

Kingston Planning Board

January 18, 2022 Public Hearing Minutes

Mr. Coppelman called the hearing to order at 6:30 PM; there were no challenges to the legality of the hearing.

Members present:

Glenn Coppelman, Chair	Peter Coffin
Lynne Merrill, V. Chair	Peter Bakie
Chris Bashaw	Robin Duguay
Richard Wilson, BOS representative	

Members Absent: Steve Padfield (alternate), Ellen Faulconer (alternate/Administrative Assistant)
Also present: Glenn Greenwood, Town Planner; Dennis Quintal, Town Engineer

Mr. Coppelman declared a quorum present and introduced the Board. The Board reviewed finalizing the remaining warrant articles based on past Board actions and public notices.

Public Hearing for Proposed and Petitioned Warrant Articles:

Article 201: Aquifer Protection Ordinance – proposing an amendment to the definition of “structure” to provide consistency with the definition of structure in “Preamble-Definitions”. This was voted to move to warrant on January 4th and the Board clarified that the vote stands bringing the amendment to warrant.

Article 206.3 proposed a change clarifying measuring the square footage for an ADU using the Gross Living Area (GLA). Mr. Greenwood explained that this was voted on at the last hearing but needed to be re-heard this evening to meet posting requirements. Mr. Bakie asked Ms. Merrill, based on her professional knowledge, to explain the difference between what a property owner is taxed for and the GLA. Ms. Merrill explained that almost every town and every tax card, except Kingston and the Avatar program, only lists two things, the total space and the GLA; they don’t have “effective” listed. She continued that the “effective” number is a taxation formula used by assessors; it has nothing to do with the other; the GLA is the area of a house that is used to define a square footage of a house; an MLS has total area and GLA listed; “effective” is never listed. Mr. Bakie referred to taxation and whether this could be an issue. Ms. Merrill explained that taxes are paid on the GLA; when an appraiser appraises, the only consider GLA; a finished basement, for example, is not included. Other items such as a deck or shed are added as “amenities” for tax purposes but is not part of the GLA. Mr. Bashaw asked if, under these circumstances, could a 600 sq. ft. ADU have a 1500 sq. ft. deck; the answer was “yes” as it would not be part of the GLA for either the existing structure or the ADU. Mr. Wilson suggested that the difference between “effective” and GLA was minor; he and the Building Inspector pulled some tax cards to check on the difference. Ms. Merrill suggested that Kingston should be the same as area towns adding that any town not using Avatar doesn’t even show “effective” on the property card.

MM&S to move the 206.3 wording regarding the GLA to the warrant as proposed. (Motion by Mr. Coffin, second by Ms. Merrill) Discussion: Mr. Bashaw will vote to move to the warrant even though he would prefer “effective”. **Motion passes unanimously (PUNA).**

Berkshire Dominion Holdings (AKA Saddle Up Saloon)

92 Route 125

Tax Map R8 Lots 40 and 40A

Charlie Zilch appeared before the Board representing the applicant, John Waters, also present. Updated plans were distributed. Mr. Coppelman read the legal notice and reviewed past Board actions on this application.

Mr. Zilch also reviewed issues that had been previously addressed; he stated that they were down to the alternative drainage on the parking lot on Lot 40A. Mr. Zilch added that he had met with Mr. Quintal and come up with a proposal that accomplished what was needed.

Mr. Coppelman read comments from the Fire Department: “subject to third party review by SFC”.

Mr. Greenwood commented that all of his previous issues had been addressed.

Mr. Quintal stated that he had reviewed the revised plans and read his comments that included:

- Long Term Operation Manual needed to be recorded
- Performance Guarantee needed to be established and the date of completion needed to be established
- Bond was required to cover Inspections during Construction
- Stormwater design was reviewed; he has no objection to the hydrocad calculations; no objection to the design.
- Suggested minor change to the trench detail on C-4 which turned out to have been done by Mr. Zilch.

Mr. Coppelman asked if the Performance Guarantee had been addressed; Mr. Zilch said that he wanted to review the extent that it was needed first and hoped it would be a condition of approval. Mr. Coffin reminded the applicant that the ConsCom (Conservation Commission) commented that there were required State permits for the floating dock and the fountains.

Mr. Zilch confirmed that they had taken the floating dock out of this application; note #20 says that the use of the floating dock will require approval from the Fire Department and Building Department and, in addition, they would need a permit from NH DES (New Hampshire Department of Environmental Services). Mr. Coppelman confirmed that the floating dock is not currently part of the request/application. Mr. Zilch agreed that Mr. Coppelman’s statement is correct. Ms. Merrill commented that the floating dock is shown on the plan. Mr. Coffin spoke about previous issues brought up by the BOS about the dock floating downstream. Mr. Bakie questioned whether that would be handled by NHDES or the Fire Department. Mr. Coffin said that there would need to be electrical permits for the dock; all required permits would need to be applied for and should be a condition of approval including the fountain. Ms. Merrill noted that the fountain was not on the plan; Mr. Bashaw agreed. Mr. Coffin said it was shown on their web site. Mr. Bakie said that it is not on the plan and it’s not the Board’s purview; it’s DES’s purview and as such, why was the Board talking about it. Mr. Coffin said that it was a comment from the ConsCom; permits have been asked to be required and has been

brought up before. Ms. Merrill asked Mr. Wilson if the BOS have questions about the permits. Mr. Wilson confirmed that the ConsCom has raised the issue that the fountain has been there without permission from the State. Mr. Coffin said that the State requires driveway permits and it is still a Town concern. Mr. Bakie suggested that a note say that they need permits. Mr. Wilson said that permits are required and part of our job is to make sure that they get all the permits. Mr. Wilson suggested that a simple condition would be to unplug the fountain; he added that the Board has done conditions requiring an applicant get State permits. Mr. Coppelman said that any approved plan has, or should have a statement that is conditional on receiving any permits – State, Federal or Town. Mr. Coppelman asked about the fact that the floating dock still appears on the plan. Mr. Greenwood explained that it is an existing condition so the structure is there; it just needs to be clear that we all understand that the floating dock is not being approved for public use. Mr. Wilson clarified that it is not being approved for any use. Mr. Wilson said that there has been a lot of work done to it that would need permits which they don't have; they need to have the third party reviewer give a rating on it and that has not been received by the Town; there was construction that the Town has never seen the engineering on. One of the conditions would be that it couldn't be used without those permits and approvals that they said that they would do all along and they haven't done that yet. Mr. Zilch said that everyone is in agreement about note #20; it is just shown as an existing condition which can't be used until approved by the Fire Department, Building Department and the State.

Mr. Wilson stated that he thought all issues had been addressed except the drainage. Mr. Bashaw agreed. Mr. Coffin suggested adding a note that outdoor entertainment was not approved. There was discussion as to why these issues were still being discussed. Mr. Zilch stated that he and the applicant understands that outdoor entertainment is not a permitted use except by permission from the BOS. Mr. Wilson said that if this ever went to court, minutes are included in the record. Mr. Greenwood explained that he will be preparing a Notice of Decision(NOD) will include that outside entertainment is not a permitted use; he will reflect the salient issues from the minutes that will go in every Town file. He understands Mr. Coffin's concerns but they will be addressed in the NOD so it doesn't need to be a note on the plan; the NOD will say that outdoor entertainment is only permitted through the permitting process by the BOS; when doing the NOD, he will go through the minutes and pick up the items through this lengthy review and reflect it in the NOD. Ms. Duguay stated that at this point, the drainage issues are resolved so the Board is just looking at the performance bond and permits. Ms. Merrill added the operation manual recording and engineering bond. It was confirmed that permits would include building permits.

Mr. Coppelman asked for public comment. There was none.

MM&S to approve the application with the following conditions:

- The Long-Term Operation and Maintenance Procedures document to be recorded at the Registry of Deeds
- Performance Guarantee to be provided for all the ground work being proposed
- Engineering Bond to be provided to cover inspection costs during construction
- All State, Federal and Local permits to be received prior to use of the property

(Motion by Ms. Merrill, second by Mr. Bashaw) Discussion: Mr. Coffin asked if the Board needed to include a timeframe for meeting conditions. The Board discussed possible timeframes. Mr. Coppelman explained that there is a timeframe to meet the conditions or the approval is null and void; usually it is 90 days unless the applicant requests more time; he explained the extension process. Mr. Quintal asked what the timeframe would be to complete the drainage as it had been pending for a long time. The

timeframe for the conditions did not encompass the timeframe to comply with the drainage on the plans; this is an existing operation and who knows when the drainage will be done. Mr. Bashaw suggested it would be appropriate to add a condition of completing the drainage with all conditions done in 180 days. Mr. Wilson suggested that some simple things like signs and permits could be done immediately.

Ms. Merrill amended her motion to include a fifth item:

- The first three conditions to be completed within 90 days
- The last two conditions to be completed within 180 days.

Mr. Bashaw seconded the amendment.

Mr. Coffin explained to the applicant that this plan is not in effect until all the conditions are met; currently they are operating under the 2015 approval that does not permit outside dining; until this plan has met all of the conditions, it is not approved so outside dining is not approved; he re-iterated that these conditions must all be met to have outside dining. Mr. Waters said that he understood this.

Mr. Waters and Mr. Zilch said that they are clear on the motion and information.

Vote on the motion as amended: PUNA

Mr. Coppelman stated that if there were any questions, they should contact Mr. Greenwood.

<Board note: this hearing ended at 7:15.>

Teatad, LLC

Granite Fields Commercial Condos

Diamond Oaks Boulevard

Tax Map R3 Lot 4 Land Unit 1

Mr. Coppelman read the legal notice. Charlie Zilch represented the applicant. He clarified a change in the building sizes with Building A being 4000 sq. ft. and Building B being 3600 sq. ft. Mr. Zilch reviewed the previous hearing and actions taken; plans were distributed. Mr. Zilch noted that he had met with the Fire Department that will be requiring fire alarms and a knox box; they have been addressed; he has addressed the signage concerns and the safety fence around the wet pond; Town Counsel review of the condo. docs is pending; he thinks all other items have been addressed. Mr. Greenwood agreed; he added that he had spoken with Attorney Kalman but doesn't have anything in writing yet.

Mr. Greenwood reviewed his comments with only two items left: approval of condo. docs and setting the threshold for substantial improvement; he suggested construction of at least one of the buildings in a two-year timeframe. Mr. Coppelman suggested the groundwork should be completed as well. Mr. Coffin agreed that the berms should be complete and stabilized.

Mr. Quintal said that he only had one comment left regarding the establishment of a Performance Bond per Article 907 requiring that it be established prior to final or conditional approval of the plan; the bond for the Inspections can be included in the performance bond.

Mr. Coppelman read Department comments: Fire Department – no comment.

There was no public comment.

Mr. Greenwood confirmed for Ms. Duguay that the condo. docs. included the notation that no amendments could be made without Planning Board approval, as well as the other amendments the Board requested.

MM&S to approve the application with the following conditions:

- Final approval received from Town Counsel for the condo. docs.
- Threshold for Substantial Improvement will be all the site work completed and completion of one of the buildings
- Performance Bond to be established per Article 907 prior to final approval which will include funds for inspections.
- Conditions to be met within 60 days (Motion by Ms. Merrill, second by Ms. Duguay)

Discussion: Mr. Coppelman explained the deadline extension process and he cautioned Mr. Zilch not to let it expire prior to asking for the extension. Vote on the motion: PUNA

<Board note: This hearing ended at 7:34.>

Matthew Francis

Aloha Overhead Doors

9 Main Street

Tax Map R21 Lot 10

<Board note: This hearing began at 7:35.> Mr. Coppelman read the legal notice. He stated that he had a “preamble” to discuss prior to moving forward with the hearing. The applicants had asked to participate remotely and have asked to authorize family members to represent them verbally instead of in-writing. Mr. Coppelman wanted to make sure the Board was comfortable with that authorization and participation from the applicants remotely. Mr. Coffin was fine with the family member representation. Mr. Coppelman said that the real issue was the remote participation. Mr. Wilson stated that the Governor’s order allowed it; Mr. Coffin agreed. Mr. Coppelman stated that the Governor’s order had ended; Mr. Wilson stated that the Zoom ability still existed; the majority of a Board had to be present but others could participate via Zoom. Mr. Coppelman agreed that there needed to be a physical location with a quorum present but thought the issue was that it was not advertised as the hearing also having a remote option so other people could zoom it but the Board was allowing just the applicant to do it. Ms. Merrill, Mr. Bakie and Mr. Wilson were all okay with it. Ms. Merrill said we needed the participant’s names for the record. Ms. Duguay was okay with the zoom participation since the applicants’ designees were present. The applicants stated their names as Matthew Francis and Alison Milioto; they authorized Matthew Francis’ father, Paul Francis, and their realtor and friend, Ben Mercuri, to speak on their behalf.

A member of the audience, who later was identified as Garrison Todd, asked if the Board was going to allow a Zoom meeting. Mr. Coppelman said “no”. Mr. Todd stated that there was an abutter who was unable to attend due to work who would have wanted to be aware of the ability to participate remotely but didn’t have the information; he wanted to know why the applicant can participate by Zoom but not the abutters. Mr. Coppelman stated that this was his concern. Mr. Todd stated that he was no sure the abutter would be able to join the hearing at this point; he suggested that the Board, in an effort to be open and fair, the abutters should have been aware of being able to Zoom in to participate, not just the applicants. Ms. Merrill said that in this particular case, if they were not here at all, they could have a legal representative here to speak for them; and that is the difference; if the Board had known about this, it could have been advertised. Mr. Todd reminded the Board that they do have their representatives here and have given them the authority to speak for them. Mr. Greenwood said that

the applicants wanted the opportunity to be able to add to an answer if necessary. Mr. Todd said that the Board should have provided the opportunity to abutters as well as the applicant to be fair to all the parties involved. Adam Faulconer, Town Cable operator, stated that he is aware that the requirement is that if the Board is allowing one person to participate remotely, they have to allow others to participate. Mr. Bashaw said that an abutter is bringing up the issue that since the Zoom link wasn't published, the Board may not be able to proceed; this is an issue and now the Board has been made aware of the issue and it puts the meeting in position to be challenged. Mr. Wilson stated that the other issue is how long did the applicants know that they weren't going to be here; they could have asked for a continuance; he would be willing to make a motion to postpone or continue to the next hearing. Mr. Bashaw suggested that the Board could simply continue the hearing with the applicants' representatives and disallow participation through the Zoom platform as it wasn't posted to the public. The applicant agreed to continue. Mr. Bashaw agreed with Ms. Merrill that he would like to see Zoom participation more often but it needed to be publicly noticed. Mr. Coppelman stated that the hearing would continue but the Board will not be allowing remote participation as long as the applicants did not want to continue; Alison Milioto agreed to continue this evening; she added that the process and application was important to them. The Zoom call was disconnected at this time.

Plans were distributed. Mr. Francis walked the Board through the plan: the business sells, installs and services overhead doors; 3 employees, 4 vehicles; the business has grown and they need a larger building. He reviewed the changes to the existing approval: change the hours to 6:30 AM to 8 PM instead of the current approval of 7:00 AM to 5:00; wants to add an automatic gate to replace the manual gate; add to the use of the storage units; wants to add motion lights for security purposes; there are 22 storage units that will have garage doors added to them to be used by landscapers for storage, as an example; the confirmed that the 22 carports will be enclosed with roll-up doors with no rear access; there is a possibility of putting up a privacy fence on the back side of the carports; move the dumpster to the back side of the building; remove the area marked "snow storage" to be able to park trucks in that spot. Mr. Coppelman said that "snow storage" is a requirement so they need to list another spot for it. Mr. Francis said there is plenty of room. Mr. Coppelman said that they need to provide a supply, detail/cut sheet for the proposed lighting, designate snow storage on the plan and the Town Engineer will need to review; he continued that the Board voted to allow a marked up plan but there needs to be more detail. Mr. Mercuri suggested that there would be other places for the trucks and the snow storage would remain as designated. Ms. Duguay said the lighting would have to comply with current ordinances.

Department comments were reviewed: Highway: 1) where is the snow storage location? 2) designate the number of employees. Mr. Coppelman suggested that if the applicant thought there might be more than there were currently, he should discuss this as part of the approval. Mr. Francis said there might be 6; there was Board discussion about this requirement; it was determined that it was needed to determine the number of needed parking spaces, septic capability, etc. Mr. Wilson stated that the information is usually listed on the plan. Mr. Coppelman continued with Highway's comments: questioned the number of company vehicles and whether there were enough parking spaces. Building Department: shouldn't the site plan have the applicant's name and address in the title block with the current date and shouldn't the changes and the notes be identified to the new applicant and not George Korn.

Mr. Greenwood read his comments that had been distributed to the Board which included a requirement that new security lights must comply with the current ordinance.

Mr. Quintal stated that he didn't write comments. He stated that this plan is a site plan that his company did and he was surprised as he was not notified, even as a courtesy, of using his site plan and his stamp without his notification. He stated that he knows that the Board has allowed slight changes to plans in the past with some minor changes but this seemed a bit more than that. He added that the abutters shown on the plan aren't current and who knows about any other changes that have occurred. He stated that the information on the plan is not accurate and he is surprised that the Board would accept this as a plan; whether he updates it or someone else updates it; it needs to be updated. He added that some of the notes may have changed.

Public comment: Garrison Todd said that he is an abutter than replaced "Beauchard" on the presented site plan; he agreed with Mr. Quintal that the plan is kind of a shambles and not easy to read; it doesn't show stormwater run-off; he believes the "proposed" storage she appears bigger than the existing one. Mr. Wilson agreed that no one has confirmed the accuracy of the plan. Mr. Todd stated that the plan doesn't accurately represent what is on site; there is no stormwater or site run-off shown. He said that they are not opposed to the business; they question what is being stored there and the plan does not look good.

Elaine Todd, 17 Main Street, stated that she has concerns with the time change being proposed for the business; she doesn't want to add a lot more traffic; she would like to the Board to consider the time change from the business activity current approval of 7 to 5 being change to 6:30 to 8:00 PM. She stated that they put in an artesian well in the back of the property and would like that checked as the current plan doesn't reflect it.

Susan Gervasi, 15 Main Street, expressed concern with an increase in traffic; she said a traffic light is needed at the intersection. Mr. Bakie suggested she contact Chief Briggs about who to contact about that issue.

Mr. Coppelman declared the public comment portion closed.

Mr. Bakie said that he had no issue with the building but suggested a site walk might be needed to compare the plan with the actual site. Mr. Coppelman agreed. Mr. Greenwood said he advocated for not needing a revised engineered plan as there was a lack of significant change; he thinks the plan is accurate. Mr. Wilson stated that items noted as "proposed" should say "existing". Mr. Bashaw did not think there was any bad intent on behalf of the applicant. Mr. Coffin said there are a number of things to be changed as the plan was 20 years old. Mr. Wilson said that most of the time the Board waives the requirement for a new plan due to the expense but he doesn't think it would be too much of an expense by getting the original person to amend as most of the ground work is done. Ms. Duguay said some of the rationale was that this was less of a use with no structural changes. Mr. Bashaw said that he has no problem with needing a new plan but there is some work to be done on the plan. Mr. Coffin agreed with the suggestion of a site walk. Ms. Merrill said she had no problem with the plan but there were a lot of corrections: name, abutters, deeds, comments from the Fire Department (FD) regarding the gate. Mr. Francis said the FD would be supplied with the code. Ms. Merrill continued that the material for the privacy fence should be indicated, along with the height; need to remove "proposed" if it is existing; removing snow storage from the current location could cause a review issue; lighting fixture information needs to be supplied. Mr. Francis asked who do they see about getting the plan updated. Ms. Merrill told him to see the person who did it. Mr. Quintal asked the Board to what extent the plan needed amending; did it need to be recorded. Mr. Coppelman said the Board voted not to require a recordable plan; Mr. Greenwood said that there would be an affidavit required to be recorded. Mr. Coppelman

told the applicant that it was Mr. Quintal who did the original plan and they should contact him. Mr. Bashaw suggested a note on the plan that it “must comply with Town Lighting and Dark Sky Ordinance”. Mr. Coffin said that at the ZBA hearing, the abutters expressed concern about the self-storage and people coming and going at all hours. Mr. Francis said that they can limit the hours of the motorized gate.

MM&S to invoke jurisdiction of the plan. (Motion by Mr. Bashaw, second by Ms. Merrill) Mr. Coppelman explained “jurisdiction” for the public. Vote on the motion: **PUNA**

The applicant was told that they couldn’t use the property prior to Planning Board approval. There was discussion as to what could be done in compliance with the existing plan. Mr. Coppelman was opposed to this as it is a slippery slope for a project being reviewed by the Board. There was discussion as to putting the variance approval note on the plan. Mr. Greenwood said that it would be included in the affidavit so didn’t need to be put on the plan.

MM&S to schedule a site walk on Saturday, January 22, 2022 at 9:00 AM. (Motion by Mr. Coffin, second by Ms. Merrill) **PUNA**

The Board discussed any updates and corrections to the plan in conjunction with an affidavit. There was discussion about having the amended plan in on-time; Mr. Wilson suggested the continuation and the applicant can ask to continue to the next hearing if needed.

MM&S to continue to February 15, 2022 at 6:45 with amended plans due to the Planning Board office by noon on February 3rd. (Motion by Ms. Merrill, second by Mr. Wilson) **PUNA**

Mr. Coppelman explained to the public that this was their notification; the public can contact the Planning Board office if they want to check on whether a continuation was requested. Mr. Greenwood will write up a list of items needed on the amended plan as discussed by the Board and provide to the applicant.

<Board note: hearing ended at 8:42>

Board Business

MM&S to accept the 12/14/21 minutes as submitted. (Motion by Mr. Coffin, second by Ms. Duguay) **PUNA**

Correspondence/Information:

- Latest issue of Town and City; also available on-line.
- Reminder that the Board will have a picture taken at the beginning of the next meeting.
- Election time – 2 Planning Board spots; the two incumbents are Mr. Bashaw and Mr. Bakie
- Letter from 22 Main Street (AKA Bolton’s Lakeside) from new owners regarding use, hours of operation, number of employees, compliance with current approval. The letter asked for permission to allow musical entertainment a few times monthly. Ms. Merrill said the only issue was the music and the Board should clarify that it could only be allowed indoors; the issue was previously addressed by the Board for this location and was not approved. Ms. Duguay added that they could ask for a special event permit from the BOS. Mr. Coffin agreed that entertainment was never authorized; Ms. Merrill agreed. Mr. Wilson said the owner was talked to about this.

MM&S for Mr. Greenwood to write a letter to the owners of 22 Main Street that “outdoor music is not an approved use for the site” and outdoor music can only be done by a special event permit issued by the BOS and no further review is required with these limitations noted. (Motion by Ms. Merrill, second by Ms. Duguay) **PUNA**

- Letter received by JoyQuest, LLC and a proposed use at 3 Newton Junction Road for Yoga, Wellness and Retail space; there was no café proposed at this point; there will be 4 employees, 20 clients at one time; Monday through Saturday 6 AM – 7 PM; Sunday 7 AM – 2 PM; she will comply with the existing site plan.

<Ms. Merrill recused herself as the representative.> Ms. Merrill explained that this is the unit where “De-Railed” clothing store was located. Mr. Wilson questioned whether there were septic issues with this use; Mr. Quintal said that he would need to look at the septic and questioned the number of people at any time. The Board reviewed previous uses. Mr. Quintal asked how many classes there would be daily; the septic system would have to be reviewed. Mr. Coppelman asked about how many people would be “overlapping” for parking. Mr. Coppelman said that the Board did not have enough information at this time. Ms. Duguay asked if the septic was the only issue as retail already exists. Mr. Coppelman said it is a fitness use. Mr. Greenwood will get in touch with the applicant and get the information to the Board prior to the Feb. 1st meeting. Mr. Bakie suggested that the Board review the septic for the possible future use she suggested in case a café wouldn’t work at this location; we should know here future goals. Mr. Wilson said a café could change things.

Mr. Greenwood asked about the Feb. 1st agenda – Danna Truslow is available to review the new Aquifer maps and the Economic Development Committee of Brentwood would like to speak with the Planning Board about possible future co-operation. They both were added to the Feb. 1st agenda. Mr. Coffin asked if Mr. Greenwood got in touch with UNH about pervious pavement; he did and then can come out at any point.

Mr. Wilson announced that a Code Enforcement Officer may have been hired.

MM&S to adjourn at 9:10 PM. (Motion by Mr. Wilson, second by Ms. Duguay) **PUNA**