

Zoning Board of Adjustment
Kingston, NH 03848

November 13, 2014
Public Hearing

Members in Attendance:

Electra Alessio, Chair
Peter Coffin

Ray Donald, V. Chair
Daryl Branch

Ellen Faulconer, Acting Board secretary.

Ms. Alessio called the meeting to order at 7:05.

MM&S to approve the October 9, 2014 minutes as written. (Motion by Mr. Donald, second by Mr. Coffin) **PUNA** (Passed unanimously)

Bob Ducharme
36 Main Street
Kingston, NH 03848

Ms. Alessio introduced the Board members. She explained that the applicant was appealing the ZBA decision of September 11, 2014 regarding 6 Sands Lane clarifying that tonight's hearing was to address the request for a re-hearing adding that the applicant needs to show that the ZBA erred or there was new information pertinent to the previous decision.

Ms. Alessio noted that the Board only consisted of 4 members this evening and the applicant had the right to request a 5 member Board; if that request was made, the hearing would be postponed; with the four member Board, three of the four would have to be in agreement for a decision.

Mr. Durbin, the applicant's attorney, introduced himself and requested that the hearing be postponed to the next hearing date as they would like a 5 member Board present. He questioned the specifics of the RSA to make sure that his client's request was within any time limitations; he reiterated that their pleasure was to postpone for the five-member Board. Ms. Alessio stated that as the Board was acknowledging the request to postpone per the membership issue, there would be a time and date given and they did fall within any timing guidelines. Mr. Coffin stated that since this continued the timeframe and the approval was in questions, there should not be any construction started. Ms. Alessio stated that Mr. Sands would be proceeding at his own risk.

There was Board discussion regarding the application process due to the postponement. The Board determined that they could not request the applicant to file for the actual re-hearing with abutters' and legal notices prior to determining whether they were granting the re-hearing. Ms. Alessio expressed concerns about delaying another month to decide the appeal. Mr. Branch stated that they couldn't ask the applicant to essentially put the cart before the horse.

There was discussion regarding the possibility of building permits associated with the original approvals; Ms. Alessio stated that building permits and their requirements were not an issue for the ZBA; Mr. Donald suggested that any questions about building permits should be addressed with the Building Inspector.

MM&S to postpone this hearing to December 11, 2014 at 7:05 due to lack of a full Board. (Motion by Mr. Donald, second by Mr. Coffin) **PUNA**

Board Business

Mr. Coffin asked about Board quorums; Ms. Alessio noted that Mr. Whittier is out of town; Ms. Francis has expressed an interest. Ms. Alessio will review which Board members are up for election and report back to the Board.

Jeffrey and Monique Sands

6 Sands Lane

Kingston, NH 03848

Tax Map U-6, Lot 5

Ms. Alessio read the notice regarding the applicant's request for a Special Exception to Article 205.4C to allow the construction of a deck proposed to be 10.5 feet from the shoreline; a special exception of 139.5 feet is requested. Ms. Alessio continued that there was also an Appeal of Administration Decision made by the ZBA at the Sept. 11, 2014 hearing regarding the denial of a variance to Article 301.1 D for a proposed trash storage area. Ms. Alessio stated that she noticed the hearing with that request but explained that Mr. Sands cannot ask for the ZBA to Appeal an Administrative Decision of a decision that they made; his recourse is to challenge the ZBA's decision in Superior Court. She stated that, therefore, that request is moot and will not be part of this hearing.

Mr. Sands pointed out that at his last meeting with the ZBA, the deck had not been included in the project inadvertently; he is applying for a variance for the proposed deck, 24 feet x 10 feet, to replace the existing deck of 24 feet x 20 feet; he stated that this will reduce impact of the impervious surface of the existing deck.

Mr. Branch reminded Mr. Sands that since there is a four person, rather than a 5 person, Board this evening, he could request a continuance. Mr. Sands stated that he was comfortable with the 4 person Board.

Mr. Donald asked if this was being placed the same distance to the waterfront as the existing; Mr. Sands stated that the existing one is closer than that being proposed. Mr. Coffin stated that this was not being refurbished or repaired with an existing building; the entire structure was being torn down and rebuilt which made it a new structure that needs to meet existing ordinances. Ms. Alessio agreed, adding that this was why variances were granted; she noted that the proposal had improved an existing situation. Mr. Coffin said that the new construction of the deck needed to meet the ordinances or get variances. Mr. Branch noted that the proposal discussed at the previous meeting did not include the deck. Mr. Donald agreed with the Chair's explanation adding that it was less non-conforming than it existed. Mr. Coffin continued that when taking down the existing and replacing with an entirely new building, the grandfathered status goes away and all the decisions need to be made using the existing ordinances.

Mr. Donald agreed adding that this was why variances were requested and granted. Mr. Sands stated that originally he was going to build on the existing footprint but decided to make the situation better; if he had not received variances, he would have built within the existing footprint. Mr. Coffin questioned why a Lot Line Adjustment had not been worked out rather than just an easement. Mr. Sands it was the other property owners' choice; he was trying to clean up the issues with the lot as much as he could for the future; he agrees that the proposed deck needs a variance, without it, he can leaving the existing deck but it is not attached to the house adding that there are no footings but he can keep it where it is per the State. He re-iterated that he just wants a 10 foot deck and will remove the 20 foot deck.

Ms. Alessio asked for any public comment in favor of the proposal. There were none.

Ms. Alessio asked for any public comment opposed to the proposal. Ms. Francis asked if the discussion only pertained to the deck; Ms. Alessio confirmed that it was only about the deck. No one spoke in opposition.

Mr. Donald suggested that all the questions had been answered. Mr. Coffin explained that he understood the issue but his problem with this variance is that the ZBA is charged with giving slight variances as long as it met the intent of the ordinance; he continued that granting a 95% change is in no way within the intent of the Shoreland Protection Ordinance and therefore not within the ZBA's purview to grant this much of a variance; he added that this is not a minor variance it was in essence waiving the entire ordinance and therefore, not in the ZBA's ability to change. Ms. Alessio asked Mr. Coffin for clarification as to why he feels it is not the ZBA's purview as she disagreed. Mr. Coffin said a variance still has to meet the intent and purpose of the ordinance, the Shoreland Protection Ordinance is to prohibit construction within the Shoreland and this is new construction; the ZBA should not be looking at it as being better than what already exists. Ms. Alessio questioned how the improvement would not be considered being better for the Town. Mr. Coffin explained that it is not a modification of an existing house, it is new construction. Mr. Donald stated that this is an existing lot; it is an existing building lot as it was there before the Ordinance was there. He suggested that it was time for a vote.

Mr. Sands suggested that the biggest concern should be reducing the impervious surface within 250 feet of the shore; the proposed deck reduces the impervious surface and the percentage of impervious surface. Ms. Alessio noted that there will be better drainage on the site with the new construction. Mr. Sands said that there has to be a Stormwater Management plan near the lake so it doesn't run with debris into the lake. He reiterated the reduction in the impervious surface. Mr. Coffin noted that he wasn't at the meeting when the house was discussed; Mr. Branch stated that the deck was discussed at that time. Mr. Coffin explained that it all would have been part of the Shoreland issue. Ms. Alessio agreed that it all would have been part of the information the Board might need to make its decision. The property folder was reviewed by Mr. Coffin and Mr. Branch. Mr. Coffin asked about the garage; Ms. Alessio stated that it was a separate building and not part of tonight's hearing discussion.

Mr. Coffin stated that while this was probably an improvement on the site, he did not like granting essentially complete waivers of the ordinance as that is basically saying that the ordinance did not matter.

MM&S to grant the Special Exception to Article 205.4 C as requested. (Motion by Mr. Donald, second by Mr. Branch) **Motion carries 3-1** with Mr. Coffin opposed.

Ms. Alessio suggested that the applicant would want to wait 30 days or proceed at his own risk.

Ms. Alessio stated there was no further business before the Board and declared the hearing ended at 7:47.