

**Town of Kingston  
Zoning Board of Adjustment  
August 11, 2022**

**PRESENT:** Peter Coffin, Chair; Meghan Kelley, Vice Chair; Larry Greenbaum, Richard Russman, Electra Alessio, Members  
Mr. Coffin called the meeting to order at 7:00 PM.

**BOARD BUSINESS:**

**Approval of meeting minutes**

Mr. Greenbaum pointed out two places where the minutes read “Greenwood” instead of “Greenbaum”.

**MOTION:** by Ms. Kelley, to approve the minutes of the June 9, 2022 meeting as amended.

**SECOND:** by Mr. Greenbaum  
**All in favor**

**PUBLIC HEARINGS**

**Daniel Birdsall  
21 Wadleigh Point Road  
Kingston NH**

**Re: Tax Map U5, Lot 34**

**This is a public hearing whereby the applicant seeks a variance to the terms of Article 205.4, Section C of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit a building within 150 feet from the shoreline of Great Pond within the Shoreland Protection District.**

Daniel and Nancy Birdsall were present to discuss this application. Mr. Birdsall said that he had inherited Lot 34 from his uncle, and it included a home that his uncle had lived in year-round. He said the house has no foundation, and is sinking into the sand, and has rot and mold. He said they are seeking to tear it down and build a new three-bedroom home in its place. He said that as no point of the lot is 150 feet from the lake, they can't use the lot without a variance.

Ms. Alessio asked the number of feet of variance that will be needed; Mr. Birdsall said that the house is 34 feet from the water. It was noted that for the sake of a motion, the amount of variance needed should be 120 feet. Mr. Coffin noted that at the first hearing on this property, the Birdsalls were granted variances from Article 301.1 A and 301.1 D, for frontage and setbacks. In addition, he said a condition of approval was that they would record an easement deed for access to cross over one property to get to the other, which has been done. This second application is for the Shoreland Protection ordinance.

Mr. Coffin said that the Shoreland Protection Act is designed to protect waterways from runoff of stormwater. In this case, he said the house is close to the water, and asked

what steps are being taken to control runoff. Mr. Birdsall said that there are banks in front of the house that are fairly steep; Mrs. Birdsall said that there are a lot of gardens as well. Mr. Russman said that the concern is wastewater runoff, and keeping as much as possible out of the lake. Mr. Coffin said that he likes to see efforts to contain stormwater such as rain gardens or vegetation. He said the project will not increase impervious area and the Birdsalls should not hardscape the lot in the future; he said nothing more can be built on the lot that is not shown on the current plan. Mrs. Birdsall said that they have put a lot of work into the lot already, and plan to raise and even out the front so that drainage can be put in. She said they have “tons” of gardens and are committed to no grass.

Mr. Coffin said that the Town will want to compare impervious coverage of the lot by the new building as compared to the old building. Mr. Birdsall said that the area of the existing house is 1373 square feet. Undercover areas, including the porches, deck and stairs, will be 1911 square feet. Mrs. Birdsall said that they will be taking away a cement walkway. They will use the existing 2011 septic system.

Mr. Coffin said that his only concern is the increased impervious area; he asked if the Board would like any conditions of approval other than maintaining infiltration on the property.

Ms. Alessio said that drainage best practices will be addressed as the owners go through the process in the Building Department. She said she has faith in the Building Inspector and Health Officer to address this; it is a part of all properties now. She said it is a real issue in town because of all the water it has.

Mr. Birdsall said that he would like to continue to enjoy the lake and described the plantings and blueberry bushes on the property that are enjoyed by many.

The Chairman closed the hearing and discussion of the criteria began. He reiterated that the applicants are looking for a variance of 120 feet from Article 205.4 Section C, which stipulates a that a building must be 150 feet from the shoreline of Great Pond.

**1. The Variance will not be contrary to the Public Interest:**

Ms. Alessio said that it would not, because the owners are improving the property tremendously by upgrading the house. Ms. Kelley said that the owners have taken care of runoff on their current property and have assured this board that they will do it on the new property. Mr. Coffin said that the property with the improvements will be no more non-conforming than the existing structure.

**VOTE:** All 5 vote “yes”

**2. The Spirit of the Ordinance is observed:**

Ms. Alessio said that it would be, because the upgrade of the property will include maintenance of runoff. Mr. Greenbaum said that the property will be less non-conforming.

**VOTE:** All 5 vote “yes”.

**3. Substantial Justice is done:**

Mr. Greenbaum said he believes substantial justice would be done. Mr. Coffin agreed and said that it is the only reasonable use of the land.

**VOTE:** All 5 vote “yes”.

**4. Values of surrounding properties are not diminished:**

Mr. Greenbaum said the values would absolutely not be diminished; that it is always better to have a new house. Mr. Coffin said it will increase the value of the property.

**VOTE:** All 5 vote “yes”.

**5. Literal enforcement of the two ordinances would result in unnecessary hardship, and cannot be reasonably used in strict conformity to the ordinance:**

Ms. Alessio said that nothing else can be done on the property besides replace the house; it is the only reasonable use.

**VOTE:** All 5 vote “yes”.

All five criteria having passed unanimously, Mr. Coffin asked for a vote.

**MOTION:** by Ms. Alessio, to grant a 120-foot variance to Article 205.4 C. with the caveat that the owners will continue to maintain proper drainage on the property.

**SECOND:** by Ms. Kelley

**All in favor**

Mr. Coffin said a notice of decision will be sent out within 5 days, and construction should not begin until the 30-day window for appeal has passed. Mr. Birdsall said they still need to go to the State for a Shoreland permit, which will take time.

**BOARD BUSINESS, cont.:**

**Proposed changes to ZBA By-laws, Procedures and General Governing Rules**

Mr. Coffin directed attention to the changes made to this document, which had been emailed to the Board members to review. He said that he would like the updated document to be approved this evening, if possible, as the state law (HB1661) requiring some of the changes takes effect on August 23.

Ms. Alessio said she has no problem moving to instate the changes as proposed but said she doesn't think this board can set fees. Mr. Coffin said that the fees have not changed and are already posted.

**MOTION:** by Ms. Alessio, to adopt the changes to the ZBA By-laws, Procedures and General Governing rules, as proposed.

**SECOND:** by Ms. Kelley

**All in favor**

Mr. Coffin noted that there is now a requirement that within 90 days of receipt of an application, the Board needs to hear it and render a decision. However, the applicant can waive this requirement and allow a mutually agreeable extension. If the applicant

does not agree to an extension the board may deny the application without prejudice, in which case the applicant may submit a new application.

Mr. Coffin will finalize the document.

**Alternate Member**

Mike Rohulich of Lamprey Road was introduced by Mr. Russman; he is interested in serving as an alternate member of the board.

There was a brief discussion of how the board operates.

**MOTION:** by Ms. Alessio to nominate Mr. Rohulich as alternate member of the ZBA.

**SECOND:** by Mr. Russman

**All in favor**

This will be a 3-year appointment. Mr. Rohulich was advised that training is not mandatory but is available.

Meeting adjourned at 7:47 PM.

Respectfully submitted,  
Susan Ayer, Secretary / BOS Administrative Assistant