

**Town of Kingston
Zoning Board of Adjustment
June 11, 2020**

PRESENT:

Electra Alessio, Chair; Larry Greenbaum, Vice Chair; Peter Coffin, Jackie Leone, Richard Johnson, Members; Charles Hart, Alternate Member

Chairman Alessio called the meeting to order at 7:00 PM.

BOARD BUSINESS

Approval of Meeting Minutes:

MOTION: by Mr. Greenbaum to approve the minutes of March 12, 2020 as written,

SECOND: by Mr. Coffin

In favor: Alessio, Greenbaum, Coffin, Leone, Johnson. Motion passes.

PUBLIC HEARINGS

Rob Healey
344 Water Street
Exeter, NH 03833

IN RE: 34 Church Street
Kingston, NH 03848
Tax Map R-30, Lot 10

This is a public hearing whereby the Applicant seeks a Special Exception to the terms of Article 104, Section 5.c of the Town of Kingston Zoning Ordinance, and asks that said terms be waived to construct a 2,490 square foot retail building on the property.

Chairman Alessio said she had spoken with Wayne Morrill of Jones and Beach Engineers, and subsequently received a request from him, on behalf of his client, to withdraw this application without prejudice. She said that the reason for this is that the Special Exception applied for no longer exists, and they will need to apply for a building permit, be denied, and come back for a Variance instead.

MOTION: by Mr. Coffin, to honor Mr. Morrill's request to withdraw the application on behalf of Rob Healey, and to apply the fees to a new application for a Variance.

SECOND: by Mr. Johnson

All in favor.

Second Empire Homes, LLC
17 King Charles Drive
Londonderry, NH 03053

IN RE: 17 First Street and 66 Great Pond Road
Kingston, NH 03848
Tax Map U-4, Lots 101 and 100

This is a public hearing whereby the applicant seeks a Variance from the terms of Article 301, Section 301.1D of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit the proposed dwelling to be less than 20 feet from the front boundary as well as both side boundaries. A 4.1 foot variance is required for the front boundary, and 11 foot boundary for both sides.

Charles Zilch of SEC & Associates presented the case on behalf of Second Empire Homes. Mr. Zilch gave the background of the property, and distributed copies of the plan proposed. He said the two lots are separated by a 30' right-of-way that belongs to the Town. The larger lot (U4-100) has always been vacant; the smaller (U4-101) had a house on it until it was taken down in 2019 after Second Empire Homes bought both properties, due to its state of disrepair.

The owners had submitted plans to the Selectmen for their consideration, either to swap land for the "paper street" right of way, or to have permission to run sewer lines across it. The Selectmen were not interested in these options. Mr. Zilch said that Camp Lincoln was also contacted, to see if they might be willing to sell some of their land at the back of the lots, but this request failed as well. He said that at this time, they have exhausted their options to expand.

The current plan is to place a 12' gravel driveway within the 30' right-of-way, so that the Town can still access the area to store snow. Mr. Zilch said that a variance for setbacks is still needed. Mr. Coffin asked what the setbacks were for the old house; Mr. Zilch gave measurements illustrating that the new house would encroach less than the original one.

Comments/Questions of Abutters:

- Jeff Waugh of 21 First Street said he is opposed to the project, and that his major concern is the water; his basement gets water in it, and he is afraid this will make it worse as he is at the bottom of the hill. He also said that there is a big hole between the two lots.
- Sarah Veit, 64 Great Pond Road, also expressed concern about flooding in the area getting worse, and is speaking for her parents on First Street as well. In addition, she worried that the project would affect trail access.
- Russell Quintal, 15 First Street, spoke in favor of the project. He said his only concern is the set of old tall pine trees on the border of his property, which the former owner would not take down. He said at least one of the trees is dead and he is afraid they will fall on his house where he has tenants; he is in favor as long as the trees are removed.

Mr. Zilch addressed the water issue, saying there is a wet pocket in the front of lot 100, and issues with snow storage as there is not a lot of place to put it. He said that the driveway would open up more of the access area and more areas to store the snow and may help the snow melt to go to other areas. He said this could ameliorate the situation. He will discuss this with Road Agent Rich St. Hilaire when they go back to the Selectmen. Mr. Coffin asked about the use of dry wells. Mr. Zilch said that the use of dry wells would be very beneficial as it is a sandy area, and in addition, drip line trenches at

the roof line and rain gutters and other options to manage water and runoff will help with the neighbors' concerns. Mr. Coffin said that he would support this if these measures were in place to offset the additional impervious surfaces. Mr. Zilch asked the Board to take into consideration that a house existed there before, and that the new house would be an improvement.

As for the trees, Mr. Zilch said they are close to the lot line and the plan is to take them down.

Questions of the Board:

- Mr. Greenbaum asked if there is usable area behind the property, and Mr. Zilch said that there is, but Camp Lincoln, while they have agreed to give land to others in the area, were not interested this time.
- Mr. Greenbaum asked about the proposal for use of the Town's right-of-way, and Mr. Zilch further explained the plan to create a 12' driveway within the 30' ROW, which would give the town better access through to Camp Lincoln's property, extending off Great Pond Road for plowing use. The driveway would provide emergency access; Mr. Zilch thought this would be beneficial to the Town. If the Town is not interested in this option, the driveway would be in front of the home.

There being no further questions, Chairman Alessio called for a vote. She noted that, as a Selectman, she has a conflict and will not vote, and Mr. Hart will be a voting member for this case.

The five criteria for granting a Variance criteria were reviewed and voted on:

Will there be a diminution of value of surrounding properties? All five voted no; passes

Granting will be of benefit to Public interest? All five voted yes, passes.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant?

All five voted yes, passes.

Will substantial justice be done if granted? All five voted yes, passes.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? All five voted no, passes.

MOTION: by Mr. Coffin, to grant a variance of 4.1 foot for the front boundary, and 11 foot boundaries for both sides, from the terms of Article 301, Section 301.1D of the Town of Kingston Zoning Ordinance, with the stipulation that an engineering solution to mitigate roof runoff on site is included.

All in favor, variance granted.

Chairman Alessio said that the tree removal is not a part of the motion, but it has been agreed to and recorded in the minutes.

**Hanoverian Holdings
1 Library Lane
Kingston, NH 03848**

IN RE: Tax Map R-33, Lot 21-1

This is a public hearing whereby the applicant seeks a Variance from the terms of Article 104, Section 104.5.E.2 of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit a vegetated buffer less than 50 feet in width between a Residential and Commercial use.

Barry Geier of Jones and Beach Engineers was present to represent Hanoverian Holdings. Jeff Polchlopek of Hanoverian Holdings was also present. Mr. Geier said that Hanoverian currently has 63 parking spaces, and has recently obtained approval to repurpose the existing garage for use as a meeting and training space, freeing up space in the main building for additional employees, which will then require additional parking. It is proposed to increase parking spaces to 92, which will bring it to within 27 feet of the abutting property. Mr. Geier referenced the plan, which shows expansion toward the north, provide 25' veg buffer, with 5' high stockade fence, shrubs and evergreens. He said that there are 25' of vegetative buffer required on the approved project on the abutting property, and that will create a total that meets the 50' required. He pointed out that this solution was received favorably by the Planning Board, as it meets the intent of the Ordinance.

Mr. Geier reviewed the 5 criteria in support of his case:

Will there be a diminution of value of surrounding properties? Mr. Geier noted that the use of the property for an office and parking is existing, and that the abutting property owners have planned for an age- restricted residential development with this knowledge. By increasing the visual buffer with a fence and vegetation, no decrease in value is seen.

Granting will not be contrary to Public interest? Mr. Geier pointed out that there will be a 50' between the two properties.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant? Mr. Geier said that the expansion of the existing parking area is designed to limit impact and maintain visual fidelity while limiting the cost of construction. He said that a denial would limit his client's ability to expand or would increase the cost.

Will substantial justice be done if granted? Mr. Geier reiterated that the intent is to limit impact between dissimilar uses, adding that a 50' buffer will be produced.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? Mr. Geier said that the office building is an allowed use in the Rural Residential Zone and is therefore not contrary to the spirit of the ordinance.

Questions of Abutters: None heard.

Chairman Alessio read into the record a letter from Conservation Chair Evelyn Nathan; see attached.

The five criteria for granting a Variance criteria were reviewed and voted on:

Will there be a diminution of value of surrounding properties? All five voted no; passes
Granting will be of benefit to Public interest? All five voted yes, passes.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant?

All five voted yes, passes.

Will substantial justice be done if granted? All five voted yes, passes.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? All five voted no, passes.

MOTION: by Mr. Coffin, to grant a variance from the terms of Article 104, Section 104.5.E.2 of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit a vegetated buffer of 25 feet rather than 50 feet in width between a Residential and Commercial use, on the northern edge of the property, as presented.

SECOND: by Mr. Greenbaum

All in favor, variance granted.

(A fifteen- minute recess was taken while waiting for the posted time of the next application. The meeting reconvened at 8:05 PM.)

Noble Homes, LLC
PO Box 185
Deerfield, NH 03037

IN RE: 9 Marshall Road
Tax Map R41, Lot 16

This is a public hearing whereby the applicant seeks a Variance from the terms of CII Commercial Zone, article 109, Section 6A of the Town of Kingston Zoning Ordinance, and asks that terms be waived to allow a single family residential to be built on this site. The legal non-conforming use of this property was abandoned when the single family dwelling was demolished on November 14, 2018.

Shane Carter of Noble Homes, LLC was present to speak to this case. He explained that they are under contract to purchase the lot with the intent to build a single family home. He said that this is an existing use; there was a residence there that was demolished, and that the house will fit the lot perfectly. He said it is small, less than half an acre, and he did not see how it would be viable for commercial use. In addition, he said that the old house was demolished due to a significant environmental issue, so having been cleaned up, and now replaced with a new home, would serve “substantial justice” for this lot and its neighbors.

Mr. Carter went on to note that Kingston’s Article 109.4 specifically allows for residential uses that were in place at the time of the ordinance to be continued and expanded. He said that this lot was never changed to another use. Reminded by Chairman Alessio that the time had expired to continue the use, Mr. Carter said that the process was lengthy as a bank owned the property.

Questions of Abutters: None heard.

Questions of the Board:

Mr. Coffin asked if there is a site plan to review. Mr. Carter presented a sketch of the site, to show there is room for septic and well radius. In discussion it was pointed out that this does not have to go to the Planning Board, however, it will have to be approved by the Building Inspector and Health Officer. House plans were also made available to the Board.

Mr. Greenbaum asked about the zoning on the neighboring lot to the left. Mr. Coffin said that on that side of the road all the lots are pre-existing residential use. Mr. Coffin pointed out that variances for both the lack of frontage and the residential use needed to be granted; both were addressed together.

The five criteria for granting a Variance criteria were reviewed and voted on:

Will there be a diminution of value of surrounding properties? All five voted no; passes

Granting will be of benefit to Public interest? All five voted yes, passes.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant?

All five voted yes, passes.

Will substantial justice be done if granted? All five voted yes, passes.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? All five voted no, passes.

MOTION: by Mr. Coffin, to grant a variance from the terms of both Article 301.1 and 109.6 A, to allow for construction of a single family home on Map R41, Lot 16.

SECOND: by Mr. Greenbaum

All in favor, variance granted.

Joseph Wilson
Small Pox Realty, LLC
15 Small Pox Road
Kingston NH 03848

RE: Tax Map R-19, Lots 30 and 31

This is a public hearing whereby the applicant seeks a Variance to the terms of Article 104, Section 104.5F, of the Town of Kingston Zoning Ordinance, and asks that said terms be waived to permit construction on an existing lot with less than 200 feet of frontage on a Class V roadway, requiring a 52- foot variance.

Charlie Zilch of Jones & Beach spoke on behalf of the applicant, who was also present. Mr. Zilch gave an overview of the property, and said that the applicant merged the two lots with the intention of building one single family home on it. The septic design and driveway permit have both been approved. However, he then was informed that because a new lot was formed, it lost its grandfathered status, and now needs a variance to comply with all current regulations. Mr. Zilch said the lot is 5.6 acres and therefore meets all siting and sizing requirements, but has only 148.93 feet of road frontage where 200' is required.

Mr. Zilch noted that if Mr. Wilson had chosen to build all on one lot or the other, the grandfathering would have remained. However, using both allows for a much more desirable layout and increases setbacks. He said there is plenty of frontage to bring the driveway in from the cul de sac on Small Pox Road.

Questions/Comments of Abutters:

Rick Lemieux, 11 Small Pox Road, had submitted a letter in opposition to granting of the variance. He stated that Mr. Wilson bought the lot for half market price of a buildable lot with the understanding that he would have to obtain frontage from an abutter; Mr. Lemieux said he had frontage available to sell to him.

Chairman Alessio read Mr. Lemieux's letter, which states his opposition on the grounds that he bought his own property with the understanding that Lots 30 and 31 could not be built on and he thought this would create a precedent.

Mr. Wilson answered that when he created the Small Pox subdivision, everything was done to 3- acre zoning and aquifer. He said that Mr. Lemieux cannot sell any of his 3 acres.

Questions of the Board:

Mr. Coffin asked about the frontage on Route 125 right of way. Mr. Zilch said that the intent is for access to land-locked property. He said that there is combined frontage on that ROW of about 700', Mr. Coffin also said that the best argument is that he could have built on either lot without sufficient frontage due to grandfathering. He said he did not think the intent of the ordinance was to force building on smaller lots.

Mr. Zilch said that he always thought the reason for the ordinance was for density control, but in this case it does not increase density at all, as no additional homes are possible.

Chairman Alessio asked for a vote, and said she would step down and have Mr. Hart vote on this case, as she felt she had a conflict; Mr. Wilson's partner had done renovation work at the Town Hall approved by the Selectmen.

The five criteria for granting a Variance criteria were reviewed and voted on:

Will there be a diminution of value of surrounding properties? All five voted no; passes

Granting will be of benefit to Public interest? All five voted yes, passes.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant?

All five voted yes, passes.

Will substantial justice be done if granted? All five voted yes, passes.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? All five voted no, passes.

MOTION: by Coffin to grant a variance of 52' from the road frontage required by Article 104.5 F, to allow construction of a single family home with less than 200' road frontage.

SECOND: by Mr. Johnson.

All in favor; variance granted.

Meeting adjourned at 8:30 PM.

Respectfully submitted,
Susan Ayer