

**Town of Kingston
Zoning Board of Adjustment
November 12, 2020**

PRESENT:

Electra Alessio, Chair; Larry Greenbaum, Vice Chair; Peter Coffin, Jackie Leone, Richard Johnson, Members; Chuck Hart, Alternate Member
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 September 10, 2020 as written,

SECOND: by Mr. Johnson

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

Joint meeting with Planning Board requested

Chairwoman Alessio informed the Board that the Planning Board has asked to have a joint meeting on December 1, 2020 regarding a Conditional Use request, as the applicant will require a variance as well, due to location in the Shoreland Protection district. This will be a virtual meeting via Zoom. The Chair will check with Planning Administrator Ellen Faulconer about the applications process.

PUBLIC HEARINGS

7:05 p.m.

Isaac and Susan Webster
7 Colcord Drive
Kingston, NH 03848

IN RE: Tax Map U-11, Lot 40

This is a public hearing whereby the applicant seeks a Variance to the terms of Article 301.D of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit a 10 ft. x 16 ft. shed to be built within 20 feet of the property line. A 15- foot variance is required.

The applicant, Susan Webster, was present to speak to the Board about her variance request. She referred to the statement submitted with her application, saying that the property has very uneven ground levels, a large front yard that is low lying and collects rain water, and a narrow area to the right of the driveway. She said the area they want to use is closest to the driveway.

Comments/Questions of Abutters: None

Questions of the Board:

Mr. Greenbaum asked which neighbors would be most affected. Ms. Webster named the neighbors that abut that side of the property (Kurgan, 18 Rockrimmon, and Walen, 16 Rockrimmon), and said she had spoken with all but one abutter (Beliveau, 20 Rockrimmon) All those she contacted signed a letter of consent.

Chairwoman Alessio said it was unusual to grant a variance when so much other land is available on the parcel. Ms. Webster reiterated that the lot is very uneven and that water collects in the front yard, making it unusable. She said the side of the driveway is a narrow strip that is also uneven; she said that in order to place the shed anywhere else would require considerable landscaping would need to be done.

Mr. Hart pointed out that in the back yard there are 46 feet to the fence at one point in the back yard, and 80 feet from the corner of the house to the property line; he questioned why the shed could not be placed in one of those areas. Ms. Webster said that the back yard is sloped, and the area is fenced for the dog. She said there is also a deck off the back of the house. Mr. Hart asked if the shed could come in further from the property line. Ms. Webster said that there is a garden with a flag pole and they wanted to put the shed in between the flag pole and the property line.

Chairman Alessio said she is concerned because the property is large enough to put the shed in another spot with landscaping, however, there are also special circumstances outlined in the letter that she thought were the main consideration. Ms. Webster said they wanted to keep close to the house and the driveway, and that everything from the attic needs to be in the shed as her husband can't go up in the attic anymore. Mr. Coffin said that should not affect placement of the shed, and that future abutters need to be protected too. Ms. Webster said it would be possible to move about 3 feet closer to the flag pole, if that would help.

Chairman Alessio suggested a condition to approval might be that the shed has to be moved back from the property line when the house is sold. Mr. Coffin said he is not sure this is allowed, that the variance goes with the property. There was some discussion of possibly adding language to the deed.

Mr. Greenbaum said that the size of the variance troubles him; he said he has faced a similar problem in the past and had to do some grading. Ms. Webster said she doesn't want to have to put the additional expense into the project as they are on fixed incomes.

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? 5 voted yes; passes

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

Will substantial justice be done if granted? 5 voted yes; passes

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? 5 voted no; passes

There was a discussion on whether or not to include a condition in the motion to approve. It was unclear whether this would be legal.

MOTION: by Mr. Greenbaum, to grant a Variance to the terms of Article 301.D of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit a 10 ft. x

16 ft. shed to be built within 20 feet of the property line, the actual variance being 15 feet.

SECOND: by Mr. Johnson

In favor: Alessio, Greenbaum, Johnson, Leone; **Opposed:** Coffin; **Variance granted.**

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

James Dufresne
Diamond Oaks Golf Club, LLC
PO Box 175
Plaistow, NH 03865

IN RE: 7 Route 125
Kingston, NH 03848
Tax Map R-3, Lot 4 and 4 LU3

This is a public hearing whereby the applicant seeks clarification of the September 12, 2019 Variance granted by the Kingston Zoning Board of Adjustment, with respect to the condition that "occupancy is restricted to US Veterans, 55 and over, and as condominiums must be ADA compliant". The Board will be meeting to clarify the intent and review/amend the language of that approval.

Chairwoman Alessio prefaced the discussion by saying the issue is that the Planning Board read the ZBA's decision of September 12 to mean that all residents of the condominiums need to be veterans, so that a spouse who is not a veteran would not be allowed to live there. She said the question is whether that was the intent. Mr. Coffin explained that the Planning Board felt that was the only interpretation that could be made, and suggested clarification is needed.

Mr. Dufresne was present to address this matter; he referred the Board to a letter written by Attorney William Reddington dated November 5, which expanded on an earlier letter from Attorney Charles Cleary on the subject. The November 5 letter included suggested language for the Board to use.

In discussion, all Board members agreed that the intent was that occupancy could include a veteran and his spouse or significant other. Mr. Johnson pointed out that the wife of a veteran who is not herself a veteran can be buried in a military cemetery. The Board reviewed the wording suggested by Attorney Reddington. It was agreed that that wording reflects the intent of the Board in a clean manner.

MOTION: by Chairwoman Alessio, that with regard to the condominiums at 7 Route 125, the use and occupancy of each Unit shall be by at least on (1) veteran of a branch of the United States Military Service.

SECOND: by Mr. Greenbaum
All in favor.

Meeting adjourned at 7:45 PM.

Respectfully submitted,
Susan Ayer, Administrative Assistant

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