ernie Landry (Alternate)

Chris Bashaw
Lynne Merrill

Members absent: Mark Heitz, BOS rep.

ZBA Members in Attendance:

Ellie Alessio, Chair
Ray Donald, V. Chair
Larry Greenbaum

Charles Hart
Richard Johnson
Peter Coffin

Members absent: Board note: Peter Coffin, member of the ZBA, served as a member of the Planning Board for this hearing; stepping down from the ZBA for this hearing.

Also in Attendance: Glenn Greenwood, Circuit Rider/Planner; Ellen Faulconer, Board Alternate/Admin. Asst.; Virginia Morse, Chair, HDC; Bill Seaman, Fire Chief; Dennis Quintal, Town Engineer; Danna Truslow, hydrogeologist consultant for the Board.

Mr. Coppelman explained the process for the joint hearing; he introduced the Planning Board members. Ms. Alessio introduced the members of the ZBA.

Paul Amoroso
Khalil Bourouphael
17 and 19 Highland Road
Tax Map U1-38,47,48

Tim Lavallo of James Lavallo Associates reviewed the history of the parcel; parcel U-38 was shared by the two applicants; the proposal was to reconfigure the 3 lots into 2 lots. He explained that they needed a variance as they were asking for a lot line change and the existing garage would then only be 7.8 feet from the lot line; he added that this was similar to other existing

conditions in the neighborhood. He continued that they were trying to clean up the conditions and keep the houses and septic systems on one lot instead of on a shared lot. Mr. Quintal had no comments.

Mr. Greenwood noted that the plan used the word “proposed” for the Bourouphael septic system and it had been installed; that word will be removed from the plan prior to signing; he stated that new copies of the updated deeds would need to be provided; Mr. Lavalley agreed to these changes. Mr. Greenwood noted that the monumentation needed to be documented: the plan should show the type of monumentation and a certificate of monumentation needed to be provided once they were set. He stated that this was the best result for the type of restraints in this area of town. Mr. Quintal asked about a new tax map number. Mr. Lavalley said the intent was to actually have lot #38 vanish as it was being added to lots 48 and 47. Mr. Greenwood said the finalized deeds would show that there will now be only two lots; again clarifying that lot 38 will cease to exist and the land split in ½ and merged into lots 48 and 47. Ms. Merrill wanted the minutes to be clear that the merger of these lots from three to two was being done voluntarily.

ZBA:

Mr. Hart asked about clarification of the road status and whether the road bisecting the lot was an issue. Mr. Greenwood explained that case law states that platting of the road does not cause a subdivision; a road in the middle of the property does not create an additional lot. Mr. Donald stated that the lots become less non-conforming with this change.

Ms. Alessio explained that the ZBA had received an application for an area variance but could not reviewed and granted for a lot line that didn’t exist adding that if the Planning Board approved the Lot Line Adjustment then the ZBA could then determine an area variance for the lot line setback. Mr. Lavalley said the structure was 7.8 feet from the shortest distance to the lot line so the variance request was for 12.2 feet.

Department Comments:

Highway: need maintenance easements on road frontage: 10 foot easement on road frontage on lots on Hooke Avenue and 10 foot easement road frontage on lots on Highland Road; Mr. Lavalley checked with the property owners who agreed to this easement; it will be added to the plan. Mr. Coppelman explained that it did not change the lot dimensions, it just provided a maintenance easement.

Public Comment:

Roger Clark, owner of property at U1-40, U1-24, U1-49,50 voiced his approval of the proposal.

Mr. Coppelman noted that properties in this lake area are a real challenge as they were originally summer camps changed into permanent residential housing; the change for the better is a good thing. He asked if there were any further questions from the Boards. Conditions of approval

were reviewed; any requirement for adding any variances to the plan was determined to be a ZBA condition.

MM&S to accept the plans as proposed with the following conditions:

- 1. The Town receives the deeds to document details of the final 2 properties**
- 2. New granite or concrete bounds at the two lot corners to be placed and also indicated on the plan.**
- 3. Need Certificate of Monumentation once the bounds are set.**
- 4. Plans being signed have the 10 foot easements for road maintenance for the resulting lots/properties on Hooke Avenue and Highland Avenue.**
- 5. Parcel “B”: remove “proposed” for the septic as it is existing**
- 6. Need to add an endorsement block.**

(Motion by Mr. Bakie, second by Ms. Croteau) **PUNA**

ZBA Hearing:

Ms. Alessio asked the Board for any further discussion. She read the variance requested by the applicant at 17 Highland Road; 13 foot variance for the garage to the lot line pending meeting the conditions proposed by the Planning Board.

Ms. Alessio read the variance criteria for the Board noting that all 5 would need to pass; each Board member voted on the criteria. Ms. Alessio read the results.

- Diminution of property values: 5 - “no”
- Public interest: 4 – “yes”, 1 – “no”
- Unnecessary hardship: 4 – “yes”, 1 – “no”
- Justice: 5 – “yes”
- Contrary to Spirit of Ordinance: 5 – “no”

Ms. Alessio noted that all 5 criteria had passed.

MM&S to grant the requested variance as discussed pending final acceptance of the plan by the Planning Board; any variance granted should be noted on the plan. (Motion by Mr. Donald, second by Mr. Greenbaum) **PUNA**

Ms. Alessio explained to the applicant that they should wait 30 days before moving forward as that was the timeframe in which someone could come forward with new information to ask for reconsideration of the ZBA’s decision. Mr. Lavalley thanked the two Boards, on behalf of himself and his clients, for having the joint hearing.

Ms. Alessio stated that it was a pleasure working with the Planning Board on this hearing prior to closing the ZBA portion of the hearing.

All American Assisted Living
4 East Way
Tax Map R34 Lot 71B

Mr. Chadwick appeared before the Planning Board on behalf of the applicant.

Mr. Coppelman explained that this was a continuation of a proposed assisted living facility; adding that there were comments received from the Dennis Quintal, Town Engineer; Glenn Greenwood, Planner and Danna Truslow, hydrogeologist consultant for the Board. He added that the Technical Review Committee had also met; there were other submissions from Department Heads.

Mr. Chadwick asked if the Board would first accept the application for jurisdiction then continue with discussion of the proposal. Mr. Coppelman explained that the Board can have any of the discussion without accepting the plan for jurisdiction first adding that the Board needed a complete enough plan; he said that he was not sure the plan was at that point yet and asked Mr. Greenwood for his guidance on this topic. Mr. Greenwood said he was ambivalent at this point about accepting jurisdiction as a conditional use permit still needed to be discussed which needed input from the Conservation Commission; he is not confident regarding the easement needed from the Town for the well. He added that if the State is unhappy with the sale of the property and giving away develop-ability of the land due to large easement, then he would not be happy with starting the “jurisdictional” ball rolling.

Mr. Chadwick introduced Patricia Panciocco, attorney working on the land issues with the State; she had visited and written to NHDOT and spoken with the Attorney General today and hoped to speak with them again soon. She gave some history on the property. In 1963, the property was bisected; the westerly end had no access so the State bought the whole piece. In the 1970's, it was determined to be “surplus” land meaning that it could be sold; if it is determined to be surplus, an appraisal can be done and then the land could be sold. At that time, it did not go forward. In the early 1980's, that happened again; it was determined to be surplus; 39:C requires that the land be offered to the Town first; the Town purchased the land for \$6000. At that time, a “reverter” clause was part of the conditions of the sale. Ms. Panciocco explained that this was like a “first right of refusal” which requires that the Town has to offer the land back to the State for \$6,000, the original purchase price. Ms. Panciocco explained that the other option to the applicant, instead of purchasing the property, was an easement for the well radius but this is also a property interest issue and as such the “reverter” issue is that while the Town could create the easement but the State, per the reverter clause, still has priority for the land and the well easement would be wiped out. The issue being that the site requires commercial funding and clear ownership is needed. She continued that they need to eliminate the “reverter” and this issue does not seem insurmountable as it had been deemed “surplus” twice before but it could take weeks or months as all the State departments need to be heard from. Ms. Panciocco continued that chances are good that it will be determined “surplus”; they have started the ball rolling but it could take some time. Mr. Greenwood confirmed that until the “reverter” is gone, the question mark is still sitting there; without that clause gone, there is still a problem. Ms. Panciocco said that she is comfortable that it will go through; she believes it is just a matter of time; the applicant is asking for a condition of approval for this issue. It was noted that the Board had received a request from their primary attorney. Mr. Chadwick asked to hear about any other issues about the plan. Mr. Greenwood suggested hearing from Danna Truslow.

Hydrogeologist report: Danna Truslow introduced herself, adding her credentials. She stated that she had reviewed the report and nitrate loading study submitted by ATC for the applicant; also comparing to requirements in the Ordinance; reviewed design features affecting groundwater issues including quality. She told the Board that she had reviewed similar proposals in Rye and questions regarding pharmaceuticals and cleaning products were concerns specific to groundwater and the aquifer.

Mr. Greenwood explained that the ordinance requires a hydrogeologic study be done; the applicant is required to provide the study as part of the application which is then reviewed by the Town's hydrogeologist.

Ms. Truslow reviewed the draft report; she noted the location of the site in the Aquifer Protection District #B; she explained the differences in the zones. She referenced the criteria for nitrate loading at the property boundaries explaining the health consequences for mothers and young children; health concerns and environmental concerns, in general, were reviewed as to the need for this information. She added that she had done a site walk with Mr. Chadwick and Mr. Low from ATC.

Ms. Truslow stated that the review prepared for the Board for this meeting was not complete as there was information she requested from the applicant and ATC that had not yet been provided. She reviewed her draft report. She did review groundwater flow. She has asked for additional information; assumptions were made regarding nitrate reducing products but additional information is needed; she stated that the 10 mg. per liter may not be accurate as it may be more like 15 mg. She has asked for additional information on the lay-out provided; not enough information had been provided at this point. She would like more information to be able to concur with the 10 mg./l evaluation. Ms. Truslow added that a design should be submitted showing the types of well; there should be more detail on the proposed well; there is an assumption at this point that it is an overburdened well.

Ms. Truslow addressed the pervious pavement proposal. She stated that while it has its benefits, but due to de-icing and petroleum discharges from cars, both she and the Town Engineer agree that pervious pavement is not a good idea as it is too much risk of infiltration into the aquifer; an underdrain may not catch this.

Ms. Truslow stated that since this was in essence a nursing care facility, there should be a pharmaceutical handling plan submitted to the Planning Board; pharmaceuticals can cause issues in the water and the septic. She added that "institutional" cleaning products can have contaminants harmful to water quality. Ms. Truslow suggested the Board get information regarding these products and how they are handled; institutional cleaning products are more serious than regular household items.

Ms. Truslow suggested that language include the use of lower, slow-release nitrous fertilizer; she agreed with ATC's suggestion from more long-term monitoring of the site. She re-iterated that she had asked for additional information that she was waiting for so this is not a complete report; she needed the additional information to give the final review to the Board.

Mr. Bakie questioned requiring this applicant to provide a grease interceptor asking if it had been required elsewhere; he also questioned mandating a pharmaceutical plan as others put it down the drain; he asked how the schools, with large buildings, contain their cleaning products. He asked if this was common practice to require these things. Mr. Coppelman explained with schools, they are municipal buildings and not subject to the Planning Board's review; he added that there were a couple of situations where oil/grease/petroleum separators had been required; one in particular near the Plaistow line. Ms. Faulconer said that while there may not have been past practice to review pharmaceutical disposal plans, there is current information regarding the health impacts regarding disposal of them and the medication getting into the drinking water with evidence that children are being affected.

Mr. Chadwick answered that the well-design is going through the process now and he will get the information to Ms. Truslow. He said that, regarding the pervious pavement, he can bring someone from UNH to explain it; he is proposing an underdrain with the perforations "up"; his assumption is that it will run through the underdrain. He stated that the pharmaceutical plan will show that it will be discharged through a hazardous waste company; the cleaning products that are typically used are non-ammonia based products; they will use slow-release nitrogen products. Mr. Chadwick stated that Ms. Truslow will get the additional information and he will wait for her final review.

Town Engineer, Dennis Quintal, reviewed his comments on the plan noting that this was the third time looking at the plan and associated material; a lot of his previous comments had been addressed so he reviewed the concerns that remained. He stated that for "note 20" he had no objection. Mr. Quintal stated that the line on the westerly side should show the proper setback; he added that a lot of construction is impacting the buffer zone; there is a wall within a few feet of the wetland; he does not support this at this time as there is significant impact as proposed. He stated that some design work could be done to minimize the impact and therefore is not in favor of approving the Conditional Use permit. He suggested that the Board could get Rockingham County Conservation District to do a review of the wetlands/setbacks. He continued that the dumpsters are close to the propane tanks; he reviewed the porous pavement proposal stating that his understanding of the Planning Board philosophy is to park on pavement, not gravel; he can't support the waiver for porous pavement as it can impact the Aquifer zone; he stated that he is well aware of porous pavement and its properties; he stated that the Town is protective of its aquifer and another design can be done with less possibility of contamination to the aquifer. Mr. Quintal continued that there should be a note on the plan that a line of sight be forever maintained. He has a concern with the nitrate setback but will defer to Ms. Truslow's review. He stated that the State of NH will review the septic as well. He said he would look at the plan again if there were any major changes.

Mr. Coppelman said the Board had received reports from RCCD who reviewed the septic design and information from the State.

Department Comments

Conservation Commission: Evy Nathan, Conservation Commission Chair, reviewed Conservation Commission comments dated 3/21/17: she referenced 205.5(B)2, Buffer – construction is prohibited; she said that it is not essential to the productive use of the land to build within the buffer. Ms. Nathan suggested that the building should be moved; it should “slide” over or be reconfigured to move the “bistro” out of the buffer. Ms. Nathan stated that the functional wetland buffer had increased to “7”; she had that it was “8”. She said that the higher score increased the wetland buffer. Ms. Nathan pointed out aspects of the plan within the buffer; the corner of the building, the kitchen/dining area is in the buffer; there are retaining walls, bollards, and a paved walkway all in the buffer. She stated that the buffers are there for a reason; the Conservation Commission has to protect wetland habitats and setbacks. Ms. Nathan said that the Commission was waiting for the final hydrogeologic study. The draft study was provided to her. She agreed with Mr. Quintal that it would be a good idea to have an independent review of the buffer analysis by RCCD. Ms. Nathan stated that the impact of the wetland and buffer should be provided in square footage; a percentage in square footage of the impact to the buffer zone should be provided to the Town. She reviewed a Town/School project that was being proposed on the Town property that was now on hold pending either the easement or sale of the property. Ms. Nathan also noticed that the plan notes a “ditch” on the plan which is actually a quickly-flowing brook with signs of deer with the area extremely wet right now. She agreed that her comments dovetail with Mr. Quintal’s to move the building to get it out of the wetland buffer. She re-iterated that the Ordinance is against encroaching on the buffer; any waivering of this should be crucial with there being no ability to move out of the buffer and wetland.

Ms. Nathan stated that she had worked in an oral surgery office and that the State controlled how small offices dispose of materials adding that there would be more material being disposed at this type of facility than a small office.

Fire Department: Fire Chief Bill Seaman referenced the SFC report regarding the review of the plan specific to three comments: 1)Fire Department Access – no signage or locations provided- they should be submitted; turning radius shows that the vehicle needs to travel over curbing - this needs to be amended; the proposed fire lane needs marking to ensure unimpeded access; 2)Propane Storage – 4000 gallons of underground LP requires that the fire analysis needs to be submitted; 3)Emergency Communications – prior to occupancy, applicant needs to confirm that construction, etc. does not impact emergency communications for safety responders. Chief Seaman explained that since the TRC meeting, he and SFC had another meeting that resolved a lot of issues adding that there were still issues with access that needed to be addressed; the applicant has been provided with Exeter’s specs. to support the apparatus getting in; he added that he was confident that it will be worked out at some point. Chief Seaman said he supported the project and the need for the facility and is just waiting to finalize the remaining issues. Mr. Greenwood stated that anticipated calls were reviewed at the TRC. Ms. Merrill asked if the Fire Department has a pharmaceutical disposal plan. Chief Seaman said they are deposited at Exeter as they have a plan to properly dispose of sharps and pharmaceuticals. Chief Seaman also explained that in case of the need of evacuation of the building, the applicant won’t rely on “911” services; it will be addressed by the applicant.

Historic District Commission: Virginia Morse, HDC Chair explained that the Commission had previously met with the applicant and approved the design of the building with a separate application approved for the sign. She stated when reviewing the current plan, the size of the columns at the entrance was surprising. Ms. Morse said that the HDC didn't have this information and sizes at that time; they stand 6 feet above ground with a 3 inch cap; dimensions are 2 feet 8 inches square and 6 feet 3 inches tall and made of stone. Ms. Morse said that the Commission feels this is quite an impact and the applicant would need to come to the HDC to get an approval for this. Mr. Chadwick showed a picture of the proposal; he is aware that this would have to go back to the HDC for an approval. Ms. Morse commented on the proposed change of location being discussed stating for the record that if there are any changes in location, appearance, design or size then the applicant would need to go back to the HDC for approvals.

Planner, Mr. Greenwood, reviewed his comments: Hydro study is not complete; Board needs to deal with the use of the pervious pavement; a lot of activity in the wetland buffer; need to have a second review by a wetland scientist to review the functional wetland and need discussion on extensive wetland buffer issue. He continued that shifting the building is a viable thing to talk about and he would like to hear from a second wetland scientist not associated with the project.

Mr. Coppelman explained that the Town usually used RCCD and Mike Cuomo is familiar with the site.

Mr. Greenwood reviewed some concerns raised at the TRC meeting. He stated that Police Chief Briggs talked about parking which abuts Rte. 125 and proposed a stockade or other type of fence along area that abuts Rte. 125 to protect from people parking along the highway to go into the property to steal from vehicles; Chief Briggs suggested lighting on the pole that is fairly close to the facility to be able to deal with safety concerns and still comply with the Lighting Ordinance.

Mr. Greenwood added that the well placement/easement/sale of the Town property needs to be clarified to everyone's satisfaction as it is the water for the proposal. Mr. Coppelman said that there needed to be the additional review of the wetland buffers before proceeding a lot further.

Mr. Quintal wanted to re-iterate his comment on moving the facility stating that if the complex was shifted southerly there would be less of an impact; if some shifting is possible then it should be done first and resolve other changes before going to another professional for review. He added that there could be other design features incorporated to help protect the wetlands. Mr. Quintal suggested giving the applicant a chance to address changes and impact to the wetlands before another professional review is done.

Mr. Chadwick said that they are willing to look at other options to bring back to the Board's attention; he added that he couldn't put anything in the well radius. Mr. Quintal suggested that the well could be moved further. Mr. Chadwick said that could be done but they would have to buy the whole parcel and the reverter clause would have to go. Mr. Coffin noted that the reverter clause would need to be removed whether proposing an easement or full purchase of the property. Mr. Coffin said once the reverter removed, they could re-locate the well to the south. Mr. Chadwick believed that the reverter clause being removed for easement was easier to obtain

than removal for sale. Mr. Coffin said the attorney did not say that removing the reverter clause was easier for an easement. Mr. Chadwick thought she meant to say this. Mr. Chadwick said that Selectman Heitz would speak to people at the State about trying to move this along.

Mr. Quintal said that the whole facility could move 150 to 200 feet if the well was moved further onto the Town property being proposed for easement and/or for sale.

Abutter comments: none.

Mr. Chadwick said that he would like to digest tonight's discussion and come back to the Board with any movement and/or other changes.

Mr. Coppelman asked about previous proposals for a graveled area along the Rte. 125 property line for the Fire Department; Chief Seaman answered that this was no longer beneficial to the Fire Department.

Mr. Coffin asked about the wetland scientist report and postponing that review; he wondered if this would create a delay; asking if reviews should be done on the buffers and values to make plans based on the correct wetland values. Mr. Quintal said there are two items: the functional values and determining setbacks and how the design is impacting the buffers and wetlands as some additional design options could be incorporated to help protect the wetlands. Ms. Nathan said that there is no issue with where the wetlands are marked; need to have the functional values confirmed along with the impacts within the buffer and the wetland impacts.

MM&S to continue this application to the May 16, 2017 hearing; placed second on the agenda. (Motion by Mr. Coffin, second by Ms. Croteau) **PUNA**

CIP Review: postponed to the 5/2/17 meeting.

Board Business

Correspondence:

- **Alternates:** currently on the Town web site; other Boards also looking for alternates; the Board agreed to put an announcement in the paper with the other Boards – due back by May 23rd; add to the agenda for meeting with applicants on June 6th. Ms. Faulconer said she would contact applicants to leave the June 6th date open.
- RPC training conference announced
- Spring Training conference announced
- Invoice for Mr. Bashaw to attend training conference signed
- DMar Construction – 17 Rte. 125 – General contractor proposed for Commerce Park; the pre-determined, approved list includes general contractor – no further PB review required.

ACTION ITEM: Send letter reminding the applicant that all equipment is to be stored inside the building.

- Bond balance

- Budget

ACTION ITEM: Ms Faulconer will keep an eye on revenue and expense for Legal Ads and get back to the Board.

- Review of 904.5 #26: reference to 904.16 should be 904.14; Ms Faulconer wanted guidance if this was just considered editorial and could be changed; Mr. Greenwood advised that it could be changed without any further action.

ACTION ITEM: Ms. Faulconer will notify Ms. Grant and other Boards of the change to update on line and pages.

- Info. received re: Kings Landing Homeowner's Association.
- 15 Rte. 125 – retail vehicle dealer license request – no further review required.
- J&M Auto Inspection Station license request – postponed to May 2.

ACTION ITEM: Mr. Greenwood will check the site on May 1st for compliance and return to the Board with the information for the meeting on May 2nd.

- Voluntary Lot Merger – U2-10,11 (21 and 23 Maple Street) – package includes previous approval by the Board – approved; Mr. Coppelman signed.
- Intent to excavate received – R2-08/Dorre Road - no action by the Board
- Annual report – RCCD
- Emails from Padfields re: information
- Town and City magazine
- FEMA report dated 3/27/17 forwarded by BOS.

Historic Resources Chapter - Master Plan: Mr. Landry updated the Board on the status; the Planning Board agreed to move forward with a subcommittee of members of other Boards: PB, HDC, HC; the Planning Board is responsible for the Master Plan and agreed with the use of this subcommittee to work on the chapter. Mr. Landry reminded the Board of the presentation scheduled for May 2nd to explain the Master Plan and moving forward with this chapter; other Board/Committee members and Town residents have been invited to attend.

MM&S to accept the March 7, 2017 minutes as written. (Motion by Mr. Coffin, second by Ms. Croteau) **Motion carries 3-0-3** with Ms. Merrill, Mr. Bashaw and Mr. Bakie abstaining.

MM&S to accept the March 21, 2017 minutes as written. (Motion by Mr. Coffin, second by Mr. Merrill) **Motion carries 4-0-2** with Mr. Bashaw and Mr. Bakie abstaining.

MM&S to adjourn at 9:50. (Motion by Mr. Coffin, second by Ms. Croteau) **PUNA**