

**Town of Kingston
Zoning Board of Adjustment
June 9, 2022**

PRESENT: Peter Coffin, Chair; Meghan Kelley, Vice Chair; Larry Greenbaum, Richard Russman, Electra Alessio, Members
Mr. Coffin called the meeting to order at 7:00 PM.

BOARD BUSINESS:

Approval of meeting minutes

MOTION: by Mr. Russman, to approve the minutes of the May 5, 2022 meeting as written.

SECOND: by Ms. Kelley

Mr. Greenbaum pointed out that the Vice Chair is mistakenly listed as himself rather than Ms. Kelley. Mr. Russman changed his motion to say, "as amended".

In favor: Coffin, Greenbaum, Kelley, Russman; Abstain: Alessio; Passes

Mr. Coffin then said that he has received written communication from the ZBA's attorney, and that he would like a brief non-public session to share it with the board.

MOTION: by Mr. Coffin, to enter non-public session under RSA 91-A:3, II (I)

Consideration of legal advice provided by counsel.

SECOND: by Mr. Greenbaum

All in favor

The board adjourned to non-public session at 7:02 pm.

MOTION: by Ms. Alessio, to return to public session at 7:14 pm

SECOND: by Mr. Greenbaum

All in favor

Discussed in non-public session: Consideration of written legal advice

PUBLIC HEARINGS

**William P. Reddington
Wadleigh, Starr & Peters
95 Market Street
Manchester, NH 03101**

**Re: 4 Bartlett Street, Kingston NH
Tax Map U9 Lot 9**

The applicant appeals the Administrative Decision regarding Article Preamble 1-C.1 of the Town of Kingston Zoning Ordinance, whereby the Building Inspector denied the building permit.

Atty. Reddington and property owner Carla Bailey were present to discuss the application. Ms. Alessio asked if Ms. Bailey lives in Kingston now; Ms. Bailey said that yes, she lives at the property although she has a Hampstead mailing address.

Atty. Reddington said that the building has had 4 apartment units for as long as Ms. Bailey has owned it. He said that there was a fire in 2007 that caused internal damage to the upper apartments. He said that damage to the exterior was repaired immediately after the fire, but there was not funding at the time to repair the interior. He said that at this time there is no change being proposed to the exterior or the footprint, and they are not asking to add additional apartments. He said that when Ms. Bailey applied a few weeks ago for a building permit to finish the repairs to Unit #3, the Building Inspector (Robert Steward) sent her a letter stating that the grace period for repairing a non-conforming use had expired and she would need a variance. He said that he believes Mr. Steward 's decision was a mistake because the property conforms to the Town ordinance, is not a non-conforming use, and therefore no variance is required. He said he believes the mistake stems from the fact the property used to be in the Single-Family Residential district, but that the zoning has changed since the time of the fire, and it is now in Historic District 1. He said in HD1 there is a right to residences in general, and as it does not define "residence", it includes single or multi family dwellings. He said he is asking this board to confirm that a mistake was made and allow for Ms. Bailey to obtain the building permit.

Answering questions from Mr. Coffin, Atty. Reddington said that in 2007 when it was an overlay district (both Historic District and Single Family Residential), the apartments were a nonconforming use that was grandfathered, but now that the zoning has changed, any residence is permitted.

Ms. Alessio said that the challenge for the Building Inspector was that it was a former non-conforming use and had expired. But now it looks like a natural expansion of a conforming use. It was ascertained from Ms. Bailey that three of the four apartments have been continually occupied, only the fourth apartment lapsed in use and that is the one that needs repair. Mr. Coffin said that he felt that the building permit was correctly denied, but that it can be stated that this is a natural expansion; the Building Inspector would not be expected to make that determination so it needed to come to this board. He said it should be a condition that any exterior changes would require Historic District Commission and Planning Board approval.

Ms. Alessio said they do not need to go to the HDC at this time because there is no exterior work proposed. She said the applicant is not asking for a variance, but to overturn the decision of the Building Inspector and get an occupancy permit. She added that the property file needs to be updated to correctly reflect four apartments in active use.

No members of the public wished to be heard.

MOTION: by Ms. Alessio, to grant relief from the Building Inspector's denial of a permit, based on the work proposed constituting a natural expansion of use.

SECOND: by Ms. Kelley

All in favor

Mr. Russman asked for confirmation that no external work is to be performed; Ms. Alessio said that is correct, that no external work can be done without going to the Historic District Commission first.

**Daniel and Nancy Birdsall
21 Wadleigh Point Road
Kingston NH**

**Re: 21 and 25 Wadleigh Point Road, Kingston NH
Tax Map U5, Lots 35 and 34**

The applicants request a variance from Article 301.1 A of the Town of Kingston Zoning Ordinance, to permit less than 200' of frontage on a right-of-way and less than 80,000 sq.ft. for both lots 35 and 34; a variance from Article 301.1 D of the Kingston Zoning Ordinance, to permit a pre-existing non-conforming lot where the side setback to established boundary line is less than 20', and a variance from Article 301.1 D of the Kingston Zoning Ordinance, to permit location of a garage where side setbacks will be less than 20' from the boundary line.

Daniel and Nancy Birdsall were present, along with their attorney, Keri Marshall. Mr. Birdsall said that he had inherited Lot 34 from his uncle, and it included a 1937 structure with no foundation, in need of replacement. He was told that in order to get that project started, he needed a new survey of the lot, but his surveyor could not place the lot lines within the deeded area as it is actually longer in the North-South direction and shorter in the East-West direction; they needed to do a Boundary Line Agreement (per RSA 472.4) to establish the deeded boundary lines. He said that as his wife and he own both lots, it was an easy agreement, and he has provided the Town with a signed copy of that document.

Mr. Birdsall said that in addition, when Wadleigh Point Road was shifted to the South, it took away road access from Lot 34, and the agreement had to establish public road access for both lots. Attorney Marshall pointed out that where the "approximate ROW" is shown on the plan is where the road used to be; the road is now more rounded.

Attorney Marshall also said that both of the lots were created by merger of two smaller lots each, and that without that this would be a much more dense development. Ms. Alessio said that the issue is that there is no road frontage; Atty. Marshall said that there is some but it is very limited. She said the key point is that they are not proposing to do anything that would impact the road frontage.

Attorney Marshall directed the Board's attention to the existing garage, which she said is small and in horrible shape. The proposal is to replace this garage, and in doing so, pull it farther from the neighbor and 4 feet farther from the lake, making it less non-conforming and allowing the neighbor a site line to the water. As for the new dwelling, she said it would be moved back from the lot line, the distance currently 9.7 feet will be 20.5 feet, and it will be 50.7 feet from the water. She said that both buildings are non-conforming but will be made less non-conforming and will meet appropriate setbacks.

She added that the Birdsalls have done a gorgeous job with their house on lot 35, and want to do the same on lot 34.

Ms. Alessio said that making the buildings less non-conforming is exactly what the ZBA likes to see, but that for the Town, the road frontage is a problem. She said that both deeds need to clearly show the easement so that there is clear conveyance no matter who owns the properties.

Mr. Russman asked about the “concrete area” shown near the road on the neighbor’s property, and Mr. Birdsall said that is the neighbor’s paver driveway. Atty. Marshall said that they don’t need to travel over this area to reach lots 34 and 35. She also remarked that both neighbors have submitted letters of support for this project.

Mr. Birdsall said that the boundary agreement maintains the acreage of both lots. Ms. Alessio said that the right-of-way needs to be succinct and legal. Mr. Birdsall said that as it stands now they split the driveway so that both lots have road access. There was a brief discussion of access to the septic area; Mr. Birdsall said that the septic was done in 2011 and the access that was there then will still exist. Mr. Coffin questioned whether it is a seasonal septic that will need to be converted; Mr. Birdsall said that it is a year-round 3 bedroom system.

Mr. Coffin remarked that the Birdsalls will need to come back for a shoreline permit. Mr. Birdsall said that they needed to establish the garage setbacks as it will affect the distances for the shoreland permit.

There were no further questions of the Board.

There were no questions from the public present; reading of the abutters’ letters of support was waived, but they will be added to the record.

In further discussion it was noted that the new house, while it doesn’t meet the Town’s setbacks, is going in the footprint of the existing house. Clearance between the garage and the boundary was questioned; Atty. Marshall said that they will not be parking cars in that area, that if the garage moves up that is where they will store cars.

The Board then went through the criteria for approval, voting on both ordinances for both lots:

1. The Variance will not be contrary to the Public Interest:

Mr. Coffin said that he felt it would not be, as the abutters have stated it would be an asset, and also as it would clarify issues involved with the boundary lines on the old deeds.

Ms. Alessio said that she felt it would not be, as it is decreasing the non-conformity.

VOTE: All 5 vote “yes”

2. The Spirit of the Ordinance is observed:

Mr. Greenbaum said that it is, as it is becoming less non-conforming.

VOTE: All 5 vote “yes”.

3. Substantial Justice is done:

Mr. Greenbaum said this is also is addressed by the lessening of the non-conformity. , and also that it will enable full use of the property.

VOTE: All 5 vote “yes”.

4. Values of surrounding properties are not diminished:

The testimony of the abutters was cited.

VOTE: All 5 vote “yes”.

5. Literal enforcement of the two ordinances would result in unnecessary hardship, and cannot be reasonably used in strict conformity to the ordinance:

Mr. Coffin said that the relief they seek enhances, does not diminish the property, and the use is not changing.

VOTE: All 5 vote “yes”.

All five criteria having passed unanimously, Mr. Coffin asked for a vote.

MOTION: by Ms. Alessio, to grant variances from Article 301.1 A and 301.1 D of the Town of Kingston Zoning Ordinance, for both lots 34 and 35, according to the plot plan provided by the applicants, and furthermore that both deeds will clearly indicate access via Right-of -Way to cross over the properties ad infinitum.

SECOND: by Mr. Russman

All in favor

**Sarah Roland
Brentwood Property Holdings
17 Elkins Road
Kingston NH 03848**

**Re: 1 Little River Road
Tax Map R34 Lot 54**

The applicant requests a variance from Article 105 Section 2 of the Town of Kingston Zoning Ordinance, to allow a veterinary hospital in the Single Family Residential-Agricultural District, which is not a permitted use, and which is a change of use from the prior non-conforming use of the lot.

Sarah Roland was present to speak about her application. She said her veterinary practice has been at Mitchell Animal Hospital for 7 years, and they are bursting at the seams. She said the Sleep Institute is for sale, and in looking at the site plan, the number of employees and patients they see in a day are all in line with what they are doing. She said she does not board dogs or keep animals overnight, so there should not be any change in noise issues. In terms of change of use, she said there will be none to the outside, except potentially a small fenced area. Changes will be made to the inside.

Ms. Alessio asked if the building is larger than Mitchell Animal Hospital; Ms. Roland said that this building is 5300 square feet, as opposed to Mitchell's 1700 square feet.

Mr. Coffin asked if this is to be used instead of Mitchell or in addition to it; Ms. Roland said that they are moving the practice a quarter mile up the road.

Ms. Kelley asked what the hours of operation will be. Ms. Roland said they are open on Mondays, Tuesdays, and Thursdays from 8 am to 6 pm; Wednesdays from 8 am to 7 pm, Fridays from 8 am to 4 pm, and are closed on weekends.

Mr. Coffin said that the building is pre-existing non-conforming, but there is a change of use as well. If this variance is approved, the next step will be to apply to the Planning Board to address issues like parking, etc. Ms. Kelley asked about the size of the septic system; Mr. Coffin said this is a matter for the Planning Board as well. Ms. Alessio said that all this Board is concerned with is the change of use.

There were no further questions of the Board; No members of the public were present to be heard.

The Board reviewed the 5 criteria for approval, reading from the answers given in the application and deciding if they are in agreement.

1. The Variance will not be contrary to the Public Interest:

The applicant had said that there will be no change to the number of employees or customers, and no change to traffic will or hours open.

VOTE: All 5 vote "yes"

2. The Spirit of the Ordinance is observed:

The application reads that the property will continue to be used for health sciences, switching from medical industry to veterinary industry. Mr. Coffin said that while the zone is single family residential/agricultural, the property was in this usage before the ordinance was written.

VOTE: All 5 vote "yes".

3. Substantial Justice is done:

The application reads that Mitchell Animal Hospital is locally owned and works closely with the public. The owner is a Kingston resident. There are no animals kept overnight, or boarded, etc. that would create a noise nuisance.

VOTE: All 5 vote "yes".

4. Values of surrounding properties are not diminished:

Application reads that building will be well maintained, and it was repeated that there will be no boarding or change in hours.

VOTE: All 5 vote "yes".

5. Literal enforcement of the two ordinances would result in unnecessary hardship, and cannot be reasonably used in strict conformity to the ordinance:

Applicant states that without a variance, they would be unable to move their hospital to the Little River Road building. Mr. Coffin said that it is a reasonable use, that the

property is suited for, so in his opinion it would be an unnecessary hardship to deny this use.

VOTE: All 5 vote “yes”.

All five criteria having passed unanimously, Mr. Coffin asked for a vote.

MOTION: by Ms. Kelley, to grant a variance to Article 105, Section 2 of the Town of Kingston Zoning Ordinance, to allow the nonconforming use of a veterinary practice in the Single Family Residential-Agricultural District.

SECOND: by Ms. Alessio

All in favor

Mr. Coffin said the notices of decision will be sent, and that there is a thirty-day waiting period to allow for any challenges.

Mr. Coffin advised that proposed changes to the ZBA procedures, and any others that may be suggested, will be reviewed and approved in August. Ms. Alessio cited Section 8.1 under applications and said that legal counsel may be wanted to help with the question of notifying easement holders. This matter appears in two places. There was a discussion of how the ordinance is written and could be improved to clarify the procedure, and what parts are from state law and can't be changed. It was agreed that an attorney should be consulted.

Meeting adjourned at 8:15 PM.

Respectfully submitted,

Susan Ayer, Secretary / BOS Administrative Assistant