

MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING
September 11, 2014
7:00 PM

Meeting called to order by Chair Electra Alessio, present, Ray Donald vice chair, Daryl Branch, John Whittier. Mr. Whittier made a motion to approve the minutes for the August 11, 2014 meeting, Mr. Donald, seconded, all in favor.

Tax Map U-6, Lot 5

Ms. Alessio explained the procedure while not having a full five member board. Mr. Jeffrey Sands stated the property has been in the family since the forties. Mr. Sands stated the house was built, and the property was subdivided. Mr. Sands stated there is a right of way running from Main Street to Great pond that is 9 feet wide. Mr. Sands stated in the thirties the town took the land owner to court. Mr. Sands stated the previous owner divided property they created a second private right of way that is twenty feet in width that runs from Grandmaison land which is now Francis's land to the public right of way. Mr. Sands states the private right of way and the only people allowed to use it is those it is deeded to which he believed was Ducharmes, Beals, temple, Buzderewicz and himself. Mr. Sands stated the land was surveyed in 1993. Ms. Alessio stated she had a copy along with the court decision granting the right of the way. Mr. Sands stated in 93 they found out the property lines were three feet off of what they thought they were. Mr. Sands stated their home actually crosses over the property line of lot #4. Mr. Sands stated on lot #3 their garage is partially on land owned by the town. Mr. Sands stated their home is much closer to the Francis property than originally thought. Mr. Sands stated they put a septic system in when it was recorded as seasonal. Mr. Sands stated they have gone through the process to convert and have come up with a septic system to use year round that has been approved by the town and the state. Ms. Alessio asked about the septic system going from a two bedroom to a three bedroom. Mr. Sands stated that is correct but the sole purpose was to convert to a year round. Mr. Sands stated it was a joint system with the Buzderewicz who have a two bedroom home. Mr. Sands stated they got approval to go up and stay on the same footprint. Mr. Sands stated it was suggested to move the house to sit solely on their property. Mr. Sands explained the plan. Mr. Sands stated he had put up a lean to style roof attached to the garage for the trash (without a permit) and has since been told to remove it or submit for a permit with this application. Mr. Sands stated they were trying to make a bad situation better. Mr. Sands stated the existing deck

goes over the water and by making these changes it will no longer and he realizes he will never get that back. Ms. Alessio stated she spoke with Mr. Steward and he confirmed that the applicant was making a non-conforming situation less non-conforming. Ms. Alessio asked for a drawing of the house. Ms. Alessio referenced a letter from Mr. Ducharmes in opposition. Mr. Sands stated the new house would be roughly the same size, no increase to the impervious surface. Ms. Alessio stated the letter was in opposition to the height, although when she spoke with Mr. Steward it doesn't exceed the town requirement of thirty feet. Mr. Sands stated the difference of height is because they would be using a New England pitch roof rather than the shallow pitch that now exists. Mr. Sands stated it would still be a single story home. Ms. Alessio read the letter from Mr. Ducharmes. Mr. Alessio stated she had viewed the property and there was a gate but the right of way was open down to the water, approximately 9 feet wide. Mr. Sands stated there is two different right of ways and spoke about the court decision and the right of way being deeded to the abutting property. A map was displayed and discussed. Ms. Joyce Francis stated she has an issue with moving the house closer to her home rather than the home he shares a septic system with. Ms. Francis spoke about a variance for a garage years ago. Ms. Francis stated she was concerned about the height of the proposed house. Ms. Alessio stated the town had a height ordinance and the proposed home does not come anywhere near the limit and therefore no request for a height variance. Mr. Donald spoke about the authority of the board. Ms. Francis stated she was in opposition to the trash area and would like it moved so she didn't have to see/smell the trash. Ms. Francis provided photos. Ms. Francis spoke about the agreement with the neighbors for the septic system. Mr. Sands spoke about the agreement and the town being the ones to decide about encroachment. Mr. Sands stated it was suggested to move the house off of the abutter's property so that if at some point in the future if the abutters sold their home there would be no restrictions preventing access around their home. Mr. Sands stated unfortunately the site plan was not in the packet and Mr. Steward had drawn in the trash shed was. Mr. Sands stated the shed was in line with the garage which is 14.6 feet from the property line and 12 feet lower. Mr. Sands stated the scent would go towards his property with winds off the lake. Mr. Sands stated the roof is a 12 pitch where now they have a 6 pitch, and it would continue to be a single story home. Mrs. Marjorie Beals stated she was concerned about her property and access to the right of way. Mrs. Beals stated she didn't understand what private right of way meant. Ms. Alessio explained that a private right of way meant it wasn't open to the general public but was open to all the abutters and police and fire should they need access. Ms. Alessio stated the access could not be obstructed. Mrs. Beals expressed concerns that the last time the Sands

built they built a garage with a gambrel and a second floor which was not on the plan. Mrs. Beals stated she was afraid of the building height and did not want to look at another building. Mrs. Beals asked about the septic system being in the right of way. Ms. Alessio stated that would be his concern as long as her access to the lake was not obstructed. Mrs. Beals asked about the right of way changing from twenty feet to nine feet. Ms. Alessio stated she had a copy of the court decision from 1934 which states it is approximately 9 feet. Mr. Sands stated the garage was built by his grandfather prior to the Beals's being there and the plans from 89 show a two story gambrel style garage. Mr. Sands stated he has nothing to hide. Ms. Alessio stated today's diligence is different than it was twenty years ago. Mr. Sands stated there is confusion about there being two right of way's: one being 9 feet and the other being 20. Mr. Sands stated the public right of way will be moved 9 feet to make room for the septic system and it has been recorded with the registry of deeds. Mr. Donald asked if was correct that this move would affect only Mr. Sand's property. Mr. Sands stated that was correct. Mr. Whittier asked for clarification of the movement of the right away. Mr. Sands stated it would all be within his property. Mr. Gene Buzderewicz stated they had been there since 1947 and the original problem occurred when land was miss surveyed. Mr. Buzderewicz stated homes were built after 1945 based on the bad survey and that was why the Sand's home encroaches on his property. Mr. Buzderewicz stated this project would alleviate a 75 year old problem. Mr. Buzderewicz stated this project has many benefits and no detriments. Mr. Sands stated he realizes the Buzderewicz family didn't have an issue with the encroachments but he wanted this cleared up so there wouldn't be issues down the road. Mr. Donald asked if the existing garage would stay. Mr. Sands stated yes it would get a new roof and siding. Mr. Donald asked if there was anywhere else on the property the trash storage could go. Mr. Sands stated if he moved it to the side of the garage it would be in the way and if he put it on the back the abutting neighbors would have complaints. Mr. Sands stated moving to the back it would change the impervious surface. Ms. Alessio asked about moving the trash to the boat garage. Mr. Sands stated distance, plowing and animals would be issues. Photos were provided and reviewed. Mr. Whittier asked if there was a copy of the state approval for the septic system. Ms. Alessio asked about permits from the town. Mr. Sands stated he had everything but the building permit. Mr. Donald made a motion to grant the special exception to locate the proposed house 20.1 feet from the shoreline, Mr. Whittier seconded. Mr. Whittier asked about the deck and how far it is from the shoreline. Mr. Sands stated the measurement is taken from the foundation, and the deck is ten feet from the home. Mr. Sands stated the state defines everything but dirt as impervious surface and there would be no increase to the impervious surface. Mr. Sands

stated the permit from the state includes the deck. Ms. Alessio stated the town is usually more restrictive and the applicant would be required to get a permit from the town. Mr. Donald stated the special exception precludes the deck. Ms. Alessio concurred and stated Mr. Sands would have to work it out with Mr. Steward. Mr. Sands stated the deck would be very low as he was trying to make it under 30 inches so no railing would be required. All in favor to grant special exception. The five criteria was used for the area variance to Article 301.1.D for 15 feet and 5.7 feet for side yard setbacks and 301.1.A for new construction. All five criteria passed Mr. Donald made a motion to grant variances, Mr. Whittier seconded, all in favor. The five criteria was used for the area variance of 5.4 feet for the proposed trash storage area, the criteria did not pass, Mr. Donald made a motion to deny the variance, Mr. Whittier seconded, all in favor. Ms. Alessio explained the thirty day waiting period.

Tax Map R-34, Lot 2

Mrs. Lynne Merrill stated they were confused because on the tax card it is noted that the property is zoned rural residential aquifer. Mrs. Merrill stated all rural residential uses apply to the property. Mrs. Merrill read article II from the 2007 annual report. Mrs. Merrill stated as one of the authors of the article it was written to help the businesses in the area to become legally conforming even though they were not in a commercial zone, but allowed commercial uses on property because they were already being used for commercial purposes. Mrs. Merrill stated rural residential does permit salons and property is in rural residential. Ms. Alessio stated the planning board sent the applicant to the ZBA because of the overlap and prior businesses located in the building had to come before the ZBA. Ms. Alessio stated it wasn't permitted or prohibited and has a history on that site. Mrs. Merrill asked why if it is permitted in rural residential why would it not be permitted on this lot. A discussion followed regarding the overlapping zones. Mrs. Laurie Farmer stated she has had a salon in town for 20 years currently located at 53 Church Street, at the Carriage Towne Plaza. Mrs. Farmer stated in January they got a new landlord and her lease is up this year and she started looking at different options. Mrs. Farmer stated 43 Church Street fits her perfectly. Mrs. Farmer stated she has lived in town for 25 years raised her three children, five of her employees graduated from Sanborn and live locally. Mrs. Farmer stated she did not want to relocate out of the area. Mrs. Farmer stated she is a service provider and a small amount of retail. Mrs. Farmer stated it is a quiet business with established hours. Mrs. Farmer stated the traffic would be nowhere near what the day care generated. Ms. Alessio spoke about the zones and the prohibited uses. Mr. Donald asked if it was the same building Dr. Hotz was in. Mrs. Farmer stated yes. Mr. Whittier made a

motion to grant the special exception, Mr. Branch seconded, all in favor. Ms. Alessio explained the thirty day waiting period.

Tax map R-13, Lot 7

Mr. Kelly Ward stated a welding manufacturing business is not on the prohibited or permitted list of uses. Mr. Ward stated his wife grew up on the property and her mother passed away recently. Mr. Ward stated he had been looking for a place to relocate his business. Mr. Ward stated they own the property and would like to do something with it. Mr. Ward stated he does welding and metal fab, small gates, truck bodies, tailgates. Mr. Ward stated there would be no heavy truck traffic. Mr. Ward stated it would be just himself. Ms. Alessio asked what was on property. Mr. Ward stated a house where his mother in law had lived. Ms. Alessio asked what the plans were for the home. Mr. Ward stated they planned to take down the house and put up a building. Mr. Michael Seekamp stated he had no objections to the business. Mr. David Joy stated the history of the area is been entirely residential. Mr. Joy stated he was concerned that a business in this location would change the characteristics of the immediate area and the surrounding area. Mr. Joy stated the business is an industrial usage, and is now located in an industrial zone. Mr. Joy stated it was a manufacturing business. Mr. Joy stated he does not believe the business belongs where it is purposed but to keep it in the industrial zone. Mr. Joy read from the five criteria, for a special exception, and stated by the nature of the business the abutters would experience all of the things on the list, and would be a negative to property values. Mr. Joy spoke about the traffic on Meeks Road, and is concerned about deliveries and pickups, which would increase truck traffic. Mr. Joy spoke about the demand on municipal services and the hazard to the public and because of the nature of the business it would be an issue. Mr. Joy stated the town has areas for businesses such as this. Mr. Joy stated that as a neighbor he would like to see something done with the property and there were many good uses in accordance with the existing zoning and characteristics of the area. Mr. Joy stated he believed very strongly that the proposal does not meet the requirements for a special exception. Mr. Joy spoke about being fair. Mr. Joy asked the board to not grant the special exception. Mr. Ward stated that his business is currently located in an industrial area but does not believe it's as industrial as the area. Mr. Ward stated he doesn't do rock crushing or have a constant stream of truck traffic. Mr. Ward stated he has two pick-up trucks, and does not have large emission of gases, and doesn't work with explosives. Mr. Ward stated he has one 20 pound propane tank; all other gases are inert. Mr. Ward stated they use a hand held plasma cutter which uses compressed air. Mr. Ward stated it is a family business that he has owned for over twenty years. Mr. Ward stated he would have

a buffer between properties. Ms. Alessio distributed a letter from Donahue Tucker and Cianddella. Mr. Del Pozo stated he is fifty feet from property and is raising a family there. Mr. Del Pozo stated he is "scared to death". Mr. Del Pozo stated he moved into a residential neighborhood and is afraid of a welding manufacturing facility. Mr. Del Pozo stated he looked at website and viewed equipment that was not small. Mr. Del Pozo stated he was afraid of fume, afraid of noise, afraid of traffic and afraid of putting his family in danger. Mr. Del Pozo stated that kind of business doesn't belong next to his house. Mr. Del Pozo stated he was scared to death that his property values would go down. Ms. Alessio asked how his home was zoned. Mr. Del Pozo stated both properties are C3 and residential starts next to it. Attorney Justin Pasay stated they were retained because there was not enough information in the application to base an opinion on. Attorney Pasay spoke about the letter he authored. Attorney Pasay stated the basic argument was it is an industrial use, and the five criteria for a special exception have not been met. Attorney Pasay stated the applicant has not obtained a variance from article 304. Attorney Pasay spoke about the proposed use versus business currently located along the corridor. Attorney Pasay spoke about the essential characteristics of the area. Attorney Pasay stated there was a concern about the traffic, and impact on the Del Pozo's well. Attorney Pasay spoke about zoning ordinance 304. Mr. Ward stated he tries to project his company on the web site as a big company but in actuality it's his father, his boys, his wife and himself. Mr. Ward stated he had steel delivered once a week. Mr. Ward stated all painting or power coating is sent out and there were no hazardous chemicals stored on-site. Mr. Ward stated he has spoken to the fire chief, and he doesn't need sprinklers. Mr. Ward stated there is no explosion hazard. Mr. Ward stated as far as mitigating smoke or fumes that would be done with filters. Mr. Ward stated he has a set schedule and does not work nights or weekends. Mr. Ward stated he is a fabricator and there are three other fabricators in the C3 district that do the same business as his. Ms. Alessio spoke about what is prohibited in C3. Ms. Alessio spoke about the limited amount of commercial zoning opportunities in Kingston, and not promoting business in Kingston to help broaden the tax base. Ms. Alessio stated she had been remiss in not notifying the applicant at the start of the meeting that a five member board was not seated and the applicant's right to postpone until there is a five person board. A discussion followed regarding diminution of property value. Ms. Alessio asked the applicant for an answer regarding continuing the hearing until the October 9th meeting. Mr. Ward stated he was surprised at the opposition to his business. Mr. Ward stated he didn't know how to proceed. Ms. Alessio explained why an applicant would postpone. Mr. Joy wondered if there was a mistake on designation of Mr. Delpozo's property. Mr. Joy read excerpts from 110.1. Mr. Joy spoke

about frontage. Ms. Alessio stated he would have to take that up at the planning board. Mr. Joy continued that 1 Meeks had frontage on Route 125 but the Del Pozo's did not. Mr. Joy asked how the property be classified as C3. Mr. Joy asked about commercial buildings needing sprinkler systems. Ms. Alessio stated there were regulations specifying what they do or do not need, but again was not in the ZBA's purview. Mr. Joy spoke again about the website and how the business would diminish his property values. Mr. Whittier stated he was impressed with the business but could not support the proposal because of statements made about the impact on the neighborhood. Ms. Alessio explained the process to re-apply, for reconsideration versus a continuance. Ms. Alessio explained the special exception criteria and prohibited uses. Mr. Ward stated he would like a continuance. Ms. Alessio stated he would be the first item on the agenda

Ms. Alessio adjourned the meeting at 9:33.

Respectfully submitted,

Tammy L. Bakie
Secretary
Zoning Board of Adjustment