

**Town of Kingston
Zoning Board of Adjustment
March 10, 2022**

PRESENT: Electra Alessio, Chair; Larry Greenbaum, Vice Chair; Peter Coffin, Jacqueline Leone, Members; Chuck Hart, Alternate Member
ABSENT: Richard Johnson, Member

Chairwoman Alessio called the meeting to order at 7:00 PM

BOARD BUSINESS:

The Chair welcomed two newly elected members, Meghan Kelley and Rick Russman, who were present. She said they must wait until after Friday at 5 pm in case the results of the election are contested. The Board will vote on officers when the new board is seated.

Approval of meeting minutes

MOTION: by Mr. Hart, to approve the minutes of the February 10, 2022 meeting as submitted.

SECOND: by Mr. Coffin

All in favor

PUBLIC HEARINGS

7:05 pm Summit Distributing, LLC
 249 NH Route 125
 Kingston, NH 03848

IN RE: Tax Map R-40, Lot 15

This is a public hearing which is a continuation from February 10, 2022, 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.

Vice Chairman Greenbaum read the following statement:

“As regards the first item on tonight’s agenda, there will be NO discussion relative to this issue at this meeting or at any future meeting of the ZBA until such time as a final decision has been ordered by the Rockingham County Superior Court.”

**Ida and James Ahern
2 Third Street
Kingston, NH 03848**

IN RE: Tax Map U-4, Lot 141

This is a continuation from February 10, 2022, of a public hearing whereby the applicant seeks an Appeal from an Administrative Decision, a Special Exception, and five (5) variances so that the applicants can demolish and rebuild their single family home in approximately the same location. The applicants appeal the Administrative Decision regarding Article 301., Section 301.D, of the Town of Kingston Zoning Ordinance, whereby the Building Inspector denied the building permit.

Furthermore, the applicants seek a Special Exception to the terms of Article 205, Section 205.7, of the Town of Kingston Shoreland Protection District Zoning Ordinance, to permit the construction of a 1,540 square foot single family residence in the same approximate footprint as the existing residence and installing a new septic tank and leach field.

In addition, the applicants seek the following variances: Article 202, Section 202.5.B and Article 205, Section 205.4.C to permit construction of a 1,540 square foot single family residence in the same approximate footprint as the existing residence and installing a new septic tank and leach field; Article 301, Section 301.1.D to permit the improvement and/or placement of a single family dwelling structure located within 20 feet from the front property line; and to permit the improvement and/or placement of a staircase located within 20 feet from the front property line; and to permit the improvement and/or placement of a deck located within 20 feet from the front property line.

Mr. and Mrs. Ahern were present with their attorney, Justin Pasay of DTC Lawyers, Portsmouth. Atty. Pasay said that Peter Landry of Landry Surveying was also present. He then went on to recap their case as presented originally on December 9, 2021. He said the Aherns hope to raze their current single family home and construct a new single family home that is more conforming to the Zoning Ordinance in every way than the old building. He said that they are focused on the setbacks to the road and proximity to the lake.

Mr Pasay said they had applied for an Appeal of Administrative Decision and several variances as well as the Special Exception; he said the Special Exception was applied for out of an abundance of caution, as he thinks that ordinance is oriented toward unimproved lots that are small and close to the lake.

Mr. Pasay said that when this case was first heard, he had expressed a preference that the Appeal of Administrative Decision be heard first, as in their view, if it is granted none of the other relief is needed. Chair Alessio asked that he recap the case for new people that may be present and to refresh the board's memory as well.

Mr. Pasay stated that the property is a small (under 13,000 sf) parcel. It is in the Single Family Residential zone, and also in both the Shoreland Protection overlay district and the Wetlands Conservation district. The house was constructed around 1950, has two bedrooms and one bath, and its construction predates Town zoning, which was put in place in 1979. He said the Aherns plan is to take down the existing house and replace it with a new one which will be less non-conforming than the old one. He said that the old building that will be demolished has a total impervious surface at the roofline of 1,031 sf,

and the new, larger building will have 1,540, reflecting a total increase of 500'. However, Mr. Pasay said that with the removal of other impervious surfaces around the lot, the net increase will only be 300 sf, and the total impervious surface will still be only 15% of the lot. A new modern septic system will be constructed, which has already been approved by the Town but will need a septic and Shoreland permit from the state if this case is successful. He said that all the relief they are looking for is related to proximity to the street or to the lake, due to the lot line setback requirements, which are 20' for front and 20' for rear and side. He said that in December he had outlined how the building will be better in both contexts:

Closest structure (steps) to the front lot line: 9.8' currently, will be 13.7'
Closest point of dwelling to front lot line: 11.35' currently, proposed 16.6'

As to the setback to the lake, Mr. Pasay said that the entire lot is within 150' of Great Pond, so there is no way the house can be constructed 300' away as required by the Shoreland Protection District. However, he said this setback will also be increased:

Distance from the end of the steps to the water: 25' currently, proposed, 30'
Distance from house to water: 32' currently, proposed, 37'

He said that the proposal is to make the property in better conformance with the purpose of both the Shoreland Protection and Wetlands Conservation districts.

Mr. Landry then gave a summary of his work. He referred to pre- and post- construction plans. He said that in present conditions, the existing leach field is currently 45 feet from the lake. The existing well is 43 feet from the existing leach field. Part of proposal is to put in new drilled well in front of the house, between the house and the lake. This allows room to put the leach field as far from the lake as possible while meeting the Town's 20' setback.

Mr. Landry said that the DES Shoreland department would like the building to be 50' from the water, ideally, but with the existing building being substandard, the DES is looking for the proposed building to be less non-conforming. They did so, and after talking to the Building Inspector, they moved the building back a little farther. There is also a footpath on the property, for which a little more room is implemented in the plan. Mr. Landry said that also in discussion with Mr. Steward, it was suggested that he go back toward the abutter's land to increase the setback from Third Street. But he said he ended up with the building on the current plan by moving it as far from Third Street as possible without creating another setback issue. He said that this, along with the new septic and well, constitute an improvement over all. He said that the 15% impervious surfaces level does not meet the threshold that would require a Stormwater management plan, but he said it is always recommended to include best management practices for Stormwater anyway, which he has done.

Mr. Landry informed the Board that when the Aherns' bought the property it was even smaller, but they and the neighbor had bought the property in between the two and split it, increasing the size of both.

COMMENTS OF THE PUBLIC: None heard for or against.

COMMENTS OF THE BOARD

Mr. Greenbaum said he found the plans a little confusing, and asked for clarification on two points: the front of the house faces the water, and the 28' dimension is for the house only; the porch is additional. He then asked how high out of the ground the foundation will be as that will affect the steps going out the front. Mr. Landry said it won't be very high, no higher than a foot and a half or two feet. Mr. Greenbaum asked if the porch could be changed and the steps realigned so the whole house could be moved toward the neighbor so there would be 20 feet on one side and 16 on the other, to reduce the amount of the variance needed. Mr. Pasay said that the proposed house is right up against the lot line to the south, at 21 feet, so there is not much room to move it. Mr. Greenbaum clarified that instead of 16 on the street side it could be 20, making things better for the town maintenance crews. Mr. Pasay said that the Town is already getting the benefit of several more feet, and said the interests of the abutters need to be weighed as well.

Chair Alessio said that she feels the real question is why not make the building slightly more narrow to eliminate the need for some of the variances. Mr. Pasay said that the reality is that it's a prefabricated home, and the Aherns are working within a budget and the need for three bedrooms. He said there are many reasons why the project being proposed as it is.

Mr. Coffin asked if the applicants live on the property year-round; the answer was yes. He then asked if they have considered the FEMA flood maps. Mr. Landry said that the building will be in a special flood hazard area, and at the time a building permit is applied for, a foundation plan for the flood zone may need to be submitted in order to flood proof the building. He suggested that there are other ways to do this, using such measures as putting the utilities on an upper floor, not in the basement.

Mr. Coffin said that going from 1.5 stories to 2 stories is not a big concern, but is one of the areas not covered under a natural expansion. He questioned whether the house may need to be raised to meet flood plain requirements. Mr. Landry stated that the elevation of the lake stays at 100 feet and the proposed sill is 110.5 feet; it is more than just inches. He said the 110 feet is based on the existing topography; there is a hump. He said that FEMA flood maps are not always accurate, so each building needs its own certificate. Attorney Pasay also said that the applicant would have to come back to the ZBA if the height for the district was exceeded.

Mr. Coffin said that as to the first relief requested, to overturn the administrative decision, at the last hearing it had been noted that the Building Inspector was following the ordinance which instructs him to send the applicant to the ZBA. He said he does not like to overturn the decision, as he does not think Mr. Steward actually made a mistake. He said he would like to know what the Chair had learned from her discussion with the attorney. Chair Alessio said that Attorney Kalman had said the Board could overturn Mr.

Steward's decision. He said that the increase of dimensions of the second floor was a natural expansion, in that it did not change the purpose of the house or property.

Mr. Coffin questioned whether the variances need to be discussed if they are not to be voted on; Ms. Alessio said that it would simplify the matter if they overturned the administrative decision based on the plan presented, in which case the applicant would go forward and get a building permit and build to the specifications presented. Or each variance could be gone through item by item. Mr. Coffin said he thought it was cleaner to go through each variance; Mr. Greenbaum agreed.

Mr. Pasay said that the body of law regarding non-conforming uses relates to where a use or dimensional aspect is not compliant with the Zoning ordinance. He said the height and what's being proposed are compliant with the ordinance. Natural expansion applies to expansion of use that is non-conforming. He said that in this case there are two non-conformities, the setback to the water and the front setback. He said a variance is not needed because in both cases they are making them better, and that it sounded as if the Town's attorney agrees. Chair Alessio said that Attorney Kalman had said that if the building is going in approximately the same location, a variance is not needed to do that. Attorney Pasay said that they strongly prefer to not go through with variances if they are not needed. Chair Alessio said that the guiding determinant is always to make properties less non-conforming, which is the case here. She said no one likes to overturn the decision of the building inspector. Mr. Coffin added that he would like it to be clear that while they are overturning the decision, they don't think Mr. Steward made a mistake.

Mr. Greenbaum said that turning the building sideways is a dramatic change. Ms. Leone said she doesn't see dramatic change and thinks the decision should be whether or not to reverse the administrative decision. Mr. Coffin said that not granting the variance may raise questions in the future.

MOTION: by Mr. Hart, to grant the applicant's request for an Appeal to an Administrative Decision whereby the Building Inspector denied a building permit, with the stipulation that construction of the new building shall follow the post-construction plans as presented and dated 4/6/2021.

SECOND: by Mr. Greenbaum
All in favor

Charm Sciences Inc.
659 Andover Street
Lawrence, MA 01843-1032

IN RE: **8 Diamond Oaks Boulevard**
 Kingston, NH 03848
 Tax Map R-40, Lot15

This is a public hearing whereby the applicant seeks a Special Exception to the terms of Article 110, Section 110.5 of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit a use that is neither specifically permitted nor prohibited. The proposed use is the manufacturing and assembly of plastic molded parts in a clean room environment.

Charlie Zilch of SEC Engineers was present along with applicant Rick Skiffington of Charm Sciences. It was established that the property owner is SUSC Kingston, LLC. Mr. Zilch presented the application to the Board. He first gave an overview of the property, saying that it lies within the Granite Fields condominium development, located on Route 125. The entire 169- acre site lies within the Commercial III zone and is affected by a 1,000' age restricted residential setback from the centerline of Route 125. The subject property is one of five land units, Land Unit 5, and is 2.01 acres in size. It contains a 31,800 sf commercial building that was the original clubhouse and soccer building for Granite fields. It is currently used as an indoor sports complex for Seacoast United Sports Club. It is served by its own individual septic system and well. Access is from a shared private way, Diamond Oaks Boulevard, leading to a shared parking lot that contains approximately 144 spaces. 111 of the spaces are required for the indoor sports use, and parking is seasonally alternated with the golf course, which requires 60 spaces.

Mr. Zilch said that the applicant specializes in the manufacture of safety diagnostic and sanitation test kits. He said the company currently has three manufacturing buildings in operation in Massachusetts and has been in business for 40 years. They wish to expand the operation and convert this building for their use. This facility would be used for manufacturing and assembly of plastic molded parts in a clean room environment. The operation involves injection molding of plastic pellets by electrically heated machinery within the building. He said there are no hazardous materials required, there is no by-product and no noxious odors emitted from this process.

Mr. Zilch said that this would be a 3-shift operation involving a total of 18-21 employees. Approximately once per month a tractor trailer would make a delivery, and occasionally box trucks and small delivery trucks would visit the site.

The interior will be upgraded to include a 20,000 s.f. mezzanine, and air conditioning. Outside, two concrete pads will be poured on either side of the office area in the front of the building to support HVAC units and a generator. The existing ground level loading dock will be modified to truck level, and an additional ground level loading dock will be installed. Power that serves the building will be upgraded and all necessary changes to parking striping and signage will be provided.

Mr. Zilch concluded by saying that Mr. Skiffington has met with the Condominium Association and has received a positive response to the change of use.

Chair Alessio asked if anyone in the audience would like to speak on the subject. Renee Speitel, 8 Mulligan Way, said the association had spent some time with the applicant to understand what he will be doing and how. She said that board members

plan to visit one of Mr. Skiffington's facilities tomorrow. However, she said that as a board, they are comfortable with what he plans to do. She said she had a concern regarding truck traffic, but that sounds like it will be minimal.

Tony Veligor, 25 Bent Grass Circle, spoke in agreement with Ms. Speitel. He said that all his questions were answered to his satisfaction, and the applicant was very upfront. He said he supports the purchase.

Sharon Plante, 16 Bent Grass Circle, said she had been concerned about the potential for smell, and asked if there would be any plastic smell or noise. She added that while there may be less traffic than the soccer club, she was also concerned about there being sufficient parking, as people park along Diamond Oaks Blvd., and some of the neighbors walk dogs there.

Mr. Skiffington said that his facility in North Andover abuts residential areas and there is no exterior discharge, that everything is contained in the machine. He said it is a self-contained system within a clean room. Ms. Plante asked if there was any exhaust produced; Mr. Skiffington said there is not.

As for the parking, Mr. Skiffington said that there are 6 employees per shift, so six or less cars will be parked there. He said there are 144 spaces there right now; Mr. Coffin said this will be reviewed by the Planning Board.

Mr. Coffin asked what kind of plastic will be used, wondering about toxicity; Mr. Skiffington said it is the same plastic used for milk containers. In further comments, he said that the plastic is heated to 350 degrees, and it would not burn unless it goes over 1100 degrees. He said there have never been any fires at his other locations. The facility will be 60 feet from residential property.

The Board then went through the list of standards for Special Exceptions:

1. No detriment to property values in this vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking area, access ways, odor, smoke, gas, dust or other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of equipment, vehicles or other materials.

Mr. Coffin referenced the testimony of the neighbors.

Agree: 5 Disagree: 0

2. No creation of traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity.

Agree: 5 Disagree: 0

3. No excess demand on municipal services including, but not limited to: water, sewer, waste disposal, police, fire protection, and schools.

Agree: 5 Disagree: 0

4. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

Agree: 5 Disagree: 0

5. Notification of the hearing will be provided to the Planning Board, Conservation Commission and Board of Selectmen.

It was noted that this has already been done.

Agree: 5 Disagree: 0

MOTION: by Mr. Coffin, based on the passage of all of the standards for a Special Exception, to allow the use of the building at 8 Diamond Oaks Boulevard for the manufacturing and assembly of plastic molded parts in a clean room environment.

SECOND: by Mr. Greenbaum

All in favor

Meeting adjourned at 8:12 PM.

Respectfully submitted,
Susan Ayer, Secretary