

TOWN OF KINGSTON  
ZONING BOARD OF ADJUSTMENT  
PUBLIC HEARING  
March 14, 2024

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

**Absent:** Robin Carter, Land Use Admin.

Mr. Coffin called the meeting to order at 7:00 PM and introduced the Board. He noted that Kyle Bache is now an elected member of the Board and was previously serving as an alternate member and that all members have been sworn in.

A quorum was present at the meeting.

**BOARD BUSINESS**

**Election of Officers:**

Mr. Coffin opened the floor for nominations.

**MOTION:** by Mr. Russman **to nominate Meghan Kelley as Chair.** (*There were no other nominations*).

**SECOND:** by Mr. Coffin.

Ms. Kelley accepted.

**All in Favor** (5-0-0)

**MOTION:** by Ms. Kelley **to nominate Peter Coffin as Vice Chair.** (*There were no other nominations*).

**SECOND:** by Mr. Tilton

**All in Favor** (5-0-0)

Attendance for the 2024 Board: Meghan Kelly, Chair; Peter Coffin, Vice Chair; Kyle Bache; Richard Russman; Shaw Tilton; Members

**Approval of Meeting Minutes (February 8, 2024):**

**MOTION:** by Mr. Russman **to accept the minutes of the February 8, 2024 as presented.**

**SECOND:** by Ms. Kelley

**All In favor** (5-0-0)

Ms. Kelley, as the new Chair of the Board, opened the public hearing for Liberty Common, LLC.

**PUBLIC HEARING**

<Board note: hearing opened at 7:03 PM>

**Liberty Common, LLC – CONTINUED HEARING from 02/08/2024**

**#’s 225, 229, 231 RT 125 and 50 Depot Road**

**Map R29 Lots 2, 4, 6, 10 (“Property”)**

(Owners: L2-Corrado & Lucia Amenta; L4-In Control Advanced Driver Training; L6-Ruth S. Albert; L10-Brenda Grant & Gail Anderson)

The Applicant is requesting **two variances** for property located in the Commercial I C-I Zone:

1) Under **Article 108: C-I, section 7.C.9. Building Height and 108.13 Structure Regulations**, to permit the height of a roof ridge of 50-feet when Article 108.7.C.9 limits the height of a multi-family structure to 35 feet.

2) A variance to **Article Preamble II: B. Definitions, section 19 Multi-Family Dwellings**, to permit a 2-family or duplex to be included within the definition of multi-family.

**Regional Impact:**

Ms. Kelley mentioned that the public hearing for Liberty Common, LLC was continued from February 8, 2024 due to the applicant's request for a continuation; and also because the Board determined regional impact at that meeting on 2/08/2024 which requires proper notification to impacted Towns (East Kingston and Newton) and the Rockingham Planning Commission (RPC) prior to holding a public hearing.

**Applicant:** Keith Martel introduced himself and said he was here on behalf of Liberty Commons as the applicant. Mr. Martel introduced Michael Kim of MK Architecture who helped with some of the overall design themes, elevations, and design intent of the project. Anna Martel, who is working on the project, and Attorney Patricia Panciocco who was in the audience and helped with the application.

Mr. Martel acknowledged that they received a copy of the **regional impact** correspondence submitted to the Kingston Planning Board and Zoning Board of Adjustment by the Rockingham Planning Commission (RPC) and Town of East Kingston, Planning Board and he appreciated their feedback. He noted that the information he read through was Planning driven...wetlands, wildlife, traffic, wells, things like this that are very important to them but were not necessarily relevant to the application before the Zoning Board tonight. He said he wasn't going to go over this tonight but glad to address any specific questions if there are any.

Mr. Martel described the property explaining that there is a total of four tax maps that comprise the area of the project that is being developed. They are in a C-I (Commercial I) Zone. Three border on RT. 125 and are accessed through a limited right-of-way (ROW) that was plotted by DOT (Department of Transportation) and the Town of Kingston a number of years ago. For the time being they are planning to stay away from this area as a means of predominate access. This area doesn't allow them access directly onto RT. 125. Mr. Martel explained that they plotted the ROW coming down a very difficult spot for the intersection (shown on the bottom of the conceptual plan); not that it couldn't be done but it wasn't necessarily the best alternative. In addition to the three parcels, they also acquired a lower parcel that fronts on Depot Road and has the predominant access for the project coming through there. The area itself is bordered by residential to the right-hand side, as well as on the frontage of Depot Rd., as well as to the back you can see the C-I to the RR (rural residential) zone going through there.

Mr. Martel further described the proposal. When coming up with the theme for the project they were sensitive to the idea that they have the transitioning in a commercial zone but directly abutting single family residential. They asked the architect, Michael Kim, to come up with a theme centered around the community green (similar to the Kingston Plains) with a sense of community with it and bring in the more nostalgic colonial error design that is common in the Town of Kingston and many of the surrounding towns in New England. Mr. Martel said that with this it is important that the variances become important to them. **He explained that they are asking for two variances from the ZBA tonight.**

- 102 1) **One is for the height of the structure.** The structure that Mr. Kim designed is designed to  
103 look more like a community meeting house. Mr. Martel explained that the way that the Town  
104 ordinance is written it has just a general overall height for these structures and the height  
105 differs, one in the zone and then it changes again when they go into Conditional Use Permit  
106 (CUP) which is a Planning Board CUP to get into the multi-family aspect of it; and he believes  
107 they actually bring it down when they go to the multi-family.

108  
109 The applicant explained that they have met with the Kingston Fire Department. The building,  
110 as they have designed with a flat roof, would comply with the ordinance. The fire departments  
111 concern is getting people out of the top floor windows with the current apparatus that they  
112 have because of the length to reach. Their intent behind this was not to necessarily hamper  
113 good design and aesthetic, but the pitch of the roof or the bell tower that they would have on  
114 the top of it. Mr. Martel pointed out that there is a letter from Fire in their application suggesting  
115 that they (the applicant) is meeting their intent with limiting the capacity of the building to just  
116 the ceiling of the top floor where any residents could potentially occupy.

- 117  
118 2) **The second variance being asked for is:** Mr. Martel explained that in New Hampshire there  
119 is a different set of codes when you go for more than two units. They share a definition of  
120 multifamily of being more than two. But in our logic two and one parcel of land with any  
121 number of units is constituted multifamily from them. So he asked Mr. Kim to design stately  
122 colonials, something that was going to fit into a country type town and look appropriate facing  
123 onto the center green. The **duplex** became important to them because the alternative which  
124 does conform to the Town ordinance would be either be big apartment buildings or row  
125 housing. They wanted to do something a little bit better than this and that look is very difficult  
126 to achieve when you have that number of doors, that number of smaller units going into it.

127  
128 Mr. Kim of MK Architecture described the overall site plan. The entry is from Depot Road. There  
129 are some access roadways on which they have several of the smaller buildings-a variation of  
130 duplexes that are proposed. The center and heart of the design is the New England common, is  
131 Liberty Common, they are proposing a central green space flanked by the smaller buildings but  
132 anchored and terminated by a larger building and two smaller walkups. The idea behind this is to  
133 make a quintessential New England space.

134  
135 **The three building types are:**

- 136 1) the **duplex** disguised as a stately colonial house. It is a traditional building that is part of what  
137 defines the central concept of the New England common or green. The main entries are in the  
138 side wings thereby concealing the fact that it's a duplex. These are the houses that will be spread  
139 around the rest of the development.  
140 2) Building B is the walkup. It is a stepped-up version from the base duplex and also allows for  
141 some smaller apartments. There is a range of accessibility and affordability. **This is a two-story**  
142 **building with 10 units designed to be the transition.** There is no elevator in this building.  
143 3) **A three-story building with a pitch roof.** They could conform with a flat roof building, but it  
144 doesn't feel right in a New England common. A feature such as a cupola is not counted in the  
145 height. This is an elevator building, so it is fully accessible. In the midsize building and this terminal  
146 building the parking will be in the back. It is the building themselves that define the common space.  
147 They are asking for the larger building to reinforce the concept of a common.

148  
149 Mr. Martel added that the 1<sup>st</sup> building-the duplex style building, this is one that is the target of their  
150 application. The 2<sup>nd</sup> building conforms to the Town ordinance. The 3<sup>rd</sup> building, subject of the  
151 height one, the location of this is very internal to the project itself.

Mr. Martel explained that they found when going through the ordinance they could put up a large warehousing type building and it really wouldn't be appropriate for the site itself. Speaking more to the individual points of the variance, the site itself is a little bit unique. This parcel though it is zoned in a way that permits those commercial uses would be those larger scale buildings, it doesn't really fit with the abutting residential use and is also hampered because of the access because there is no access directly onto RT. 125. This site is unique in that it abuts single families on every side. Mr. Martel pointed out its use as currently zoned (commercial) that the more traditional commercial uses maybe aren't fitting here.

Mr. Martel added that the tower building is internal to the site itself. They are not asking for relief for a building that would be situated directly next to a single-family house going into it and that it is an appropriate ask coming through and they didn't believe that it created any negative impact. Similarly the duplex request they felt to be the same. It's a better transition from the single-family zone to the abutting uses that are on the other sides, keeping more in harmony with the single-family use of it.

**Mr. Martel clarified that the project is a for sale condominium project.** He went on to say that the engineer (Mr. Kim) mentioned the word apartment and an apartment people believe to be a rental house and that is not the intention for the project going in to it. They feel that the duplexes better serve after seeing the feedback of residents and feedback of the Town, better service as a smoother transition between the uses permitted in the C-I zone and the single-family houses that are around this site. Generally they would task their engineers to design something that fits with the Town's regulations. There are times when regulations are designed for uses that are more commercial in nature and assume that the land that they are being applied to enjoy the access, enjoy the parts that would make them commercial. They need to transition into the single-family houses without having an uproar about it and didn't think a giant massive apartment building would do that.

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

Mr. Coffin commented that he would be interested in seeing what a triplex would look like. Mr. Martel said that when they started sketching into it, if you look at the width of each of the individual units going in to it then insert another unit into the center, the width, and the mass of those buildings prohibits the look of the traditional colonial sitting around a common green. It starts going into more of a multifamily and that's kind of specifically what the community feedback was, those bigger buildings, so this was more to address that. Mr. Kim explained that common types of triplex typologies are not traditionally found near a New England common. Mr. Martel said that they explored the rationale behind the duplex being omitted from it and the understanding that they had from Planning was that it was a function of building code, that they followed the definitions based off of building code. When you go to larger buildings you trip into sprinklers and different types of fire separation, things like this. They did not believe it to be an intent specific thing, they believed it to be just an emulation of what building code is.

Mr. Tilton asked the applicant to explain more about the 35' and 45' height difference under commercial and why not just drop the building down and match it to the others. Mr. Martel responded that in the commercial zone the multifamily requires a Conditional Use Permit and one of the triggers under commercial, under that CUP changes the height of the building from 45' to 35'. So buildings could be at 45' but it is reduced to 35' for somebody that is going to put an apartment in a living area right at the top of that building. It is the fire apparatus that they are trying to achieve, that they can get a ladder up to the window. Mr. Kim said that the first thing they try is something that conforms. If you get something that reaches just the 35', at a scale that is appropriate to the site plan the first reaction they got was this is a motel, and this doesn't reinforce

the whole concept of a common. Mr. Tilton brought up that they are asking for a variance for multifamily and we have specific designation in NH state law and also within our code that is a multifamily is 3 or more, it's not 2 or more, so this is a big piece. And it specifically states within the commercial I zone it can only be multifamily, so he is appreciating that they are trying to match into the neighborhood; and also commercial I says it can't be that anyway, it has to be more than 2. Mr. Coffin read from the NH RSA 674:43.I. "multi-family dwelling units, which are defined as any structures containing more than two dwelling units, whether or not such development includes a subdivision or resubdivision of the site."

Mr. Tilton explained to the applicant, knowing what they are asking for, knowing that there is an RSA that the Board is going to have to look at, knowing that they have the specific laws, how they are going to make that argument. Mr. Martel answered that he thinks that the variance criteria talks about the intent of the ordinance. In some case like this is to promote harmony with the site within neighborhoods that it is being situated. They certainly could do what Mr. Kim would consider, going to be a bad job and have flat roof buildings and could also have five, 24-unit two story buildings going into there and there would be many unhappy abutters with them sticking to the ordinance itself. Mr. Martel said that the intent of the ordinance and the reason why this process is here is to give the Town flexibility, that when something could be done better, when there's a rationale behind it. That this isn't one that we're asking for more density. It's a way that we perceive we are making the project a better fit within the community. After seeing Fire and Planning, they didn't see any areas where we would contradict the ordinance where we would be against any intent for it. Mr. Martel commented that believe they can do the project better than this ordinance was written for, that didn't really think of a project like this.

Mr. Russman asked if it would be fair to say that they are not just asking the Board to disregard the ordinance, that multi is 3 or more, more than 2, and asking the Board to negate it. Mr. Martel explained that they are asking not to meet it as written, that is correct. Mr. Russman brought up that they talk about their perception that this would look better and be more in harmony and that is a matter of opinion. Mr. Martel said he shares his understanding. Mr. Russman shared that the Town, not so long ago, voted to make multifamily be more than 2 and this is a multifamily zoned permitted area. Mr. Martel replied, correct under a Conditional Use Permit. Mr. Tilton mentioned that the struggle is that the property is not residential, we cannot put single-family homes in this area. Mr. Kim said that the compromise they are doing is 3 and 1 is 2, there are no single-family families proposed. They are not asking the Board to negate the zoning as written they are asking to adhere to the intent, which in this case is not being as well served in their opinion, by the letter of the law but is better served by the interpretation of which the ZBA is empowered to do.

Ms. Kelley pointed out that there are so many bedrooms that can be allotted in this particular piece of property, 255. Mr. Coffin mentioned the density is based on bedrooms and that the requirements were changed a couple of years ago to comply with the State's request for workforce housing, that is why the Board decided on the 3; because the State definition of multifamily and felt multifamily was their distinct attempt at meeting this request. To say we can allow duplexes and single family in RR, but most of the Town is this and that's not what the intent of this ordinance was when they created it, it was to comply with the State's request for workforce housing so we know what the intent was when they wrote it. It was to provide more housing which is a big deal in the State right now. Ms. Kelley commented that if the maximum number of bedrooms is 255, and one of Glenn Greenwood's (Town Planner) comments was that the Town's ordinance requires greater density in this zone in order to address the accepted need for increased housing stock, the number of bedrooms allowed is not going to change based on the size of the property, correct? Mr. Coffin replied, that is correct. Ms. Kelley said no matter what, there is not going to be a higher density than is already being proposed. Mr. Martel said the proposed, that there's any

configuration of those bedrooms on the site that's permitted, so it could be one bedrooms, it could be 128 two bedrooms. These are designed as a mix of one-and two-bedroom units, they cap out at two bedrooms. Ms. Kelley asked if that was in the duplexes as well as the apartments, Mr. Martel said correct. Mr. Kim clarified; it is for 255 bedrooms. Ms. Kelley noted that it is the same amount of bedrooms, so it comes down to more, bigger buildings with the same number of bedrooms or it can have a different look and style that in their opinion fits more with our Town. Mr. Martel explained that the site is a single owner condominium site, and the structures may be a duplex, but they are not doing standalone duplexes on a slightly bigger house lot in a residential zone. From their view they are staying consistent with multifamily and just trying to do better while adhering to the literal interpretation it seems to point towards.

Mr. Coffin brought up that the only set of minutes when the Planning Board was discussing the making this article regarding height, Rich St. Hilaire who was on the Planning Board and was also one of the fire chiefs said he didn't know when they talked about the 45-foot height originally, he said "I didn't think the fire department would buy off on that", so he suggested 35 feet. Thirty-five feet is not a random number, in the state model, in fact the default zoning ordinance that towns can adopt, it says 35 feet for the maximum height for residents. **However, the State rule also takes the height of the roof as being from the peak to the eve and dividing it so it's a little different computation. In our ordinance it says to the peak of the roof.** Mr. Martel said to be clear that the information when he's saying the numbers that's from their meeting with the Fire Chief. Mr. Coffin said he'd like to see an actual number versus a +/- (now shows 50 +/-). Mr. Martel replied he would have no problem with that, limiting it to a finite number is perfectly achievable.

Mr. Russman asked what would be above the 35 feet. Mr. Martel answered structure and limited mechanical storage, but primarily structure.

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

Public comment opened at 7:53 PM.

#### **#1: Edward Whitten, 56 Depot Road –**

- Mr. Whitten explained that they are located at the adjacent property to the east of this property.
- They can see the 9.5-acre parcel which would be the entry spot from their house.
- On a personal level he would rather see a duplex rather than a triplex, not that he'd like to have major development there, but in general, they are correct in the standpoint of it looks more traditional to go with duplex than a triplex.
- He has more of an issue with the building height and the occupancy space and that it doesn't impact our fire department.

#### **#2: Barbara Hunt, 24 Madison Ave. –**

- They are an abutter to the property across the wetland from the property.
- Ms. Hunt asked if there were any plans to leave trees behind there. She mentioned that they said the parking was going to be behind the building. Wondering what the visual impact will be. There are not a lot of trees back there because of all the wetlands.
- She mentioned that 35 feet is a rather large building and suggested possibly to have a balloon test done to get an idea of what it looks like.

Mr. Martel responded that according to the scale it appears they will be in excess of 700 feet from the building to the property line closest to the property there, which is 29 Madison. Then they have

the distance going back to their house and is that probably in excess of 800 feet, maybe 900 feet from that building. The buffer shown on the property by the environmental scientist is a 60' buffer going along it, plus the distance of the wetlands going across there. They plan on leaving any trees that are not in the disturbed construction area.

**Board comment(s) cont.:**

Mr. Russman brought up that one of the things that is required is they show there is a hardship here. This is almost totally aesthetics; they are getting the density and can still do what they want with the property (as zoned). Mr. Martel spoke saying it puts them in an awkward spot. Giving a direct abutter something that they do not want and object to. He is glad to do it, but he tried here. Everybody has the perception that they would go to triplexes and the abutter had some feedback with the length of the building that you go to, to maintain the same type of housing stock, you'd probably go larger than triplexes. Mr. Martell went on to say that once you absolved the look of the stately colonial you'd probably go into a traditional condominium. Would need to change up the look of the building so dramatically so you didn't have 150-foot-long colonial architecture, it's very straight, very boxy that nobody wants to look at. They would probably dramatically need to change the architecture to be something else, he noted that this is just clarifying, I hear triplex.

Mr. Russman commented that it would be fair to say the other buildings are big boxy buildings. Mr. Martel said they are designed with a specific intent. There is a single big boxy building in the center of it. They are meant to emulate architecture of past decades, centuries.

Mr. Coffin informed the applicant that where we got this information is in their application. "While the applicant could construct triplexes, the middle unit of a triplex is often dark due to the limited number windows and duplexes are more desirable." Mr. Martel explained that he doesn't want to leave the misconception that if we do not do duplexes that the public is going to leave here thinking we are doing triplexes.

Mr. Kim said that on a theoretical basis that the correct assertion is that the asks are aesthetics. He is an architect, aesthetics are important, aesthetics are real and from his experience translated as protection of the character and that he believes is legal as well. Taking issues of character which do get into the gray area of opinion is still valid.

Mr. Russman mentioned that they said it would be difficult to achieve but they can do it in terms of making it a good-looking building if it was a triplex. Mr. Kim explained that a duplex that surrounds a common is a game his people can win, and the real winners are the people that live there.

Ms. Kelly read Mr. Greenwood's memo addressed to the Chairman and the members of the Kingston Zoning Board of Adjustment dated March 13, 2024 that provided some background on the ordinance into the record.

**Memo To:** Chairman and Members of the Kingston Zoning Board of Adjustment  
**From:** Glenn Greenwood, Kingston Town Planner  
**Date:** March 13, 2024  
**Subject:** Background information for Liberty Commons variance request for multifamily development.

The Kingston ZBA is in the process of reviewing a request for a variance to the town's standards for multifamily development as submitted by Liberty Common, LLC. Their request specifically reads as follows:

A variance to Article Preamble II: B. Definitions, section 19 Multi-Family Dwellings, to permit a 2-family or duplex to be included within the definition of multifamily.

The Town of Kingston has taken very specific steps to plan for the location of multifamily housing in town. They also have been very clear in describing the type of unit that qualifies as multi-family. We have determined the threshold for multifamily as being structures with more than 2 dwelling units. This is the definition found in RSA 674:43, I. In a separate statute addressing just workforce housing (RSA 674:58, II) the law states that multifamily workforce structures have five or more units. Our local ordinance allows such structures to have up to twenty-four units per building with a minimum of three units. The Planning Board has intentionally called out the land involved with this proposal as being the area in town that allows for the greatest residential density.

Throughout town in those areas zoned rural residential (which constitute more than half of the land area in town), two family structures are allowed by right.

The variance request in this instance reduces the residential density of the zone in a way not desired by the Planning Board or the supporting vote of the Town's people to zone the land in the manner it has been zoned. There is no harm to the applicant by the imposition of greater density in their proposed development. The importance of variances is typically tied to a property owner being restricted in their desire to construct a project due to the standards found in a zoning code. There is not a hardship created by the application of the ordinance in this case. The Town's ordinance requires greater density in this zone in order to address the accepted need for increased housing stock. A variance of the town's standards actively works against achieving the zoning district's goals.

*Reference:*

NH RSA 674:43, I: A municipality, having adopted a zoning ordinance as provided in RSA 674:16, and where the planning board has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for **multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units**, whether or not such development includes a subdivision or resubdivision of the site.

Mr. Martel questioned the comment about reducing the density and clarified that the density will not be reduced, it will be the same number of bedrooms whether duplexes or triplexes. Ms. Kelley did say it was a conflict here also and wasn't sure what he was trying to get across there.

Mr. Martel explained that they are not there to jam something down the Board's throat that they do not want, that is not their intent. Their intent was to be more harmonious with the neighborhood



that we have, and he can feel where the Board is based off of Glenn's letter with that. Mr. Martel asked if he had Mr. Kim draw the buildings that the duplex would be replaced by would that change the Board's perspective of that. So his question is whether the Board would like more information, seeing what adherence would actually look like or if the perspective is more set into the actual verbiage of it.

Mr. Coffin commented that as Mr. Russman pointed out, we have to have a strong reason to reverse, as it says negate that verbiage. He asked if the applicant is leaning toward requesting a continuation? Mr. Martel clarified, to get more information? They don't want to continue to keep trying if it not something the Board is supportive of. They believe it is a better project that better fits in the Town and he hears what the abutters say for feedback. If the Board is comfortable with knowing that he tried, no is an acceptable answer and is the inclination that he feels from the Board in which case he would probably just withdraw the application rather than go through each of the criteria for the Board and would redesign the project in a way that conforms to the Town's regulations, and you know what that looks like you just described it so they cannot have the issue of not conforming. Mr. Martel went on to say, it is their intent to conform they just thought they could do better.

Mr. Tilton shared that he does appreciate this and glad they are bringing this up, but he isn't at an answer yet. He is trying to understand because this is obviously well thought out, it fits within our community, this is the piece the Board is struggling with. How would they make that work if they were going to say yes and to make the variance and know where they have a legal standing on what the Board is deciding because they could come back with boxes and not even be consulted, perhaps and just bypass this whole Board. There is a lot to take in and consider and do not think it is an easy process. The density piece is not going to change so he appreciates Mr. Greenwood's comments. The Board is having a discussion and deliberation around this.

Ms. Kelley reiterated that she also appreciates what they have put forward design wise and understand Glenn's comments. The Zoning Board is here to figure out what is the best use of a piece of land and is an application that comes before us an appropriate use. This is zoned C-I, but it is also available to be somewhat residential because of the multifamily aspect of it and that it just becomes what does that multifamily look like for this piece of land. For her, the density is the density, she realizes that there is an RSA that says it needs to be at least 3 but it also comes down to the same number of bedrooms are going in and then it becomes what do we want our Town to look like and does this just going on this RSA allow for what we need for housing for this particular piece of land and still fit with what the Board sees as a plan for Kingston.

Mr. Bache said that when he looks at it and hears what they are saying, can the project be completed without the variances and can it be aesthetically pleasing, can their firm do that. Mr. Martel said that it a subjective question and Mr. Bache is correct in his interpretation that he can leave here and come back with five 24-unit buildings that reduce infrastructure costs, which serve as an abrupt transition, which leaves our abutter looking at a very large building, several of them going into it. He is just trying to do the best that they can with it and feel a little chastised by it and he knows the Board doesn't mean to be, it is just the nature of what it is. Mr. Martel shared that they struggled with the same questions that the Board is, in running through it. How do you know something is the right thing to do then find the support to do it. And how do you stand and tell somebody that you did something that you knew wasn't the right thing to do because it didn't think within the deviation on here because it is a variance just by definition of what it is. They have some contractual obligations to the land owners and he need to move the project ahead. They felt that they were coming here with something that was a little more of a no brainer from a more ignorant standpoint of it and don't mean to push the Board discomfort. His thought or suggestion is that he can withdraw.

405  
406 Attorney Patricia Panciocco of Panciocco Law, LLC came to the table and mentioned that yes  
407 you can, but her personal opinion for the record is she agrees it's a lot to think about. A couple  
408 things have jumped out to her in listening to what the Board has to say, and she agrees she is a  
409 little partial but what we have here is a developer looking to go above and beyond here.

- 410 • Looking to build value, a community like this brings a whole lot more value to the  
411 community here in the Town than 5 or 6 big box buildings. It's far more attractive and it's  
412 going to have a higher value. People are going to want to live there.
- 413 • The other thing that comes to mind, and this is just from a broader perspective, is zoning  
414 lines when we all draw them on a map, they are very harsh. They get drawn where you  
415 know the vision, but they often don't take into account what's already there. And it's this  
416 Board's job to smooth those edges and that is the purpose of a variance. It's not negating  
417 your ordinance. She's heard that a couple of times and it's not. It's relieving the strict  
418 application of the ordinance to a particular site that's in a unique location, like this. It is  
419 caught between two state highways, residential all around it and commercial across the  
420 street, and the access is challenging. What he is trying to do is create a smooth transition  
421 so everybody's happy and the abutters are not all worked up because they got big boxes  
422 in there.
- 423 • She applauds the Town for looking to adopt an ordinance to encourage more affordable  
424 housing and mixed housing and multifamily housing that is absent in a lot of communities.  
425 But the mixed use that we all had at the turn of the century when all these designs and  
426 these nice buildings were built; it's all coming back, everything comes full circle and that  
427 is what he's trying to achieve here. Is a mixed-use type of community that's valuable.  
428

429 So in her opinion, and this is up to Keith, she would table this and maybe they talk to Mr.  
430 Greenwood about what his thoughts are, and everybody have a little more time to think about  
431 it rather than feeling like you're pressured, and you are on the hot seat. Maybe you have some  
432 pictures of triplexes or plans that can be looked at. Ms. Panciocco said she has been in the  
433 middle units, and they are dark and dreary, and nobody wants them. That goes to value and  
434 if you are looking to build your tax base that's not the way to go because there's very little light  
435 in those units and they are not as pleasing to be in. Zoning isn't meant to handcuff you.  
436 Building codes and fire codes, while they're really important they don't think about aesthetics,  
437 they look at public safety as they should. It's up to people like him to come up with something,  
438 a place and a look where people want to be and call home. So it is up to Keith if he wants to  
439 withdraw or want to try to give the Board a little time to digest what we've shown them. Mr.  
440 Martel asked a procedural question, if they withdraw do they have to reapply? Ms. Panciocco  
441 said they would have to reapply.  
442

443 Mr. Russman stated that with all due respect it is up to the them (applicant and team) to have that  
444 discussion. It is not up to the Board to have that discussion because obviously they could reduce  
445 the density and build different types of homes and the question is how much money they are  
446 going to make in that respect over going to the maximum density. They are not going to want to  
447 build ugly homes because they are not going to sell as well, and they are not going to make the  
448 money that they would make otherwise. It is not this Board to try and resolve what is in the  
449 applicant's best interest. The Board has to deal with the ordinance as it's given and do respect  
450 what the applicant is trying to do. Mr. Martel responded it is not about maximizing, it is the same.  
451 Mr. Russman said that he gets that, but they could build different types of structures if they  
452 decided not to put as many units on this piece of property. Mr. Martel said they could build the  
453 same number of units; they do not have to reduce the density to build different structures. Mr.  
454 Russman noted they could have all kinds of opportunities to do mix and match and so on. To say

that they will come back with pictures of different buildings for them, the Board are not design people as far as what looks good to one might not look good to the other.

Mr. Martel asked to move on to the **height issue**. Ms. Kelley started by reading the comments from Chief Pellerin of the Kingston Fire Department.

## EXHIBIT B

### Kingston Fire Department

148 Main Street – PO Box 302  
Kingston, New Hampshire, 03848  
(603) 642-3626

A productive meeting with the applicant Keith, and his architect Brent was held at the town hall. Discussions regarding building heights ensued. It was stated the fourth floor of the multi-unit building was specified as storage only. Additionally, a cupola on the main multi-unit building would be more than 55'. It was relayed to the applicant that if the building was sprinkled, with no occupancy to be had above the third floor and all NFPA requirements for fire protection and life safety were met the plans were satisfactory for all fire department concerns. Water supplies and cistern locations would be discussed further in the process as approvals were granted by other town boards. Furthermore, the applicant had stated the conceptual design called for several duplexes within the development. The applicant was advised there would be no issue regarding life safety or fire protection regarding the construction of duplexes, but if triplexes or larger units were to be constructed, they would then be considered multi family and would need to be sprinkled. It was a productive first meeting, with subsequent meetings to follow pending forward progress by the applicant.

Respectfully,

*Graham H. Pellerin*

Graham H. Pellerin  
Fire Chief  
Kingston, NH

Ms. Kelley noted that our ordinance states a height of no higher than 35 feet and the application is for 55 feet (modifying the 50+/- on the initial variance request application) to the height of the roof line. Ms. Kelley mentioned that Chief Pellerin has given his approval for the way that it is because there will be no residences above the 35 feet.

Mr. Tilton brought up that there are two different heights that are permissible. One is 35 feet, and one is 45. Forty-five is for non-residential. For residential the ordinance says it cannot be above 35 feet above the ridgeline, or they could have a 35' flat roof. Mr. Coffin mentioned that 35' was at the time what the fire department felt comfortable with as far as having residences. What the

applicant is talking about here is aesthetics and having a hip roof is significant compared to a box roof. In our ordinance it talks about the cupola as being excluded from the roof height, so this is not an issue. He noted that 55 feet, is basically 25 feet from the ceiling of the residential area to the hip of the roof. Mr. Kim commented it's about 20 feet. Mr. Coffin mentioned that aesthetically it makes sense because anything less would be a shallow pitched roof with the design that they are trying to achieve. The whole intent of the 35' is the fire department, and if they are happy with that, he doesn't see an issue. Ms. Kelley said she is in agreement with this, her main concern was fire hazard and when we received the letter from the Chief stating that he felt that they could easily handle any emergencies the way it was set up.

Mr. Russman pointed out that their application is for 50', but they are saying 55'. Mr. Kim said that the buildings that they have presented are 55 and that the application showed 50'+/- and the revised height is 55'. Ms. Kelley stated that they are putting on record that 55 feet is the final number.

Mr. Tilton brought up that minus the aesthetics they can make a third building on that end and that it is just all three look the same or the same height and have a cupola on top of it. They could do all this and wouldn't need a variance. He's not super concerned about this; it is the fire piece is the main issue.

Mr. Russman asked the applicant, "Are you sure you do not want to withdraw the application." Mr. Russman noted that he is not sure where they are on this. Mr. Coffin mentioned there are two different applications. Mr. Russman asked the applicant, "so this one you want to go forward with?" Mr. Martel said to move on to this one (height variances) while he contemplated where he was at with the other one (duplex variance). Ms. Kelley said it didn't sound like they wanted to go through one at a time, it sounded like the applicant has given their presentation and wanted to feel us out where we were at. Mr. Martel said every time those things go a little bit differently and if the Board is comfortable with the information that they have in the written application, it does sound like he'd like to ask for a vote on heights so he knows where he stands on this one, because he is a little less clear and that probably plays in and the we could revisit the conversation on how they proceed with the other one.

Ms. Kelley said they are happy to close the meeting on variance for the height and go into deliberation and vote on it if Mr. Martel is okay with the Board moving forward. Mr. Martel nodded yes.

Ms. Kelley closed public comment at 8:39 PM.

**Board discussion and deliberations regarding the applicant's variance requests to:**

**1) Article 108: C-I, section 7.C.9. Building Height and 108.13 Structure Regulations**, to permit the height of a roof ridge of 50-feet when Article 108.7.C.9 limits the height of a multi-family structure to 35 feet.

The applicant provided written responses to the five variance criteria with their application.

Mr. Russman asked the applicant if they feel comfortable that they have covered the hardship on height with what's on the application. Mr. Martel responded that they believe they have provided enough information for the Board to take up a vote on, yes.

*Board discussion: Ms. Kelley asked the Board if they have any discussion before going through each of the criteria.*

Mr. Tilton mentioned what would be helpful for him is because this is a big project, we can read the letter of the law as it's written so to speak but whether we are here to hold the intent of the law or also holding the overall look and feel of our Town. There is a lot of pieces to this, given the scale of the project that need to be held as we are having this discussion. He doesn't think it just a simple no you're not meeting it or yes let's do what we want to do. Ms. Kelley said at this point they can curb any more discussion about we realized they could have done a number of things to meet the ordinance. That is not why there are here, they are here to ask for relief from it for aesthetic reasons for a number of reasons. We are all at that understanding that it is designed in a way that is not fitting our ordinance but that is why we are here tonight, and it is up to the Board to decide whether or not fitting but it is contrary to the purpose of the ordinances.

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

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

*Board Discussion: Mr. Bache commented that the sloped roof is aesthetically pleasing and fitting to our Town. The cupola is very similar and fitting for Kingston. He doesn't see it altering the essential character of the neighborhood or threatening public health, safety, welfare, public rights. Mr. Coffin said those are the two big legal criteria that they have to evaluate. Ms. Kelley said that it is not contrary, it doesn't put any residents at danger, it's been looked at by our Fire Department and they've deemed it not a safety hazard to have it be that tall (see letter for details). Mr. Coffin brought up that the intent was residential safety, fire safety, and this is not contrary to that.*

➤ **This would not be contrary to the public interest with presumed conditions that there are no residence above 35 feet and meets public safety requirements.**

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

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

➤ **The height of the residences is capped at 35 feet that the ordinance requires.**

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

3. **Granting of the variance would or would not give substantial justice.** (Any loss the individual that is not outweighed by a gain to the general public is an injustice.)

*Board discussion: Mr. Coffin said he does not see a public gain, Ms. Kelley agreed.*

➤ **There is no substantial justice because there is no public gain that outweighs the loss to the individual and improves the aesthetics of the project.**

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

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

*Board discussion: Mr. Coffin brought up the comment made by the owner of 24 Madison that there is a risk that it is visible more than if you had a flat roof apartment but the distance equation and the natural vegetation especially towards the boundary line would mitigate that*

significantly. Ms. Kelley commented that even if you can see the building through the trees, would you rather look at a building that has a flat roof or one that has a peaked roof. Mr. Tilton mentioned that even if it's commercially zoned it keeps its flavor of the area, it's a character of the neighborhood which is rural residential. Ms. Kelley added that any concerns about vegetation would be addressed at the Planning Board stages.

➤ **The value of the surrounding properties would not be diminished because the structures would be within the character of the surrounding residential area.**

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

**5. Owing to special conditions of the property that distinguishes it from other properties in the area. A denial of the variance would result in unnecessary hardship because... (Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship)** 1) There is or is not a fair substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because...

*Board discussion: Mr. Coffin said the question is what are the special conditions of the property that distinguished it and that's what the applicant addressed in their first response under A. Because of their "frontage on 125 and 107 detracts from its residential use and prevents convenient access for typical commercial uses." Ms. Kelley said, so there is no access onto RT. 125 currently. Mr. Coffin said there isn't and the right of way that comes down, it comes right out at the intersection and that was an issue when they had a warehouse proposed on the northern end of the project. It was abandoned because there was no way to get all those tractor trailer trucks out right next to the road. Mr. Bache said that the special condition of the property that distinguishes it from other properties in the area across the street from 125, is a warehouse complex composed of several buildings. They do not have access from 125, they have access from Depot Road. The same exact layout as this. Mr. Coffin noted that it is a distinguishing factor compared to other properties in C-I, or C-II or III where you have frontage access. That's a limited access section of RT. 125. Mr. Tilton said we are talking about the height here. Mr. Bache commented that the special condition is the property's frontage on RT. 125 and what does this have to do with height. Mr. Tilton pointed out that the applicant didn't address the height under section A. and section B. just the aesthetics (on the application). Mr. Coffin said that the height restriction is not based on the limited access and even though it has a unique aspect to it they are not related.*

*If the criteria in sub paragraph( a) (of the variance criteria worksheet) "having not been established" this is the final part of the unnecessary hardship test. "An unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it." This criterion only comes into effect if the Board finds that subparagraph( a.) (I) & (II) don't apply. The question here is the way the wording is written in the State requirements – "Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property; and the proposed use is reasonable or not reasonable one." The easiest part of this one to answer is the second part of it which is it is a*

reasonable use because the use is residential and it's a permitted use in the property. So the question is whether there is a fair and substantial relationship between the general public purpose of the ordinance, which is the public safety and the specific application of that provision to the property. Which would be saying you've got to cut the building height down, there's a relationship between the building height and that safety. We already said earlier that there isn't because of the restriction on the residential height. The Board brought up the warehouse across the street again and that it is a permitted use in the zone and it has the same special conditions which is the one they are arguing the access issue. Ms. Kelley asked could the special condition be it is zoned commercial which can be multifamily, so it could go either way, truly commercial or multifamily. Mr. Coffin said the height restriction is only there because of the residential aspect of it and they are negating the concern for that needing to be 35 feet because they are keeping all of the residences below 35 feet. Mr. Coffin said that is not a condition of the property, which is a condition of the use. Mr. Coffin said that he doesn't think there is a fair and substantial relationship between the general public purpose of the ordinance and the application, but he can't tie it to a special condition of the property. Mr. Bache said because the special condition of the property is RT. 125 and RT. 107 that is what the special condition is. Ms. Kelley pointed out because it has limited access, they're saying that it's better as a residential area they would be moving the access down further and it's inappropriate for it to empty at the commercial use therefore it would need to be a residential use and that restricts the height to 35 feet. Mr. Russman noted that it is not like it is an undersized lot and we're trying to put something on there that the land doesn't lend itself to that. He doesn't know what the special condition allows them not to have a reasonable use of the property. Mr. Coffin said that this is the whole issue of how these variances are often decided and that is if you can do something, if you can comply with the ordinance without it causing a real hardship that's based on something about the property, then you should comply with the ordinance. Mr. Bache said that the height of the building could be lower. They could come in with five boxes with flat roofs, it's not in the best interest of the Town. Ms. Kelley brought up would a distinguishing factor of it be that it is surrounded by single-family residential homes and not surrounded by other commercial. Mr. Coffin questioned how that would affect the height. Ms. Kelley explained it would affect the residents around with the design choice that they have to make because of the variance. Mr. Tilton said it is challenging because there could be a warehouse next to the gentleman who spoke tonight, and he could be looking at a 45-foot box and they wouldn't have to come before the Board at all for that. Often, we are relying on the applicant to figure this out, these are such complicated applications, he mentioned there was an attorney present (Attorney Panciocco). He doesn't know where it is on the Board to figure this piece out or not and we are struggling to put it into the language that they would need to for approval so that no one is going to question our decision. We are trying to base this on a legal argument or grounded argument. Mr. Tilton discussed that we are saying it is not sufficient enough that the applicant would like to do this as a part of the overall piece of a project and they have to have a variance to be able to do this. And it's only if there is something distinguishingly challenging about the piece of property itself that we can grant the variance. Mr. Coffin concurred that is the way the state has written it. They have to have a reason why they can't reasonably follow the ordinance. That reason has to be based on special conditions of the property and you know we've said before that all these other criteria have been met because we felt it was benefit to the overall project of the Town to have this design and it is not contrary to the intent of the ordinance and because it meets the safety requirements that the ordinance was designed for. Mr. Tilton said hypothetically if the ordinance again was that residential could be 60 feet we again wouldn't be having this conversation. And that was based on accordingly a fire fighter at that point in time. If we don't grant the variance we are saying to the applicant, somebody could say let's change the



ordinance to 60 feet-which is an arbitrary number here. Even though we could put in all kinds of other things that would be less appealing. Mr. Tilton said that we're trying here, something else is going to go in there at some point so unsure how to think about this. Mr. Bache said that enforcing the ordinance would not create an unnecessary hardship. They could just make the buildings smaller, it's not like they are burdened, it's not like they cannot do the project. Mr. Coffin stated that the point the attorney and the applicant was trying to make is the Zoning Board can make the decision that it is in the better interest of the Town to grant the variance, but the State's requirements seem to tie the Board to doing this, to bypassing that special condition requirement. Mr. Tilton said if we look under the variance criteria guideline right under the explanation column it says, "determine the purpose of the zoning restriction in question the applicant must establish because of the special conditions of the property the restriction as applied to the property does not serve that the purpose in a fair and a substantial way." So again it is on the applicant, but what is it serving to say no to the applicant, how is that fair. Ms. Kelley added that the special condition of the property is that by choosing to make it residential, that is what caused need for a variance. This is a unique piece of property because if you go one way or the other you go strictly commercial there is a different height by choosing to go residential and that kind of creates the hardship in itself. Mr. Tilton said that the special conditions of the property cause the proposed use to be reasonable. It doesn't seem like the proposed use is unreasonable in the B. category. And the use must not alter the essential character of the neighborhood which also does not do. Mr. Tilton said that it does not serve in a fair and substantial way and is not sure how it's substantially beneficial to not allow this variance. Ms. Kelley agreed, to say no because there's no residences above 35 feet, there is no safety concern. Mr. Tilton pointed out that the safety piece has been met and not sure how or what that serves with the greater sense of scope of the project. Mr. Coffin mentioned that they are reading from the Board of Adjustment Handbook that's produced by the New Hampshire Municipal Association where they've taken all the case law and sort of give guidance to the boards on how they are supposed to do this. Because of the way the State law is written. It says, "the applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area." That is the real problem that we are having with this. Is that nothing about that property that's distinct from the other properties in the area. Mr. Tilton added that other than it is zoned commercial, and the other area of the property is residential. Mr. Coffin said that's true, it is a permitted residential use where different restrictions are in place. Mr. Tilton said that would maybe be the argument. Mr. Bache asked is that what the special condition is, it is zoned residentially and commercially. Mr. Coffin said that applies to all the land in C-I. Mr. Bache stated that is not a special condition. Mr. Tilton said it is distinct from all of the land in the area. Ms. Kelley explained that any of the properties in C-I would have this same hardship. Mr. Bache said it does not make it distinct. Ms. Kelley said it makes the C-I distinct. Mr. Coffin expressed the Board is working really hard to be comfortable with something they could justify. Mr. Coffin said there could be people in opposition to this project and possibly find they didn't follow the requirements of a variance and could overturn it. Mr. Coffin commented that the finding of fact could be there was no distinguishing, no special condition of the property that would distinguish it from others, therefore, the unnecessary hardship was not found to exist.

Mr. Coffin said the options are to continue at the applicants request, to deny without prejudice if we had not gotten to this point and they could bring it back without making changes and that is mostly if there was insufficient information or basically if they didn't want to continue and we still didn't feel like we had enough information we could deny without prejudice; and the third option is to vote to deny and if voted to deny they could reapply with new information or new plans so



the plans would substantially change. If they changed the plans as the applicant pointed out the applicant could produce plans that wouldn't even need to go to the ZBA. Or they could produce new plans and come back with the same variances and figure out a different way of presenting it or if we made a mistake. Mr. Tilton mentioned how justice is being served by not granting this variance. Mr. Coffin said that is what they answered earlier. Mr. Tilton mentioned that they could propose that the zoning restriction in the height restriction in the C-I area does not serve the purpose of a fair and substantial way, because the 35 feet is based on safety, and they could make as a condition for only one building at 55 feet. And (b.) is met by saying that the conditions of the property cause the proposed use is reasonable. Mr. Coffin suggested that the topography and the hydrology of the parcel is the unique aspect of the property. That there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application to that property because the increased wetlands on the property lend to a taller building.

There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the increased density required by the wetlands on the property lend themselves to a taller building. The proposed use is a reasonable one because use is residential which is permitted.

Mr. Coffin said that the fact that they have the other three multifamily buildings that are all there you could certainly make more and wouldn't need the height adjustment. Getting back to the point how aesthetically it looks better and there is no substantial relationship between the safety requirement that 35 feet has been put in there before in the building height. Mr. Tilton commented that where they do the wetlands piece, there's no hardship that is being created here. Mr. Bache noted that it is even on the application. Mr. Coffin said they are at liberty to decide what special properties are, but they've got to be germane. Ms. Kelley referred to what Mr. Tilton said earlier that the height restriction in the C-I area does not serve the purpose in a fair and substantial way because the applicant placated the safety concerns through design and by saying that they were going to stay under 35 feet. This is a special condition of this property because the ordinance changes based on it being a C-I with a residential use.

- **The height restriction in the C-I area does not serve the purpose in a fair and substantial way because the applicant placated the safety concerns through design and by saying that they were going to stay under 35 feet. This is a special condition of this property because the ordinance changes based on it being a C-I with a residential use.**

**A vote was taken. 2 Yes, 3 No. FAILED**

**MOTION:** by Mr. Coffin **that the variance be denied because it failed to meet the criteria of unnecessary hardship.**

*Discussion:* Mr. Coffin mentioned that the applicant can reapply with new plans. Mr. Martel asked what "deny without prejudice" meant. Mr. Coffin explained that if an applicant didn't want to go to an extension and we as a Board determined that we didn't have enough information to take a vote. However, we got past that point because we took a vote and are denying the variance request. If we denied without prejudice instead of taking a vote, the applicant would be able to come back with the same plans and more information.

**SECOND:** by Ms. Kelley

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

757  
758  
759 **2) A variance request to Article Preamble II: B. Definitions, section 19 Multi-Family**  
760 **Dwellings, to permit a 2-family or duplex to be included within the definition of multi-**  
761 **family.**  
762

763 The Board did not make a determination on the multifamily definition variance. Ms. Kelley  
764 asked the applicant if that is something they would like the Board to continue with or is that  
765 something they would like to withdraw at this time. Mr. Martel stated that he would like to  
766 withdraw.  
767

768 Ms. Kelley informed the applicant that he will receive a Notice of Decision within five business  
769 days, which is one week.  
770

771 *<Board note: hearing closed at 9:30 PM>*  
772

773 **BOARD BUSINESS CONT.**  
774

775 **1. Daniel and Nancy Birdsall, 21 and 25 Wadleigh Point Rd.,**  
776 **Map U5, Lot 35 and 34**  
777

778 **a. Review of conditions in Notice of Decision dated June 14, 2022.**

779 Mr. Coffin read from the Notice of Decision that was issued on June 9, 2022 – “As a condition  
780 of approval precedent to construction, your deeds for these two lots must be amended and  
781 recorded to show rights-of-way or easements to permit access over the other lot, and to show  
782 the amended boundary line separating the lots.”  
783

784 Mr. Coffin questioned that if an attorney was doing a title search would the easement come up  
785 for either one of these lots. When either one of the lots may be sold in the future would future  
786 people would know that there is an easement to get in the lot with the new house (Map U5-34).  
787 Mr. Coffin brought up that the question is does the Cross Easement Deed (Book 6431 Page  
788 520) meet the requirement of the condition above. There was one deed for the Boundary Line  
789 Adjustment (Book 6411 Page 2105). The six feet on either side of that was the easement and  
790 that deed was recorded separately.

791 Ms. Birdsall mentioned that Keri Marshall (their attorney) was at the June 9, 2022 meeting and  
792 she drew up the Cross Easement Deed. Mr. Russman explained that if the title examiner at that  
793 time is not satisfied, they will bounce it back and say the Birdsall's have to do another easement  
794 agreement with your neighbor to whatever standard they want. To him it looks adequate.  
795

796 Ms. Kelley stated that there was a condition of approval that the two deeds for these lots must  
797 be “amended and recorded to show rights-of-way and easements to permit access over the  
798 other lot, and to show the amended boundary line separating the lots” and we do have recorded  
799 plans with book and page numbers for those deeds and for the easement. **The Board agreed**  
800 **that this condition has been met.**  
801

802 **b. Letter from the Birdsall's requesting to move the garage slightly due to**  
803 **new circumstances during the house construction.**

804 Mr. Birdsall explained that they built the house before the garage and the electric pole is right beside  
805 the iron pipe by their neighbor's garage. The proposed garage, no matter where we put it, was going  
806 to be between that pole and the house. So it was decided that they wanted to go underground. The  
807 previous garage's electric service was overhead. Their intent was to have it go as close to the

property line as possible and when they dug the line, the first time, there was miscommunication and the builder didn't know exactly where the garage was going to go but he dug the trench right where the approved garage was and then when the utility came out they said no; that's only two feet and you have to go down four feet because he knew there would be further construction in that area. With that they couldn't go any closer to the neighbors garage they didn't want to undermine whatever type of foundation that was. So they ended up being about 9 feet off of their garage. To put a garage there they have to move it east to stay away from the underground utilities and if they moved it just to the east they would be in their ROW, so they had to move it to the north to stay out of the ROW. They are just making these moves because of the underground utilities and to maintain the ROW access between the 2 lots. This new position moves the garage further away from 27 Wadleigh Point (neighbor's property).

Ms. Kelley mentioned that it appears they are now 11 feet away from the neighbor's garage and practically right on the bound of the easement, but not on the easement.

Mr. Coffin referred to the variances requested, Article 301.1 A and 301.1 D, which were conditionally approved at the June 9, 2022 ZBA public hearing. He read from the June 14, 2022 Notice of Decision, "These variances allow construction of the proposed garage on lot 34 as shown on the plat drawn by Timothy A. Peloquin dated March 1, 2022". He stated that instead of giving a variance of a certain number of feet because they requested that, the variance was given to do it as shown on the plat. The new location meets the requirement of the variance which were the setbacks, and the variance needs to be modified to reference the document that was presented at the meeting, which is plat drawn by Mr. Peloquin on July 27, 2023, amended August 15, 2023 and to be amended again with the amendment line showing the new location of the garage.

The current variance expires June 10, 2024. Mr. Coffin explained that as long as they applied for a building permit they do not need to file and extension as long as the Board determines that it meets the variance limitations. He noted that garage doesn't need to be completed by that date. They have to have the application to the Planning Board or to the Building Inspector before the expiration date.

Mr. Coffin mentioned to the Birdsall's that all of the details with the underground lines should also be drawn on the amended plan.

**MOTION:** by Mr. Coffin that it meets the requirements of original variance with the new garage location being moved northeast as shown on the plans submitted at the ZBA meeting on 3/14/2024, on the condition that the plot plan is amended and dated and provided to the Planning Office and Building Inspector.

**SECOND:** by Ms. Kelley

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

Ms. Kelley explained to the applicant that they will receive a new Notice of Decision and as stated they will need to provide new plans to the Planning Office and the Building Inspector.

**The following agenda item will be moved to the next meeting:**

1. Zoning Board of Adjustment By-laws, Rules of Procedure and General Governing Rules:  
The Board will vote to modify the ZBA By-laws regarding the newspaper of general circulation due to the Carriage Towne News closing.

## **ADJOURNMENT**

Meeting adjourned at 10:05 PM.