

**Kingston Planning Board
Public Hearing
September 17, 2013**

The Chairman called the meeting to order at 6:45 PM. There were no challenges to the legality of the hearing.

Members in attendance:

Richard Wilson, Chairman	Ernie Landry
Glenn Coppelman, V. Chair	Adam Pope
Peter Coffin	Stanley Shalett

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Dennis Quintal, Town Engineer; Ellen Faulconer, Admin. Asst.

Absent: Mark Heitz, Rich St. Hilaire, alternate

**Richard LeClaire
Frederick Korn
Bucco's Restaurant
143 Main Street
Tax Map U9-42**

Mr. Wilson announced that Selectman Heitz had contacted the Board and recommended that the Board not revoke the site plan due to payment of the fine; he read the draft affidavit of the Board's site approval. Mr. LeClaire spoke to the Board stating that he had an issue with the hours of operation listed on the affidavit as those were not the hours under which he was operating. Mr. Coppelman explained that the Board had agreed to no further site review based on the letter provided to the Board which noted the operating hours; normally any changes would require Board approval. Ms. Faulconer stated that she did have a problem with the change in the hours without public review. Mr. Pope said the Board usually will accept changes upon receipt of a letter. Ms. Faulconer felt abutters should be notified. Mr. Coffin agreed that due to this being in a residential neighborhood, abutters should be notified; he stated that abutters have the right to know of any changes.

<Board note: Mr. Shalett arrived at this time.>

Mr. Greenwood agreed with Mr. Pope that the Board has addressed changes of this nature by letter by usually from businesses in formally established commercial areas not from something in the middle of a residential zone; the Board would be have a site review and have done this in the past and cited review at Mr. Mike's as an example.

Mr. Wilson asked about the Board signing the affidavit; Mr. Greenwood stated that the Board had already made the decision based on the original submitted letter from Mr. LeClaire and those hours are the ones that are approved.

The Board consensus was that any changes to the approved operating hours would require site plan review with abutters notified; the revocation hearing would be continued for 60 days to allow the applicant time to apply for site plan review.

MM&S to continue the hearing for possible revocation for 60 days (Nov. 19th). (Motion by Mr. Pope, second by Mr. Coppelman) **PUNA**

Bill Ranney
Robert Kalil
Little Old Lady Auto
5 Rte. 125
Tax Map R3-6

Mr. Wilson noted that no one was present representing the business or the property.

MM&S to hold a public hearing to consider revocation of the site plan previously approved for Little Old Lady Auto. (Motion by Mr. Coppelman, second by Mr. Coffin) **PUNA**

Action Item: Ms. Faulconer will forward this information to the Board of Selectmen for possible fines for non-compliance of the site.

Fitzgerald-Boyd Law, PLLC
Montana Realty Trust
17 Jericho Road
Tax Map R5-8-30

Jackie Fitzgerald-Boyd and Tim Lavalley appeared before the Board representing the applicant. Mr. Lavalley explained that there is an existing dwelling on the western portion of the lot and they were proposing splitting the lot into two lots consisting of 1.85 acres and 2.11 acres. He explained the wetlands as drawn on the proposed plan as done by Tim Ferwerda; there is a 35 foot building setback for Functional Value 2 and 75 feet for FV 10. He continued that the proposed lot has a driveway shown on the easterly side of the lot with the septic and well shown on the plan.

Mr. Greenwood reviewed his comments: wetland delineation should be verified by RCCD for both lots and the wetland report submitted for RCCD's review; the Town standards are for perpendicular sidelines which are not on this plan; the key is incorrect; he continued reading his comments 3 through 9. Mr. Wilson stated that there are significant problems with the plan; at a minimum there should be a waiver request regarding the perpendicular lines requirement. Mr. Coppelman asked why the lines weren't drawn as perpendicular. Mr. Lavalley said that if the lines were drawn differently then they could not meet the contiguous soil requirement.

Mr. Wilson read Department comments: Building Inspector commented that this subdivision has previously been denied due to filling of wetlands; 100 foot building setback not met; has house on lot. Mr. Wilson read comments from Health questioning the septic, Highway; the Police

Department asked for Technical Review Committee input; Conservation noted that there was no wetland scientist stamp on the plan which is a requirement; they asked for a written explanation for the different wetland values; septic question.

Mr. Lavalley said he understood going for a Technical Review; he said that both septic areas are shown. Ms. Faulconer clarified that one of the concerns of the Health Officer was that there are no dimensions shown for the 4000 sq. ft. receiving area and it is drawn within a curve on the property. Mr. Lavalley said that he would clarify that. Mr. Wilson said that there were some changes needed for the plan; it was incomplete at this time. Mr. Coppelmann said that he would like to see a written waiver for the side lot lines; the purpose of this requirement was for lot lines to be more or less straight on the side as an issue for abutters and the lots themselves; what is drawn is clearly at a sharp angle and would need a waiver. Mr. Lavalley said he would provide this.

Mr. Wilson stated that this type of subdivision had been turned down at least two other times. Mr. Lavalley said he hadn't been involved then; he said that there had supposedly been wetland filling on the site but he couldn't find anything supporting that; he said that the Wetlands Board couldn't find anything; he added that if you went on the site, you could see an area that was a large fill of gravel but he doesn't think anything had changed on the site as Montana Realty had owned it for a long time.

Abutters Linda and Alan Bridgham of 9 Jericho Drive spoke to the Board; they live north of the lot and have serious concerns as there is another piece of the wetlands that has an active flow and crosses into their property with drainage between the two properties. They said there was some documentation that the site had been filled.

Mr. Wilson noted that there is documentation of wetland filling on the site; there is a letter from the Kingston Conservation Commission that any further development would need to come from the original wetland boundaries; be measured from the original wetlands. Mr. Coppelmann suggested that RCCD should do the review of the original existing wetlands on the original approved plan. Mr. Lavalley stated that he believes there are more wetlands on the property now; the drainage flow goes south to north and crosses Jericho Road running east and then water runs behind the home.

Mr. Wilson clarified that they would need to have verification of the original wetlands. Mr. Lavalley stated that he did not believe anything was ever filled on the site. Mr. Greenwood reviewed the file and showed Mr. Lavalley the letter from KCC and the Wetlands Board noting the filled wetland. Mr. Wilson re-iterated the Board would need to see the original wetland boundaries along with the current wetlands shown together and reviewed by RCCD; using the original plan and the new plan combined.

Bob Burke, 18 Jericho Drive, asked about the notification process. Andy Russner, 12 Jericho Drive, stated that he moved there in 1998, choosing that location as that area was unbuildable/vacant. He pulled some of the records and spoke with former KCC Chairman, Diane Eadie recently who suggested an item of consideration was the Commission's letter to the Wetlands Board. He asked, since the last rejection 8 – 10 years ago, what had changed regarding

contiguous land and requirements for septic based on previous decisions and actions on the site. He suggested the Board review and consider past decisions prior to any continuation. Mr. Wilson stated that these area all things the Board is going to consider; he added that while wetlands verification had changed, this agreement says that any setbacks will be based on the original conditions.

Mr. Coppelman said that he did not think the Board would vote to accept for jurisdiction as plenty of items are missing from the plan. Mr. Quintal will not review the plan until after receiving RCCD's review and getting revised plans. Mr. Wilson again re-iterated providing a plan with original wetlands included.

MM&S to continue to October 15, 2013 at 7:00 PM. (Motion by Mr. Pope, second by Mr. Coppelman) **PUNA**

James Duval
4 Hunt Road
Tax Map R-5 Lot 21D

Mr. Wilson confirmed that the applicant had not gone to the ZBA for relief. Tim Lavalley, representing the applicant clarified the activity on the site; he felt that there was some misinformation on the plan through his own errors. He suggested that it was really an in-home business; originally starting as a "toy box" for the property owners with the school bus parked in the large building. He reviewed previous minutes.

Mr. Wilson stated that the applicant had been directed to ask the ZBA for relief and they didn't; the building permit for the building clearly states that it is only to be used for storage. He cautioned Mr. Lavalley to no longer refer to the activity as an in-home business as the Board had already ruled on the activity as not meeting that requirement. Mr. Pope added that "semi" trucks delivering materials and picking up from the site clearly does not meet the in-home business requirements. Mr. Lavalley stated that his father's notes say to go to the ZBA for a manufacturing facility which the property owner does not want. Ms. Faulconer read from the minutes and the Board's motion says to go to the ZBA for this use in the Rural Residential zone. Mr. Pope read sections (g) and (h) from the Residential Home Occupation Ordinance: prohibits repair shops except for small items and prohibits use of materials or delivery of 12,000 gvw; he added that he doesn't think the applicant has to ask for manufacturing but it does not meet the RHO Ordinance. Mr. Coffin stated that the use is not a permitted use in the Rural Residential Zone. It was noted that there has also been no request for a Business permit for the site; Mr. Wilson noted that all the changes to the building and septic have been done without permits clarifying that there is a bathroom in the building and other remodeling within the building done without permits; the septic is for a three bedroom house which does not include the bathroom in the "storage" building.

Mr. Lavalley stated that he couldn't wrap his head around requesting a waiver for manufacturing from the ZBA when that wasn't really required for the activity; he said he would take the blame for not going to the ZBA as he assumed "manufacturing" and didn't want to go to the ZBA. Mr. Coppelman said that there are a lot of different types of manufacturing; Mr. Wilson said that

technically if you are making something, you are manufacturing. He stated that the applicant should stop operating if not going to the ZBA. Mr. Coppelman stated that this Board had given clear guidance to the applicant. Ms. Faulconer stated that Mr. Lavalley has had three months to call and ask the Board about the intent of the applicant going to the ZBA. There was discussion about any tax implications of the change in use on the site. Ms. Faulconer suggested the applicant speak with the Board of Selectmen's office and the Assessor to get accurate information about any tax impacts.

The Board, by consensus, directed the applicant to go to the ZBA prior to the next meeting.

MM&S to continue this hearing to October 15, 2013 at 7:15. (Motion by Mr. Pope, second by Mr. Landry) **PUNA**

Peter Shribman
Shribco Realty Two, LLC
18 and 20 Travis Cove Road
Tax Maps R-17 Lots 18-8 and 18-10

Bill Gregsak introduced himself as representing the owner. He explained that a new builder had placed the driveway and propane tank incorrectly making the lot non-conforming and this was a land swap to correct the situation.

Mr. Wilson read the Department comments; the Health Inspector noted that the septic system and driveway location is missing on Lot 18-10. Mr. Gregsak said that he would add this to the recordable plan. It was confirmed that for cluster zoning, the setbacks are 15 feet instead of 20 feet. Mr. Quintal's comments were read; Mr. Gregsak noted that lot lines had to be drawn around existing and proposed systems. He added that Certificate of Monumentation would be provided to the Board and stamped by the surveyor. Mr. Greenwood suggested that the Board could make the addition of the driveway and septic a condition of approval.

MM&S to accept jurisdiction of the plan. (Motion by Mr. Pope, second by Mr. Coppelman)
Motion carried 6-0-1 (Abstention for Mr. Shalett as he had briefly stepped out of the room)

MM&S to accept the plan on the condition of adding the driveway and septic location on 18-10 within the approved setback; the conditions to be met within 30 days. (Motion by Mr. Pope, second by Mr. Coppelman) **PUNA**

Samuel T. and Joseph W. Patterson
New England Paving, LLC
47 Route 125
Tax Map R4 Lot 2B

This is a preliminary design review. Attorney Mary Ganz introduced herself as representing the applicants adding that this was a very preliminary design; the applicants were interested in purchasing the parcel. Mr. Quintal explained that his company had done a lot of work previously on this site adding that the wetlands crossing isn't where the driveway is currently shown on the

plan, it would be more in the center; the driveway permit has been applied for and he is sure SEC will provide topo work and design for the proposal. Mr. Wilson confirmed that the Board had notification from DOT about the driveway permit application. He read Department comments: Police - Technical Review; Conservation – plan too small to review; Highway – 20 foot setback required for driveway; Building – questions regarding buffers and setbacks. Mr. Coffin asked why the trucks were proposed to be parked as far back as possible and as close to the residential buffer as possible. Mr. Quintal said that the applicant should know that buffer zones are very important. Mr. Greenwood asked about the number of vehicles. Mr. Joe Patterson answered that he had 4 dump trucks, 2 low-bed trailers, a service truck, pick-up truck, tag-along trailers. The Board confirmed that this use is neither permitted or prohibited in the zone and would need a special exception from the ZBA. Mr. Coffin cited 110.3, 110.4, 110.5 and explained the ZBA process to the applicant adding that they would want to have an actual plan ready to present to the ZBA. There was discussion regarding paving on the site; Mr. Patterson stated that he was not planning on paving but possibly paving the driveway. The applicant was referred to the Health Inspector regarding any facilities requirements for the commercial activity. Mr. Patterson stated that the proposed hours of operation would be to leave at 7:00 AM and return between 4 and 6 PM Monday through Friday and possibly Saturday, no activity on Sunday. Mr. Quintal asked if there would be repairs on the site. Mr. Patterson said there would. Mr. Quintal asked if this qualified the applicant under section (k) service repair; Mr. Coppelman said that it was not close enough as it was not the main activity; Mr. Pope agreed. The Board agreed it would still require ZBA action. Ms. Faulconer asked if they intended on washing vehicles on the site. Mr. Patterson said they did. Ms. Faulconer said this may be an issue they would need to address that might impact their decision on paving and have issue with drainage and the wetlands. Mr. Landry asked if there would be hazardous paving materials or other hazardous materials stored on the site. Mr. Patterson said no. Questions were raised about security lighting on the site; the applicant was referred to the Lighting Ordinance.

Debbie Boyle, abutter from 15 Pillsbury Pasture asked if any structures were being built. Mr. Patterson answered not at this time. Mr. Coppelman explained that any future changes or expansions would require additional site plan review. Attorney Ganz asked about the ZBA; Mr. Coffin explained the process; deadline procedures were explained by Mr. Coffin and Mr. Quintal.

Mr. Greenwood explained that since this was a Design Review, continuation of this hearing was not a possibility; the applicant would need to apply for site plan review.

Trendezza, LLC
22 Marshall Road
R33 Lot 27

Mr. Wilson read comments from the Highway Department noting lack of compliance with Town regulations and suggesting that the plan should not be on the agenda until it is complete. The Fire Department noted that the proposed cistern does not meet the Town's specifications; it does note that it meets Fremont's specifications. Both the Police Department and Highway Department suggest the need for a Technical Review Committee for this project. Conservation Commission notes that it had not yet met to review this proposal. Mr. Greenwood stated that the

plan does comply with a lot of the Town's requirements and the Board might consider accepting for jurisdiction. Ms. Faulconer stated that she would think the Board might have issues since two major departments state that it does not meet the Town's requirements. Mr. Landry noted that the plan includes a comment on Page 5 about meeting Nottingham's requirements.

Christian Smith, representing the applicant, discussed the cistern as shown on several sheets of the plan; it was determined that the cistern does not meet the Town's requirements as the one proposed is concrete. Mr. Smith said this was a simple detail switch and the Fremont reference had been removed and changed to Kingston. Mr. Greenwood reviewed the plan and said that the Fremont reference was still on the plan.

Mr. Smith said that the road is proposed to be private but it was proposed to be built to Town specs and questioned how it was deficient. Mr. Wilson answered that the cul-de-sac was too small.

Mr. Smith explained that they had added 5 feet of pavement to the road width which was intended to be the sidewalk area; it would be just line striped; there would be no physical separation between the roadway and sidewalk area. He explained that the cul-de-sac was reduced for pavement coverage; it is not connecting or continuing in the future; it ends. Mr. Wilson noted that the Board of Selectmen has been saying that roads should be built to Town specs. even if private. Mr. LaRiviere, project developer, said that this had been previously discussed with the Board and it was still an open road and would meet Town standards; he can add to the cul-de-sac as necessary.

Ms. Faulconer asked why the Board would consider continuing this review if the road was not correct and it could change the whole discussion. Mr. LaRiviere said he would like the discussion to continue as he needed direction from the Board; he had questions about the current sidewalks as proposed and whether the Board thought they met the requirements for pedestrian access; the drainage swales design needed input from the Board; the maintenance swales are an issue; they would like to fill them with rip-rap. Mr. Wilson suggested that meeting with the Technical Review Committee could address these types of issues. Mr. LaRiviere added that only the Board could approve them; Mr. Wilson said this was correct but the Board takes the Department's input as advice to make the decisions. Mr. Smith said that they would like to tell the Board about some specific items to get a discussion.

Mr. Coffin questioned the proposed pedestrian access. Mr. LaRiviere stated that elderly people don't really like to use sidewalks; it is unclear in the requirements the design intent; he would like to look at alternatives and spend money on the site for additional amenities that would be different but better. Mr. Wilson raised a question about density calculations, especially for #45.

Mr. Wilson asked the applicant what their specific questions were for the Board. Mr. Smith asked if the extension of the road pavement for pedestrian access was acceptable. Mr. Quintal said that the Town requires 24 feet of pavement; the plan appears to be 27 feet for road and pedestrian access. Ms. Faulconer stated that this did not appear to meet the Town requirements; she was unclear how it is considered to have 5 feet added.

Mr. Greenwood stated that while the applicant seems to be technically trying to meet the ordinance, they are not reading the intent of the ordinance. Mr. Greenwood added that a large problem with the plan is that the present lay-out does not provide for any unit privacy; a requirement especially for market-rate housing. He added that he was concerned to hear that the option for pedestrian access is additional paving of the road; that is not what the ordinance meant. Mr. LaRiviere noted that he would be happy to meet with the Technical Review Committee. Mr. Smith said that when reading about unit privacy he was thinking more globally instead of building to building. Mr. LaRiviere stated that they don't have windows from one unit facing windows of another unit. Mr. Greenwood suggested they look at a development in Newcastle that uses privacy fencing and landscaping for unit privacy. Mr. LaRiviere said they will come back to this. Mr. Smith said that this was just due to their misinterpretation of the ordinance.

Mr. Smith asked about the 3 to 1 swales along the roadside; they would like to line with geofabric, in-fill with river stone with just minor slopes to a roughly leveled stone on the top. Mr. Quintal stated that he was not sure that this would be acceptable to him; there are frozen conditions and the road could fill with water and ice; open swales are easy to maintain and they might want to consider a 4 to 1 slope; grading can address some of the issues. Mr. Quintal expressed concerns about the existing pit area; there does not appear to be information that this was reviewed; it had been excavated down to the seasonal high water table; he was unsure whether this was a jurisdictional wetland; he suggested that this be sent to the soil scientist for review. He said the vegetational buffer and limits of clearing should be shown on the plan especially near residential property. Mr. Quintal continued that he spoke with Jennifer Mapes at the Wells and Water Supply Division for the State regarding the number of wells and the plan as presented is not acceptable to the State, suggesting that the applicant refer to the State's regulations adding that any more than 10 need community water supply and would need multiple permits if kept the way they are currently shown. Mr. LaRiviere discussed possible yields. Mr. Quintal stated that State requirements may affect the design.

Mr. LaRiviere asked about the community's entrance signage and asked if there was anything to check other than the Sign Ordinance. Mr. Greenwood said the applicant should be aware of the Sign Ordinance and the Lighting Ordinance. Mr. LaRiviere wondered whether signage was limited to one or both entrances. Mr. Smith said not Lighting plan was provided as no street lights were proposed, just individual unit lighting.

Mr. Smith asked about driveways and following Town standards for a mail box at each unit; they were proposing a possibility of a bank of mailboxes near the proposed cistern. He asked if this was proposed, would individual pull-offs be needed at each driveway; a mail kiosk would eliminate the need for all the pull-offs for mail delivery. Ms. Faulconer stated that while she has no particular objection to the mail kiosk, she is not interested in the elderly walking on the roadway to access the mail kiosk.

Mr. Aldus Kenter, abutter, asked about the new house being built on the site. Ms. Faulconer informed the Board that the LLA for the site had not been recorded or finalized at this point as the mylar had not yet been received. Mr. Smith explained the new lot line placement for the abutter.

Martine Staublin, abutter at 18 Marshall Road, stated that she had attended the last meeting; she questioned the need for the cul-de-sac to continue per the Town's requirements. Mr. Smith said that it is intended to be a private road so it won't be connected. Mr. Coppelman said that the Town considers cul-de-sacs to be temporary but the Town could ask for a possible future connection; private access and needing future connection for public access was reviewed. Mr. LaRiviere noted that they property abuts a significant wetland beyond the cul-de-sac and then it is Conservation land. Mr. Coppelman explained that the Town wanted to keep dead end streets to a minimum for maintenance purposes, asking for future connections to provide that opportunity for the future; he suggested the applicant might want to look at possibilities for that. Mr. LaRiviere said that they would be doing things to meet the spirit of the ordinance. Ms. Staublin asked about requiring people to not park on the streets asking if people would be parking on the roadway. Ms. Faulconer asked if they were proposing any overflow parking, for visitors, etc. Mr. Smith stated that each unit has a two car garage and the length of the driveway for each unit provides for a width of two cars and length of one car; there was no overflow parking provided. Ms. Staublin said she had some issues concerning the wetlands asking about a shooting range and possible lead contamination of the soils. Mr. Smith said that soils mapping, test pits and environmental testing had been done adding that the shooting range area was now on the SE Land Trust section of the property and he believed they are addressing the issue.

Mr. Wilson suggested setting up the Technical Review Committee explaining that this review would be done during the day with the Department Heads.

Mr. Coppelman asked if the Board wanted to do a site walk; majority of the Board said yes. The site walk will be held on September 28 at 9:00 AM; the TRC will try to be scheduled before this date if possible; Ms. Faulconer will arrange at the next Inspectors' meeting and try to schedule for an early Thursday morning in conjunction with the Inspectors' meeting. Mr. Coppelman asked if the road, lots, location of homes could be staked out prior to the site walk. Mr. Smith said that the road would be staked out prior to the site walk.

MM&S to continue to the site walk on September 28th at 9:00 AM with the next hearing continued to October 15th at 7:30 PM. (Motion by Mr. Coppelman, second by Mr. Pope)
PUNA

<Board note: the televised portion of the meeting was concluded at this time.>

Board Business

Correspondence:

- DOGC re: bond requirement question for completion of road. Mr. Bartlett and Ms. Merrill spoke on behalf of the owner. After review of previous minutes and timing involved since the original approval, the Board agreed that, under the circumstances, there are no additional requirements pertaining to a road bond; direction can be given to the Building Inspector to issue building permits.
- Civil Construct Mgmt. – invoice approved.

- Mr. Wilson confirmed vote regarding Planning Board approval for conservation properties.
- RPC contract for Mr. Greenwood's services approved by the Board, signed by Chairman
- NHMA announcement of Law Lecture Series
- Interdepartmental memo template approved
- Bonds reviewed
- Budget reviewed
- Letter from Mr. Pellegrino amending escrow use
- Question from Conservation received after approval of plan; no action by Board.
- Ms. Faulconer's vacation request approved
- Town and City magazine received
- Legal Correspondence

MM&S to approve August 6, 2013 minutes as presented. (Motion by Mr. Coppelman, second by Mr. Shalett) **Motion passed 6-0-1** with Mr. Pope abstaining.

MM&S to approve August 20, 2013 minutes as presented. (Motion by Mr. Coppelman, second by Mr. Wilson) **Motion passed 6-0-1** with Mr. Pope abstaining.

MM&S to adjourn at 10:15 PM. (Motion by Mr. Pope, second by Mr. Coffin) **PUNA**