

**Kingston Zoning Board of Adjustment
August 11, 2016
Public Hearing**

Minutes

The Chairman called the meeting to order at 7:00 PM; there were no challenges to the validity of the meeting.

Members Present:

Ellie Alessio, Chair
Chuck Hart

Peter Coffin
Richard Johnson

Board Business

MM&S to accept the October 8, 2015 minutes as written. (Motion by Mr. Johnson, second by Ms. Alessio) **PUNA**

MM&S to accept the June 9, 2016 minutes as written. (Motion by Mr. Hart, second by Ms. Alessio) **PUNA**

Ms. Alessio noted that there were four Board members currently present; petitioners have the option of postponing to the next hearing date in September to have a 5 member Board; approval of the application with a four member Board would require 3 of 4 members voting in favor.

Ms. Alessio asked if there were people interested in serving on the ZBA to let her know.

**Robert Kalil
John Crosby
19 Page Road
Kingston, NH 03848
Tax Map R22 Lot 32**

Ms. Alessio read the notice regarding the appeal of an administrative decision. Mr. Kalil introduced himself to the Board; he had provided documents regarding his representation on behalf of Mr. Crosby. Ms. Alessio explained the process to Mr. Kalil. Mr. Kalil stated that he wished to proceed with the hearing. Mr. Kalil explained that Mr. Crosby was an elderly gentleman who has lived at the property for 46 years; Mr. Crosby and his neighbor believes that this is commercial property although he stated that he did not know where they got this belief. Mr. Kalil talked about Mr. Crosby's life experiences; he said that over time he turned a single family house into four units and thirty to forty years ago, people did that. He said that he had spoken to the building inspector about the property who referred him to the property file; he asked how to get the property recognized as 4 units. He was eventually referred to the ZBA. He explained that he is trying to get the property approved for a 4 unit building as he has been renting it as a 4 unit; he said that the Town of Kingston

ZBA

*Unaccepted minutes
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has recognized it as a 4 unit building. He said he reviewed the property file and there are several notes about multiple units; Mr. Kalil said that if not allowed, he should have gotten a cease and desist. He is getting charged as a 4-unit for his taxes. He re-iterated that he never got a cease and desist. He wants the Town to recognize that it is a four unit home. Mr. Kalil re-iterated that Mr. Crosby is 75 years old and there have multiple inspections by the Fire Department who noted unit number 3 so it must be recognized as a four-unit place; Mr. Crosby wants to retire and nobody ever stopped him from fixing the building and wants to sell it to get his income so he can retire. He said that everyone in the Building Inspector and Fire Inspector's office recognize it as a four-unit but no one wants to admit it. He said that this is a case for Elderly Affairs at the State House as he should have been told not to spend any money on fixing a house; there is no cease and desist on his having 4 units; he noted that Mr. Crosby would not let any town officials into his apartment. He suggested that if Mr. Crosby couldn't get back all the money that he put into the building, it was a serious case as nobody told him he couldn't do what he had done. Mr. Kalil discussed the financial impact of repairing and maintaining the building. Ms. Alessio asked Mr. Kalil if he was asking the ZBA to overturn the Building Inspector's decision because Mr. Crosby was 75. Mr. Kalil said that at 75 it is a lot harder to reason then when someone is 50 years old. He said that when Mr. Crosby doesn't get a cease and desist, he thinks everything is okay. Mr. Kalil said that Mr. Crosby set the building up beautifully: there are 4 legal hearing systems that the Fire Department could go and inspect them all; there are 4 electric meters, 4 kitchens, with everything completely separate. He said that Mr. Crosby needs to have this taken care of as a 4 family; it is a unique situation. Ms. Alessio stated that she was sure there are other buildings with unique situations that do not meet codes or zoning requirements and as issues come up, these issues come to the Zoning Board to try to resolve them. Mr. Kalil said that he was told that the area is zoned to allow for a two family but the house is set-up as a four family. He said that every unit has separate egresses and assumed the fire department gave him that good advice. He said there is abundant parking; he has an accurate septic design; he reiterated that the parking was humongous and could park 60 cars on the property; he had a sketch showing all the door locations. Mr. Kalil said that if he could get the inspectors to do a walk-through, they would see that it meets all the codes for plumbing, electrical, building and fire; if all the codes are legit, there is no reason for him not to have a four-family there. Ms. Alessio asked if Mr. Kalil had any further information before she opened it up for public comment. There was no public comment. Ms. Alessio opened up the discussion for the Board.

Ms. Alessio stated that there was a letter addressed to Mr. Kalil dated July 25, 2016 from the Building Inspector in the Board's packet of information for this hearing. Ms. Alessio read the letter regarding the review of the property file in regards to Mr. Kalil's request to determine the legal status of 19 Page Road: 1980 – properties restricted in RR to 1 or 2 residences only; 1989 – property listed as a SFR dwelling with 3 bedrooms; 1990 – owner provided a letter that that the property was a SF 3-bedroom dwelling; later in 1990 – building permit granted to convert to a duplex with a letter from the owner that it was a two-unit dwelling; property cards from 1991, 1992 list as SF dwelling; 1997 – two letters from Attorney Woodworth advising the Inspectors to obtain a court order or otherwise to stay away from Mr. Crosby's; 2004 property card shows a note that there are 4 apartments; units 3 and 4, although they may have existed for several years, were constructed without

the proper septic, Planning Board, Zoning Board or Building Department permits and approvals. Mr. Stewart says that his opinion is that the approval is for two-family and that the additional apartments are not legal nor property permitted; a multi-family apartment building is not an allowed use in the RR zone which would require, at a minimum, ZBA use variance, Planning Board site plan approval, an updated septic design plan, and the proper permits including occupancy permits.

Ms. Alessio reminded Mr. Kalil that the application is a request to overturn the Building Inspector's decision; she said that, as an example, if the request was denied, he would have the opportunity to go through the permitting process for the other two units. She stated that the only thing being acted on at this hearing is whether or not Mr. Stewart's decision is upheld or his request is granted to overturn the decision. She said she is trying to make sure he focused on tonight's request. Mr. Kalil reviewed his review of the file and a note from Mr. Crosby that it is a single family home; six-months later, Mr. Crosby wrote that it was a two family home with a later notes saying it is a three-family home; he was trying to appease the building inspector. He continued reviewing the file. Mr. Coffin noted there was nothing saying it was a four-family home. Mr. Coffin said that this is not a special exception. Mr. Kalil said he didn't know what the application was for. Ms. Alessio noted that Mr. Kalil filed the application. Mr. Coffin read the application that was submitted by Mr. Kalil; he read the pertinent zoning ordinances including 104.5 (H). Mr. Kalil said that Mr. Stewart made an error in referencing the letters written by Mr. Crosby that were in the property file. Mr. Coffin noted that in the zone, based on the dates, Mr. Crosby would have had to go to the Planning Board for approval and that didn't happen. Mr. Kalil said he understands the zones. Mr. Coffin continued that there is no record of any Planning Board meeting where additional units were approved. Mr. Kalil said there was only approval for a single family residence. Mr. Coffin explained that Planning Board approval wouldn't have been required for a single or two-family residence. Mr. Kalil said it is a single family house with six bedrooms; it has been a four-family for 30 years and everybody knows it. Mr. Coffin said that the Building Inspector is saying that proper procedures as required by the Ordinances have not been used so an occupancy permit needs to be denied; the question for the Board is whether the Building Inspector made a mistake in his determination based on the interpretation of the Ordinances.

Mr. Hart said there was a lot of history to the property and there were inspectors on the property, but the entire property was not open for their review. Mr. Hart reviewed Mr. Stewart's decision in regards to the Ordinances; he noted that there was a list of possible actions to try to have four units on the property. Setting precedents were discussed. Mr. Kalil reviewed fire department reviews and actions. Mr. Johnson said that if there were approvals Mr. Kalil is referencing, he should present them. Mr. Johnson said that there were two units that the officials were not allowed to inspect; Mr. Kalil said he did not know that information exactly; he said inspectors have been on site numerous times. Ms. Alessio said that some of the information is superfluous and not germane to the issue. Mr. Kalil said that upon viewing the property, the Board would see that it was set-up perfectly as a four-family. Ms. Alessio said that in the Rural Residential area, two-families are allowed. Mr. Kalil said that 46 years ago, everything was grandfathered in and that is when he started with this project. He said that he did not have anything to add other than

saying when going to Zoning and Planning in Plaistow, they want him to prove a hardship and this is quite the hardship. Ms. Alessio re-iterated that this was not the issue; the issue is whether Mr. Steward erred in his decision or not; it is not a use variance which would bring in a hardship issue but that is not before the Board at this time. Mr. Kalil said he would go to the Planning Board to get this approved.

MM&S that the Board determined that the Building Inspector did not make an error in failing to grant the occupancy permits based on the reasons cited in the Building Inspector's letters dated July 19, 2016 and July 25, 2016. Mr. Kalil interrupted asking what permits the building currently has. Ms. Alessio said that is not germane to the issue; she re-iterated that the issue was whether the Inspector erred in denying the permit for the undocumented, unpermitted additional residential units at 19 Page Road. Mr. Coffin said he should ask the Building Inspector which units currently need permits. The motion was amended and re-stated.

MM&S to uphold Robert Steward, the Building Inspector's decision to deny an occupancy permit for the undocumented residential dwelling unit at 19 Page Road based on the reasons cited in the letters dated July 19, 2016 and July 25, 2016. (Motion by Mr. Coffin, second by Mr. Hart) **PUNA**

Ms. Alessio confirmed that the request to get the occupancy permit for unit 4 is denied; he would need site plan and septic plan approval to begin to go in the direction to get an exception to the Rural Residential zoning but nothing is guaranteed.

Amy L. Alberts Rev. Trust of 1995
Main Street
Kingston, NH 03848

Applicant: Senior Housing Development LLC
30 Jericho Executive Plaza, Suite 400 E
Jericho, NY 11753

Ms. Alessio read the notice for this portion of the hearing requesting a variance to the terms of Article 102, Section 5A to permit a 58 unit Assisted Living Facility on the property. George Chadwick introduced himself along with Ben Wells and Stephen Humphreys as representatives for the proposal. Mr. Chadwick requested that the hearing proceed acknowledging that they would need 3 of the 4 members to vote for approval to move on.

Mr. Chadwick reviewed the specifics of the location for the proposal and the specifications of the proposal itself. They stated that they had had conceptual reviews at the HDC and the PB; they went to the HDC for a denial due to the zoning that brought them to the ZBA. Mr. Chadwick discussed the physical aspects of the proposed development. Ms. Alessio reminded the Board that this was a use variance as this is neither a permitted nor a prohibited use so has been referred to the ZBA; the HDC denied without prejudice. Mr. Humphreys described the facility and the building itself using architectural drawings;

elevation views were presented. The septic system exterior design was reviewed; Mr. Chadwick reviewed a traffic study. Mr. Wells stated that the building value would be 9 to 10 million dollars.

Mr. Chadwick explained how the use would fit into the zone reviewing. His said that the hardship criteria is met as it is fronted on two streets, is a fairly large piece of property that looks to be developed with a structure similar in size to what they are proposing which is a large structure with a residential feel with a curb cut on Main Street that has the residential feel similar to the existing structures in the Historic District; the view from Main Street will be a large open lawn with irregular tree placement between the structure located 500 feet back from Main Street; they are trying to locate the structure on the lot in a manner that reduces the mass and the size and the feel of the building as the district is entered.

Ms. Alessio opened the discussion up to the members of the public. Susan Prescott, representing the HDC on behalf of Chairperson Virginia Morse who was unable to attend, stated that the HDC members heard a preliminary presentation with a formal application and are looking favorably on the project. She continued that when and if the ZBA does grant a variance, the applicant still needs to return to the HDC for a Certificate of Approval. Stan Shalett, abutter from 3 East Way, expressed water concerns as he did not know how much water the senior facility would be drawing; he has a shallow well with only about 300 gallons which could run dry; a facility with 58 units will probably use up a lot of water in the area; he said he would be concerned with the wetlands itself so as not to interfere with the natural drainage system; he said the project should also fit into the Town's historic nature suggesting that they downsize from 58 units to 25 units to better fit into the historic character; townhouses would better fit into the character better. Ms. Alessio said it sounded like he wasn't opposed to the property being used for Assisted Living but he wants a smaller project. Mr. Shalett agreed that he would be in favor if it was a little smaller; he suggested moving closer to high ground to avoid the wetlands. Ms. Alessio clarified that if the use was granted by the ZBA, the project would still need to go to the HDC and PB for review and approval; the ZBA would just be granting that the use is allowed to occur on the property but all the rest of the permitting still needs to be done and reviewed. Mr. Shalett asked the ZBA if they think it meets the historic character of the Town; Ms. Alessio said she couldn't speak on behalf of the ZBA as they hadn't had a chance to speak about it yet; the Board hadn't gotten input from the public nor have they discussed it themselves. Mr. Shalett wanted confirmation that East Way wouldn't be used as an emergency access road; Ms. Alessio said that discussion would occur at the Planning Board. Mark Fitzpatrick of 191 Main Street also thought there might be a water problem as his dry has run dry already this year; he expressed concerns that the septic will be next to the yard where his children play and dumpsters where he will look out his back yard; he doesn't mind something going on the property but he was not pleased with this project going in and the items going behind his house. He asked about contamination of wells with the large septic system. Ms. Alessio said that these items will be addressed and they have to have a proper, accommodating septic system that would not adversely impact the neighbor's wells and septic systems. Mr. Fitzpatrick said he was unsure whether he could attend other meetings and wanted his opinion voiced.

Ms. Alessio opened up Board discussion. Mr. Coffin referenced Envision Kingston and a facility like this being appropriate for the village area within walking distance to certain places; he thinks there was general consensus that this type of project was supported. Ms. Alessio asked why they chose Kingston. The applicant said they have a strong presence in NH; a regional marketer is from Kingston and she contacted him; they found the area charming and wanted better land value.

Ms. Alessio reviewed the criteria that the Board needed to review to render a decision for a variance for Article 102.5 (A) for Tax Map R34 Lot 71B:

1. Diminution of Value of Surrounding Properties: "No" from all four Board members/PASSED
2. Benefit to Public Interest: Yes/all four members/PASSED
3. Literal Enforcement result in Unnecessary Hardship: Yes: 3, No: 1/ PASSED
4. Substantial Justice: Yes/all four members/PASSED
5. Use be Contrary to Spirit of Ordinance: No/all four members/PASSED

Ms. Alessio noted that all 5 criteria did pass; she asked for a motion.

MM&S that the variance for the property located at Main Street and Rte. 125, R34-71B, be granted to permit the construction of the Assisted Living Facility. (Motion by Mr. Coffin, second by Mr. Johnson) **PUNA**

Ms. Alessio reminded the applicant that technically they need to wait 30 days during the appeal period; an official notice of decision will be sent within the week for their records.

The Chairman declared the hearing adjourned at 8:24 PM.

<Note: Minutes done from tape; respectfully submitted by Ellen Faulconer.>