

**Town of Kingston
Zoning Board of Adjustment
October 14, 2021**

PRESENT:

Electra Alessio, Chair; Larry Greenbaum, Vice Chair; Peter Coffin, Richard Johnson, Jacqueline Leone, 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 December 10, 2020 with two corrections: on page two, in two places, "rain guard" should be "*rain garden*".

SECOND: by Mr. Greenbaum

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

Reorganization of the Board

Chairwoman Alessio reminded those present that this Board has not met since the March election. She said that Mr. Coffin and Mr. Greenbaum were re-elected. Chair and Vice Chair positions have not been set for 2021.

Mr. Coffin asked Ms. Alessio if she is comfortable remaining Chair; she said she is, but will not run for re-election in 2023 due to other obligations.

MOTION: by Mr. Coffin, to nominate Mr. Greenbaum to continue his role as Vice Chair, and Ms. Alessio to continue as Chair.

SECOND: by Mr. Johnson

All in favor

PUBLIC HEARINGS

7:05 p.m.

Summit Distributing, LLC
249 NH Route 125
Kingston, NH 03848

IN RE: Tax Map R-40, Lot 15

This is a public hearing whereby the applicant seeks a Special Exception to the terms of Article 201, Section 4.E.14 of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit a retail motor fuel outlet with a 5,100 s.f. convenience store/quick service restaurant and five (5) retail fuel dispenser islands (ten [10] fueling locations), and three (3) high speed commercial diesel islands (two [2] fueling locations), within the Aquifer Protection District Zone B.

Present to speak on the application were the applicant, Tom Frawley, President and owner of Summit Distributing, and Nicole Duquette from Greenman Pederson Inc. (GPI), the Project Engineer for the project. Ms. Duquette gave the presentation to the Board with the aid of plans displayed on an easel. She said that the property is a 13.8- acre

parcel on Route 125, directly across from Marshall Road in the C-II Commercial district. She said they are not within the Shoreland Protection District as the Little River is more than 250 feet to the north. She said they are within the Aquifer Protection Zone B, not Zone A. She said this use would be prohibited in Zone A, but being in Zone B allows them to apply for a Special Exception.

Ms. Duquette reported that they had been required to go to the Natural Heritage Bureau for findings on endangered species and plants. They had found no endangered species, but did find one endangered/threatened plant, the Northern Blazing Star. She said the plant was found in front of the next door neighbor's lot. Chair Alessio asked if the presence of the plant adversely affects the project, and Ms. Duquette said that they would be allowed to transplant it in an area where it will be supported.

Ms. Duquette went on to describe the proposed project. She said that there are only two diesel fueling lanes and three parking spaces for trucks, that this is not a truck stop. She said that they will require a lot line adjustment to square off the lot; this will give Kingston Crossings frontage for their main lot, and allow room for a public water supply well. This will decrease the area of the parcel by about 2 acres. She said the well and septic will be all that are in the rear area of the property, and that the septic system will be under the 2,400 gallons per day threshold for requiring a hydrogeologic study.

With regard to Stormwater regulations, Ms. Duquette said that the project will be under an alteration of Terrain because it will disturb more than 100,000 square feet. DES will review it as well, and Ms. Duquette said that any rain that hits the fueling area has to go into water quality units such as a lined system or underground fire retention area; it can't be allowed to immediately infiltrate. There will be a lined retention area at the front of the property. For the driveway, parking area, building and canopies, the water will go into infiltration basins with pretreatment to separate oil from water before going into the retention area to be infiltrated. There will be rain garden areas.

Ms. Duquette said they are working with DOT to look into a separate driveway onto Route 125. Even with the new driveway, she said they estimate a total of 25-30% impervious surfaces on the lot, and 10-15% would not be rechargeable, so they would be within the allowable limits of 25% impervious surface with more than half being recharged.

Ms. Duquette said that Mr. Frawley is looking into solar panels on the roofs and canopies to supply lighting to the site. He is also proposing two electric vehicle charging stations. She said that all the safety features of the gas station are in writing in the original packet submitted.

Chairwoman Alessio suggested that the answers to the criteria for Special Exception should be read. Ms. Duquette went through the criteria as presented in the application:

- 1. The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants:**

a. Petroleum storage and fuel equipment pollution prevention - Modern fueling components with prevention and safety features proposed, such as double walled piping and tanks with fiber glass construction, overflow valves and spill prevention equipment.

b. Stormwater Management System - The Stormwater design will consist of deep sump catch basins with oil/water separator snouts and oil/water separator tanks capable of containing fuel in the unlikely event of a spill. These components will convey the stormwater to a lined impervious sediment/forebay/bioretenion area to further pretreat and treat stormwater runoff from the tank mats and the fuel dispensing areas. Stormwater from the canopies, roof, and paved areas that are not within the fueling area will be collected with deep sump catch basins with oil/water separator snouts and conveyed to a sediment/forebay and a bioretention area capable of infiltration. This system will provide pretreatment and treatment of the stormwater as well as provide groundwater recharge as required for lots within the Aquifer Protection District.

2. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer:

The applicant has not proposed significant groundwater withdrawals from the aquifer. With (stormwater infiltration) systems in place, and a lack of high-level groundwater withdrawals, the proposed development will not cause a significant reduction in the long-term volume of water contained in the aquifer, or in the storage capacity of the aquifer.

3. The proposed use complies with all other applicable sections of the Article.

The proposed development will comply with all other applicable sections of the Aquifer Protection Ordinance (APO). The proposed septic system will be designed to meet all required NHDES daily loading requirements, nitrate setbacks, as well as the separation to the Estimated High Water Table as required by Kingston's Subsurface Disposal Systems Rules and Regulations for lots within an Aquifer Protection District.

We anticipate that about 50% of the impervious surfaces will be directed to a stormwater recharge system. This will allow us to comply with both NHDES Alteration of Terrain regulations and the Kingston APO. Although the APO allows up to 60% impervious lot coverage with groundwater recharge (Section 201.3.C), the underlying district, Commercial Zone C-II, only allows up to 50% (Section 109.9). The applicant's development plan proposes lot coverage of approximately 30%, which complies with both regulations.

4. A hydrogeologic study shall be submitted for uses whose septic system is designed for more than 2,400 g.p.d. In Zone A, a study shall be submitted for any septic system designed for more than 2,000 g.p.d.

According to NHDES' flow ratios, the daily proposed flow to the subsurface system will be approximately 1,225 gpd. Since this amount is below the 2,400 gpd limit, a

hydrogeologic study is not required per the Ordinance.

5. The Zoning Board of Adjustment may require that the applicant provide data or reports prepared by a qualified hydrogeologist to assess any potential damage to the aquifer that may result from the proposed use. The Zoning Board of Adjustment shall engage such professional assistance as it required to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria. The applicant is prepared to work with a qualified hydrogeologist engaged by the ZBA, to assess any potential effects the proposed development might have on the aquifer. However, the applicant further states that the development's modeled daily flow to the proposed subsurface septic system is approximately 50% less than the amount of daily flow limit requiring a hydrogeologic study.

Ms. Duquette addressed several further points of safety measures, such as shear valves that will shut off a dispenser if a driver drives away with the nozzle, or hits the tank. She said that there will be fire suppression measures in both canopies even though not required by the State of New Hampshire. A pressure detection system will detect any minor leak within a pipe and even though the pipes are double walled, it will shut down the system if a leak is detected. There will be a manual switch behind the cashier also. Sumps will be placed underneath to catch minor spills, and there are overflow preventions when filling tanks. Monitoring wells at the corners of the tanks will be required to be checked regularly.

Questions of the Board:

Mr. Coffin asked if the lined system that catches the fuel run off is emptied and hauled off site periodically. Ms. Duquette answered no, that the run off slowly goes through a system of filters, stone and underdrains, then to an outlet to a vegetated area. She said that this is just for surface water, and anything beyond that would be reported to DES and the fire department.

Mr. Hart asked if a set of traffic lights is planned. There was a brief discussion in which it was pointed out by the Chair that the 266 Route 125 project has already worked with a traffic engineer and included lights that would affect this project as well.

Mr. Coffin said that if this Board grants the Special Exception, the project will still need to go through the Planning Board process. Chair Alessio said she has faith that the Planning Board will go through everything carefully, and that there will also be the permitting process and the DES. She said that the ZBA is only opening the door to develop this sort of project on this parcel.

Ms. Leone said that all the technical components will still need to be pursued, including the driveway through the State DOT, an Alteration of Terrain permit through DES, and the site plan review. It was agreed there is a long road ahead.

Mr. Coffin asked if the septic system would be used by other tenants; Ms. Duquette said it would not.

Mr. Greenbaum asked if there are other instances of projects of this nature in this area. Mr. Frawley answered that Summit has properties in Maine, Vermont and New Hampshire, and that he tries to make each one specific to the area. He gave the examples of a “farm” theme in Randolph Vermont, and a property in Keene designed to fit in with the surrounding old factory buildings.

Comments/Questions of Abutters:

No one present asked to be heard in support of the project.

Several residents spoke in opposition:

Tia Peltier of Bluebird Lane said she lives next door to her father, Louis Kent, who has written a letter and who has joined the meeting via Zoom. She said that her father and neighbor (also present) are very concerned because there will be leaks no matter what is done to prevent them, that there are accidents all the time. She said that even a small leak is going to be a problem. She also said that the lights and truck traffic are going to be a problem.

Ms. Peltier had brought a letter from her father, which Chairman Alessio asked her to read. Instead, Mr. Kent read himself via Zoom. (See letter, attached.)

Karen Coombs, 6 Little River Road, asked if the design was based on a hydrogeologic study done last year; she said her concern was that there was a significant drought and the study would not represent normal runoff. Ms. Duquette said that they did site specific mapping by soil groups, and it was done last month. However, she said that even if the study was done during a drought, they would estimate the normal water levels. Ms. Coombs then asked about snow removal methods; she was told that this sort of detail would be addressed by the Planning Board. Ms. Coombs said that as she lives next door on a farm, she has significant concerns.

Carl Oppenheimer, 12 Depot Road, said that he was surprised that a gas station would be considered in the Aquifer Protection district. He said that if you look near the diesel pumps at the Shell station in Kingston there is spillage. Mr. Oppenheimer also cited traffic concerns on Route 125.

The Chair asked if the inspectors had reviewed this project; she has gotten no feedback from them. No information was available.

Marghi Bean, Tucker Road, said that traffic is a concern to her because the Route 125 intersection is already busy.

She then asked what happens in 20 years when the system is dirty. She said it will fail in time and she wants to know who will be responsible for cleaning out the filtering system. Ms. Duquette said that is partially the reason why they propose having the land for an open drainage system, because if there is a problem it is known right away. Any spill will be detected and the soil will be dug up right away and replaced. Ms. Bean then asked how the water treatment systems work, because the Town’s water is a very important resource.

Ms. Duquette explained how the oil is separated from water in the basins and the levels

of containment before it goes into open retention areas. She described the retention area materials. Asked what happens to oil in the catch basins, Ms. Duquette said that if it's just a film, it remains in the catch basins until they are maintained and vacuumed out.

Mr. Frawley said that many towns like Kingston instituted aquifer protection zones in the 1980's and 1990's, which he said was prudent given the older underground storage tank systems. He said that he has served for 25 years on the Oil Fund Disbursement Board, which is overseen by NH DES, that cleans up problems from many years past. He said that in earlier years he would have agreed with the letter writer (Mr. Kent), but that now there are so many protections in place, and the stormwater collection systems are so much better, it is a very different scenario. He said that New Hampshire is one of the toughest states for rules and regulations for new installations. He said he lives in a small town where a gas station failed, so he shares the concerns.

Mr. Coffin said that the ordinance states that additional protections for groundwater may be required at the Planning stage. He said that this Board is not capable of determining what may be needed. Chair Alessio said that it would be appropriate to add this as a condition of approval.

Ms. Alessio asked about the number of test pits done on the site. Ms. Duquette said several have been done by GPI both for septic and drainage but additional test pits will be done and witnessed by Mike Cuomo of the DES.

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

1. The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants:

Mr. Coffin and Ms. Leone both said they are comfortable with this, with the condition that the project may be subject to additional restrictions to protect the quality of the groundwater. Ms. Duquette suggested adding "by the Planning Board and their third party reviewer".

5 Agree, 0 Disagree, with this condition

2. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer:

5 Agree, 0 Disagree

3. The proposed use complies with all other applicable sections of the Article.

5 Agree, 0 Disagree

4. A hydrogeologic study shall be submitted for uses whose septic system is designed for more than 2,400 g.p.d. In Zone A, a study shall be submitted for any septic system designed for more than 2,000 g.p.d.

Mr. Coffin said that this is not required due to the rating of the septic system.

5 Agree, 0 Disagree

5. The Zoning Board of Adjustment may require that the applicant provide data or reports prepared by a qualified hydrogeologist to assess any potential damage to the aquifer that may result from the proposed use. The Zoning Board of Adjustment shall engage such professional assistance as it required to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria. It was agreed that this may be answered by referring to Item 1 for the potential need for hydrogeological study.

5 Agree, 0 Disagree

MOTION: by Mr. Coffin to grant the Special Exception to the terms of Article 201, Section 4.E.14 of the Town of Kingston Zoning Ordinance, with condition that the project may be subject to additional restrictions by the Planning Board and their third party reviewer to ensure the quality of the groundwater, to include possible hydrogeological study.

SECOND: by Mr. Greenbaum

In favor: Alessio, Greenbaum, Johnson, Coffin, Leone

**Benevento Bituminous Products
900 Salem Street
P.O. Box 692
Wilmington, MA 01887**

IN RE: Tax Map R-3, Lot 18

This is a public hearing whereby the applicant seeks a Variance to the terms of Article 107, Section 107.6, of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit the height of a pollution control duct up to 88 feet where existing ductwork is 61 feet, and the ordinance limits the maximum height to 35 feet.

Present to present the application were Michael Tierney of Wadleigh, Starr & Peters law firm, attorney for Benevento, and William Schneider, Operations Manager for Benevento. Mr. Tierney said that the owner has authorized them to apply for a height variance. He said that the asphalt plant on site was built in 1965, moved to Kingston in 1995, but is still operating with 1965 technology. He said one of the most important things for an asphalt plant to have is an adequate pollution control duct. He said that it is not possible to meet current efficiency and environmental standards with a 35' stack. He said they are here for a variance to allow the new plant to meet or exceed all 2021 DES standards for an asphalt plant. He said that the 35' height limit in the Kingston Ordinances will make this impossible.

Mr. Tierney said that the criteria for variance can be easily met. He said that the public interest threshold is met because it is in as good a location as it can be; a plant is already there, an older plant is being replaced with a newer one, and it is in an industrial zone where such plants belong. He said the intent of the ordinance is met; the 35' limit is intended for buildings and to ensure they are not visible or harmful to residential areas;

this plant is in the industrial district and is not visible from far away, so will not affect property values. He said if anything, replacing the 1965 plant with one up to current standards will increase values. As for the question of literal enforcement causing hardship, he said that it is just not possible to build an asphalt plant with a 35' stack, and it would not be approved by the state because it would be a fire hazard.

Questions of the Board:

Mr. Coffin ascertained that the stack is going from 65 to 88 feet, and asked what the difference is. Mr. Schneider said that it has to do with the angle of the pipe, and gave a detailed explanation of how the pipe needs to handle "fugitives" from the aggregate, not just steam, which need to have room to free fall back into the bag house. He said this is crucial to handle the steam.

Ms. Alessio asked if this means the current plant is in trouble, Mr. Schneider said no, that is working on 1965 technology; the new plant will need the higher stack. Ms. Alessio said that she had not realized the entire plant was being replaced. Ms. Leone followed up by asking if the replacement is due to a safety problem or occurrence with the old plant. Mr. Schneider said no, it is just that the technology has changed and the old plant has seen its time. He said there are no safety concerns. Mr. Hart asked if the plant was originally built with a 66-foot stack. Mr. Tierney said it was, built in Rhode Island and moved to Kingston. He said there was no evidence found by Town Planner Glenn Greenwood that there was any application to the Zoning Board in 1995. Ms. Alessio said it is done now, and that now the 88-foot stack is being requested for better efficiency.

Ms. Alessio asked Kevin St. James to come forward with input from the Fire Department. Mr. St. James said that he has asked Fire Chief Graham Pellerin for comment during a recent inspectors' meeting. Chief Pellerin said he has no issue with the height of the stack; if there was a problem requiring fire department response, Plaistow would be called as they have a larger ladder truck. Mr. Coffin said that was his only issue with the height.

Ms. Leone asked when the new plant is planned to be built. Mr. Schneider said that they are hoping for next November (2022), due to current delays in the supply chain.

Mr. Greenbaum said that when California standards are applied, there are no more stringent standards.

Comments/Questions of Abutters:

None heard.

Chairman Alessio then asked the Board to go through the 5 criteria for approval and fill in forms individually. Results were tallied:

Will there be a diminution of value of surrounding properties? No: 5

Granting will be of benefit to Public interest? No: 5

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant?
Yes: 5

Will substantial justice be done if granted? Yes: 5

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? No: 5

MOTION: by Mr. Coffin, to grant the variance to Article 107, Section 107.6, of the Town of Kingston Zoning Ordinance, to permit the height of a pollution control duct up to 88 feet where existing ductwork is 61 feet, and the ordinance limits the maximum height to 35 feet.

SECOND: Mr. Johnson

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

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

Meeting adjourned at 8:42 PM.

Respectfully submitted,
Susan Ayer, Administrative Assistant

To: The Kingston zoning board of adjustment
PO Box 716 Kingston NH 03848

Re: The special exemption hearing for summit distributing LLC.
Reference to Tax Map R40 lot 15.

Date: October 14, 2021

Summary:

Granting a variance is not acting in the best interest of protecting the health of our residents and environment. I recommend their request be denied.

Objections:

Summit Distributing LLC is requesting a variance from complying with all provisions of our Aquifer Protection Ordinance so they can construct a retail gas station within a protected and restricted area.

As an abutting property owner and long-time Kingston resident, I could talk about all the well-known negatives associated with constructing a gas station in our community like crime, increased traffic and decreased property values; however, since Summit is only requesting a variance from having to protect our groundwater, I'm going to focus on this specific topic.

After reading a study performed in Rockingham County, New Hampshire Department of the Environment has this to say about what municipalities can do to prevent groundwater contamination from gas stations:

"Given the likelihood that underground storage tank (or UST) systems will release gasoline constituents and the possibility that spilled fuel will be carried off the fueling area by stormwater, municipal officials interested in providing the highest possible level of protection for groundwater used for drinking water should consider restricting the siting of gas stations... If the municipality's zoning ordinance prohibits the location of certain highrisk land uses in wellhead protection areas, aquifer protection areas, or other areas of high-value groundwater, gas stations should be considered for inclusion in the list of prohibited land uses."

We did this! Kingston adopted Article 201: Aquifer Protection Ordinance in 1989 and has amended it on several occasions to continue providing our community with the highest level of protection for our health and our groundwater from high-risk sources of contamination and it specifically prohibits gas stations. Now Summit is asking us to rule against our own protection.

Louis Kent
9 Blue Bird Lane

The primary purpose of the Aquifer Protection Ordinance is clearly stated in Section 201 which says:

The Town of Kingston hereby adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve and maintain potential groundwater supplies... The objectives of the aquifer protection district are:

- A. to protect the public health and general welfare of the citizens of Kingston;*
- B. to prevent development and land use practices that would contaminate or reduce the recharge of the identified aquifer;*
- C. to promote future growth and development of the Town, in accordance with the Master Plan, by ensuring the future availability of public and private water supplies;*
- D. to encourage uses that can appropriately and safely be located in the aquifer recharge areas.*

The Ordinance specifically prohibits gas stations from being constructed in the Aquifer Protection Zone unless "a special exception from the board of Adjustment that imposes additional protections for groundwater." The exception is to ADD more protections on the industry, not grant a variance to eliminate them completely! The special exception criteria also states:

"the proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or be increasing the long-term susceptibility of the aquifer to potential pollutants;"

The negative impact of gas stations on the environment has been extensively studied, and the susceptibility of aquifers are well documented. Gas stations use underground tanks to hold toxic material such as gasoline and oil which contain dangerous substances, including benzene, toluene and heavy metals known to cause cancer and harm children. These tanks are notorious for leaking these toxins into our drinking water supplies, homes and businesses. One pin-prick sized hole in an underground tank can leak 400 gallons of fuel a year. One gallon of petroleum can contaminate one million gallons of water. That is worth repeating. One gallon of petroleum can contaminate one million gallons of water and one pin prick sized hole can leak 400 gallons of petroleum a year.

Why should we go against the advice of our State Department of Environment by providing a variance to our own ordinance? We have known constructing a gas station here is a bad decision since 1989 when we established this rule. If it was ever to be considered by a board, they

were to include additional groundwater protection measures, not grant a waiver from them. How will this developer be protecting our drinking water source if they want to be exempted from the groundwater protection requirements?

Those daily dribbles and drops may not appear to be much, but a study estimated at a typical gas station, about 400 gallons being spilled over a 10-year period, including nearly 2 gallons of benzene, a carcinogenic component of gasoline. Again, one gallon of petroleum can contaminate one million gallons of water.

Now let's consider spills carried off the concrete by rain or snow. The clean water may flow over concrete and pick up the spilled gasoline. It could get into the soil and end up in the water and surrounding wetlands. The proposed site is primarily freshwater wetlands!

If Summit has no interest in taking measures to protect our groundwater in the beginning of their project, how can we trust them to do so during their daily operation and maintenance?

Summit Distributing won't be drinking this contaminated water, **we will be!** Once it's contaminated, it is lost to us forever. There isn't enough money to clean it up and the history of their industry shows they won't. It's this board's responsibility to enforce this ordinance which has been established to protect the health of Kingston's residents as well as our environment. There is no way our community can consider a special exception variance because it is well documented gas stations make aquifers susceptible to pollutants. Granting a variance is not acting in the best interest of protecting the health of our residents and environment. It will set a precedence to allow other high polluting industries into our community.

If we don't say no now, it will only get more difficult to stop this development from moving forward in the future. We have the power to stop it now and do the right thing for our residents and our community.

Let's not put Summit Distributing's profits above our own health and safety. Let them find another site which won't put us and our groundwater at risk.

I respectfully request the Board follow the advice of the New Hampshire Department of the Environment, **our own ordinance** and learn from other town's mistakes and deny Summit Distributing's variance request to build a gas station.

Thank you for listening and I know you will consider these points when you decide what is best for the residents of Kingston and our precious water.