

TOWN OF KINGSTON  
ZONING BOARD OF ADJUSTMENT  
PUBLIC HEARING  
September 14, 2023

**PRESENT:** Peter Coffin, Chair; Meghan Kelley, Vice Chair; Kyle Bache (alternate); Peter Broderick; Richard Russman; Shaw Tilton; Members

**Also Present:** Robin Carter, Land Use Administrator

Mr. Coffin called the meeting to order at 7:07 PM.

A quorum was present at the meeting.

**BOARD BUSINESS**

**Approval of Meeting Minutes (August 10/11, 2023):**

**MOTION:** by Mr. Tilton to accept the minutes from August 10<sup>th</sup>/11<sup>th</sup>.

**SECOND:** by Mr. Russman

**A vote was taken, All in favor, the motion passed. (5-0-0)**

**PUBLIC HEARING**

*<Board note: hearing opened at 7:10 PM>*

**Karen and Daniel LaPanne  
3 Chase Street  
Map R34 Lot 36**

**(Heidi J. Heffernan  
7 Wrights Road  
Map R34 Lot 32)**

Mr. Coffin explained that the applications for 3 Chase St. and 7 Wrights Rd. are being heard together because if the variances are approved they will be going to the Planning Board for a lot line adjustment application. He said that they have to go before the Zoning Board (ZBA) to request the variances because the lots are non-conforming grandfathered lots and they will lose their grandfathered status if new lots are created.

Mr. Coffin read the legal notice:

The applicant for **3 Chase Street** is requesting three (3) variances for a non-conforming residential lot located in Historic District I, and Aquifer Protection District Zone B in order to allow a lot line adjustment with R34 Lot 32. **Two variances are for Article 301.1.A: minimum lot size and minimum lot frontage; and a third for Article 201.4.A: minimum lot size in the Aquifer Protection District Zone B.**

The applicant for **7 Wrights Road** is requesting two (2) variances for a non-conforming residential lot located in Historic District I and Aquifer Protection District Zone B in order to allow a lot line adjustment with R34 Lot 36. **One for Article 301.1.A: minimum lot frontage; and a**

48 **second for Article 201.4.A: minimum lot size in the Aquifer Protection District Zone B.**  
49

50 **Applicant:** Bryan Parmenter of PFS Land Surveying, Inc. who did the survey for both lots  
51 represented 3 Chase St. and 7 Wrights Rd. Mr. Parmenter explained that they have non-  
52 conforming lots based on the fact they were created prior to the zoning was created. Mr.  
53 Parmenter described the area currently part of 7 Wrights Rd. as a small sliver of land that abuts  
54 3 Chase and 3 Chase would like to purchase it. Mr. Parmenter provided some details on the  
55 lots.

- 56     ▪ 3 Chase St. lot would get larger and have more frontage.
- 57     ▪ 7 Wrights Rd. has access frontage is on Wrights Rd. (36') and there is 16.71' area that is  
58 on Chase St. (this is not access frontage). The frontage is non-conforming. The lot size  
59 is conforming as to the Historic District (HDI) zoning so they do not need any relief for  
60 this.
- 61     ▪ Both lots are located in the aquifer protection area and both are non-conforming lot sizes  
62 for the aquifer protection zone.

63  
64 Karen LaPanne of 3 Chase St. came to the table to go over the variance criteria outlined on her  
65 applications.  
66

67 **Article 301.1.A: minimum lot size – 3 Chase St.:**

68 Mr. Coffin referred to the application question, "A variance of the Zoning Ordinance to permit",  
69 and read Ms. LaPanne's answer. "*A small variance to allow maintenance access and allowing*  
70 *the property to become more conforming gaining 16.71 feet more of frontage.*" Mr. Coffin explained  
71 that the 16.71' is the width of the very narrow strip of land that comes down from the northern lot  
72 (7 Wrights Rd.) and is parallel and adjacent to 3 Chase St.  
73

74 Ms. LaPanne went through the five (5) variance requirements.  
75

76 **1. The proposed variance will not be Contrary to the public interest, because...**

77 It will allow the lot to become closer to conformity with the public zoning ordinance.

78 **Board comments:**

- 79     ○ *This will increase the lot size from the existing size of 17,102 S.F. (.392 acres) to*  
80     *21,198.2 S.F. (.487 acres). The lot size being added is 4,906.5 S.F. (.094*  
81     *acres). The minimum lot size requirement in HD1 is 80,000 S.F.*
- 82     ○ *The lot size is not being increased by much but making it less non-conforming.*

83  
84 **A. The Spirit and Intent of the ordinance is preserved.**

85 Because the land itself will remain the same and will be consistent with the spirit of the  
86 ordinance. Their frontage is going to grow and the 7 Wrights Rd. frontage on Chase St. will  
87 be taken away but 7 Wrights access frontage will remain where it is at Wrights Rd. The 16.71'  
88 of frontage for the 7 Wrights Rd. property on Chase St. is unusable and is not the access  
89 frontage for 7 Wrights Rd.

90 **Board comments:**

- 91     ○ *It would maintain a lot that is no smaller than the current non-conforming lot and*  
92     *would not make any significant changes. Ms. LaPanne stated that area is*  
93     *unbuildable.*

94  
95 **B. There is Substantial Justice in granting the variance.** (Any loss to the individual that is  
96 not outweighed by the general public is an injustice.)

The ordinance created the non-conformity and without a variance they are not allowed to do any improvements to their property and their well. Mr. Parmenter explained that the current well is just about straddling the current lot line.

*Board comments:*

- Mr. Coffin commented that the current well does not affect the well radius it is on their property (3 Chase St.) and that it would increase the protection of the well slightly. What the applicant is stating is that they would not have a benefit to them that would cause a loss to the general public. Ms. LaPanne said correct.*

**C. The values of Surrounding Properties are not Diminished.**

Ms. LaPanne answered, It is going to allow 3 Chase St. to become slightly larger but it will not negatively affect the neighboring property values. The land is unbuildable.

**D. Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship.**

Mr. Coffin explained that the unnecessary hardship is not hardship to the applicant but based on something about the property that is unique.

Ms. LaPanne said that the adoption of the ordinance created the non-conformity which created the hardship. The enforcement of the ordinance creates the hardship. Allowing the variance is in the spirit of the zoning ordinance by helping the lot to become more conforming.

*Board comments:*

- Mr. Coffin explained that unnecessary hardship can be shown in two ways. a) because of the special condition of the property that distinguishes it from other properties in the area that there is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and b) The proposed use is a reasonable one.*
- Mr. Coffin mentioned the unusual less than 17' narrow strip of land that comes down between 7 Wrights Rd. and 3 Chase St. is unique to the 7 Wrights Rd. property. It would be the condition of the property that would distinguish it from other properties the area. The ordinance was created to require a minimum lot size in the Historic District and the applicant is seeking a variance because they are actually increasing their lot size and there is nothing about the other property that would make it usable for the current owner.*

Mr. Coffin asked the applicant if there was anything different to add regarding the **variance request for the frontage except it is for frontage versus area**. Mr. Parmenter replied it is a very similar argument. He referred to the third variance request that is for the aquifer protection zone and that the minimum lot size is 3 acres and if the argument would be the same as for the lot size in the Historic District. The applicant replied yes. Mr. Coffin said that the applicant will not be able to increase the property size to make it 3 acres but it would make it less non-conforming.

Mr. Coffin asked the Board if they had any issue in not going over the other two (2) variances since they will be going over the same reasons.

Mr. Coffin explained that all of the variances for both properties would have to be granted in order for the applicants to go to the Planning Board for the lot line adjustment.

148 **Board comment(s):**

149 Mr. Broderick read a portion of the State law (RSA 674:33, I(b)) under variance criteria #5.  
150 **“Alternatively, unnecessary hardship exists if, owing to special conditions of the**  
151 **property that distinguish it from other properties in the area, the property cannot be**  
152 **reasonably used in strict conformance with the ordinance, and a variance is therefore**  
153 **necessary to enable a reasonable use of it.”** He doesn’t see a hardship here; he sees it as it  
154 would be nice to have. He noted that the applicant has to hit all 5 criteria in order for the Board  
155 to be able to grant a variance. Mr. Coffin spoke and said that it reads, **“First is to show that**  
156 **because of the special condition of the property that distinguish it from other properties**  
157 **in the area: (a) There is no fair and substantial relationship between the general public**  
158 **purposes of the ordinance provision and the specific application of that provision to the**  
159 **property; and the proposed use is a reasonable one.”** Mr. Broderick went on to read,  
160 **“Alternatively, the applicant can satisfy the unnecessary hardship requirement by**  
161 **establishing that, because of the special conditions of the property, there is not**  
162 **reasonable use that can be made of the property that would be permitted under the**  
163 **ordinance.”** He commented that the applicant is not making anything they are keeping it as it  
164 is. Mr. Coffin read the rest of this section, **“If there is any reasonable use (including an**  
165 **existing use) that is permitted under the ordinance, this alternative is not available.”** Mr.  
166 **Coffin pointed out and read “The applicant must establish that the property is burdened**  
167 **by the zoning restriction in a manner that is distinct from other land in the area. (a)**  
168 **Determine the purpose of the zoning restriction in question.”** Mr. Coffin said the zoning  
169 here is the aquifer protection ordinance. The purpose is to make a low density of septic systems  
170 in the aquifer protection zone. **“The applicant must establish that, because of the special**  
171 **conditions of the property, the restriction, as applied to the property, does not serve that**  
172 **purpose in a “fair and substantial” way.”** He discussed that the because of the size of the  
173 property changing from 2.8 acres to 2.7 acres would this have a fair and substantial difference  
174 in the density of the aquifer protection zone. Mr. Broderick replied no. Mr. Broderick explained  
175 that how is 3 Chase St. gaining that piece of property support their case.  
176

177 Mr. Broderick commented on #3 Substantial Justice of the variance criteria and the applicants  
178 notes on the application. “Without the variance owners cannot have maintenance access.” Ms.  
179 LaPanne said her concern is more about the well and that it is right on the border of the two  
180 properties and that tractors can go near their well and disturb the aquifer.  
181

182 Mr. Coffin brought up that the key factor here is that the density of the neighborhood is not going  
183 to change if these variances were allowed and increase of the size in the smaller property (3  
184 Chase St.) is of a higher percentage of non-conforming to the loss of conformity to the large lot  
185 (7 Wrights Rd.) which is a very small percentage and is not very useable to the owner of 7  
186 Wrights Rd.  
187

188 **Public comment(s):**

189 Public comment opened at 8:07 PM.  
190 Richard Healey, 3 Wrights Road –

- 191 • Abuts the LaPanne property. He had concerns about the lot line moving closer to his
- 192 property.
- 193 • His concern is the lot would run that whole back of the property and they have a lot of
- 194 leaves and rotten wood in their back yard. He spends a lot of time on his back deck and
- 195 he has to look at their back yard.
- 196 • Mr. Coffin mentioned that if he has issues that need to be addressed about enforcement,
- 197 they should be brought up with the Board of Selectman (BOS).

Mr. Coffin explained that what the Board has to decide is if this would be in the public interest and in the property owners' interest and wouldn't harm public interest; and would be within the spirit and intent of the ordinance. In this case because these are non-conforming lots that preexisted before the ordinances and have grandfathered status of protection whether the Board may determine to grant a variance(s).

Ellen Faulconer, Jericho Drive –

- Ms. Faulconer mentioned that the Aquifer Protection Ordinance covers anything that can be done with the lot.
- Suggested adding to the plan that the property is in the Aquifer Protection Zone and the lot size requirements.

Mr. Coffin informed the applicant that the plan should show the amount of each variance on the plan.

Public comment was closed at 8:20 PM.

Mr. Broderick commented on #3 Substantial Justice on the Aquifer Protection 201.4 variance request. "To protect the well." He understands people may drive their tractors too close to their well but fails to see how granting this variance would further protect the well. Ms. LaPanne said it will allow that no one else can be near that area because they will fence it in. Mr. Broderick said to say that someone may drive near the well, or sell their house does not satisfy this criteria. To say they want the land because the neighbor said you could have the land doesn't satisfy the criteria. Mr. Broderick said if that well goes dry it couldn't be replaced there without special exceptions from the Health Officer because it is so close to the property line and the road.

### **3 CHASE STREET – Map 34 Lot 36 – VARIANCE APPLICATIONS BOARD DELIBERATION AND DECISIONS**

#### **Article 301.1.A: minimum lot size – 3 Chase St.:**

Mr. Coffin noted that the minimum lot size according to this ordinance is 80,00 S.F. The square footage of this lot will be 21,198.2 S.F., the difference is 58,801.8 S.F.

#### **1. The proposed variance will not be contrary to the public interest, because...**

Would not be altering the general use or appearance of the property.

**VOTE:** All 5 vote "yes". (5-0)

#### **2. The spirit of the ordinance is observed.**

Will not change the density in Historic District I.

**VOTE:** All 5 vote "yes". (5-0)

#### **3. Substantial justice will be done by granting the variance.**

It will decrease the non-conformity.

*Board discussion: Mr. Broderick said that he doesn't see where substantial justice will be done.*

**VOTE:** 4 vote "yes", 1 "no". (4-1)

#### **4. The values of surrounding property values are not diminished.**

This Increases nonconformity. Will give property owners of 3 Chase St. the ability to maintain this strip of land.

**VOTE:** All 5 vote "yes". (5-0)

248  
249 **5. Literal enforcement of the provisions of the ordinance would result in**  
250 **unnecessary hardship.**

251 *Board comments: Mr. Broderick questioned how does adding a piece of property to the existing*  
252 *lot cause an unnecessary hardship to keep it as it is.*

253  
254 Meets the criteria under 5. (a) There is no fair and substantial relationship between the  
255 general public purposes of the ordinance provisions and the specific application of that  
256 provision to the property; and (b) The proposed use is a reasonable one.

257 **VOTE:** 4 vote "yes", 1 "no". (4-1)

258  
259 **Article 301.1.A: minimum lot frontage – 3 Chase St.:**

260 Minimum lot frontage is 200 S.F., proposed lot will have 91.71 S.F. of frontage, the difference  
261 between of 108.29 S.F.

262 **1. The proposed variance will not be contrary to the public interest, because...**

263 **No change to the appearance and use of the property.**

264 **VOTE:** All 5 vote "yes". (5-0)

265  
266 **2. The spirit of the ordinance is observed.**

267 **It will be less non-conforming.**

268 **VOTE:** All 5 vote "yes". (5-0)

269  
270 **3. Substantial justice will be done by granting the variance.**

271 **It will decrease non-conformity.**

272 *Board comments: Mr. Broderick said that he doesn't see where substantial justice will be done.*

273 **VOTE:** 4 vote "yes", 1 "no". (4-1)

274  
275 **4. The values of surrounding property values are not diminished.**

276 **Less non-conforming and no change in use.**

277 **VOTE:** All 5 vote "yes". (5-0)

278  
279 **5. Literal enforcement of the provisions of the ordinance would result in unnecessary**  
280 **hardship.**

281 Meets the criteria under 5. (a) There is no fair and substantial relationship between  
282 the general public purposes of the ordinance provisions and the specific application  
283 of that provision to the property; and (b) The proposed use is a reasonable one.

284 **VOTE:** 4 vote "yes", 1 "no". (4-1)

285  
286 **Article 201.4.A: minimum lot size in the Aquifer Protection Zone B:**

287 Minimum lot size according to this ordinance is three (3) acres. The proposed lot size will be  
288 .487 acres, difference of 2.513 acres.

289 **1. The proposed variance will not be contrary to the public interest, because...**

290 **Won't change the appearance and use of the property. Won't change the density and**  
291 **will be less non-conforming.**

292 **VOTE:** All 5 vote "yes". (5-0)

293  
294 **2. The spirit of the ordinance is observed.**

295 **It will be less non-conforming and won't change the density of the area.**

296 **VOTE:** All 5 vote "yes". (5-0)

3. **Substantial justice will be done by granting the variance.**

(Any loss to the individual that is not outweighed by gain to the general public would be an injustice to the applicant.)

**Decrease of non-conformity.**

**VOTE:** All 5 vote "yes". (5-0)

4. **The values of surrounding property values are not diminished.**

**No change of use.**

**VOTE:** All 5 vote "yes". (5-0)

5. **Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.**

*Board comments: Mr. Broderick said that they are going to use it for what it is now, so where is the hardship? Mr. Coffin responded by State Statute a hardship is created when, there is no fair and substantial relationship between the purposes of the ordinance, which is to decrease density, and the provision of that of the specific application of that provision to the property. He noted it is for the property as a whole. There is no way you can get to 3 acres for this property. Mr. Broderick commented that he doesn't see how adding that section of land to the property and using it as it is currently that it creates an unnecessary hardship.*

**There is no fair and substantial relationship that exists between the purpose of the ordinance and application on this property and the proposed use is reasonable.**

**VOTE:** 4 vote "yes", 1 "no". (4-1)

The three (3) variances passed all five (5) criteria.

**Article 301.1.A: minimum lot size (area) – 3 Chase St.:**

**MOTION:** by Ms. Kelley **to grant the variance to 3 Chase Street for Article 301.1.A. area in the Historic District I, allowing a difference of 58,802 S.F. compared to requirement.**

**SECOND:** by Mr. Coffin

**A vote was taken, 4 in favor, Mr. Broderick opposed, the motion passed. (5-1-0)**

**AMENDED MOTION:** by Ms. Kelley **to redact "in the Historic District 1".**

**SECOND:** by Mr. Broderick

**A vote was taken, All in favor, the motion passed. (5-0-0)**

**Article 301.1.A: minimum lot frontage – 3 Chase St.:**

**MOTION:** by Ms. Kelley **to accept the variance for 301.1.A. in relation to the frontage for the difference of 108.29 feet when 200 feet is required.**

**SECOND:** by Mr. Coffin

**A vote was taken, 4 in favor, Mr. Broderick opposed, the motion passed. (5-1-0)**

**Article 201.4.A: minimum lot size in the Aquifer Protection Zone B – 3 Chase St.:**

**MOTION:** by Ms. Kelley **to accept the variance request for 3 Chase Street in relation to 201.4.A. which is the area required in the Aquifer Protection Zone for a difference of 2.514 acres where 3 acres is required.**

**SECOND:** by Mr. Coffin

**A vote was taken, 4 in favor, Mr. Broderick opposed, the motion passed. (5-1-0)**

Mr. Coffin explained to the applicant that the Board's decision is subject to an appeal up to 30 days from today and that the variance(s) expire in two (2) years. If the applicant(s) goes to the Planning Board that extends it for as long as the Planning Board is working on it, plus six (6) months.

<Board note: hearing closed at 8:55 PM>  
<The Board took a break at 8:55 PM and reconvened at 9:05 PM>.

## **PUBLIC HEARING**

<Board note: hearing opened at 9:10 PM>

**Heidi J. Heffernan**  
**7 Wrights Road**  
**Map R34 Lot 32**

Mr. Coffin mentioned that there are two (2) variances required. One for Article 301.1.A – minimum lot frontage and one for 201.4.A: - minimum lot size in the Aquifer Protection Zone.

**Applicant:** Mr. Parmenter and Ms. LaPanne presented on behalf of the applicant.

### **Article 301.1.A: minimum lot frontage – 7 Wrights Rd.:**

Mr. Parmenter described the access frontage being at the end of Wrights Rd. The frontage is about 36 feet wide.

Mr. Coffin brought up the question whether Wrights Road was ever extended beyond that point. He explained that the ordinance refers to frontage on what is used for access, so the 16.71 feet off Chase St. is not considered part of access frontage.

Mr. Parmenter explained that the access frontage on Wrights Rd. is not changing.

### **Public comment(s):**

Public comment was opened at 9:15 PM. There was none. Public comment closed at 9:15 PM.

### **Board comment(s):**

Mr. Broderick said that everything brought up here should be about 7 Wrights Rd. and not 3 Chase St.

## **7 WRIGHTS ROAD – Map 34 Lot 32 – VARIANCE APPLICATIONS** **BOARD DELIBERATION AND DECISIONS**

### **Article 301.1.A: minimum lot frontage – 7 Wrights Rd.:**

**1. The proposed variance will not be contrary to the public interest, because...**

**No change to existing conditions. Access frontage does not change.**

**VOTE:** All 5 vote “yes”. (5-0)

**2. The spirit of the ordinance is observed.**

**No change to access frontage.**

**VOTE:** All 5 vote “yes”. (5-0)

**3. Substantial justice will be done by granting the variance.**

Mr. Coffin corrected a statement on the application “This is not a buildable lot” and has an obsolete access lane. He noted that we are talking about the whole property, the 2.7 acres that will be left and that it is a buildable lot and was built upon but can’t be expanded upon.

Mr. Coffin explained this question further - Any loss to the individual that is not outweighed by the general public is an injustice. The loss to the individual would be that they couldn’t do the lot line adjustment but this wouldn’t be against the general public.



**No change in conditions and no loss to the general public.**

**VOTE:** All 5 vote "yes". (5-0)

**4. The values of surrounding property values are not diminished.**

*Board discussion: There will be no change in the current conditions and other than having that narrow strip of land be maintained and put a fence up to block the boundaries to improve it would be an advantage to the 3 abutters along that strip of land.*

**No change in current conditions and improvement to abutters of narrow strip maintenance.**

**VOTE:** All 5 vote "yes". (5-0)

**5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.**

*Board discussion: Mr. Coffin said if they applied literal enforcement they would not be able to use the unused narrow strip of land. They wouldn't be able to sell a portion of the property that they would like to, that would be a hardship if they couldn't detach a section of land they have no use for. Mr. Broderick read the a portion of the applicant's answer on #5 of the application "The hardship is due to the unique formation on my lot compared to others." Mr. Broderick said this does not create an unnecessary hardship because they do not like the shape of their boundaries. Mr. Tilton commented that if we are saying that the property can't be adjusted we are not allowing them; but if we are saying if the spirit and intent of making this happen, we are allowing them to do this, we are not changing anything about anything, the hardship is the law is creating a hardship on the property owner that they cannot adjust what they own rightly by saying they can do this. They can say there is a hardship to the property owner in this sense. Mr. Coffin said they can't make reasonable use of the property. Mr. Broderick read the rest of the answer on #5, "Piece is of no value and incapable of producing a reasonable return." He said that this is setting a heck of a precedent to come in and say you want a variance because you don't like the shape of your lot and there is no reasonable return. Mr. Coffin said that the Board would reject that statement and not use it as a finding of fact.*

*Mr. Coffin read the language from Article 301.1.A regarding frontage. "Every building lot shall have a minimum contiguous frontage of two hundred (200) feet on a "public right-of-way". This frontage shall provide access to the lot." This is why the strip that goes down to Chase St. can't be used as access and that this is why the frontage isn't changing. Only Wrights Rd. provides access to the property.*

**There is no change in access frontage and 200 foot requirement cannot be met due to lot configuration.**

*Note: Mr. Coffin brought up that if the Town road agent can find some evidence that the 230 foot extension was made to Wrights Rd. it will need to be included on the plan. He suggested that the applicant do some research on this if they do go to the Planning Board.*

**VOTE:** 3 vote "yes", 2 "no". (3-2)

Mr. Coffin noted that all five (5) criteria have been met.

**Article 301.1.A: minimum lot frontage – 7 Wrights Rd.:**

**MOTION:** by Ms. Kelley to grant the variance for 7 Wrights Road in relation to Article 301.1.A., granting 36 feet of frontage where 200 feet is required based on all five (5) criteria that have been met.

*Board discussion: Mr. Broderick asked if the Board had anything from the road agent. Mr. Coffin said we did receive something but do not know if the road goes all the way down. Applicant – Mr. Parmenter said that this conflicts with the owner's deed.*

**SECOND:** by Mr. Russman

**A vote was taken, 4 in favor, Mr. Broderick opposed, the motion passed. (5-1-0)**

**Article 201.4.A: minimum lot size in the Aquifer Protection Zone B – 7 Wrights Rd.:**

Three (3) acres is required in the Aquifer Protection Zone A or B.

**Public comment(s):**

Public comment was opened at 9:35 PM. There was none. Public comment closed at 9:35 PM.

**Board comment(s):** Mr. Coffin asked the Board if they had any questions. There was none.

**1. The proposed variance will not be contrary to the public interest, because...**

**Density in the aquifer protection zone will not be increased.**

**VOTE:** All 5 vote "yes". (5-0)

**2. The spirit of the ordinance is observed.**

**Intent is to limit density and density will not change.**

**VOTE:** All 5 vote "yes". (5-0)

**3. Substantial justice will be done by granting the variance.**

*Board discussion: Mr. Broderick pointed out that the answer on the applicant's application reads "This is not a buildable lot and granting the variance will allow 3 Chase St. maintenance access." He commented what does this have to do with 7 Wrights Rd., they did not answer this as it pertains to 7 Wrights Rd. and they have to answer all of the questions as required by statute. <The Board stopped deliberations and asked the applicant to answer this question.>*

The Board asked the applicant to clarify the answers to question 3 as it pertains to 7 Wrights Rd. Mr. Parmenter responded that the applicant is losing a 1/10<sup>th</sup> of an acre of land, the public is not gaining a 1/10<sup>th</sup> of an acre of land and there is no gain by the public. Mr. Coffin asked the applicant what the loss would be to the individual if they enforced this variance. The homeowner could lose the ability to be in good standing with neighborhood, the general public. Justice is being done by allowing the lot line transfer by putting abutting lands in more conformity and not creating a significant detriment to the lot (7 Wrights Rd.). By allowing the variance would create a lesser of a density for the aquifer protection.

*Board discussion cont. Mr. Tilton commented that the loss to the individual is they can't sell the property and there is no gain to the general public whether it changes or not. Then it becomes a hardship for the individual, that's the substantial justice. Mr. Broderick spoke and said that it is not an unnecessary hardship.*

**The failure to grant the variance would prevent the applicant from selling an unused unusual parcel of land without any gain to the general public.**

Mr. Coffin said that if someone has another finding of fact they can provide it.

Mr. Broderick asked that it be noted that he disagrees with the findings of fact because the applicant did not answer the question.

**VOTE:** All 3 vote "yes". 2 vote "no". (3-2)

**4. The values of surrounding property values are not diminished.**

**No change to surrounding properties and no change to property use. (The configuration of what is there will stay there.)**

**VOTE:** All 5 vote "yes". (5-0)

**5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.**

**There is no fair and substantial relationship which is the purpose of the ordinance, which is density, and the specific application of the provision of the property and the proposed use is reasonable because it doesn't change.**

*Board discussion: Mr. Broderick said they did not answer this question sufficiently and because they do not like the shape of their lot doesn't create a hardship.*

**VOTE:** 3 vote "yes", 2 "no". (3-2)

Public comment was opened and closed at 9:35 PM. There were no comments from the public.

**Article 201.4.A: minimum lot size in the Aquifer Protection Zone B – 7 Wrights Rd.:**

**MOTION:** by Ms. Kelley **to grant the variance for 7 Wrights Road in reference to Article 201.4.A., granting 2.73 acres where 3 acres is required in the Aquifer Protection Zone B for the reason that it passed all five (5) criteria.**

**SECOND:** by Mr. Coffin

**A vote was taken, 3 in favor, Mr. Russman and Mr. Broderick opposed, the motion passed. (3-2-0)**

Mr. Coffin explained to the applicant that the variances have been granted so they can go to the Planning Board. However, the plan should be amended to show that this is in the Historic District Zone and add that this is in Aquifer Protection Zone B overlay. Mr. Parmenter will also add to the plan the five (5) variances that were granted.

Mr. Coffin explained that Notice of Decisions will be mailed to each applicant separately. There is a 30 day appeal process; the Board's decision is appealable up to 30 days from today. They can apply to the Planning Board and get on the agenda, but will have to wait 30 days for their public hearing. The variance(s) expire in two (2) years. If the applicant(s) go to the Planning Board then it will not expire until six (6) months after the Planning Board is done.

*<Board note: hearing closed at 10:04 PM>*

553 **PUBLIC HEARING**

554  
555 **Greg Demetri and Scott Demetri**  
556 **83 Rt. 125**  
557 **Map R10 Lot 9**  
558

559 Mr. Coffin recused himself from the public hearing on this application for Administrative Decision for  
560 Article 110.3.K because he was part of the decision from the Planning Board. Ms. Kelley stepped in  
561 as Acting Chair and Mr. Bache was a voting member for the hearing on this application.  
562

563 **83 RT. 125 – Map R10 Lot 9 – Appeal to Administrative Decision:**

564 *<Board note: hearing opened at 10:05 PM>*  
565

566 Ms. Kelley read the legal notice:

567 The applicant has submitted an **Appeal from an Administrative Decision for Article 110.3.K.**  
568 to a decision that was made by the Kingston Planning Board on August 1, 2023 that the  
569 proposed use of a facility that services and leases refrigerated trailers is prohibited at this  
570 location due to its proximity to a truck sales facility within 1,000 feet.  
571

572 **Applicant:** Present were John L. Arnold, Attorney from Orr & Reno who was representing the  
573 applicants, Greg and Scott Demetri. Greg joined Mr. Arnold at the table and Scott was present in  
574 the audience. Also present in the audience was Erin Lambert the engineer.  
575

576 Mr. Arnold explained that they have two (2) applications before the Board tonight. 1)  
577 Administrative Appeal and are challenging a decision that was made by the Planning Board that  
578 the proposed use of the property is not allowed by the terms of the zoning ordinance. 2)  
579 Separately they have filed a Variance application and will get to it later if the Administrative Appeal  
580 isn't granted. He commented that they have put together two (2) alternate theories on why this  
581 use should be allowed for this property. This use is allowed by right under the zoning ordinance  
582 and the Variance application is a use that should be allowed by Variance if the Administrative  
583 Appeal isn't granted.  
584

585 Mr. Arnold went over the background and provided an arial image on the overhead screen for  
586 viewing.

- 587     ▪ He pointed out the subject property on the map. It is roughly a 12 acre lot in C-III zoning
- 588     district.
- 589     ▪ The Demetri's run a company called CJ&J Leasing, a family owned business that leases
- 590     and services refrigerated trailer units. They are looking to move their business to this
- 591     property.
- 592     ▪ The issue they have run into with the Planning Board is it is within 1,000 of Pat's Truck
- 593     Sales located at 77 RT. 125 and because it is within 1,000 feet that this business is not
- 594     allowed at 83 RT. 125.
- 595     ▪ He went over the conceptual site plan for the property. It is located on RT. 125 and West
- 596     Shore Park Rd. The proposal is to build a 20,000 S.F. building in the middle of the property
- 597     which contains some office space and repair service bays for the refrigerated trailer units.
- 598     The bulk of the property would be storage for the trailer units.
- 599     ▪ Greg Demetri gave an overview of the business. CJ&J Leasing is a family owned business
- 600     for 30+ years. They lease refrigerated trailers. Currently located in Haverhill, MA. They
- 601     have outgrown the property in Haverhill and this property suits what is needed for their
- 602     business. They would be coming to Kingston to be good neighbors and this would be a
- 603     good fit for the business and the Town.

- 604       ▪ Mr. Arnold said that CJ&J is fundamentally a different business than the relevant provision  
605       of the zoning ordinance intends to govern. It is a lot different than a used car lot, different  
606       than a new car lot, and an RV dealership. This is an important distinction between how  
607       the ordinance is interpreted and the variance criteria.
- 608       ▪ The applicant provided a narrative support document of the Administrative Appeal. Mr.  
609       Arnold presented an overview of the of the three (3) arguments for this appeal.

610  
611       Mr. Arnold referenced Article 110.3.K.. (“K”) – Permitted Uses in the C-III zoning district.  
612       The language in K shows the terms *permitted use* and *uses*. He read Subsection K of the  
613       ordinance. **“Vehicular, trailer and recreational vehicle sales, rentals or leasing and service  
614       repair facility provided (these are permitted uses) that no lot used for this purpose may be  
615       located any closer than 1,000 (one thousand) feet in any direction to any other lot used for  
616       this purpose.”** Mr. Arnold emphasized the words “this purpose”. He mentioned that the Supreme  
617       Court in New Hampshire says that when you have a zoning ordinance that uses two (2) different  
618       terms in the same section it is presumed that the terms mean different things. The two (2) different  
619       terms referred to for this provision are *permitted use* versus *purpose*. Given that these are different  
620       terms, and given that the rules of construction applied by the Court that these mean different  
621       things. Mr. Arnold commented that the only rational term for this provision is that Subsection K  
622       identifies one (1) use category and identifies a permitted use. Within the permitted use there are  
623       several different ones that have been identified – vehicular, trailer, RV sales, renting or leasing.

624  
625       Mr. Arnold stated that his argument is the 1,000 foot separation requirement by its plain  
626       terms applies to the specific purposes and not the overarching use that it is in Subsection K. He  
627       went on to explain that you couldn’t have a car dealership within 1,000 feet of another car  
628       dealership, that’s a specific purpose that is identified in Subsection K. But you could have what  
629       they are proposing a trailer leasing facility within 1,000’ of a car dealership because they are  
630       separately identified purposes within Subsection K.

- 631  
632       1. The **plain language of the ordinance does not prohibit a trailer leasing facility  
633       within 1,000 feet of a car dealership.** Pat’s Truck dealership is a truck dealership  
634       and this proposed use is a trailer leasing facility and are fundamentally different  
635       purposes. The 1,000’ separation requirement does not apply to them.
- 636       2. Requiring 1,000 feet of separation between these two (2) uses, Pat’s Truck Sales and  
637       this proposed use isn’t really consistent with the **purpose and intent of the provision.**  
638       The 1,000’ separation requirement was implemented specifically for a couple of  
639       reasons. 1) To prevent the creation of an auto-mile down RT. 125 with several used  
640       car lots one after the other and the frontage of the street being occupied by parking  
641       lots with vehicles on display; and 2) promote diverse types of businesses within the  
642       commercial district so you don’t end up with car dealership after car dealership along  
643       the road.
  - 644       - Mr. Arnold referred to Planning Board minutes from 2011  
645       (10/04/2011) when the Town was contemplating enacting this zoning  
646       ordinance. He commented that they reflect a discussion that points  
647       out the intent of the ordinance and he read a few discussion  
648       comments from the minutes. “Mr. Landry stated that while diversity  
649       was good, having multiple car lots next to each other along the  
650       highway was not good.” “Mr. Coppelman said that he likes cars but  
651       he does dislike looking up and down Rte. 125 and being a magnet for  
652       used” car “sales.” Mr. Heitz agreed that he doesn’t like to see a lot of  
653       car lots as they tended to be unsightly and dirty-looking.” These  
654       comments reflect the intent behind the provision, to preserve an

attractive streetscape and not just be lined by used car lots and he believes that this is what the Town was trying to avoid when they enacted this provision.

- He remarked that their proposed use is different and the intent of the provision is to prevent the type of use that they are proposing.
- A copy of the conceptual site plan was put up on the overhead screen. Mr. Arnold explained that they are not proposing a site to attract customers that are driving by with flashy displays out front.
- It is a lot that will have a substantial commercial building as shown on the plan. The lot will have significant vegetation and landscaping in the front. Most of the storage of the trailers and equipment for the business will be out behind the building in the rear of the property.
- Mr. Arnold went back to the minutes and referenced a concern that was stated, "that the requirements for auto dealer licenses were such that a very minimal building could be erected with the rest of the land being used for displays that did not really do much for the commercial tax base or creation of jobs hopefully associated with commercial development. " He understands that putting up a small car dealership doesn't do much for the tax basis, it doesn't do much for the assessed value, doesn't do much as far as creating jobs. He commented this will bring a diverse business to the C-III district, will create tax revenue for the Town, and bring jobs to the area. He stated that the business they are proposing isn't contrary to this concern, it is what the Town was trying to achieve by expressing these concerns. They are not talking about putting up a small car shack they are talking about putting up a 20,000 S.F. building. The business will generate revenue, increase the assessment for the property, and long-term create jobs for residents in Kingston. It is going to be a driver for the economy.
- The intent and purpose of this provision requiring the 1,000' separation requirement; preserving the appearance of the streetscape and bringing diverse businesses to the area. With what is being proposed they are doing both of these things. This is a much different business than Pat's Truck Sales and they will be preserving the appearance of the streetscape.

3. Mr. Arnold said that this is an argument that make in the administrative appeal that he doesn't expect this Board to address. This is a legal argument that is put in mainly to preserve their fights in the event there is an appeal. He explained that it is an argument based on the equities and enforceability of the provision. He commented that several decades ago that had provision requirements, like the 1,000 separation requirement were more common and in more recent times they are uncommon and have generally been phased out and it is usual to see one. The history of enacting this provision doesn't give any rhyme or reason to the 1,000 feet. There is no explanation why 1,000' is the magic number that will serve these purposes and protect the Town as opposed to some other distance. How the provision operates creates some degree of unfairness to property owners because permissible uses of the property fluctuate based on what neighbors are doing. He fully acknowledged this isn't the case here, but it is essentially a floating zone where someone could come in and buy a property and expect to develop a specific use on it and then unbeknownst to them their neighbor beats them to it and puts in a similar use before they get a chance to. Then a use that is intended for a property that was allowed is now prohibited. So, it creates a degree of uncertainty and unfairness.

Mr. Arnold mentioned that if the Board wants to get into more detail in what is in the application, he certainly can if the Board has any other questions.

**Board comment(s):**

Mr. Broderick asked if they repaired tractors/the cabs. Greg Demetri replied, all they do is deliver and pick up the trailers. He noted that they have four (4) tractors that deliver the refrigerator units from one point to another. They do not lease or sell tractors. Ninety-five percent of the trailers are refrigerator trailers and 5% are dry trailers. He commented that most of their trailers are storage and are behind supermarkets and are backed up to loading docks so for the maintenance and repair they may need to maintain overhead doors, brakes, tires. Mr. Broderick asked who their customer base is. Mr. Demetri said most are grocery stores that need extra refrigerator storage at certain times of the year. Also, produce and dairy companies that may need extra refrigerator storage. Mr. Demetri explained that most of their customers are existing customers and what you won't see is customers coming to the property to shop and look at the trailers, 98% of their customers contact them by calling them. Mr. Broderick referred to the plan and talked about the driveway coming off RT. 125 and asked how deep and wide it is. Ms. Lambert came to the table to respond to this question and said the plan provided is a rendering so the measurements are not on it. The narrowest width is the standard width and there are two aprons for the trucks to use for turn-around.

Mr. Tilton brought up the reason the applicant is before the Board is for the Administrative Appeal is for the 1,000 provision. Mr. Tilton wanted to clarify a couple points the applicant raised. 1) They are suggesting that "use" and "purpose" are different. So, the Board should be thinking of these differently. He said they are permitted to use, but they are saying that Pat's Truck Sales and their proposal is different purposes so the Board should not be considered as similar businesses. Mr. Arnold said that the ordinance uses two separate terms and that "use" is in one place and "purpose" is in the other; and trying to figure out the meaning that go with each term, his argument is that purpose is in Subsection K is specific to vehicular vs trailer vs RV sales, leasing and service. Demetri's proposed business of trailer leasing is a different purpose than a truck dealership like Pat's Truck Sales. Therefore, the 1,000' requirement doesn't apply because of the plain terms of the ordinance, the ordinance says properties "used for this purpose" cannot be within 1,000' of another "lot used for this purpose." Mr. Tilton asked if they are saying that the 1,000' separation is purely put in for appeal purposes. He commented that it is written into the Town ordinances that this is the amount (1,000 feet) and is not arbitrary it is a fixed amount. Mr. Arnold explained that when he said arbitrary it is not that the number isn't fixed it is that there is no rational basis to support this number articulated. He said that in order for an ordinance to be enforced there has to be a rational basis and the provision being applied and the public purpose that it is trying to achieve. His point is that he hasn't been able to find any rational basis between specifically 1,000 feet as being a necessary number to achieve this public purpose of trying to preserve the appearance of the streetscape or bring diversity to the business in the area.

Mr. Russman said in talking about 3 acre zoning (3 acre lots) that if the Town sets 3 acre zoning there is no real rational basis for this. Mr. Arnold said that he is not saying this at all and there can be a rational basis or it, but he looked at the Planning Board minutes around the adoption of this, he looked at the purpose and intent statements in the zoning ordinance and he can't find any articulated basis for the 1,000 feet. Presumably when the Town is doing its zoning acronym and coming up with the 3 acre lot size it is with recommendations from the soil scientist or stated purposes in the minutes, master plan on how much density is desired and here he hasn't been able to make that connection why 1,000 feet is the correct number there. Mr. Russman referred to the language in Subsection K that vehicular could mean trucks, trailer leasing or rentals falls

757 within this. Mr. Arnold said it does and he is not arguing that their use doesn't fall under Subsection  
758 K, but what he is saying is that even within K the ordinance uses these different terms – it uses  
759 “use” and it uses “purpose”. Yes, they are within the use category in K, but within K there are  
760 different purposes and that is why he is saying this has significance. The Supreme Court has said  
761 that if there is a use of two (2) different terms “use” and “purpose” they are presumed to have  
762 different meanings. Mr. Arnold said that this “purpose” refers to vehicular is one purpose, trailer a  
763 purpose, and RV sales is a purpose, rentals and leasing are a purpose. They are within K as a  
764 trailer leasing company, but their purpose of a trailer leasing company is different than the purpose  
765 of Pat's Truck Sales which is a vehicular sales facility. In the last sentence about the 1,000 feet  
766 that is where it refers to “this purpose” and that no other lot with this use can be within 1,000' can  
767 be “used for this purpose”, and that there are different meanings within the subcategories of K.  
768

769 **Public comment(s):**

770 Public comment opened at 10:40 PM.  
771

- 772 - Ms. Kelley read a letter submitted from Jake Rayner, owner of Pat's Truck Sales, 77  
773 Route 125 in favor of the proposed refrigerator trailer leasing business. He stated that,  
774 “Their business of renting and servicing refrigerated trailers is nothing like my truck sale  
775 business.”  
776
- 777 ■ Ms. Kelley read a letter submitted from Glenn Coppelman dated September 13, 2023  
778 who was a member on the Planning Board at the time of the adoption and amendment  
779 of this Article. “As a member of the Kingston Planning Board when this Article was  
780 amended (as well as when C-III was originally adopted), I can tell you that much of the  
781 Boards discussion involved the “functionality” of the C-III Zone, as well as the density of  
782 uses and the desire to have a commercial zone that offers a variety of businesses for the  
783 benefit of our community. We were seeing much development in neighboring  
784 communities that had a monoculture of vehicular and related sales/service businesses  
785 along stretches of roadway, particularly Route 125. The Board, at the time, proposed the  
786 1000-foot separation amendment in order to provide for a more diverse landscape of  
787 business and services, and the Voters supported it overwhelmingly.”  
788
- 789 ■ Ms. Kelley read an email from Dana Akers, 16 Reinfuss Lane, dated September 7, 2023  
790 that outlined concerns for the two applications. He recommended input from Town  
791 Counsel prior to the Board voting on the criteria.  
792
- 793 ■ Ms. Kelley read an email from the Town attorney dated June 29, 2023 to Glenn  
794 Greenwood, Town Planner in regard to Section 110.3(K). “If a facility that leases  
795 refrigerated trailers is a permitted use in the C-III zone if it is within 1,000 feet of another  
796 vehicle rental facility. Both of these uses seem to fall clearly within the category of  
797 Section 110.3(K). They both involve the leasing or sales of vehicles or trailers. The  
798 ordinance, no matter how outdated or what the original purpose was intended to prevent  
799 needs to be adhered to as it is written. A trailer leasing facility is not permitted use if it is  
800 within 1,000 feet of an existing construction vehicle sales facility.”  
801

802 Erik Towne, Manages Lone Tree at 12 West Shore Park Rd. –

- 803 ■ Here on behalf of Erik and Ryan who own the property.
- 804 ■ They own 750 feet on the back lot line of this property.
- 805 ■ The parameters for the 1,000 separation was set a long time ago.
- 806 ■ In support of upholding the Planning Board's decision.



Ellen Faulconer, Jericho Drive –

- Would like the Board to uphold the Planning Boards decision. She explained that the Planning Board did their due diligence in reaching out to Town Counsel as to whether they were reading the ordinance correctly in that this was not allowed. The Planning Board got advice from Legal Counsel and then made their decision.

Public comment was closed at 10:45 PM.

### **83 RTE. 125 – Map R10 Lot 9 - APPEAL TO ADMINISTRATIVE DECISION BOARD DELIBERATION and DECISIONS**

Mr. Bache commented that if we go on the interpretation of the applicant then there could be a vehicular lot, a trailer lot, RV sales lot, a rental lot and a vehicle leasing lot, and a service repair facility all inline together. This seems to go against the ordinance.

Mr. Broderick explained that the Board has been given a lot of information and heard enough testimony to move to make a motion.

Ms. Kelley noted that we have received testimony from two former Planning Board members that were on the PB when the ordinance was adopted; and have received advice from Town Counsel.

**MOTION:** by Mr. Russman **to uphold the Planning Boards decision and to not grant this.**

**SECOND:** by Ms. Kelley

*Board discussion: Mr. Broderick stated that the ordinance is specific and Town Counsel has upheld it, and the Planning Board has upheld it and he agrees with it. Mr. Tilton said in terms of upholding it, we have Legal Counsel, the history and the 1,000 ft. is the way the ordinance is written. It is an interesting argument about the terms but there is no grounds to overturn the Planning Board's decision.*

**A vote was taken, All in favor, the motion passed. (5-0-0)**

Ms. Kelley informed the applicant that their Appeal to Administrative Decision has been denied and that we will move on the Variance Application.

### **83 RT. 125 – Map R10 Lot 9 – Variance Application:**

Ms. Kelly read the legal notice for the hearing.

The applicant is requesting a **variance in the Commercial III district for Article 110.3.K.** to permit approximately 600 feet of separation between a proposed trailer service and leasing facility and an existing truck dealership, where 1,000 feet of separation is required.

*<Mr. Coffin returned to the hearing. Mr. Bache resumed as an alternate member/was not a voting member.>*

**Applicant:** Present were John L. Arnold of Orr & Reno and the property owners Greg and Scott Demetri.

Mr. Arnold said that the testimony they provided in the Administrative Appeal is equally applicable for the Variance request.

- The variance request specifically is to allow the proposed trailer service and leasing facility within 1,000 feet of another truck sales dealership.

- He noted that the application says about 600 feet of separation distance from lot 1-9. It may be less, it wasn't entirely clear because Pat's Truck Sales is on lot 1-9 and on the aerial they may extend to lot 1-10 but wasn't clear based on the ownership.
- The issue here is the separation between the uses of Pat's Truck Sales and this proposed use.

Mr. Arnold went over the five (5) variance criteria outlined in their application.

**1. The proposed variance will not be contrary to the public interest.**

Mr. Arnold explained that the test to this criteria is if it would alter the essential character of the locality; and 2) if it would threaten public health, safety, or welfare.

- In terms of character of the area, a slight reduction from 1,000 feet down to 600' or even 400' is not going to change the character of the area. It's a relatively minor difference and is not going to have a dramatic impact. This is based on the separation itself.
- There shouldn't be public health, safety, and welfare differences whether a 1,000' or 600'. They have been operating for 30 years and have not had any health or welfare issues in terms of the business.

**2. The spirit of the ordinance is observed.**

Mr. Arnold said that this question overlaps with the first question. The test is the same test that the Court applies. The spirit of the ordinance is spoken about in Mr. Coppelman's email. The creation of this was to prevent an auto mile down RT 125. The site plan shows they are not a car lot or will have streetscape with flashy displays of cars or inflatables. He explained that there will be vegetation along the street, the trailers will be mostly in the back of the property. For these reasons it is consistent with the spirit of the ordinance.

**3. Substantial justice will be done by granting the variance.**

Mr. Arnold explained that this test is a balance between public harm and the benefit to the applicant on the other and the question of which is greater. In this case there isn't any public harm by allowing 600' if separation. The Demetri's have a successful business and this will be a public benefit, it will be a boost to the economy, increase tax revenue and increase jobs. It is going to put a large parcel of commercial property to use, 12 acre lot zone C-III. Right now, there is an old single family home on it which is a non-conforming use. The benefit to the Demetri's is without the variance they cannot relocate their business here so is a very significant benefit to them.

**4. The values of surrounding property values are not diminished.**

The question is the separation between this property and Pat's. of 600' of separation going to have an impact on surrounding property values more than if it was 1,000'.

**5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.**

The property has unique characteristics that distinguish it from other properties.

- Relatively large lot (12 +/- acres). Most of the other lots down RT. 125 are generally smaller lots. The size of the lot is important because this uses a lot of space. The other lots in this zone are too small to accommodate the use.
- This property has relatively little frontage on RT. 125. This is relative here because one of intents of the ordinance is to prevent streetscape of car lots (vehicle displays). The lot is a deep lot that allows them to store the trailers in the back of the lot where there is not a lot of visibility. On their site plan it shows they are preserving the streetscape.
- The property currently has a non-conforming use on it. The house that is there isn't

908 allowed in the commercial district; it is allowed to remain a non-forming use, but not an  
909 appropriate use of the property. This use is more consistent with the zoning than what is  
910 currently there.

911 Test of the hardship Is there is a substantial relationship between the general public purposes  
912 and ordinance and its strict application to this property. This is going to improve the appearance  
913 of the streetscape and bring diverse business into the C-III district. The development serves  
914 both these purposes, it will preserve the streetscape, it avoids the unsightly streetscape that the  
915 ordinance was designed to prevent, and brings diverse business to Kingston. The trailer leasing  
916 company is unlike anything else that is in Town and much different than Pat's. This is a  
917 significant commercial development. This proposal serves the general public purposes of the  
918 ordinance and what it tells you is you do not need to strictly apply the ordinance to achieve  
919 those purposes. That means there is not a substantial relationship between those purposes and  
920 the separation application of this property. This is what needs to be shown to establish hardship.  
921 The use is reasonable.

922  
923 **Board comment(s):**

924 Mr. Broderick brought up it appears there is about 420' between Pat's and this property. Mr. Coffin  
925 commented that the intent of the ordinance is pretty significant.

926  
927 **Public comment:**

928 Public comment opened at 11:10 PM.

929  
930 Ellen Faulconer, Jericho Drive –

- 931 ▪ Ms. Faulconer explained that when this ordinance was put together it was because the  
932 Town's people were putting letters in the paper, giving comments to the Planning Board  
933 about how development was occurring and working its way up through Kingston. The  
934 Town was asking the Planning Board to do this.
- 935 ▪ 1,000 feet is five (5) house lots. 1,000 feet in a commercial zone is not an extraordinary  
936 length of space. 1,000 feet was reasonable to allow the use but still answer to the call  
937 from the public that this is not what they want Kingston to look like.
- 938 ▪ This ordinance was put in with this language and was adopted by the Town because this  
939 is what they want to limit these types of businesses coming up RT. 125.
- 940 ▪ The wording of the ordinance doesn't just address car lots, it shows vehicular sales,  
941 service and trailers....it is specific.
- 942 ▪ The Town's attorney has confirmed that this is what it means, it is not "if" or "or". This is  
943 what the Town voted. She commented that if the Board allows this they are basically  
944 gutting this part of the ordinance.
- 945 ▪ Ms. Faulconer would not like this variance to be granted.
- 946 ▪ She mentioned that the Town used language that was used in another town and has  
947 been proven in court.

948  
949 Josh Webber, 85 RT. 125 –

- 950 ▪ Regarding property values, this is not more than 1,000 feet and the ordinance should be  
951 applied. There is going to be a 17' fence on the side abutting his property. The whole  
952 side of the property runs along his backyard. This is what he will be looking at from his  
953 second floor. He doesn't know how it could be defended that this would not significantly  
954 decrease the value of his property.
- 955 ▪ Diesel trucks are very dirty and if there is going to be 20 trucks coming in and out a day  
956 that is going to be a very dirty look and leave black soot that diesels do as well as health  
957 concerns for the people that live in the area.

Eric Towne, 12 West Shore Park Rd. –

- The ordinance says what it says and should be followed.
- Tax money and jobs shouldn't come into play with this decision.
- He has had conversations with other people and if this gets approved it will be extremely hurtful.
- He has 750 feet along the back wall, where are they going to put all the trailers?
- Had concerns with lighting.
- This is a huge detraction from property values.
- He doesn't see how they can claim hardship. These rules were in place before they made the purchase. There are many other things that could be done here.

**Board comment(s):**

Mr. Russman asked the applicant if they looked into what was allowed before they purchased it. Mr. Arnold explained that Supreme Court has made it clear that buying a property that is subject zoning restrictions does not put any limitation to claim a hardship.

Mr. Coffin mentioned that the Town has had many people interested in purchasing lots in the C-III district who did not because they wanted to do vehicle sales, etc. and looked at the ordinance and realized the lot they were interested in didn't have the 1,000 separation.

Mr. Arnold said that they are not claiming ignorance of the ordinance he is saying that the existence of the ordinance doesn't have any bearing on the ordinance criteria when they bought the property. It's been suggested that if someone buys a property with knowledge of a zoning restriction they can't claim any hardship that is not what the law is. Buying a property with knowledge of a zoning restriction, the buyer is equally entitled to ask for a zoning variance as someone who owned it when the zoning restriction was put in. That shouldn't be something that is counted against his client in any way. This has to do with the condition of the property and proposed use, not anything to do with the purchase.

Mr. Coffin explained that the Board's decision shouldn't be based on a contingency purchase on whether a variance is granted or not.

**Applicant comment(s):**

Mr. Arnold responded to some of the comments brought up earlier. In terms of Ms. Faulconer's comments that this is not what the Town wants the area to look like and that is what the voters reflected in the warrant article that passed back in 2012. He doesn't take issue to this and that any commentary is about the enforceability of the 1,000 foot requirement. That has been resolved by the Board in the last application. His point in this application is he can appreciate that the intent of the residents and the Planning Board at the time was trying to preserve the appearance of RT. 125. But their argument in this application is that the proposal does that. They are not coming in with the car or truck lots or other types of uses on the property that were articulated as the concern that are going to detract from the streetscape. When you look at the plan it is fundamentally a different type of business that doesn't detract from the streetscape. This is not any different than any retail space would look up front. There's a wide section of green area, a big driveway coming into a commercial building. There is a lot of parking out back but that is different than what the ordinance is about, preserving the streetscape.

On impact of property values, this needs to be focused on separation issue. If the use was located 1,000 feet away from Pat's Truck Sales is it going to have certain impacts on property

values. Whether 1,000' from Pat's or 600' from Pat's doesn't make a difference in property values. The Board needs to make their decision not on the impact of the business itself, but the impact of the variance to reduce the separation from 1,000' to 400+ feet.

There was discussion on the distance between Pat's and 83 RT. 125. The discrepancy is if measuring from lot 1-9 or 1-10. The records show that Pat's owns 1-9 and not 1-10, but it looks like their parking lot extends onto 1-10. Mr. Arnold says if the measurement is from 1-10 he does not dispute the 400+ amount.

**Public comment cont. –**

Ellen Faulconer –

- Ms. Faulconer wanted clarification on the distance between the existing use and the proposed use. Is it only one lot now? Mr. Coffin said yes.

Public comment was closed at 11:35 PM.

**183 RT. 25 – Map R10 Lot 9 – VARIANCE APPLICATION  
BOARD DILIBERATION AND DECISIONS**

**1. The proposed variance will not be contrary to the public interest, because...**

*Board discussion: Mr. Coffin mentioned that if we know the spirit of the ordinance is to restrict vehicle sales facilities, the project falls under trailer rentals and leasing, and vehicle repair facilities which are listed it is in theory contrary to the public interest. Ms. Kelley noted that the character of the neighborhood would be changed because there are residential properties close by. Mr. Bache commented that if the vehicle businesses are so close together it directly conflicts with the ordinance. Mr. Tilton said the spirit is not being upheld because it is only 400 feet, which is a significant change from the 1,000'. Mr. Russman said this doesn't meet the spirit of the ordinance because the 1,000 feet is specific. The Town's people voted overwhelmingly for this ordinance.*

**The spirit is not upheld because it is contrary to the spirit of the ordinance.**

**a. Is not contrary to the public interest.**

**VOTE:** None agree

**b. Is contrary to the public interest.**

**VOTE:** All 5 vote "yes".

**2. The spirit of the ordinance is observed.**

**a. Spirit is observed if variance is granted.**

**VOTE:** None agree

**b. Spirit would not be observed if the variance is granted.**

**VOTE:** All 5 vote "yes".

**3. Substantial justice will be done by granting the variance.**

**Harm to the general public is greater than the benefit to the applicant.**

**a. Substantial justice is done by granting this variance,**

**VOTE:** None agree

**b. Substantial justice would not be done.**

**VOTE:** All 5 vote "yes".

**4. The values of surrounding property values are not diminished.**

Board discussion: Ms. Kelley mentioned this is a C-III business and is permitted but this is within 1,000 feet of a business described in the ordinance and would not necessarily diminish property values. Mr. Tilton said if Pat's wasn't there they would be permitted to do this even though it would not diminish property values. Mr. Coffin commented it wouldn't have required the variance.

The Board is voting on whether granting the variance of the 1,000 feet would cause the values of surrounding properties to diminish and not whether the project itself would cause surrounding property values to diminish. The Board discussed it would have been helpful to have expert testimony on this. Board members can use their own personal experience on this too.

Values of the surrounding properties would not be diminished by granting of the variance.

**a. Granting this variance cause the values of surrounding properties to diminish.**

**VOTE:** 1 vote "yes"

**b. Granting this variance cause the surrounding property values not to diminish.**

**VOTE:** 4 vote "yes".

**6. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.**

The Board discussed the intent of this criteria – (a) There is no fair and substantial relationship between the general public purposes of the ordinance provisions and the specific application of that provision to the property; and (b) The proposed use is a reasonable one.

Mr. Coffin said that because the proposed use a reasonable one because it is permitted in the C-III zone if it weren't for the proximity to another similar business of the uses listed. Is there a substantial relationship between the general public representative of the ordinance, which is to diminish the density of all the uses listed and the application of this provision to the property. There is a fair and substantial relationship because we've discussed what the intent was, what the Board's intent was, what the Town's intent was when it passed the ordinance. This falls into this category that is listed. Ms. Kelley commented that the use is reasonable.

**There is fair and substantial relationship, it creates a density of like businesses that are listed as prohibited within the 1,000 feet.**

Mr. Coffin brought up that there is a number of other types of business that could go here.

**a. Literal enforcement of the ordinance would result in an unnecessary hardship.**

**VOTE:** None agree

**b. Literal enforcement of the ordinance would not result in an unnecessary hardship.**

**VOTE:** All 5 vote "yes".

**MOTION:** by Ms. Kelley to deny the variance request based on requirements 1,2,3, and 5 not being met.

**SECOND:** by Mr. Russman

**A vote was taken, All in favor, the motion passed. (5-0-0)**

Mr. Coffin explained that an appeal can be made within 30 days and informed the applicant that the Town office closes at noon on Fridays.

<Board note: hearing closed at 12 AM>

- 1108 **Board Business:**  
1109 - Add the following to the October agenda: Put a change of procedure in place to end ZBA  
1110 meetings earlier similar to the Planning Board procedures (Any hearing not started before 10  
1111 PM gets continued and the meeting ends at 10:30 PM). Revise section 7.1 in the ZBA By-  
1112 Laws to remove the reference to the 45 day requirement because the State already put in a  
1113 90 day requirement for decision. The Board to send any other changes to procedures they  
1114 want considered to Ms. Carter.  
1115 - **Change the October 12, 2023 ZBA meeting to October 19, 2023.**  
1116

- 1117 **Correspondence:**  
1118 - Invoice from Civil Construction Management, Inc. (Dennis Quintal) for the Summit Distributing  
1119 site plan review - \$675  
1120 **MOTION:** by Mr. Russman **to pay the invoice from Dennis Quintal for \$675. This is to be**  
1121 **paid from the escrow account for Summit Distributing. LLC.**  
1122 **SECOND:** by Mr. Broderick  
1123 **A vote was taken, All in favor, the motion passed. (5-0-0)**  
1124  
1125 - TFMoran Invoice, Civil Engineers for the Summit traffic study review in the amount of \$3,627.  
1126 **MOTION:** by Mr. Russman **to pay the invoice from TFMoran for \$3,627. This is to be paid**  
1127 **from the escrow account for Summit Distributing. LLC.**  
1128 **SECOND:** by Mr. Broderick  
1129 **A vote was taken, All in favor, the motion passed. (5-0-0)**  
1130  
1131 - Truslow Resource Consulting, LLC invoice for the hydrologic review for Summit Distributing,  
1132 LLC for \$2,061.20.  
1133 **MOTION:** by Mr. Broderick **to pay the invoice from Truslow Resources Consulting, LLC**  
1134 **for \$2,061.20. This is to be paid from the escrow account for Summit Distributing. LLC.**  
1135 **SECOND:** by Ms. Kelley  
1136 **A vote was taken, All in favor, the motion passed. (5-0-0)**  
1137

- 1138 **ADJOURNMENT**  
1139 Meeting adjourned at 12:14 AM.