



## KINGSTON ZONING BOARD OF ADJUSTMENT

June 13, 2019

Present:

Electra Alessio  
Larry Greenbaum  
Peter Coffin  
Richard Johnson  
Chuck Hart  
Jackie Leone

Chairperson Alessio called the meeting to order at 7:00.

Board Business –

Minutes of April 11, 2019 Approval – Mr. Coffin made a motion to approve the minutes, Mr. Johnson seconded. Motion carried unanimously.

Public Hearings

**Kathy DiPietro**  
**9 Acorn Drive**  
**Kingston, NH 03848**  
**IN RE: Tax Map R-23-39 D**

This is a public hearing whereby the applicant requests a Special Exception from the terms of Article 206, Section 206.4, to permit construction of an Accessory Dwelling Unit (ADU), and also needs a variance to Article 206.4.A 4 because the square footage of the proposed dwelling unit exceeds the amount allowed by the ordinance by 99 square feet.

Kathy DiPietro stated she and her son Michael bought the property together. It is a split level ranch with a finished basement. The lower level would be the ADU, the outside would not change and they would not be adding anything. Mrs. DiPietro stated she could understand if it was new construction but the 99 sq. ft. overage is already there. Ms. Alessio read the letter from the Building Inspector Robert Steward. Ms.

Ellen Faulconer asked if the board did grant the variance to clarify why so that a precedent is not set. Mr. David Richi stated he had received an abutters notice and asked if the ADU would be separate from the existing domicile or there would be no new building. Ms. Alessio explained the ADU process and stated there would be no change to the existing building. Mr. Coffin stated the intent of the ordinance is the ADU is secondary to the main house. Mrs. DiPietro stated the top floor is 1832 sq. ft. and the lower is 1058 sq. ft. for a total of 2890 sq. ft. Mr. Coffin stated it meets the spirit of the ordinance and asked about parking. Mr. Michael DiPietro stated there was more than adequate parking. All 5 criteria passed, Mr. Coffin made a motion to grant a variance to allow additional 99 sq. ft. as the existing structural limitation would make conformation to the ordinance unreasonable, Mr. Greenbaum seconded. Mr. Coffin made a motion to grant a special exception Ms. Leone seconded, all in favor. Ms. Alessio explained the 30 day waiting period.

**Ruth and Dale Albert  
13A Rockrimmon Road  
Kingston, NH 03848**

This is a public hearing whereby the applicant requests a Special Exception from the terms of Article 206, Section 206.4, to permit construction of an Accessory Dwelling Unit (ADU).

Mrs. Ruth Albert stated they would like to construct an ADU over a separate 3 car garage. Ms. Alessio stated this was an unusual application because the home had not been built, she had no letter from the Building Inspector. Mr. Coffin asked if the property was in the Historic District. Mrs. Alberts stated no it was far enough off Main Street to be Single Family Residential. Ms. Alessio stated the motion could be made with a stipulation to comply with the ordinance. Mr. Coffin stated both the square footage and percentage meets the requirements and all other requirements are part of the building permit process and septic has to be approved by the health inspector. Mr. Coffin made a motion to allow the ADU with the condition it meets all the requirements. Mr. Greenbaum seconded all in favor. Ms. Alessio explained the 30 day waiting period.

**Kingston Board of Selectmen  
163Main Street  
Kingston, NH 03848**

**IN RE: James Dufresne  
Diamond Oaks Golf Club, LLC  
#7Route125, Kingston, NH  
Tax Map R-3, Lot 4 and 4LU3**

This is a hearing whereby the Kingston Board of Selectmen requests the Town of Kingston Zoning Board of Adjustment grant a Re-hearing on a decision made on April 11, 2019. This decision granted Diamond Oaks Golf Club a Variance to the terms of Article 110, Commercial Zone III, Section 110.4, to permit conversion of the second floor of the existing club house to apartments, with the following two conditions: that preference be given to U.S. Veterans, and that occupants must be age 55 and older.

Ms. Alessio stated if a decision to grant a re-hearing was made tonight the re-hearing would be at a later date. Selectman Kevin St. James stated the Planning Board worked hard to set up commercial and residential zones: there being limited commercial zones. If the ZBA mixes commercial with residential it would set a precedence. The Board of Selectmen does not agree with the ZBA's decision. Ms. Alessio explained the BOS has to have a reason why a re-hearing is warranted. Selectman St. James stated it was contrary to the public interest because it would set a precedence. Selectman Coombs stated the variance is unenforceable, vague and non-specific, the enforcement arm cannot verify that Veterans be given preference. Selectman Coombs stated the spirit of the ordinance excludes residential in the commercial zone and this decision negates the ordinance, allowing apartments within 1000ft of Route 125. Selectman Coombs stated the apartments were not low income or strictly for Vets only specifically for 55 and over. Selectman Coombs asked how the rental situation could be enforced; it would be an opportunity for anyone to move in. Selectman Coombs stated it does not directly benefit the town as Kingston has numerous 55+ communities. Selectman Coombs stated there is no recourse to check if Vets are given preference. Selectman Coombs stated this was not in the public interest and negates C3. Selectman St. James stated there is a number of things the applicant can do with the property that is allowed in C3 to deny this use would be no hardship to the owner. Ms. Ellen Faulconer spoke as a member of the Planning Board and as such was in favor of a re-hearing. Ms. Faulconer stated the minutes from the April meeting did not explain how members voted. Ms. Faulconer stated the hardship had more to do with the Vets than a hardship to the property owner. Ms. Faulconer stated a re-hearing would allow the board to set up a better record. Attorney Charles Cleary of Wadleigh, Starr & Peters raised a point of order and asked if it was typical to accept public comments. Ms. Alessio stated yes. Attorney Cleary asked if anything else was submitted by the selectmen. Ms. Alessio stated no. Attorney Cleary asked on what grounds was an error made. Ms. Alessio stated the board could re-consider if there was an error/omission or new information. Attorney Cleary stated his objection is based on the fact that residential is allowed in C3 in mixed use and 55+ and there is no justification for a re-hearing. Selectman Coombs reiterated that there are no conditions for Veterans preference that are enforceable. A discussion followed regarding the ZBA's jurisdiction of enforceability. Selectman St. James stated the applicant did not meet 4 of the 5 criteria. Ms. Faulconer stated a re-hearing would bring clarification and when the ZBA puts conditions of a variance the Planning Board will deny until those conditions are met. Attorney Cleary stated he does not believe any additional information was brought forth within 30 days and decision

are meant to be final. Mr. Coffin made a motion to grant a re-hearing because the board failed to be specific with reasons. Mr. Greenbaum seconded. A discussion followed regarding responsibilities of conditions and enforcement of those conditions/renting and sub-letting. Ms. Leone asked if this was the first time the BOS had been before the board. Selectman St. James stated yes, although Mr. Coombs had come as a private citizen. Ms. Leone stated the question had been asked how the apartments would be rented to Vet's and she was not comfortable with answer as there is no weight to the word "preference". Attorney Cleary stated it was not just a word but a promise made by the applicant. 55+ usually uses affidavits but conceded that applicants can be untruthful. Ms. Alessio noted that a member of the audience at the April meeting misrepresented her statements and thanked Selectman St. James for making her aware. Mr. Greenbaum stated he rents in a 55+ community and every year gets an affidavit to sign and return to management. Selectman St. James stated it may be a good intention but there is no way to enforce. Ms. Alessio stated the issue is not Veterans but rental properties in the commercial zone within 1000 ft. of Route 125. Attorney Cleary disagreed. Ms. Faulconer stated if the ZBA allows residential in commercial zone the Planning Board cannot make stricter; the Planning Board cannot make the applicant make the apartments condos and the BOS is asking for relief to be stricter. Mr. Johnson stated the way to enforce is to request the renter to show a DD214 every year. Ms. Leone asked if that could be discussed if there was a re-hearing. Mr. Greenbaum asked if the scope of the re-hearing would be limited. Ms. Alessio stated she didn't know that it could be limited but would have to be DE novo, start from square 1, no additional fees to applicant. A vote was taken 3 in favor 2 against. A re-hearing date was set for July 18<sup>th</sup> at 7:05.

**SFC Engineering Partnership  
1 Industrial Drive  
Windham, NH 03087**

**IN RE: South District YMCA Camp Lincoln  
67 Ball Road  
Kingston, NH 03848  
Tax Map R-25, Lot 3**

This is a public hearing whereby the Applicant seeks an Appeal of an Administrative Decision made by the Kingston Planning Board. The applicant alleges that an error has been made in the decision, determination or requirement by the Planning Board, on or about February 19, 2019, to deny overnight camping in relation to Article 1, Section C.2, of the Town of Kingston Zoning Ordinance, and hereby appeals that decision.

Mr. Coffin stated he would recuse himself Mr. Jeff Murphy stated he had no issues with him staying where he was. Mr. Murphy stated this was a unique situation. Ms. Alessio

stated she had a letter from the Fire Department and the property file. Mr. Murphy stated they received a letter last October stating the use was non-conforming to the zoning ordinance. Mr. Murphy stated the previous director maintained the overnight use was what was always there and went before the Planning Board without consulting professional advice and was denied overnight use. Mr. Murphy stated a lot of information was not brought before the Planning Board. It has become apparent that overnight accommodations have been since inception. Mr. Murphy stated they were not looking to add anything but to continue using the camp as they always have. Mr. Murphy provided an additional document from the Superior Court dated 2001 that notes overnight use. Ms. Alessio stated the issue was: has overnight use been in existence without interruption. Ms. Faulconer stated she was on the board of the YMCA in the late 90's and they did not have overnight camping. Rick Russman stated he was on the YMCA board for many years and sons were day campers and life guards. Mr. Russman stated there was a hiatus from overnight camping although he would not mind them being able to have overnight camping again. Ms. Alessio stated if they were to use the camp for functions they would need to legitimize overnight stays. Ms. Faulconer asked which decision is being appealed. Ms. Alessio stated the application was an appeal of Administrative Decision by the Planning Board on February 19, 2019. Ms. Faulconer stated they were challenging a decision that they asked for. Mr. Alex Turex stated the former director was following advice of town members. Ms. Faulconer stated the application is flawed and they should be seeking a variance. Ms. Leone asked if the Planning Board was opposed to overnight use. Ms. Faulconer stated they have to deny as it is not an allowed use in the Single Family Residential Zone. Mr. Turex stated there was a change in the camp in the 80's since that time overnight rentals did go on and has not been interrupted. Ms. Alessio stated that Camp Lincoln came before the ZBA for 2 cabins for non-overnight use. Ms. Faulconer concurred stating the plan specifically says day use only. Ms. Alessio conceded the camp has had overnight camp outs. Mr. Turex stated the camp has changed from resident camp to day camp and an assumption was made that they can rent for overnight groups. Ms. Alessio asked how the board could help. Ms. Faulconer stated they would need to apply to the ZBA for a variance. Mr. Murphy stated while in preparation it became apparent they did ask for a denial but it was not a well-informed request. A discussion followed regarding abandonment and break from overnights. Mr. St. James stated he appreciates all that the YMCA does but there is a life safety code and this is not just about kids camping out but adults with cigarettes and alcohol in old buildings. Mr. Murphy stated buildings are equipped with smoke alarms and inspected by Chief Seaman. Ms. Alessio read two letters from Chief Seaman. Mr. Murphy reiterated the camp is not looking to change what they do. Mr. John Whittier stated the board has an obligation but the YMCA is not the enemy but a great neighbor. The property could be sold and multiple residences could be built that would have a negative effect on the lake. Mr. Whittier suggested the bureaucracy be stopped and someone take the YMCA under their wing to help them get

this done, as it is a source of revenue and they are willing to pay for upgrades. Mr. Whittier stated it is a benefit to Kingston to have the YMCA stay in business. Ms. Faulconer stated the Planning Board thought that is what they did. Ms. Alessio suggested the request be denied and figure out what the YMCA wanted to do and how to get them there. Mr. Murphy stated they would like a re-hearing with the Planning Board. Ms. Faulconer told him to re-apply. Ms. Alessio suggested a work session. Ms. Faulconer stated she would be available Monday at 1:00. Ms. Alessio stated the applicant could not ask for a continuance because the application is not for a variance. Mr. Greenbaum asked if events were scheduled for this summer. Mr. Turex stated they had been cancelled at a loss of 50K, they would like the opportunity to continue as it brings much needed revenue and is a benefit to the town of Kingston. Ms. Faulconer stated while they were waiting to go through the process they could go to the selectman for a special event permit. Motion to deny the request made by Mr. Greenbaum seconded by Mr. Hart, all in favor.

Meeting adjourned at 9:04

Respectfully submitted,  
Tammy Bakie