

**Kingston Zoning Board of Adjustment
September 17, 2015
Public Hearing**

The Chairman called the meeting to order at 7:00 PM, declaring a quorum present; there were no challenges to the validity of the meeting.

Members Present:

Ellie Alessio, Chair	Ben Romano, alternate
Ray Donald, Vice Chair	Chuck Hart
Ellen Faulconer, alternate	

Ms. Alessio announced that Mr. Romano and Ms. Faulconer will be voting members this evening.

Board Business:

MM&S to approve the August minutes as written. (Motion by Mr. Romano, second by Mr. Hart) **Motion carries 3-0-2** with Mr. Hart and Mr. Donald abstaining.

Correspondence: Ms. Alessio reviewed a letter from Attorney Durbin requesting an extension for zoning relief granted to his client, Mr. Pramberg, in November, 2013. RSA 674:33 I (A) states that the relief granted expires in two years but can be extended for cause. He is asking to be on a ZBA agenda prior to November 14, 2015 so the approval doesn't expire before meeting with the ZBA. The Board discussed the request. The Board clarified that the meeting would be to only discuss the extension and any extension granted would be for those conditions already approved; no alterations or changes on the previous approval. Ms. Alessio stated that she had been contacted by Selectman Heitz and invited to attend a meeting with Mr. Pramberg and his attorney with the Building Inspector to discuss the ZBA's intent with the original decision; Ms. Alessio said that she was uncomfortable with that as it was a Board decision and any interpretation of that decision should come from the Board, not one individual from the Board adding that if there are questions regarding the ZBA's decision, they should come to the Board for clarification. There was Board consensus on that decision. Mr. Romano noted that the RSA requires the applicant to give cause for the extension which could be discussed at the hearing.

MM&S to add to the November 12, 2015 agenda a hearing to consider an extension on the expiration date of the original decision (for Mr. Pramberg) of November 14, 2013. (Motion by Mr. Donald, second by Chuck Hart) **Motion carries 4-1** with Mr. Romano opposed.

**Christopher Chevalier
20 Circuit Drive
Kingston, NH 03848
Tax Map U3 Lot 43**

Ms. Alessio noted neither the applicant nor any representative was present at the start of the hearing. There was no one to speak in favor of the application.

Ms. Alessio read a letter from Lynn Macklin, 27 Circuit Drive, in opposition to the proposal; the letter stated that respecting neighbors' lot lines is necessary in this tight neighborhood.

Ms. Alessio reviewed the file noting that 10 years ago, a permit had been requested to build the shed that was the subject of the request and that permit had been denied as it was too close to the lot line. There was no approval of a permit to build the shed.

William Jean, the direct abutter to the property, spoke in opposition of granting the variance. He said that part of the shed was on his property. He said that he had spoken to Mr. Chevalier about this and had offered to help him move it. It was noted that the original permit, which had been denied, was for a shed 10 ft. x 16 ft.; the current shed is 12 ft. x 12 ft. x 16 ft. Mr. Jean had pictures showing that there had not been a shed on the property prior to Mr. Chevalier moving in. Mr. Jean added that the property is currently being sold and he would like this addressed now so it does not become an issue with the new owners. Mr. Jean showed pictures of the shed and its location to the Board. Mr. Hart stated that the roof hangs over the fence/property line. Mr. Jean stated that the rain run-off from the roof affects his property.

Mr. Donald said that he would be uncomfortable granting a variance for a structure that was already built and never had a permit. Mr. Romano said that diagrams original to the requested 10-year old permit are different than the existing location and tilt. Mr. Jean noted that the shed comes onto his property about 1 and ½ feet; the roof hangs over onto his property by about 5 feet.

Ms. Alessio reviewed the process for a re-hearing request noting that a representative for this hearing had still not arrived. The certified mailing receipts were reviewed; there was a receipt of delivery for Mr. Chevalier. The Board was comfortable that the applicant had received notification of the hearing.

Ms. Alessio read the criteria for granting a variance; the Board filled out the paperwork and Ms. Alessio tallied the votes for the set of 5 criteria.

- First criteria re: diminution – did not pass
- Second re: public benefit – did not pass
- Third re: unnecessary hardship – did not pass
- Fourth re: substantial justice – did not pass
- Fifth re: spirit of the ordinance – did not pass

MM&S to deny Mr. Chevalier's request for a variance. (Motion by Mr. Donald, second by Mr. Hart) **PUNA**

Ms. Alessio will notify Mr. Chevalier of the decision.

Shirley LaPrell
4 Old Coach Road
Kingston, NH 03848
Tax Map R8 Lot 41

The applicant was represented by David LaPrell and Ronald (Buddy) LaPrell. Ms. LaPrell is requesting a variance to Article 301.1B. While the representatives do not have anything in writing confirming they are representing Ms. LaPrell, it was noted that David LaPrell is on the deed. Ms. Alessio suggested that having confirmation of representation should be added to the requirements at time of application.

Ronald LaPrell explained that they are trying to build a two family home and keep it on one level; the old house was "L" shaped; they have shifted the "L's" to be a little different. He stated that according to the Building Inspector, if it was stick built there wouldn't be an issue but since they were using modular it doesn't meet the ordinance. He added that he believes the result will be the same but the ordinance as written prevents this. He explained that the modular approach is cheaper Ms. Alessio asked if the only reason they want the exception is because it doesn't make sense to you that this is not allowed. Mr. LaPrell said that using the modular method prevents cost overruns from a builder.

Mr. Romano noted that a certified plot plan is in the file dated 4/2015. The location was reviewed. Mr. LaPrell explained that there was a shared driveway on the property; there is another building on the lot that is another apartment that was built in 1973 and is grandfathered. Ms. Alessio said that by allowing a two family unit, there will be three on the property. Mr. LaPrell agreed; they confirmed that the building that burned was a two-family home. Mr. Donald said that the tax card says it is a single-family dwelling. Mr. LaPrell said that the Building Inspector did the research and somehow it got changed to a single-family dwelling but in the early 80's it was a two-family. Ms. Alessio said that the latest information is that it is a single-family home but said the issue is not the two-family but how it is being built. Ms. Faulconer said her initial opinion was that this would not be a big issue but when looking at the plan, it was in fact, two complete houses that are just being shoved together and instead of four bedrooms, it is two dwellings with three bedrooms each and what is being proposed is doing exactly what the ordinance prohibits. Mr. Donald said that this was exactly what had happened on Rte. 125 and the Ordinance was changed to make sure that this didn't happen again. Mr. LaPrell said the Mr. Steward told them everything they would need to do to move forward but in the end said that he couldn't approve it and his hands were tied; but if it was stick built he would issue the permit right away. Mr. Donald said that being stick-built it would be one unit subdivided within itself but at this point it is two separate units that are being brought in and you want to join them together; it is not one building, it is two buildings that you want to put together and the Ordinance states this can't be done. The applicants explained that the house had burned down and they were currently living in Pope Housing trailers. They explained that it had been a 4 bedroom house and was going to be 6 bedrooms; two dwellings with three bedrooms each. There is an entry between the two through a closet and a utility room. Ms. Alessio read the pertinent ordinance. Mr. Hart asked if they spoke with the pre-fab company to see if this could be built as a duplex although as one level and

if they spoke about how much this would cost. Mr. LaPrell said they hadn't asked if it could be built side by side with one roof. Mr. Romano said it had to look like a two family house not two separate houses put together; they have been done in the past and look horrible. Mr. LaPrell confirmed that there was an existing house on the site. The septic system was reviewed. Mr. Donald stated that previously there was a septic system installed for a five-bedrooms. Ms. Alessio said that each unit has three bedrooms now. Mr. LaPrell said that all they had to do was eliminate closets and then it wasn't a bedroom anymore. Ms. Faulconer said a review by assessors might be a problem and then the septic system would no longer comply. There were multiple discussions about the issues regarding the building and the site. Mr. LaPrell said they are trying to avoid the "motel" look and that is why they are going with the "L" shape. Ms. Faulconer re-iterated that the property card from 2012 says that the building was a single-family residence. Mr. Romano found an earlier card with additional information. Mr. LaPrell confirmed that prior to the fire, there were two families living in the property with two kitchens and three bathrooms and two separate entrances; everyone who was living in the house was related. Mr. LaPrell said that the Building Inspector initially noted that the house was listed as a single-family home and their tax information did not say it wasn't two-family and he was shocked but later the Building Inspector got it sorted out and said they would be able to re-build a two-family home. The process that brought them to the ZBA was reviewed. Mr. Donald explained that he was a Building Inspector for years and it is not up to the Building Inspector to go to the site and lay out the proposal as it is his responsibility to review the proposal that has been designed. There was continued discussion on how long it took the surveyor to comply with requirements of the Town and the discussions that took place prior to applying to the ZBA. Mr. Hart said that the ZBA had to either grant the approval or not based on the ordinance.

Ms. Faulconer asked if a septic system has been approved for the expansion of the bedrooms on the property. Mr. LaPrell said it is new; it is a two-year old system. Ms. Faulconer asked if the system was built for four bedrooms and the outlying building or was it built to accommodate the six buildings and the outlying building. She clarified that she was asking if the current septic system will support what they want to build. Mr. LaPrell stated that they would have to look into that. Mr. Romano said that there was a failed system in 2002 and there were two tanks, 1250 and 1000 and a pump; it looks like there is a tank where the existing apartment is and one for the main house; Mr. Romano said it was not built to accommodate the proposal. Mr. Romano says that he has two issues in that this looks like two separate houses; he was on the Planning Board when they ordinance was done and the intent was to not build structures that looked like two pushed together; the second concern is that the septic system is designed for a four-bedroom house per the notes on the septic plan and this is a six-bedroom plan. Ms. Faulconer said that she does not have an issue with modular, per se; however, they have given them a plan that far exceeds the allowance of the septic system. She said that she would have no problem continuing the hearing so the applicant can get work through the septic issues and get any other paperwork done so they would not have to re-apply and have the added expense of a new hearing. She said personally she couldn't grant a waiver for this where the septic system cannot support the proposal especially as the applicant has stated that they don't want to

add costs to the project and therefore, seems unlikely that you intend to upgrade the system.

Mr. Hart asked if there could be an approval for a variance with conditions. Ms. Alessio said that if all five of the criteria passed then there could be a motion to grant the variance with the conditions. Mr. Hart suggested, as an example, a condition of four bedrooms instead of six as he didn't see that on the form. Ms. Alessio said that a motion with stipulations can be done if the five criteria passed. Mr. Romano assumed that the two-family was for specific members of the family and suggested that there is criteria for in-law apartments which might be easier and said they might want to look at that. He said this property already has two separate tanks on the property; to meet the current requirement you could have two sides with two bedrooms for each one; he suggested a single-family home with an in-law apartment which would probably not need a variance.

Ms. Faulconer said that when looking at the plan as presented, it is hard to see a modular home, it looks like two single-family homes stuck together. Mr. LaPrell asked if it would look better with them put together in a straight line. Ms. Faulconer said what she would like to see presented was a building that met the criteria for the existing septic system which would have a smaller "L" extension and look like a rambling-type ranch. Ms. Faulconer said she has seen modular houses built and has no problem with them but this design does not seem to be meeting the ordinance; she noted that Mr. LaPrell had previously stated that he did not need all the bedrooms so if one side was smaller, it might look more like the Ordinance. Ms. Faulconer said the Board was trying to work with Mr. LaPrell to move forward but there still needed to be compliance with not only the language of the ordinance but the spirit and intent of the ordinance.

Mr. Donald said there is an existing ordinance with a reason why the ordinance was passed and it has to look like a house not two structures stuck together. He continued that there has been a suggestion to continue this hearing; he suggested ask the applicant if they want to continue and go back to the drawing board or do they want the Board to vote on the current application tonight. Mr. D. LaPrell said they wanted to continue but asked about whether they should just come back with one long house. Ms. Faulconer does not have an issue with them trying to make some sort of "L" shaped unit rather than one long building. Mr. LaPrell was concerned with having to make it shorter. Ms. Faulconer re-iterated that she would not feel comfortable granting any approval for a house that did not have a septic system that could support it. Mr. LaPrell said the Building Inspector did not say this was a problem. Mr. Romano said the Board has given the applicant information tonight that shows a septic system designed for four bedrooms. Mr. LaPrell asked if the septic system was upgraded, would the proposal work. Mr. Romano said that a new septic design would need to be applied for as the leach field would need to be bigger and the tanks would need to be bigger; he said that he still questions the design as there are five bedrooms on the property and wondered about the leach field. Russell LaPrell said that they need five bedrooms. Ms. Alessio noted that they would still need a variance if putting two complete modular together. Other possibilities were discussed.

Ms. Faulconer said that the first thing needing to be done was addressing the number of bedrooms and the current septic system and deciding whether to install a bigger septic system or have less bedrooms. She would like them to contact the modular company they are using and ask them to provide a visual representation of what the house will look like when it is built; this will provide the Board with information to confirm that it will look like an “L” shaped house and not two houses stuck together; she expects that the modular company should be able to provide them with this representation. Ms. Faulconer said that this might help the Board decide if the proposal meets the spirit and intent of the Ordinance and help in the decision to approve the variance request. Mr. Romano again explained the intent of the Ordinance to the applicant. Russell LaPrell stated that he did not care about the ordinances. Mr. LaPrell said that if they built one long house and changed the septic system, they would probably be okay but it would look like a motel. Ms. Faulconer explained that the Board cannot guess that the property can support an enlarged septic system. She said that she is hoping that they can show a representation that will look appropriate for the Board to grant a variance; she explained that it was meeting the spirit and intent of the ordinance not just “getting around it”. Mr. LaPrell said that the Building Inspector explained a previous court representation to him which they have tried to do what he suggested.

Mr. Donald suggested that the LaPrells return to the modular manufacturer and show them the ordinance and ask the manufacturer to show a pictorial representation of the building/duplex that they are going to provide; there may be a roof difference on the “duplex” versus two single-family buildings placed side by side together.

Mr. LaPrell said they are running out of time with the winter coming. Mr. Donald explained that the ZBA is doing its best to provide alternatives and suggestions to help them through the process; there are rules that the ZBA has to comply with; the Board can give an extension to allow you more time to get the information requested or the Board can take a vote which he did not recommend based on the discussion. Mr. Donald again explained the ordinance requirements. Mr. LaPrell stated that the Building Inspector said that the Board could grant this approval. Ms. Alessio explained that the Board does not just make wishes come true; the Board had criteria that needed to be met to make decisions.

Ms. Faulconer said the Board is giving them the opportunity to go to the modular builders and ask for a picture of how this is going to look, just the way you are asking for it, showing the roof line and this might give the Board enough information to think the proposal meets the spirit and intent; the other issue to be worked on is the septic system and the bedrooms.

Ms. Alessio said that currently there is no October meeting although one could be scheduled. Mr. Donald said if they could show the Building Inspector a picture that satisfied him, they might need to come back here. Mr. LaPrell did not think that would happen. Mr. Romano clarified that even though the applicant felt it was a matter of opinion, the proposal as shown did not meet the criteria however, if they returned with something that looked like a single-type home with the proper amount of bedrooms they

might not even need to come back to the Board if the Building Inspector thought the ordinance was met. He continued that the current proposal does not meet the language of the Ordinance but it does not meet the spirit and intent of the ordinance. Mr. Romano suggested looking at other two-family houses. Ms. Faulconer suggested a pictorial representation of the proposal would be very helpful. The process of review, denial and the ZBA process was reviewed again. Mr. LaPrell said that is sounded like it either had to be stick-built or they would go to court. Ms. Faulconer asked if they would like this to be continued.

MM&S to continue to October 8th at 7:05 PM. (Motion by Ms. Alessio, second by Mr. Hart)

Discussion on the motion:

Mr. Romano would like a discussion with the Building Inspector to make sure that the he understands the concerns that the Board has specifically in regards to the septic system and the proposed building. Ms. Faulconer will let the Building Inspector know of the concerns. Ms. Alessio made sure the applicant understood that the ZBA's was concerned that the septic system was only for four bedrooms. David LaPrell said that the Building Inspector said that wasn't an issue. Ms. Alessio said the Board had no information from the Building Inspector that this was true. Mr. Hart suggested that it might be helpful for the Building Inspector to come to the next meeting. Ms. Alessio clarified that she understood that the applicants have a certain idea of what they want to do in their mind but what they have in their mind might not be what can be approved. There was continued discussion regarding the timing of the initial building application, family members involved with the process, issues with the bank and insurance, and the review of the application; the applicants' frustration with the process. Ms. Alessio explained that the ZBA has a responsibility to the Town and the ordinances and have been trying to help them with their proposal; she said that by complying with the septic and providing the Board with a picture may turn this into a "no-brainer". Mr. Donald said if the applicant tells the manufacturer what you need, a pictorial representation with the correct lines can be provided so they can get the building permit they need. Ms. Faulconer said that the manufacturer can help them with that. Mr. Hart suggested that the manufacturer might contact the Building Inspector for guidance in regards to the ordinances as he knows Mr. Stewart has spoken with them before. Ms. Alessio will speak with Mr. Stewart about the possibility of him meeting with the applicant and the manufacturer. Ms. Faulconer suggested types of roof designs that might be possible to have the structure look like one building; she said for all the Board knew, this was the intent of the manufacturer, but that information was not available for the Board at this time.

Vote on the motion: Passed Unanimously (PUNA)

Ms. Alessio noted that no further notifications would be sent to the applicant about the hearing. Ms. Faulconer stated that because this meeting was rescheduled, the applicant was not waiting a month, it would be sooner than usual; while it might not seem it, the

Board was trying to help him with this. Mr. LaPrell stated that he realized that none of this was personal and he would see the Board in October.

The Chairperson declared the meeting adjourned at 8:45 PM.

Respectfully submitted,

Ellen Faulconer
Recording Secretary