

**Kingston Planning Board  
Public Hearing  
May 19, 2015**

The Chairman called the meeting to order at 6:50 PM.

Members in Attendance:

Richard Wilson, Chair	Carol Croteau
Glenn Coppelman, V. Chair	Peter Coffin
Stan Shalett	Adam Pope
Mark Heitz, BOS rep.	Ernie Landry, Alternate

Members Absent: Rich St. Hilaire, Alternate

Also in Attendance: Dennis Quintal, Town Engineer; Glenn Greenwood, Planner; Ellen Faulconer, Administrative Assistant/Board Alternate

**Fitzgerald-Boyd Law**  
**Jason Rego**  
**27 Jericho Drive**  
**Tax Map R8 Lot 30**

Tim Lavalley introduced himself as representing Montana Realty Trust and Jason Rego; he said that new plans were dropped off, with a letter, on May 1<sup>st</sup>; no other plans had been received; he stated that there had been a site walk and they had re-visited some wetland flag locations to make sure things were matching; he felt that two issues were left on the plan one being the 4,000 square foot receiving area for the existing dwelling adding that he felt that was addressed at the last meeting by James Lavalley. He continued that the 15% slopes on the proposed new lot were reviewed at the site walk and the Board could see that the 15% slopes were scattered throughout the lot. He said the Board could act on the plans in front of them adding that the information is there and the Board has had the plans for 18 days and they have nothing to add.

Mr. Wilson said that there had been a discrepancy in the wetland's area between two plans and he asked James Lavalley to give the Board a reason as to why that had happened; he asked Tim Lavalley if they had the answer. Tim Lavalley said he didn't know the Board was looking for a reason why so they don't have the answer. He suggested that it probably had something to do with new things being drawn on the plan; the wetlands were re-flagged and they are where they are on the plans as are the 15% slopes; he said one of the changes was in the existing topography around the existing dwelling as they had the old topography before the house was built so it had been fixed on the plans. Ms. Faulconer noted that Mr. Lavalley said during the site walk that the flagging had been changed in the December/January timeframe so wondered why the wetlands would show up as different in a plan in March or April; she did not understand what one had to do

with the other. Mr. Lavalley stated that the flagging was done in December/January before the snow but the locations were not checked until after the site walk; he can not pinpoint an answer about the discrepancy so there was no point in continuing to ask the question; he was not sure why the discrepancy but what is on the plan is out there. Mr. Wilson stated that he was sure that Mr. Lavalley understood the Board's question as there was a drawing that he did that said this is the area and the footage but when they had to come up with more area, the location suddenly changed. Mr. Lavalley said that the more square footage was with the house laying on top of it; the area is the area; nothing is changed. He stated that he did not know why there were some discrepancies; he wished he had an answer. Mr. Wilson said that he did, too.

Mr. Wilson asked Mr. Greenwood to review his comments. Mr. Greenwood said that he had three things for the Board for this evening and reviewed his comments which he had handed out to the Board. His comments stated that the plan showed two very concerning elements regarding the 4,000 sq. ft. (4K) area for a septic system on lot 8-30; the first issue being that the 4K area is not clear of the building as is required of a 4K area in order to subdivide. He continued that when a new lot is platted, an area of 4,000 sq. feet is required and no portion of the building can be placed within this area. In addition, when the area of the home intrusion is removed, the septic reserve area is much less than the Town's required 4,000 sq. ft. The second issue is that the revised plan showed a shift in the location of the mapped wetland resource as had been previously shown; the new mapping had the wetland system shifted 10 feet westerly from its original location. He noted that without this relocation of the wetland, the septic reserve area would not be able to be located where it shows now. He commented that this re-mapped wetlands relocation is mysterious in that without it, the septic reserve area is completely non-viable.

Mr. Greenwood continued that the second issue for the Board's discussion is the 15% slope issue; he stated that it is universally accepted that 15% slopes are not appropriate for house or septic system construction and this issue has repeatedly been raised regarding the proposed lot. He continued that the Board does not want to create a lot where large amounts of 15% slope exist; the problem for the Board with the lot that has already been developed is that even more 15% slopes exist on this lot and to reduce this lot through the subdivision process results in creating a lot with less than 60,000 sq. ft. of soil exclusive of 15% slopes. Mr. Greenwood added that as stated in previous decisions, the Planning Board does not want to approve such lots for subdivision.

Mr. Greenwood's final comments concerned the definition of contiguous and while the judge has declared that the lot meets the definition as found in a dictionary and looking at a plan of the property does not convey as well as an on-site evaluation; the fact that the "bridge" is comprised on land sited on a steep slope further negates its opportunity to be viable as a contiguous, developable piece of land.

Mr. Greenwood stated that these are the issues that he thinks the Board should consider when making their determination on how to proceed with the plan.

Mr. Quintal stated that his comments were the same as those previously submitted as he did not see any real changes to the plan; there is a note on the plan that says it was an updated plan with new locations and topo on lot 8-30; that sheet was dated, none of the other sheets were dated. He said the second sheet that he has showed some proposed contours and the existing contours are very weak and are hardly able to be read but it doesn't really show all the proposed grading for lot 8-30 so that lot is well below the requirements for the 60,000 sq. ft. contiguous land so there is no grading that will be able to get the 60,000 on that lot. Mr. Quintal continued that from his previous letter to the Board, he said that same thing about the grading and that lot 8-30-1 does not meet the requirements either and if the 1.1 foot area shown for contiguous is removed, he estimates that the amount is actually 46,000 sq. ft. which is actually about 57% of the requirement instead of the 75% which is required. He added that, as alluded to by Mr. Greenwood, the 4,000 sq. ft. area on the existing house lot was not scaled out to be 4,000 sq. ft. on the original plans but by moving the wetlands location and moving the setbacks, he could calculate the area to be 4,000 sq. ft. but it includes a good portion of the house, approximately 1/3 of the existing house, so at this point in time, it does not meet the requirement of 4,000 sq. ft. of a receiving soil. He said that it does not meet the requirement. He stated that he had asked for some erosion control to be shown on the plan; some silt fence was shown; no other drainage or drainage issues were presented; only the plans were submitted and no other documentation was provided.

Mr. Wilson read department comments: the Building Inspector's comments state that the 4,000 square foot receiving area of lot R5-8-30 has been impacted by the existing house and the only remaining 4,000 square foot area is on the proposed new lot; if the new lot is created then the existing lot would then become non-conforming. The Conservation Commission's comments included a supportive statement on the Planning Board's decision to exclude the area of the 15% slope in the 60,000 square foot requirement and exclude the 1.1 foot bridge used to connect the parcels of land because it does not meet the spirit and intent of the word "contiguous". The Conservation Commission's comments continued by explaining that in many areas the slope is significantly greater than 15% and adjacent to either wetlands borders or vernal pool areas; some level of protection for the wetlands areas is required and there is no evidence of a build and grade proposal offered by the owner; the lot is currently a single 3.93 acre (approx. 171,000 sq. ft.) area and areas of greater than 25% slope are within 50 feet of surface water; their belief is that an Alteration of Terrain permit is required. Mr. Wilson continued reading the Conservation Commission's comments which stated that in comparing the prior State approval to subdivide on file with NHDES, the lot line division was perpendicular to the street; with subsequent denials by the Planning Board for not meeting contiguous soil requirements, the lot lines were altered to achieve a 1.1 foot soil "bridge"; that bridge is immediately adjacent to and part of the incline to the street surface; effectively, this street surface area is not relevant to the lot in question; the change in the lot line division in order to justify a Merriam-Webster definition versus the intent to protect the wetlands borders is not within the spirit and intent of the ordinance. Mr. Wilson read the Health Officer's comments which stated that as it appears, if the proposal is granted, the existing lot will become a non-conforming lot with less than the 4,000 receiving area. The Fire Department had no comment.

Mr. Coppelman asked if Mr. Wilson would like to review the site walk. Mr. Wilson noted that he along with Mr. Coffin, Ms. Croteau, Mr. Landry, Mr. Shalett, Ms. Faulconer and Mr. Greenwood were in attendance at the site walk. He said that the Board saw the area, saw the water, saw the hill that would be cut down; he added that, for himself, he didn't know how this would be achieved without impacting the abutter; he said that the plan didn't really show what slopes would do if the hills were cut down regarding drainage as the slopes would either have to go toward the wetlands, which can't be done, or towards the street which can't be done as towards the street would be putting drainage going toward the house being proposed. He asked if anyone else wanted to add anything. Mr. Coffin added that some of the stakes marking the wetland boundaries were located at the low point of the outflow of where the culvert came in to the property and they were at the low point and would have been under water; he did not think the wetlands flagging were the best. Mr. Shalett asked about the total amount of land and the amount not being able to be built on such as the 15% slopes and septic area. Mr. Quintal said that each lot actually needs 80,000 square feet as a minimum and out of that 60,000 is supposed to be dry, upland, contiguous and suitable for building and if this isn't met, the Planning Board may require more land and in this case there is not much more than just barely 60,000 on the parent lot and if the 1.1 foot is removed as it is not able to be accessed by 1 foot on a steep slope so by the intent of the Planning Board which he believes the intent is to have contiguous upland to be usable; in that sense, it would negate that area as Mr. Greenwood eluded to in his letter. Mr. Quintal continued that this is why he did the calculation as there is really only about 46,000 square feet that, if flattened off, would be usable; on the other lot, due to the existing steep slope where the house, the house would need to be removed and do a lot of grading on the lot to come anywhere near 60,000 sq. ft. on that lot as it is just barely over 60,000 sq. feet with the slopes so he is unsure 60,000 sq. ft. could be met. Mr. Shalett said that this answered his question.

Attorney Fitzgerald-Boyd said that at this point she doesn't think there is anything more they could offer or say and they feel they have answered the questions appropriately and the spot does meet the subdivision; a copy of Mr. Greenwood's comments were provided to her. She stated that when the existing house was built, that was where it was required to be put and it met the septic for Town and State approvals. They have offered to have Mike Cuomo to review the wetland flagging and have provided a plan to show the impact of the 15% and remove it but was unaware of any reason why it couldn't have been done to begin with; they believe they have exhausted the contiguous issue and they don't feel there is anything further for them to do. They would ask for a vote so as not to spin their wheels and repeat the same things over again.

Mr. Wilson said that one comment about that is that every time that a plan is changed, it changes the Board's response. Attorney Fitzgerald-Boyd replied that absolutely, she did understand that. Mr. Wilson said that offering to cut all the 15% slopes opened up other issues which might have included requiring 100 foot setbacks which could not be provided on the current plan; he continued that every time they took a step, it took them several steps backward. Attorney Fitzgerald-Boyd agreed adding that at this point, the

plans are as done as possible and there is nothing else that could be adjusted or revised; there was nothing else they could do.

Ms. Faulconer asked to clarify a statement made by Attorney Fitzgerald-Boyd; she said that when James Lavalley was at the meeting talking about the location of the house, he did confirm his belief that the house was not originally designed to be built where it is, it was supposed to be further back so it would not actually be on the septic area like it is now; it was built differently and an as-built was then provided to the Town with the house being in a different location. She continued that when brought up at the meeting, James Lavalley said that he believed that was an accurate assessment of what had happened when the house was built; it was originally designed to sit further back on the lot. Attorney Fitzgerald-Boyd asked if, when that was done, it was acceptable. Ms. Faulconer said yes, but at the time, it was not a subdivided lot so there was more area. Mr. Wilson said that is one of the big things as now it is a whole lot so there are other areas to meet the requirements; if subdivided, those areas will no longer be there. Ms. Faulconer said this refers back to the comment made by the Health Officer that subdividing creates a non-conforming lot. Attorney Fitzgerald-Boyd asked if the tape of that meeting was still available. Ms. Faulconer said if the minutes have already been approved, it was not available but if not, they would still be available as that is the Board's procedure.

Mr. Wilson asked Mr. Greenwood what the Board's responsibilities were to address for the Court. Mr. Greenwood said that the Court wanted additional information on the three topic areas; Mr. Wilson noted that these were basically the issues addressed by his earlier comments. Mr. Greenwood suggested that the Board make determinations and he would prepare a response letter for the Board for the Court. Attorney Fitzgerald-Boyd asked if Mr. Greenwood had made a conclusion that the Board was denying the application; Mr. Greenwood said he had no idea what the Board was going to do; Attorney Fitzgerald-Boyd also had the impression that the Board would probably be denying. Mr. Wilson said the Board had questions from the Judge that needed to be answered.

Mr. Heitz asked for clarification of the three issues; Mr. Greenwood's advice is that the Board respond to the Judge's determination of contiguous; Mr. Heitz asked if this was due to the word meeting the definition but certainly not the intent of it; Mr. Greenwood confirmed this. Mr. Coppelman added that, based on the site walk, there might be some more information, having seen it on the ground. Mr. Wilson said that part of his recommendation would be to ask the Judge do a site walk.

Mr. Wilson asked if there was any public comment; there was none. He asked if there were any additional Board comments.

**MM&S to deny based on the following reasons:**

- **Lot 8-30 does not meet the 4K area for the existing lot in the new plan**
- **The 4K area in the new lot, 8-30-1 is questionable due to the change in the wetland in the revisions**

- **The Planning Board would require additional contiguous uplands on 8-30-1 due to the 15% slopes being excluded and the impact on the surrounding area and wetlands if they were removed**
- **The 1.1 foot “bridge” for contiguous soils does not meet the spirit or the intent of the ordinance.**

(Motion by Mr. Pope, second by Mr. Coffin)

Discussion on the motion: Ms. Faulconer wanted to clarify that the issue with the 1.1 bridge and the reason why it doesn't meet the spirit and intent is because the 60,000 square foot contiguous soils must be able to be buildable and based on the slope there is no way it can be developed, it is not really a bridge, on paper it looks like a bridge but it is such an intense slope there is not way that it could be considered suitable land to make the 60,000 sq. ft. She stated that this was what she saw when she went on the site walk and did not speak for the rest of the Board.

Mr. Coffin said that in the spirit of not having the motion itself be a two-page document that the motion could refer to the professional opinions stated by both Dennis Quintal, the Town Engineer and Glenn Greenwood, the Board's planner, during this meeting and previous meetings. He suggested adding this to the motion so that the explanations such as the one given by Ms. Faulconer can be referred to as the reasoning behind the motion.

The motion will be amended to include Mr. Coffin's recommendation.

**Added to the motion:**

- **Information provided by Mr. Greenwood and Mr. Quintal throughout the review process, including, but not limited to, comments from Mr. Greenwood dated May 19, 2015 and Mr. Quintal dated March 19, 2015.**

Comment continued: Mr. Shalett asked for further clarification of the Judge's issues; Mr. Wilson stated that this was the issue being decided and clarified during this discussion. Mr. Coffin said that the Board was trying to clarify the intent of the requirement in relation to the narrow strip of land as it was not buildable due to the narrowness and steep slope and that it was part of an embankment made when the road was put in.

Ms. Faulconer stated that part of what the Judge asked for was to give the applicant the ability to show where the 4,000 square foot area could be met on the property and she did not believe that any of the submitted plans showed this at all. Mr. Heitz agreed saying that the problem being was that the house is located in the 4,000 square feet. Ms. Faulconer continued that, at this point, having the lot exist as is, meets the requirement for having any additional receiving area on the site but by subdividing the lot, the Board would then be creating a non-conforming lot and under the Town's subdivision regulations, under the General Requirements for the Subdivision of Land, the plat shall conform with all State and Town laws or regulations. She stated the Town's own regulations tell the Board that we must meet our own requirements and if the subdivision was approved, the Board would not be meeting our own requirements. Ms. Faulconer added that it is generally determined that steep slopes are those that are 15% or greater and referenced this from the “Innovative Land Use Techniques” manual and noted that

other Towns have the same requirements and one of the reasons that slopes can have additional issues with run-off and things of that nature. Ms. Faulconer said that while the applicant said they can remove all the slopes, while also stating that they are not removing the slopes, the obvious intent is to not remove the slopes; but any changes would impact the property owner as one of the big slopes cuts right through the property line and would definitely impact the abutter on the existing vegetation on his property and might change and impact the run-off to the wetland and none of the specifics of these impacts were provided to the Board. She stated that her point was that the applicant can't provide a plan showing that they can meet the requirements but not show that the impact of those changes comply with other Town or State requirements; it is not a true indication of what the impact of any re-grading of that site would be without additional information.

**Vote on the motion: Motion carries 6-0-1 with Mr. Heitz abstaining.**

Attorney Fitzgerald-Boyd asked for copies of the comments from the Building Inspector, Conservation Committee and the Health Officer and arranged to come in to make a copy of the tape.

**Thomas Brouillette  
Trendezza, LLC  
Donald and Shibaun Heath  
30 Marshall Road  
Tax Map: Parcel A (R33-28) and R41-1**

Mr. Wilson announced that Mr. Brouillette had requested a continuance for tonight's hearing. Mr. Heath was present and asked for clarification for the requested continuance. There was discussion about whether Mr. Heath wanted a continuance; errors and misrepresentation on previous submissions. Ms. Faulconer and Mr. Greenwood will work on a timeline of events for the Board prior to Mr. Greenwood contacting Attorney Loughlin. Mr. Heath agreed to the request for a continuance.

**MM&S to continue to June 16 at 6:45.** (Motion by Mr. Pope, second by Mr. Coffin)  
**Motion carries 6-0-1 with Mr. Heitz abstaining.**

### **Board Business**

#### **Correspondence:**

- Bond balances were reviewed; letter to be written to American Tower asking that they request their bond balance be returned.
- No Bond was in place for the Trendezza project at this point. There was Board discussion about the process; the Board determined that mylars will no longer be signed and recorded until any required bonds are in place. Ms. Faulconer will send letter to Trendezza; advise Building Inspector that no further permits should be issued prior to bond being in place. The Board discussed process of inspections for a private road; Mr. Wilson noted that the Town Engineer can inspect anything on the plan; Mr. Greenwood noted specific areas such as

Stormwater Management and other details of the plan. Mr. Greenwood added that the project needs to comply with the plan that was approved. Mr. Quintal noted that a project on a private road is reviewed more like a site plan than a subdivision. Ms. Faulconer to send a letter to include requirement to comply with Town Engineer's comments from his last review of the project.

- Memo re: RSA notation change to be added to previous proposed changes for the next election for article 301.
- Notification of Coastal seminar
- Discussion of PREP grant to help with Natural Resource inventory; deadline was discussed; Ms. Faulconer will contact Dana Truslow about the possibility of assisting with the preparation of the grant in time to comply with the application deadline otherwise it will become a project for next year. .
- The Blake/Galloway project was reviewed; no reclamation plan has been received; Mr. Greenwood will contact Mr. Galloway, follow-up with a timeframe regarding the reclamation of the site.
- Information regarding the possible filling at the New Boston Road location discussed at the last meeting; Mr. Quintal reviewed the site visit he had with the Health Inspector; the property owner was referred to Seekamp Environmental; there is a possibility of some wetland's disturbance but the owners have been given the proper information about not filling the wetlands.

### **Carriage Towne Bar and Grill**

**Rob Healey**

**53 Church Street**

**Tax Map R34-1**

Mr. Wilson explained that this was an expedited review. Ms. Faulconer noted that the Board had received the property owner's letter. The Board reviewed the proposal to expand the restaurant. Mr. Wilson read comments from the Fire Department; Mr. Healey said that those concerns and issues had been addressed with the new plan provided to the Board at the beginning of this hearing. The Health Officer's comments stated that no comments were being provided since no septic plans had been provided. Mr. Healey explained that he is working with the state at this point to verify that the additional seating will be okay with the current septic system. Mr. Healey explained that they are moving 20 feet over to the left with a new wall being put up making the neighboring space a smaller space. Mr. Coppelman asked with the additional business and traffic if there would be a parking impact. Ms. Croteau agreed that parking is tight in the plaza and asked Mr. Healey if he had any thoughts about the parking. Mr. Healey stated that there is additional parking on the right side of the parking lot, customers could just park a little further away but there were no changes to the parking lot being proposed. Mr. Wilson noted that his prime hours were usually when the other businesses were closed. Mr. Heitz stated that the parking lot is pretty full in the morning but clears up in the afternoon; he added that the rest of the lot has ample spots to accommodate any additional parking for the restaurant. Mr. Wilson confirmed that there were no changes to the existing hours of operation. Mr. Shalett said he was concerned with the fire exits; Mr. Wilson said that the Fire Department will address any of those issues through the



permit process. Mr. Healey stated that there will be two more than the law requires. Mr. Healey explained that the storage container is not new. Ms. Faulconer asked if it had received Planning Board site approval; Mr. Heitz stated that he got a building permit and was not directed back to the Planning Board.

Mr. Greenwood said that the only issue he sees is whether the septic can support the additional use; if there is a septic constraint it could be a major drawback to the project and the Board would need to find out if it is resolvable. Mr. Heitz said that as the former owner, he is familiar with the property and has reviewed the current application with the Health Officer; the State inspector, Jay Bass, was called in to the project as it is a high-tech system; the confirmation on the septic system will come from the State for the Town Health Officer's approval; Mr. Broderick has stated that Mr. Healy can move forward without the approval but he does so at his own risk; fire and building codes will need to be met. Mr. Healey explained that Wastewater Solutions is working on the septic system concerns to get the plan to the State. Conditions of approval were reviewed; the process of meeting conditions permitting to receiving permits was reviewed; Mr. Coffin explained that a conditional approval is a way to give an approval to an applicant so they don't have to return to the Board after they meet the conditions. Mr. Healey explained that he wanted to start construction while he was working out the septic issues with the State; he stated that he just wants permission for construction, not occupancy. Mr. Quintal suggested that the Board look at the request as two issues; one for construction; one for expansion adding that the septic plan approval will actually govern the number of seats allowed for the restaurant. The Board reviewed the possibility of allowing the construction of the expansion but basing the occupancy permit of meeting the condition of getting the septic approval. Mr. Wilson stated that building expansion did not guarantee the number of seats, if the septic was not approved it would only mean the spacing between tables would be wider.

**MM&S that the expansion of the use and construction of the building are allowed pending compliance with building and fire codes; the number of seats allowed for the expansion are conditionally approved pending final septic approval.** (Motion by Mr. Pope, second by Mr. Heitz) **PUNA**

Minutes: Mr. Coffin stated that he would like the minutes of April 21, 2015 amended regarding the Trendezza discussion to include the phrase "listed as the property" prior to "owners".

**MM&S to accept the minutes of April 21, 2015 as amended.** (Motion by Mr. Coppelman, second by Mr. Coffin) **Motion passed 5-0-2** with Mr. Pope and Ms. Croteau abstaining.

### **Board Business, continued**

- Mr. Greenwood reviewed the previously approved Early reclamation plan; there were issues with the plan being recorded since there was not a surveyor's stamp on the plan; Mr. Early provided the Board with an additional plan provided by a

land surveyor. The Board recommended providing the registry with both the engineer's and surveyor's plan in hopes that they both could be recorded. Mr. Quintal reviewed the surveyor's plan and said it would be sufficient. The Board agreed that if both plans could not be recorded, the surveyor's plan could be recorded in place of the engineer's plan.

- The meeting scheduled for May 26<sup>th</sup> was cancelled.
- Mr. Coppelman stated that the CIP information needed to go out soon to be able to get the feedback in a timely manner. Mr. Greenwood will work with Ms. Faulconer on getting this out.

**MM&S to adjourn at 8:40.** (Motion by Mr. Coppelman, second by Mr. Pope) **PUNA**