

**Town of Kingston
Zoning Board of Adjustment
September 10, 2020**

PRESENT:

Electra Alessio, Chair; Larry Greenbaum, Vice Chair; Peter Coffin, Jackie Leone, Richard Johnson, Members
Chairwoman Alessio called the meeting to order at 7:00 PM.

BOARD BUSINESS

Approval of Meeting Minutes:

MOTION: by Mr. Coffin to approve the minutes of July 9, 2020 as written,

SECOND: by Mr. Johnson

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

PUBLIC HEARINGS

7:05 p.m.

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 Variance from 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, thereby adding a second building at that location.

The applicant, Rob Healey, was present, along with Wayne Morrill of Jones & Beach Engineers. Mr. Morrill spoke to the application, noting that it was brought to the Planning Board for a design review, where it was determined that it is not an approvable use and therefore needs ZBA relief.

Mr. Morrill said that the property is a 2.55-acre site which currently has a commercial strip development. He said that when the owner bought it there was a 21,000 square foot self-storage facility included on the plan of record. However, this is no longer "grandfathered" as it was not renewed over the years. Mr. Morrill said the current proposal is a substantial reduction in lot coverage from what was previously approved. He described the planned use as for local businesses who have outgrown their space at home and need better space to operate, giving the example of an electrician. Mr. Morrill said that there will be no new curb cuts, and well and septic are on site. An amended septic plan will be needed if the project goes through. He noted that the parking area used by the Veterans Club is on one side, a cemetery on the other.

Mr. Morrill then addressed the five criteria with the following information:

- The proposed location is on an intersection where several businesses are

clustered together. Given the similar uses in close proximity, including businesses already on the parcel in question, no detrimental impacts are anticipated.

- It is not believed any adverse traffic impacts will occur, due to the size of the building and the use of existing curb cuts.
- There will be no additional demands on the aquifer; minor changes will be made to bring into compliance.
- There will be no additional demands on Town services other than standard demands on fire and police service for a retail building of this size. Water and sewer are on site.
- No hazardous or toxic materials are expected to be on site during operation. Access to the building is provided on all sides.

Comments/Questions of Abutters: None

Questions of the Board:

Mr. Greenbaum asked if the parking area in use by the Veterans Club belongs to them or to this parcel; Mr. Morrill said that it is on this parcel but has always been used by the Veterans, and no change will be made to that.

Mr. Greenbaum also asked about the storage building already existing on the property, and it was explained that this goes with the tenants of the strip mall; each has a unit for storage.

Mr. Coffin said to be clear, there are currently two buildings on the parcel and this proposal will make three; the current square footage adds up to 6,400 square feet when 2,500 is allowed in the residential zone. By adding an additional 2,400 square feet, the applicant is proposing to add to the non-conformity. This was affirmed by Mr. Morrill.

Mr. Coffin also questioned the lot coverage with regard to stormwater management. He said it is 37% today, and will be 45% with the proposed building added. Mr. Morrill said that in the Planning Board process, they were told that 25% coverage would be allowed if no infiltration was added; with infiltration added they can go up to 60% lot coverage. Minutes of the Planning Board were read; Chairwoman Alessio said that this matter was addressed at the Planning Board and this board is being asked for a variance due to the square footage. She said that the applicant will still need to submit plans for a building permit.

Ms. Leone asked about the appearance of the building. Mr. Morrill said it will look similar to the storage building, with an overhead garage door on each unit. He said there will be no parking in front, but a 30-foot drive lane, so a business owner could back a vehicle in and store it inside the building. He said this is not a place where customers come for goods, but rather safe storage space for a local contractor or small business.

Mr. Morrill then clarified that there is currently no infiltration on site at all, so there is ponding occurring in the front parking lot. He said that moving forward infiltration and catch basins will be added, so that any oil from the parking areas will be caught in the

basins. Any additional impact will be infiltrated into the ground.

Paul Trabucco of the Veterans' Club said he just wanted to see the plan and be able to inform people about the parking area. He went over with Mr. Morrill where the driveway will be, and to confirm there will be no impact to the parking area.

Chairman Alessio then asked the Board to go through the 5 criteria for approval:

Will there be a diminution of value of surrounding properties? All 5 voted no; passes

Granting will be of benefit to Public interest? 4 voted yes, 1 voted no; passes

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant? 4 voted yes, 1 voted no; passes

Will substantial justice be done if granted? 4 voted yes, 1 voted no; passes

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? 1 voted yes, 4 voted no; passes

Mr. Coffin questioned the intent of the ordinance, if not to limit the square footage allowed. Mr. Greenbaum said that the question the Board is here to decide is whether there will be an adverse impact. Chairman Alessio said she did not see that the additional 2,500 square feet would adversely impact the area or the intent of the ordinance. She added that the intent when the ordinance was approved was to allow additional business on Church Street. Ms. Leone said that in addition, she saw the intent to include bringing business and revenue into the community. She said did not see the additional square footage as harmful.

MOTION: by Mr. Greenbaum, to grant a Variance from 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, thereby adding a second building at that location.

SECOND: by Mr. Johnson

4 in favor, 1 opposed; variance granted.

Mr. Healey was cautioned to wait 30 days before proceeding in case new information comes forward for the Board to consider.

Barry and Gail Phillips
66 Indian Rivers Drive
Eliot, ME 03903

IN RE: 19 Farm Road
Kingston, NH 03848
Tax Map R-39, Lot 12

This is a public hearing whereby the applicants seek a Variance from the terms of Article 301.1 of the Town of Kingston Zoning Ordinance, and asks that terms be waived to construct a single family house.

Mr. and Mrs. Phillips addressed the Board and explained that they had owned the property in question for nearly 30 years. Mr. Phillips said it has been in Current Use, and has 300 feet of frontage on Little River Road. They would like to take a portion out of Current Use to build a house and garage. They were denied a building permit because the lot fronts a Class 6 road. Mr. Phillips said that others have built homes beyond where he proposes to build, with Town approval, and also that he is familiar with living on a dirt road. He also said that most of the land is on the northern border of the town, so several abutters are in Brentwood, and these abutters were notified.

Chairwoman Alessio said that the problem is that the parcel is on a Class 6 road.

Mr. Phillips said he feels it is a hardship not to be able to build a homestead there. He said it is zoned Rural Residential and is a beautiful lot. He said he has no problem with the road, and that there is electricity on it. He said a lot of things could go in there, and a single home would be minimum impact. He said he was on the Conservation Commission for 20 years.

Chairwoman Alessio said that the fact that a person built a house there in 1963 does not matter. She read from the letter of denial from Building Inspector Robert Steward, who cited Section 301.1 of the Town's Ordinances:

"Every building lot shall have a minimum contiguous frontage of two hundred feet on a 'public right of way'. This frontage shall provide access to the lot. (The term 'public right of way' for the purposes of this ordinance shall be limited to those highways which qualify as Class I through V highways under the provision of NH RSA 229:5..."

The Chairwoman then said she had asked Town Planner Glenn Greenwood how that RSA impacts this land. She read from Mr. Greenwood's memo:

"...The section called out in the ordinance requires buildings to be erected on land with frontage upon roadways classified as being I-V. The subject property is located on a road classified as Class VI. I do not believe the ZBA has the right to grant a variance of this nature. State law, RSA 674:41 outlines the process by which a building permit may be issued for property located on a Class VI roadway. As found in RSA 674:41 I (c), a building permit for property located on a Class VI roadway requires that 'the local governing body after review and comment by the planning board has voted to authorize the issuance of building permits for the erection of building on said class VI highway or a portion thereof'."

Chairwoman Alessio said that the Town has no ordinance to give a roadmap or process to grant a variance for property on a Class VI road.

Mr. Phillips said his next stop would be to the State courts. Chairman Alessio said the other option is to go to the Board of Selectmen and Planning Board to ask them to put an ordinance in place to allow building on this Class VI road. She said that is the process that would need to take place.

Questions/Comments of Abutters:

Charles Anderson of 31 Farm Road spoke to the Board and applicant, saying he lives at the end of the road in the house built in 1963, which has stayed in the family. He said he puts loads of gravel down on the road every year. He said it is peaceful but a lot of work, and winter is hard. He said that the Town services, including plowing and garbage pickup, stop where the pavement stops.

Sandra Fox 15 Farm Road asked for clarification that the road is not going to be brought up to standards. Chairwoman Alessio said that is not an issue here tonight.

Questions/Comments of the Board:

Mr. Greenbaum said that the Phillips could talk to the Town Planner to see how to approach this, that he may have a way to go about it. Chair Alessio said that it is clear at this point that the ZBA does not have the authority to grant this relief. Mr. Greenbaum said the inference in Mr. Greenwood's memo is that the applicant should go to the Planning Board, that there may be a process there. Chair Alessio said that the options are to build a road or go to Town warrant. Mr. Phillips said that then he may as well build a development. He said he thought there would be latitude with the ZBA, and that the Planning Board had told him they did not have a process for this. Mr. Coffin said he had not seen the RSA cited in the Planning memo before tonight; and Mr. Greenbaum said that until he saw the Planning memo he would have agreed with Mr. Phillips that a variance could be granted. He gave a copy of the memo to Mr. Phillips. It was agreed a vote is required.

MOTION: by Mr. Greenbaum to deny the application for a variance to the terms of Article 301.1 of the Town's ordinance, due to the lack of meeting the requirements of RSA 674:41 I (c).

SECOND: by Ms. Leone
All in favor.

Meeting adjourned at 7:30 PM.

Respectfully submitted,
Susan Ayer