

**TOWN OF KINGSTON
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING
December 14, 2023**

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

ABSENT: Meghan Kelley, Vice Chair

Also Present: Robin Carter, Land Use Admin.

Mr. Coffin called the meeting to order at 7:03 PM.

A quorum was present at the meeting.

BOARD BUSINESS

Mr. Coffin said that Mr. Bache will be a voting member since Meghan Kelley is not here tonight.

PUBLIC HEARING

<Board note: hearing opened at 7:06 PM>

**Karl and Ellen Money
4 Concannon Road
Map U1 Lot 59**

Mr. Coffin read the legal notice for this hearing.

The Applicant is requesting a **Variance to Article 301 Section 301.1.D** to permit the improvement and/or placement of a single-family dwelling structure located within 20 feet from the left and right-side property lines.

Applicant: Karl and Ellen Money introduced themselves. Tom Alosso, their contractor, was also present.

Ms. Money explained that they want to replace their existing home and build a new one to make it better. (The applicant submitted a detailed application, and the Board did have time to read it prior to the hearing; the applicant did not read it aloud to the meeting.)

Board comment(s):

Mr. Coffin said that the property is on the lake and existed before any of the wetland setbacks and most were built as summer cottages. The septic systems were not always up to the capacity of a year-round family. This will involve a new septic system and moves the septic further back from the shoreline and this is a great improvement. The Board is on the side of people doing things to reduce the amount of nitrates that may flow in to the water.

Mr. Coffin mentioned stated that 301.1.D. is about setbacks. Variances are apt to be granted if you make a non-conforming situation less non-conforming, which this obviously is. The Board tends to look at anything that improves the conformity with the zoning ordinances as an improvement.

Mr. Coffin mentioned for anyone watching tonight's public hearing that there are other sections of Article 301.1, A. that requires contiguous frontage of 200 feet on a public right of way and a minimum area of 80,000 S.F. In case the building inspector didn't actually grant the waivers, the ordinance provides for waivers for pre-existing non-conforming of anything that was a lot and a structure of record. He read from section 301.1.C. **LOTS OF CONTINUOUS FRONTAGE OR CONTIGUOUS LOTS** - "In any district in which structures are permitted, a structure may be erected on each lot which was a lot of record at the date of adoption or amendment of this ordinance, even though such lot fails to meet the requirements for area or width or both,". This covers the 80,000 S.F. minimum lot area requirement and the 3-acre requirement in the aquifer protection zone; and the frontage requirements. This is why they are only required to get a variance for 301.1.D.

The property is also in the Aquifer Protection Zone and under Article 201.7 - NON-CONFORMING USES. Mr. Coffin said that the waiver for this allows "non-conforming use may continue and may be maintained, repaired and improved," but not expanded-and are talking about the use being expanded. Their use is residential single-family house. Mr. Coffin referred to the application where it said this was an improvement and he did check with the NH Municipal Association who said that this certainly qualifies even though this is new construction. A tear down and rebuild is not an expansion of use. This falls under the maintained and repaired and improved category. So they are not required to meet all the requirements of the Aquifer Protection Zone B.

Mr. Coffin brought up the Shoreland Protection District waiver under 205.9. NON-CONFORMING USES, which allows non-conforming uses to be continued, maintained, repaired and improved but not expanded and this applies to the applicant because they are in the Shoreland Protection District.

Mr. Coffin stated this is the explanation of why we are only dealing with setbacks from the sidelines (301.1.D).

Mr. Broderick summarized the applicant's situation. This is a non-conforming lot that they are improving it and making it less non-conforming, Ms. Money said, right. Going from the property line of 5'8" to 8'4" so they are improving. They are bringing the house back 10 feet of the water, so 50' is going to 60', that is improving. Mr. Alosso said, correct. They will be going to a Biomat septic system which is innovative technology and is approved by the state and making the septic system better. Mr. Alosso agreed. Mr. Broderick said this is near the lake and moving further back from the lake and the new septic system will be a good thing. Mr. Coffin said it is beyond the 150' setback. Mr. Broderick said that there is no change in "use", it's a single family to a single family and is an improvement across the board.

Mr. Alosso commented they will be building a very modest home. They are using the same footprint with the exception of a small notch that was required for basement stairs for access to the basement because the utilities will be put in the basement. The current house is on a stone foundation.

Mr. Coffin brought up the paving information on the plan. He said he did check with the Town and have had people putting down RAP, which is reprocessed asphalt product. The state does not consider RAP to be porous because it is not loose; it packs down and the asphalt seals together. He did check with Gravel Lock they have a porosity of 20 gallons per minute per square foot using 3/8 inch stone which is the same as if you didn't use the binding material because the hard rock

contacts where the stones would contact anyway, he was impressed by this, it is a fully porous material that improves the situation on the lot because the entire paved area is going to be fully porous and allows infiltration.

Mr. Coffin explained that the proposal and the way it appears on the warrant for this is the same amount of distance on both sides. This is done because of the outside staircase. It is included as part of the structure and is included in the setback. The distance from the outside of the staircase should be used. The Board will not be giving two (2) different setback requirements, if the setback is greater than what is in the existing conditions plan it is not an issue for him and any member of the Board can weigh in if it is an issue for them. This is why we would be using the same number for a setback from the sidelines. Mr. Coffin noted that the variance required would be 11.6'.

Mr. Coffin asked if the Board had any other comments or concerns. There was none.

Public comment was open and closed at 7:20 PM. There was no public comment.

Mr. Coffin asked the Board if they had any conditions that may need to be considered. He explained that the plans do become part of the Notice of Decision. That way there is no question to the building inspector on what has been approved.

Applicant's variance application:

The applicant provided a written response to all five (5) of the variance criteria and will be part of the record for this application.

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

As submitted by the applicant.

A. The Spirit and Intent of the ordinance is preserved.

As submitted.

B. There is Substantial Justice in granting the variance.

As submitted.

C. The values of Surrounding Properties are not Diminished.

M As submitted.

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

As submitted.

The applicant was asked if they wanted to provide any additional information that may not have been a part of the application package. Ms. Money said they hit it all.

The Board went into deliberations to go over the five (5) variance criteria

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

- t will improve the exiting setbacks.

- Makes the non-conforming structure less non-conforming.

A vote was taken. 5 Yes, 0 No.

2. The spirit of the ordinance would be observed because...

- The lot would be more conforming with the ordinance.

- Improvements would not alter the character of the neighborhood.

148 **A vote was taken. 5 Yes, 0 No.**

149
150 3. **There is substantial justice in granting this variance.** (Any loss the individual that is
151 not outweighed by a gain to the general public is an injustice.)

- 152 - The interests of the public are improved due to the improved setbacks and septic de-
153 sign.

154 **A vote was taken. 5 Yes, 0 No.**

155
156 4. **The values of the surrounding properties would not be diminished** because...

- 157 - There is no change in the use of the lot or the size or location of the house.
158 - A new house would be of higher value than the existing structure, and that there would
159 be less surface water run-off onto neighbors' properties and into the shared lake.

160 **A vote was taken. 5 Yes, 0 No.**

161
162 5. **Literal enforcement of the provisions of the ordinance would result in an unneces-**
163 **sary hardship** because: 1) No fair substantial relationship exists between the general public
164 purposes of the ordinance and the application of the ordinance to the property because,,,

165 *Mr. Coffin read from the applicant's application. " The "special conditions" of the Property for the*
166 *purposes of this variance criterion include the layout and location of the existing residence, the*
167 *substantial, lawfully nonconforming lot size, and the fact that the Property is the Applicants' pri-*
168 *mary, year-round residence. As there are no special conditions of the Property, the first prong of*
169 *the hardship analysis is satisfied."*

- 170 - The lot is a lawfully permitted pre-existing sub-standard size and layout that will have im-
171 provements to the setbacks required by the ordinance

172 *Mr. Coffin noted that the purpose of the ordinance which is to create a set back would apply to*
173 *new development where you have large lots, this is true of most of the lake front properties,*
174 *there is no way you are going to get that kind of setbacks from the historical use of those prop-*
175 *erties. Any improvement to this has got to be, even though it requires a variance, has got to be*
176 *compliant with the purpose of the ordinance. To look at this another way we'd be looking at a*
177 *worse substandard situation, not just from the septic point, but from the neighbors' standpoint.*
178 *He commented that they have an unusual situation where there is a Town road running across*
179 *the property.*

- 180 - A Town road runs across the property, further restricting the applicants' use of their land.
181 - The proposed use is a reasonable one because it is permitted in this zone by ordinance.
182 (residential use in a residential zone).

183 **A vote was taken. 5 Yes, 0 No.**

184
185 **MOTION:** by Mr. Russman to grant a variance of 11.6' from the setback requirements when 20'
186 is required of Article 301.1.D. and having met all the criteria.

187 **SECOND:** by Mr. Broderick

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

189
190 Mr. Coffin explained to the applicant that people have 30 days to file an appeal of this including

191 themselves. He commented that if you start construction, it is at your own risk before the 30-day
192 appeal period is up.

193
194 Mr. Coffin informed the applicant that they will still need to get the building permit through the
195 building inspector.

196
197 He explained that they will get a Notice of Decision by email within one week from today (5
198 business days) and a copy will be mailed.

199
200 Mr. Coffin said as a note, make sure the basement elevations conform with the Flood Plain
201 ordinance, because this is in the flood plain zone. This isn't something this Board had to
202 consider but you will want to make sure it is taken care of otherwise you may not be able to get
203 flood insurance.

204
205 <Board note: hearing closed at 7:45 PM>

206
207 **Approval of Meeting Minutes (October 19, 2023):**

208 The Board had the following changes:

- 209 - Line 100, change "servicing" to "serving" as an auto repair shop.
- 210 - Line 348, change "houses" to "house's" septic.
- 211 - Line 294 and line 303 – make the following changes in bold below:

212
213 "Mr. Jones said he doesn't have anything tonight but asked that the Board continue them so
214 they could try and procure and produce that evidence **"if that's kind of (unintelligible)"**. Mr.
215 Coffin said that he can ask the Board, but it may be irrelevant because even if we knew the
216 previous tenant had used it, the pre-existing non-conforming has expired during Mr. Conner
217 owning it."

218
219 *Mr. Coffin noted that it is important that it is a conditional request.*

220
221 "He is asking that **if** his argument to the Board, this is a pre-existing use should be reinstated
222 solely because it expired for logistical reasons is compelling, **then maybe** we continue this until
223 he can get more evidence that the claim of the use coming up to at least the last few years is
224 credible."

225
226 Mr. Coffin said that the minutes differ some from the transcript on YouTube. The transcript
227 references on YouTube are as follows: (emphasis in bold added)

228 38:52. Mr. Jones: "I don't have anything in black and white here tonight and I
229 guess maybe I'd ask that the board continue us so that we could try and procure
230 and produce some of that evidence **if** that's kind of..."

231
232 39:40: Mr. Jones: "The fact that it was it was a pre-existing use is kind of the only
233 reason that we can come in and ask for a use that's prohibited in the zone to be re-
234 instated so if I mean this is kind of the board's chance to strike that from this entire
235 property I would I guess ask if that **if** my argument to you that this pre-existing use
236 should be reinstated solely because it expired due to logistical reasons is compelling
237 then I'd ask maybe we continue this until I can get more evidence that that claim of
238 the use coming up to at least the last few years is credible.

239
240 *Mr. Coffin said that the reason the transcript is important is because he believes that is why the*
241 *Board didn't act on that is because we didn't think it was a compelling argument. We were*

ceding to him that the “use” was a legally pre-existing use before the property was sold, and he said on the Notice of Decision we didn’t make any establishment of when the pre-existing use ended except after the property was purchased. All of the argument that Phil (Coombs) and everybody else was making that it wasn’t legally existing, including himself because he mentioned that it had never been approved for a commercial use garage had been built was irrelevant, and we didn’t base the decision on that. We went through the criteria based solely on; and Meghan had Rick have made the point too, that the one-year discontinuance had occurred, and they had an ample opportunity to bring that up. All that time after they bought it, they were trying to get plans to put up the indoor skating rink. They were producing plans to the Planning Board, and they never once mentioned anything about the garage. All they would have had to do is say they intended to continue using the garage.

MOTION: by Mr. Russman to accept the minutes (October 19, 2023) with the corrections made by the Chair.

SECOND: by Mr. Tilton

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

Request for Rehearing

Souhegan River View Investments, 255 Route 125, R40 Lot 12

Mr. Coffin asked the Board if anyone wanted to make a point in favor of granting a rehearing, in opposition to or any arguments in regard to the letter that was received.

Mr. Coffin explained that this is a request for rehearing received from Souhegan River View Investments for a rehearing for the October 19, 2023 hearing at which their request for a variance was denied by the ZBA for a commercial garage in the C-II zone where it is prohibited.

MOTION: by Mr. Russman to deny the motion for rehearing.

SECOND: by Mr. Tilton

Board discussion: Mr. Tilton said that he would go with our attorney’s consult email we received. Mr. Coffin said that the attorney sent a letter supporting the position that the Board was not required to conduct a rehearing just because a request for a continuance had come about. We explained that because the request for rehearing was not necessary because we were not basing our decision on extra material required to show that there was a pre-existing non-conforming use condition on the property. There were two cases where Mr. Jones requested continuation and, in both cases, they were conditional requests; he used the word “if” in both cases and we explained why. We felt that was not required and he didn’t argue then that he would still want the continuation. On this aspect Mr. Coffin said he would certainly concur that we are not required just because of the continuation request to rehear this.

Mr. Coffin asked the Board if new evidence was presented or errors of the Board.

Mr. Russman said there is no new evidence. They waited more than a year to come forward so they lost whatever rights they might have had, if they ever had any. Mr. Coffin noted that Mr. Jones said that “You know I’m not sure how much the garage expiration was at the top of his mind (being Mr. Connor) obviously that doesn’t change the fact that it has expired now”. So they were not arguing the point of expiration. Mr. Broderick said; they didn’t really do their due diligence, someone should have been checking on this. They dropped the ball and now they want us to pick it up. Looking at the email from the Town Attorney, the last sentence says, “no I would not grant a rehearing.” Mr. Coffin said

292 *that she said she would not grant a rehearing request based on a specific question on the*
293 *continuation. If there was anything else in the letter from the attorney that would indicate that the*
294 *Board made a mistake or that there was new evidence being presented. There wasn't any new*
295 *evidence. We went through the variance procedures, so he concurs that we do not need to conduct a*
296 *rehearing.*

297
298 **A vote was taken, All in favor, the motion passed. (5-0-0)**

299
300 **2024 Budget**

301 Mr. Coffin mentioned that the final budget request had gone to the Budget Committee with the salary
302 recalculation for the Land Use Administrator because of the correction for the increase in the hours
303 worked.

304
305 Mr. Russman said that the next budget committee meeting will be on January 6, 2024 at the Town
306 Hall.

307
308 **ADJOURNMENT**

309 Meeting adjourned at 8:10 PM.