

1 **KINGSTON PLANNING BOARD**

2 **FEBRUARY 21, 2023**

3 **PUBLIC HEARING**

4 **MINUTES**

5 Ms. Merrill called the meeting to order at **6:33 PM**; there were no challenges to the legality  
6 of the meeting.

7  
8 **MEMBERS PRESENT:**

9 Lynne Merrill, Chair

Peter Coffin

10 Glenn Coppelman, Vice Chair

Robin Duguay

11 Peter Bakie

12  
13 **ALSO PRESENT:**

14 Glenn Greenwood, Town Planner

15 Dennis Quintal, Town Engineer

16 Robin Carter, Land Use Admin.

17  
18 **ABSENT:**

19 Chris Bashaw, BOS Representative

20 Steve Padfield

21  
22 Ms. Merrill declared a quorum present and introduced the Planning Board ("PB" or  
23 "Board").

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24  
25 **PUBLIC HEARING**

26  
27 **Deschenes Living Trust**

28 75 Exeter Road

29 **Map R36 Lot 2-1**

30  
31 **SUBDIVISION APPLICATION**

32 *<Board note: This hearing began at 6:35 PM.>*

33  
34 Ms. Merrill read the legal notice for the hearing. The applicant is requesting the  
35 **subdivision** of one (1) residential lot which is situated in Kingston and East Kingston into  
36 two (2) lots along the town line. The lot size to remain with the existing residential dwelling  
37 in Kingston will be 8.7380 +/- acres.

38  
39 Ms. Merrill provided an overview of the format of the hearing. Ms. Merrill explained that  
40 the Board may be able to make a decision tonight or may decide to continue it to another  
41 hearing.

42  
43 James O'Neil, LLS, Land Surveyor of Hancock Associates of 34 Chelmsford Street,  
44 Chelmsford presented on **behalf of the applicant, Deschenes Living Trust**. Mr. O'Neil  
45 brought a rendering of the subdivision and made it available for viewing. He mentioned

that what is being looked at is a piece of property that is approximately 29 acres and is located in Kingston and East Kingston. They would like to separate the lot into two (2) lots and establish a lot line along the town lines. Mr. O'Neil explained that the two (2) towns tax the parcel separately at the respective town line.

Dennis Quintal, PE, CWS, **Town Engineer** stated that he looked at the subdivision from the perspective of East Kingston and Kingston and his comments reflected both towns. Mr. Quintal read through engineering comments from his letter, dated February 8, 2023, to the Town of East Kingston and Town of Kingston Planning Boards. (Letter attached). Mr. Quintal said there was an East Kingston Planning Board meeting last week (February 16, 2023) for this property.

- Mr. Quintal commented that item #4 and #15 have been taken care of on a revised plan (dated 2/6/2023) and that almost all of the items noted could be easily addressed.

Glenn Greenwood, **Town Planner** explained that he looks at the application/plan as a Planner and remarked that this proposal has no change as it relates to the Town of Kingston; and that the only change is creating a boundary line along the Town line. He mentioned that the applicant thought that they had two (2) parcels, however, discovered it is one parcel located in both towns, and the applicant's goal is to have two (2) lots as they initially thought.

Mr. Greenwood shared his comments from his memo to the Board dated February 20, 2023:

- This is the first public hearing for this application, so the Board needs to consider invoking jurisdiction upon the plan.
1. The newly created property boundary that runs along the existing Town line must be monumented at each new lot corner with either concrete or granite posts. The town line should also be referenced according to its placement following the last perambulation by the Boards of Selectmen for the two Towns.
    - Mr. Greenwood further explained by saying there has to be an understood Town line with metes and bounds.
  2. The subdivision plan needs and endorsement block for the chairman signatures for each community.
  3. The zoning designation for the Town of Kingston is indicated in the zoning note on sheet one as single family residential but it is single family residential – agricultural.
  4. The existing percent of impervious lot coverage on the lot R36-2-1 should be indicated in a note. *He commented it should be included on the plan because the Town tracks that and required for Stormwater management.*
  5. Add a note stating plan will comply with Kingston's fire protection regulations.
  6. Add a note stating, "all roadways, access ways, parking and sidewalk facilities shall be constructed per town regulations."

Ms. Merrill noted that there are no comments from the Town departments.

92 **Board comments:**

93 Mr. Coffin mentioned that the subdivision doesn't appear to have any regional impact on  
94 the Town of Kingston because the only other affected town had already had a hearing,  
95 and that there was no development proposed in Kingston. Mr. Greenwood responded  
96 with what we are being told the property is staying as it is. Mr. Coppelman  
97 recommended that the Board make a motion that this will have no regional impact to the  
98 Town of Kingston.

100 **Motion made by Mr. Coppelman that due to there being essentially no impact to the**  
101 **Town of Kingston for this subdivision application that it has no regional impact to**  
102 **the Town. Seconded by, Mr. Coffin. A vote was taken, Ms. Duguay was not present for**  
103 **the vote, all present were in favor, the motion passed.**

105 **Motion made by Mr. Coppelman to invoke jurisdiction. Seconded by, Mr. Coffin. A**  
106 **vote was taken, Ms. Duguay was not present for the vote, all present were in favor,**  
107 **the motion passed.**

108  
109 Ms. Merrill asked Mr. O'Neil if he had a response in regard to Mr. Quintal's comments.  
110 He said that they looked at the overall comments for both towns and have addressed  
111 85% of them. **Mr. O'Neil's comments:**

- 112 • He referred to the comment #2 on Mr. Quintal's letter regarding Steep  
113 Slopes in East Kingston and said this has been addressed.
- 114 • #3 regarding the nearest fire pond or cistern – he has reached out to both  
115 fire departments to find out this information.
- 116 • #21 - Once the plan is approved will set monuments.
- 117 • #8 - He has reached out to the wetlands scientist for the extension of the  
118 wetlands because it wasn't delineated, and uplands were less than 15%.
- 119 • #12 site distance – they are looking at this today and doesn't have an  
120 answer on this yet.
- 121 • #26 regarding Bound Certification, once they receive approval, they will  
122 see what can be set.

123  
124 Mr. O'Neil said that everything else has been addressed.

125  
126 **Public comments:**

127 Ms. Merrill opened public comments at 6:49 PM. There were no comments from the  
128 public. Public comment was closed at 6:49 PM.

129  
130 **Waiver requests:**

131 Ms. Merrill brought up that there are **two (2) waiver requests** to be addressed by the  
132 Board. Mr. Merrill read the waiver requests submitted to the Board, dated January 10,  
133 2023. **One was a waiver for Site Specific Soil mapping and the second one was a**  
134 **waiver for Mandatory Preliminary Design Review.**

136 **Motion made by Mr. Coppelman to grant the waiver request for Article 905.5**  
137 **Mandatory Preliminary Design Review. Seconded by, Mr. Coffin. A vote was taken,**  
138 **Ms. Duguay was not present for the vote, all present were in favor, the motion passed.**

139  
140 Ms. Merrill asked if the Board would like to make a motion on the Site-Specific Soil  
141 mapping waiver request. Mr. Coffin referred to Mr. Quintal's comments on wetlands and  
142 soil mapping and if there were enough uplands. Mr. Quintal responded that on the  
143 Kingston side there is enough uplands soil to meet the requirements and that they are not  
144 building anything there. Even if there was a vernal pool in the rear, the existing wetlands  
145 are far enough away. Mr. Coppelman said we are dealing with the Kingston part of the  
146 subdivision which has been there a very long time and there are no proposed changes to  
147 Kingston.

148  
149 **Motion made by Mr. Coffin to grant the waiver request for Article 905.3,I. Site Specific**  
150 **Soil mapping. Seconded by, Mr. Bakie. A vote was taken, Ms. Duguay was not present**  
151 **for the vote, all present were in favor, the motion passed.**

152  
153 *<Ms. Duguay arrived at 6:53 PM.>*

154  
155 The Board asked Mr. O'Neil how much time he might need to make the changes to the  
156 plan. He felt he could have everything ready for the next meeting which is March 7, 2023.

157  
158 **Motion made by Mr. Coffin to continue this hearing to Tuesday, March 7, 2023, at**  
159 **6:30 PM and materials discussed at the hearing are due to the Planning Board by**  
160 **noon on Friday, March 3, 2023. Seconded by, Mr. Bakie. A vote was taken, all were**  
161 **in favor, the motion passed.**

162  
163 *<Board note: This hearing ended at 6:57 PM.>*

## 164 **PUBLIC HEARING**

### 165 **Housing Support Inc.**

166  
167 186 Main Street

### 168 **Map R34 Lot 21**

## 169 170 **SITE PLAN REVIEW APPLICATION**

171 *<Board note: This hearing began at 6:58 PM.>*

172  
173 Ms. Merrill read the legal notice for the hearing. This is a **site plan review application**  
174 for the total renovation of the existing structure to created four (4) one (1) bedroom  
175 housing units, including a small addition at the rear. Also, the extension of the right-side  
176 driveway to accommodate one handicapped parking space and three extra parking  
177 spaces at the rear.

178  
179  
180 **Applicant,** Paula Newcomb, Executive Director of Housing Support Inc. was invited to  
181 the table and introduced herself. She explained they are a non-profit organization from

182 Newburyport, MA and is here for the property at 186 Main St. She introduced her  
183 architect, Christopher Novelli of n3 Architecture.

184  
185 Ms. Newcomb explained that they purchased the property on December 21, 2021, and  
186 has been talking with the Town since January of 2022 about their plans to create housing  
187 for veterans and that there is a need for this type of housing. Their initial plan was to  
188 create seven (7) rooms with their own baths, each person would have their own lease  
189 and there would be management and services provided.

190  
191 Ms. Newcomb said they have talked with Town counsel and many people from the Town  
192 at length. She said they have not had a response from the neighbors in regard to their  
193 idea of seven (7) rooms. They talked with Town counsel on what might be acceptable  
194 and decided that four (4) separate one (1) bedroom, one (1) bath apartments would be a  
195 better concept. Ms. Newcomb stated that they would go before the Town for a site plan  
196 review to include expanding the driveway in the back to address the neighbors' concerns  
197 because they didn't want to see cars in the front driveway. There would be handicap  
198 parking in the back and two (2) apartments on the first-floor apartments would be  
199 handicap accessible.

200  
201 Christopher Novelli, Architect of n3 Architecture introduced himself. He mentioned the  
202 primary purpose of the small addition on the back is for handicap accessibility. One  
203 change on the plan was to reduce the two (2) story addition to one (1) story.

204  
205 Mr. Coppelman stated for the record that he needs to disclose that he knows the applicant  
206 from a former work affiliation, Community Development Finance Authority. He said he  
207 doesn't plan to recuse himself unless the Board feels it would be appropriate.

208  
209 Ms. Merrill asked if there was handicap accessible to the 2<sup>nd</sup> floor. Mr. Novelli replied no.

210  
211 Mr. Greenwood, **Town Planner** provided his comments:

- 212 • He said this is the first public hearing for this proposal, so the Board needs  
213 to consider invoking jurisdiction to begin the 65-day review clock.
- 214 • The town has regulations for the review of multifamily proposals in the  
215 Historic District 1.
- 216 • The Board is left to consider if the proposal adequately provides for the four  
217 (4) proposed units as detailed.
- 218 •

219 Mr. Greenwood read his review comments on the plan entitled, "Renovations 186 Main  
220 Street", prepared by n3 Architecture, dated 1/25/2023:

- 221  
222 1. The site plan regulations require plans be recorded at the Registry of Deeds. For  
223 this to occur plans need to be prepared by a licensed land surveyor. ***Waiver has***  
224 ***been requested by the applicant.***
- 225 2. The proposal requires that additional parking be created on the site. The proposal  
226 offers an extended driveway that plans for the construction of one accessible  
227 parking space and three conventional parking spaces. This driveway extension is

228 set approximately 2 feet from the property boundary. Driveways are supposed to  
229 be offset 20 feet from the property boundaries.

230 3. The Health Inspector has indicated that the septic system design meets the  
231 capacity required for the proposed use.

- 232 • Mr. Greenwood commented he has been told this is the case but does not  
233 have this in writing.

234 4. Town Counsel has recommended that leases for the apartments should be no  
235 shorter than one year.

- 236 • Mr. Greenwood said this suggestion was made so there would not be  
237 confusion that this constituted a boarding house instead of apartments. Ms.  
238 Merrill remarked or an Air B and B.

239  
240 Mr. Greenwood concurred with the applicant that there has been a lot of discussion about  
241 this proposal over the past year; what applies, what doesn't apply, zoning, what  
242 procedure(s) should be followed.

243  
244 Mr. Coffin raised a question on the waiver and that the Registry of Deeds won't accept  
245 the site plan if it isn't stamped by a licensed land surveyor. Mr. Greenwood said what this  
246 would mean if the Board accepted this waiver an Affidavit could possibly be recorded  
247 instead of the plan.

248  
249 **Town Engineer comments:** Mr. Quintal said he did the septic design for the previous  
250 owners and at that time it was two (2) units with three (3) bedrooms each. He described  
251 the system as, 900 gallons a day, the septic tank design is appropriate and is an adequate  
252 septic system for what is being proposed for four (4) units. He concurs with Mr.  
253 Greenwood about the driveway being close to the property line especially since it is not  
254 surveyed. It may be an impact to the abutters so knowing where the property line is  
255 necessary. He raised a concern on how the traffic in the driveway would be handled  
256 because of the width of the driveway and would someone have to back out into the street  
257 without having a turnaround in the front yard.

258  
259 Ms. Newcomb mentioned that they did have the property surveyed last summer by a  
260 registered engineer but not by a licensed land surveyor because they were not able to  
261 find one that could complete the survey in a reasonable amount of time. That is why they  
262 submitted a waiver request. She is still looking for a licensed land surveyor to complete a  
263 survey.

264  
265 Mr. Coppelman brought up that it is important to have a survey done by a licensed survey  
266 and be able to record a plan vs recording an affidavit. Ms. Merrill agreed particularly with  
267 development so close to the boundary line it would be imperative that the boundary lines  
268 be exact. Ms. Newcomb said that initially they wanted the parking in the front, but the  
269 neighbors wanted it to be in the back.

274 **Department comments:**

275 Ms. Merrill read the Town department comments:

- 276 • **Fire:** 1) Comply with all town ordinances, rules & regulations. 2) Comply  
277 with NFPA Codes (2018).
- 278 • **Historic District Commission:** 1) Apartments are not a permitted use in  
279 HD1, therefore, a variance is necessary. 2) An apartment unit requires a  
280 minimum of 600 sq. feet of living space. Dimensions on the plan are not  
281 provided. The portion of the planned driveway extension is not 20' from the  
282 side lot line of the abutter's property – 901.1,C.3.
- 283 • **Public Works:** No change to existing driveway within town ROW. If more  
284 apartments added, new mailbox unit will need to adhere to town mailbox  
285 regulation.

286  
287 **Discussion:**

288 Mr. Coffin referred to the question from HDC regarding apartments not being permitted  
289 and wanted to address this. Mr. Greenwood explained that originally the interpretation of  
290 the ordinance by the building inspector and himself was that apartments were not a legal  
291 use in HD1. However, after discussion between applicant's attorney, Town counsel and  
292 discussion with the BOS it was determined that the initial interpretation was wrong, and  
293 apartments are allowed in HD1 because of the way residential use is described. Mr.  
294 Coppelman said because it is so nonspecific. Mr. Coffin said it just says residences. It  
295 could be an overlay with mixed use Single Family Residential with Historic District 1. Mr.  
296 Greenwood replied that yes, what you are seeing is a series of events that took place a  
297 while ago. Mr. Greenwood mentioned he has always envisioned that HD1 was the overlay  
298 for the residential district itself, but that was a discussion took place approximately 15-18  
299 years ago. That was the final interpretation that was explained to him from Town counsel  
300 guidance to the BOS.

301  
302 Mr. Coffin brought up the question on apartment sizes for the four (4) apartments and if  
303 the applicant had that information. Mr. Novelli responded that they do not have that  
304 information but thought they were roughly 600 sq. ft. on the second floor and the first floor  
305 are larger. Mr. Coffin explained that since this is a requirement, they need to know the  
306 actual sq. footage for each apartment.

307  
308 Mr. Coffin asked Mr. Greenwood if he knew what the requirement would be for a driveway  
309 variance. Mr. Coffin said it would be an article 901 driveway permit regulation. Article  
310 901.1,C.3. Design Criteria - #3. Reads "Individual driveways shall be located a minimum  
311 of 20 feet from any side lot line. Mr. Greenwood's understanding is it is not appealable to  
312 the ZBA. The area of the apartments is a zoning ordinance requirement. Ms. Merrill said  
313 that the Town tax card shows 1,670 sq. ft. on the first floor and about 1,260 sq. ft. on the  
314 upper floor and ½ story total. Mr. Coppelman mentioned that would include the stairway  
315 sq. ft. too. Mr. Coffin brought up the ground coverage and that the property is located in  
316 the aquifer protection zone and the distance right now according to the plan is very close  
317 to the allowance (14.15). When you pave the driveways and put in a parking area this  
318 would be additional coverage. Plan shows 26.4.1 and he believes a waiver could be

considered up to 35% lot coverage if the engineered infiltration system is approved by the PB of its design structure.

Ms. Merrill asked the Board if they believe the plans are complete enough to accept jurisdiction. Mr. Coffin said we need to know the apartment sizes; a survey needs to be completed by a licensed land surveyor to determine the lot lines. Ms. Newcomb said a survey has been done, but not by a certified land surveyor. Article 904.5,G. explains that license number and seal of the NH licensed land surveyor is required.

Ms. Newcomb stated that they have been working on this project for well over a year and if there is something they can do to reassure the PB that they plan to comply with everything the PB would like to see and not delay this project any further, they would appreciate it. Mr. Coppelman explained that once the Board decides to invoke jurisdiction it starts the 65-day time clock for the Board to make a decision. With the plan not having sufficient information most likely a continuance will be needed. Ms. Newcomb asked does that mean a decision won't be made 65 days from the next meeting. Mr. Coppelman explained that what it means is the Board only has 65 days to make a decision once jurisdiction is invoked, but that doesn't necessarily mean that is how long it will take to make a decision.

Ms. Merrill asked if there were any public comments. Public comments opened at 7:25 PM.

**Public comments:**

Attorney Michael Donovan, 52 Church Street, Concord, NH introduced himself. He said he has had a municipal small practice in Concord for 36 years. He is representing Scott and Madelynn Ouellette of 189 Main Street, Virginia and Robert Morse of 188 Main Street, and Jeff and Julie Robie of 184 Main Street. All are abutters to this property.

Attorney Donovan explained that his clients position is it must conform with Town ordinances, otherwise the Town will be setting a dangerous precedent by approving multi-family housing in the Historic District ("HD"). Mr. Donovan explained that he is a veteran, and he would not represent clients that were opposed to veterans housing as a policy itself. The concern is the precedent this sets in the HD.

Mr. Donovan referred to a memorandum he prepared to the Kingston Planning Board, dated February 21, 2023, and handed copies out to the Board. He pointed out that it explains the opposition from some of the other legal opinions that may have been provided.

1. Mr. Donovan said they ask that the Board not propose site plan quorum for three (3) principal reasons and a couple more that his clients will talk about.
  1. This does not comply with 301.1,B. of the Town ordinance on zoning for this district. "Every building lot shall have no more than one single family home or one two-family dwelling".



- 365 2. This does not comply with the Town's zoning requirement that units be  
366 greater than 600 sq. ft. Referenced in two (2) places. Zoning  
367 Regulations, 301.3,B. and found in the Definition of Property in Zoning  
368 Regulations.  
369 a. Mr. Donovan brought up that the applicant was not able to tell us  
370 the sq. footage. of the apartments. He said that using a scale on  
371 the plan, the apartments on the 2<sup>nd</sup> floor do not have 600 sq. ft.  
372 each.  
373 3. The applicant does not have a Certificate of Approval from the HDC for  
374 a change in use from the present two-family dwelling to a multi-family  
375 dwelling per the applicant's proposal. This is an expansion of use from  
376 what is there now, and they do not have the required Certificate of  
377 Approval from the HDC.  
378 4. His clients have looked at the coverage for the Aquifer Protection Zone  
379 for either district, it doesn't comply. Mr. Donovan mentioned ground  
380 water recharge and that it is a technical computation. It's an analysis  
381 that is done by a hydrologist or someone with similar credentials.  
382

383 Mr. Donovan went over some arguments and referenced specific cases.

- 384 • Settlement 1 NH – “a planning board may not approve a site plan where the  
385 zoning does not allow the proposed use.” Attorney Donovan indicated that  
386 he gives the Board the legal authority to use his memorandum. (Specific  
387 case reference is indicated on his memorandum to the PB.) The change to  
388 four (4) units is an increase in density. He referred to the case *Cesere v.*  
389 *Windham*, which is also noted on the memorandum, and said it is “on point”  
390 because it involves a site plan application which did not comply with zoning  
391 ordinance density requirements.  
392

- 393 1. Mr. Donovan referenced a memo from the applicant's attorney that was provided  
394 last summer. He said it uses terminology to get around the fact that the ordinance  
395 clearly says that only two-family or one-family homes are allowed. He mentioned  
396 what is overlooked in the letter is the zoning regulations have a conflicts clause,  
397 and our ordinances state that when they conflict, the stricter or the higher standard  
398 governs. Mr. Donovan explained that even if you accept the argument, and stated  
399 he doesn't, the conflicts clause requires the stricter regulation that the single/two-  
400 family are allowed. He added that if there is a problem with the administrative act  
401 and workforce housing that is used as an example in the letter from the other  
402 attorney, if there is a conflict with it, he suggested to the PB that it be addressed  
403 and straightened out through the Town's zoning ordinances; not through the  
404 accepting the legal opinion of the attorney who provided it. He said the PB is bound  
405 to enforce the site plan review ordinance as it's written and if there are legal  
406 arguments that those requirements that should not apply, those arguments need  
407 to be resolved with the Zoning Board of Adjustment (ZBA).  
408  
409 2. Mr. Donovan discussed the 600 sq. ft., and that ordinance is clear. If they can't  
410 meet the 600 sq. ft., then they would need a variance from the ZBA.

- 411  
412 3. Mr. Donovan discussed that the HDC Certificate of Approval that is required for  
413 the change in use. He said that Town counsel has prepared a letter, dated  
414 December 28, 2022, that appears to say otherwise.  
415

416 Mr. Donovan went over the NH statute on the purpose of historic regulations outlined on  
417 pg. 2 & 3 of his memorandum.

- 418 • RSA 674:45, the purpose of the historic regulation. Preservation of  
419 structures and places of historic, architectural and community value. He  
420 explained that when the purpose is limited to the preservation of a structure,  
421 only the words structure and architecture would be used in the statute.
- 422 • He went over specific numerator purposes -
  - 423 I. Preserving districts in the municipality which reflect elements of its  
424 cultural, social, economic, political community and architectural  
425 history;
  - 426 II. Conserving property values in such districts;
    - 427 ▪ Mr. Donovan went on to explain that achieving these  
428 purposes involves more than just reviewing the exterior  
429 structural alterations. This is important in conserving property  
430 values.
  - 431 III. Fostering civic beauty;
  - 432 IV. Strengthening the local economy;
  - 433 V. Promoting the use of the historic districts for the education, pleasure  
434 and welfare of the citizens of the municipality.
- 435
- 436 ▪ Mr. Donovan referenced RSA 674:46 which defines the  
437 allowed content of the historic district regulations. He read this  
438 RSA on pg. 3 of his memo. "Within the districts, the  
439 municipality is empowered to regulate the construction,  
440 alteration, repair, moving demolition or use of such structures  
441 and places."
- 442 ▪ RSA:45 limits the regulations to exterior alterations.
- 443 ▪ 102.7 Kingston HDC ordinance – any person who wants to  
444 institute a new use or enlarge an existing use of land or  
445 buildings within the Districts must file an application and  
446 obtain a Certificate of Approval from the HDC.
- 447 ▪ Pg. 4 of the memorandum – 102.9 Guidelines. B. The change,  
448 if any, in the amount of noise, congestion and traffic that the  
449 proposed building or use will create in the district. C. Must also  
450 review the proposal of design, or of materials, or for a purpose  
451 or use inconsistent with and detrimental or injurious to  
452 buildings and purposes or uses upon adjoining lands and  
453 whether such proposal is such that it will detract from the  
454 character and quiet dignity of the Kingston Historic District.  
455

Mr. Donovan explained that we are not here to determine if this proposal meets any of those criteria or not. He stated, what the Board cannot do is approve a site plan for a “use” that requires a Certificate of Approval from the HDC for the changes in the “use” without the applicant receiving that Certificate of Approval.

Mr. Donovan mentioned that the HDC did review and approve the application on October 11, 2023, but it was only for the exterior alteration of the structure. The applicant did not check off on their application that they were looking for a Certificate of Approval for a change of use.

Mr. Donovan acknowledged and understood that the letter from Town counsel, dated December 28, 2023, was its own summary.

Mr. Donovan concluded with the Board must deny the site plan application because it does not comply with the zoning regulations. He said if or when the Board does decide to accept jurisdiction after review of the revised site plan that the Board must deny for all the reason he has outlined. He further explained that alternatively, if the Board does grant approval, the Board should condition any approval on the applicant obtaining necessary variances to section 301.1,B. for the 600 sq. ft. requirement from the ZBA, and the applicant obtain a Certificate of Approval from the HDC for the change of use.

Ms. Merrill thanked Attorney Donovan for his comments. She asked anyone else would like to give public comment.

Scott Ouellette, 189 Main Street came to the table and introduced himself.

- He said he went through the plans and scaled them out and the 2<sup>nd</sup> floor is way under 600 sq. ft. – One is 248 and the other is 355 sq. ft. He reviewed the sq. ftg. on the Town tax card. Ms. Merrill said it showed 1,670 on the 1<sup>st</sup> floor, 840 on the 2<sup>nd</sup> flr and ½ story 3<sup>rd</sup> fl. is 420 sq. ft.
- He brought up that the plans that were submitted to the Planning Board are different from the plans that the HDC were initially given. The back part now only shows one (1) story. The railings were changed from wooden to metal. The plan should make clear what the landscaping and lighting will be.
- The barn in back was not part of the HDC review and it appears that work is being done on it. Mr. Ouellette asked if anything was being done with the barn, and if it is, it should be brought into the site plan and will need to go before HDC again.

Robert and Virginia Morse, 188 Main Street came to the table and introduced themselves.

- Mr. Morse brought up the driveway and that his well failed a few years ago and they had a new well drilled and kept it 10’ off the lot line. He had concern about plowing snow all the way to the back and where all the water would go when the snow melts.
- He mentioned the spotlights can be annoying.
- He said he had concern about the credential of the survey, and there was always question on where the boundary line was on that side. He said that the previous owner reset the monument because it was dug up, and they weren’t sure if it was

the right place. They hired a surveyor, and asked the surveyor if they had information from the school survey at the back of their property. Mr. Morse asked if the markers closed, and the surveyor said they didn't. Normally you would require a certain closure on the mark. With their surveyor stating the line doesn't close, there is no way with certainty that the boundary line is accurate.

- Ms. Morse stated she is concerned that the driveway is being extended such a long way beyond where it ends now. She believes the current driveway only extends 2.1 feet off the lot line. If there is any change to the survey and the driveway is paved it may end up right on the property line which is a concern for her well and the plantings, they have there. If a waiver is granted by the PB she believes due diligence and due process should be given to grant that waiver.
- Ms. Morse mentioned her concern for the placement of snow and the runoff from the melting snow. In the corner where the properties meet is some wetland already.
- Ms. Morse asked if the plan that was submitted tonight/to the PB, is exactly the plan that was submitted to the HDC at the October 11, 2022, meeting. The plan does appear to show some difference and would like the applicant to respond to this question. A condition of the HDC approval was if there were any changes to the plan the applicant is to go back before the HDC. Mrs. said she did talk with Ms. Newcomb about being able to meet the requirements for adequate parking.

Stanley Shalett, 3 East Way came to the table and introduced himself.

- Mr. Chalet mentioned he lives down the road about 500' perpendicular to the property at 186 Main St.
- He is on the HDC but is not speaking as an HDC member. He is speaking as a private citizen.
- He explained that he is a veteran himself and know things about PTSD, being a soldier is not easy and has a lot of demands.
- Mr. Shalett said he is stuck with the question of permitted uses that the HDC has enumerated. He believes this one seems out of place, and this would be a place for supervision and to keep people from being homeless.
- He stated there are many statutes, like RSA 674:45 that talks a lot about cultural resources and historic architectural community value. He commented on the scope to the authority of the HDC, they can regulate the structure alterations, like demolition. But when it comes to the list of things in the permitted uses where there is a huge controversy and that this is a residential situation. Mr. Shalett made reference to the residential situation on the corner of Rte. 125 and Main St., the senior assisted living facility. The question of this property having a different use, and is it against the cultural resources of the HD. He said he doesn't think so. He feels that permitted uses should be expanded, he doesn't see uses that have particular zoning ordinances that enumerate as part of Article 1200, the ordinances of the HDC. The uses are related to cultural standards in some way. He said we want the Town to be uniform and preserve the HD as when it was founded in 1972. Mr. Shalett stated that there has to be a standard review in regard to this project. He said there is no standard review, it is arbitrary and very subjective. He didn't see any objectivity.

- He pointed out that the HDC is actively involved with the exterior of the subject structure to preserve it, and not change it without approval.
- He asked what would interpret what a permitted use would be and expressed that this would be for veterans, and he doesn't believe this project would impact the character of the HD and/or the character of the HDC.

Ms. Merrill asked if there were any other comments from the public. There were none, public comment was closed at 8:05 PM. Ms. Merrill thanked the public for their comments.

**Board comments:**

Mr. Coppelman said that there are some issues with the noncompliance of zoning ordinance.

Ms. Merrill made a comment that the lighting would have to follow the Town lighting ordinance which requires that it not go past the property line. Mr. Coffin explained to the applicant that they do not need to come to the planning board for that they can see the Code Enforcement Officer.

Ms. Merrill wanted to hear from the applicant on what they intended to use the barn for anything other than storage.

Ms. Merrill said there were a lot of multi-family buildings on this street. Mr. Bakie said the discussion has been around allowing more than two (2) units, but there are other multi-family in that area that have more than two (2). Ms. Merrill counted five (5) on that street between the lights at Main St./Depot Rd. and Rte. 125. Mr. Bakie commented that when it is brought up about change of use, it was multi-family and will continue to be multi-family. He asked how it is determined what is a multi-family. Is it three (3), four (4) or a two (2)-family. Ms. Merrill replied it is usually done by septic capacity. Mr. Coppelman stated it would increase the density if being changed from a two (2) family to a three (3) family. Ms. Merrill said that any increase in density does not affect anything else or any of the abutters.

Mr. Bakie suggested a continuance because there are multiple questions that have to be answered.

The Board commented that it needs to be determined if the plan that was used for the HDC approvals is the same plan as what was provided to the PB.

Ms. Merrill invited the applicant back to address some questions. <8:15 PM>

Ms. Merrill asked Ms. Newcomb what their intentions are with the barn. Ms. Newcomb said they want to use it for a workshop and put a bathroom in it and heat it. Ms. Merrill asked if it was on the plan. Ms. Newcomb said it was not. Ms. Merrill explained that it needs to be.

Ms. Duguay asked Ms. Newcomb if there would be adequate parking to include parking for support people and would it be above and beyond the four (4) spaces. The plan shows four (4) parking spaces. Ms. Merrill commented there wouldn't be space for guest parking. Ms. Newcomb said that the tenants will only probably use two (2) of the four (4) parking spots. She said that the two (2) long driveways in the front will be more than adequate for visitors. Ms. Merrill asked where their other locations where and if they have any in other rural communities. Ms. Newcomb replied that they have three (3) buildings in Amesbury, a building in Haverhill and three (3) buildings in Lawrence. Ms. Merrill commented that they are in higher density areas where people can walk to places like grocery stores. She questioned that if they are not going to have vehicles how they would get the things and access the services they need, are they going to be isolated there. Ms. Newcomb mentioned that in this rural community there are two (2) veterans clubs and 7.88% of residents in Kingston are veterans.

Ms. Merrill asked if there were differences in the plan that was approved by the HDC and one that was provided to the PB. Ms. Newcomb explained that the difference is that it was shown on the HDC plan as a two (2) story, and now it is a one (1) story and extends three (3) feet out. It doesn't show from the street. Ms. Merrill asked Mr. Greenwood if that means the plan has to go back to HDC. Mr. Greenwood said according to the way the approval process was described earlier he believes it does but would be a question for the HDC. Mr. Novelli raised a question, if the dimensions of the footprint stay the same, whether one (1) or two (2) story does that still have an impact. Ms. Merrill replied yes. Mrs. Merrill mentioned that if they return their plan to two (2) stories as on the plan approved by the HDC, they wouldn't have to go to the HDC for that change.

Mr. Bakie suggested that our Town legal counsel review the information provided by Attorney Donovan who was representing his three (3) clients mentioned earlier. Mr. Coppelman referenced the letter that was prepared by Town counsel to the Select Board and explained that it was a very long letter saying that the HDC does not have jurisdiction over use. If this is the case, then all the Town boards may need to look at the procedures. Mr. Coffin asked does that mean you are suggesting that a third party review the letter. Mr. Coppelman said he wasn't suggesting that, but questioned if another party should be considered to review attorney correspondence.

Ms. Duguay went back to the comments on jurisdiction that were made earlier and questioned the Board's ability to even approve the use as it is being proposed to change from a two-family to a four-family dwelling. Mr. Coppelman identified two zoning ordinances that are in question for this proposal. Section 300, Article 301: Buildings and Building Lots, 301.1, B Lot Regulations which talks about two-family. The other one is also building code Article 301.3, A.2., regarding the minimum living area of 600 sq. ft. per unit.

Ms. Newcomb asked for clarification, if the question on the aquifer protection and the if the driveway being paved affects the plan. Mr. Coffin explained that it is based on the coverage of a paved driveway. Right now, the driveway is not paved. Mr. Coffin said the plan shows a proposed extension to the driveway, parking areas, the shed and the addition does reduce the impervious equation. He mentioned that her engineer could

calculate for her. Mr. Quintal said he would like to see full plans sized appropriately, and an existing conditions plan and a proposed conditions plan. He said if there is a groundwater recharge issue then we need to see existing conditions. He went over some of the differences on the plan. For example, the area in the back he believes was the old swimming pool and that would be an existing impervious as compared to proposed impervious which would be a calculation that wouldn't be necessary.

Mr. Coppelman asked Ms. Newcomb how much time they might need to make applicable changes and if they felt they needed to go to any other boards for any variances they may need. Ms. Newcomb informed the Board that they have not yet been told they need any variances. Ms. Newcomb said they have done everything the Town has asked and have spent a lot of time and money. She said the "use" question shouldn't even be a discussion, it shouldn't matter. They didn't realize changing the two (2) story addition to a one (1) story would mean they had to get the exterior design approved again by the HDC. They will return the plan to the two (2) story layout, so it is exactly as it was. Mr. Coppelman mentioned that the letter from the Town attorney, is saying that the determination of the use doesn't lie with the HDC, but zoning relating to use does lie with other boards.

Ms. Merrill asked the applicant how much time they would need to pull everything together, items that needed to be addressed. Impervious surface existing and proposed plans, survey that isn't expected to be done until the end of March, indicated size of the rooms and units on the plans, and the size and any changes to the barn. Ms. Newcomb wanted to continue to the March hearing so they could show the progress of what they have done. Ms. Merrill said the Board cannot approve anything until everything has been done (i.e., the survey that may not be completed until the end of March). Ms. Duguay added the Board will need the required survey plans to be able to make an informed decision. Mr. Bakie said the driveway is so close to the lot line and the Board will need to see the actual survey plans.

Ms. Merrill explained that we would need everything into the Board, including the survey by March 9, 2023 to continue this to the March 21, 2023 public hearing. Ms. Newcomb would like to try for the March 21, 2023, hearing. Ms. Merrill said that if they find they can't meet that timeline, Ms. Newcomb could provide a letter to request to continue to April.

**Motion made by Ms. Duguay to continue this hearing to the March 21, 2023 public hearing at 6:30 PM, and all applicable materials and plans to be submitted to the Planning Board by noon on March 9, 2023. Seconded by, Mr. Coffin. A vote was taken, all were in favor, the motion passed.**

*<Board note: This hearing ended at 8:39 PM.>*

## **BOARD BUSINESS**

### **Approval of the January 17, 2023 Minutes:**

**Motion made by Mr. Coffin to accept the 01/17/2023 minutes as written. Seconded by, Ms. Duguay. A vote was taken, all were in favor, the motion passed.**

**Kingston Age Friendly Communities Survey:** Mr. Coffin brought up the Age Friendly survey for Kingston and suggested that it get sent out to the Board. **[AI-1 2.21.2023 Mr. Coffin will forward the survey to Ms. Carter to distribute to the Board.]**

**ADJOURNMENT**

The meeting was called to adjourn at **8:40 PM**.

**\*\*Next Public Meeting is scheduled for Tuesday, March 7, 2023.** Subject to change.\*\*