

**TOWN OF KINGSTON
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING**

MARCH 9, 2023

PRESENT: Peter Coffin, Chair; Meghan Kelley, Vice Chair; Electra Alessio, Richard Russman, Michael Rohulich (alternate), Members

Mr. Coffin called the meeting to order at 7:03 PM.

Mr. Coffin introduced the Board and explained that Mr. Rohulich will be a voting member tonight.

BOARD BUSINESS

Approval of meeting minutes

MOTION: by Ms. Alessio to accept the minutes of the August 11, 2022 as written.

SECOND: by Ms. Kelley

Mr. Russman was not present for the vote.

All present were in favor.

Zoning Board of Adjustment Public Hearing Calendar for 2023

- A ZBA Calendar for 2023 was shared with the Board for review and comment. Mr. Coffin explained that the idea is to post the calendar on the ZBA page of the Town website. The Board agreed.

<Mr. Russman arrived at 7:05 PM>

Certified mail fee increase

- Propose changing the Certified Mail fee so it matches what the Planning Board is charging. Abutter fees are mailed out via Certified Mail.
- Postage has increased, recommend changing the Certified Mail fee from \$11.50 to \$12.25.
- Mr. Coffin asked Ms. Carter to send this information to Susan Ayers for the BOS approval.

Ms. Alessio stated that following the Planning Board Certified Mail fee amounts has always been done.

Plans for ZBA Public Hearings

- Mr. Coffin brought up that a section could be added on the ZBA website to post plans for upcoming hearings. The Board agreed that this would be a good idea.

PUBLIC HEARING

**Robert and Nancy Griffin
68 Danville Road
Kingston NH**

Re: Tax Map R22, Lot 45

<Board note: this hearing opened at 7:09 PM.>

Mr. Coffin read the hearing notice.

This is a public hearing whereby the applicant is seeking a variance for the reduction in the required minimum frontage from 200 feet to 174.52 feet. A variance of 25.48 feet. The applicant would like to subdivide a 20.6 acre parcel into two (2) residential lots. The existing dwelling would remain with the three (3) acre lot which the applicant is requesting the variance for. **Zoning Ordinance reference is Article 301.1 Section A.**

Mr. Coffin wanted to disclose that he does know the applicant from monitoring an easement on property previously owned by the Griffins, but that property has been sold to a new owner; Mr. Coffin doesn't plan to recuse himself.

Applicant comments:

The applicant's engineer, Dennis Quintal, spoke on behalf of the Griffins. Mr. Quintal explained that typically he doesn't take on projects like this in Kingston because he is the Town Engineer representative for the Planning Board. However, he did do some work on this property years ago and prepared the survey for them. Since his company did the survey, and when they asked Mr. Quintal to help them with this project, it didn't make sense to have them start over and have to hire someone else to do that work, therefore, accepted doing this work for them.

Mr. Quintal explained that applicant would like to downsize their house and subdivide the 3-acre lot from the 20 acre parcel and build a smaller house on the remaining 17 acres. He added that at the advice of Glenn Greenwood, Town Planner, the application went to the Planning Board to see if any other variances might be required before going to the ZBA for the frontage zoning variance. Mr. Quintal referred to the letter from Mr. Greenwood, dated January 30, 2023, to the Griffin's outlining that the Planning Board is unable to accept their application because both lots need two hundred feet of frontage as required by Article 301.1, A.

Mr. Quintal described the aspects of the proposed subdivision plan, dated November, 2022, to the Board. He said that the new house would be built a considerable distance from the street and near the middle of the 17 acre lot. Mr. Quintal went over facts to support the variance request and provided a response to the five (5) criteria that must be met for the Board to consider granting a variance. Mr. Quintal provided a document with the detailed responses to the five (5) criteria questions and read them to the Board. (Copy available at the ZBA office).

Mr. Quintal said that one thing they looked at, knowing they didn't have the frontage is to create a possible subdivision that would add a new Town road with a cul-de-sac that would be

at least four (4) lots. He only wants one (1) lot for them to build a new home, so the subdivision option is not what they wanted to do and is probably better for the Town too.

Board comments:

Ms. Kelley asked Mr. Quintal for a clarification on the measurement for the lot frontage and variance being requested. **Mr. Quintal made a correction to the variance request; the variance is for 24.48 feet for the 3-acre lot. The information on the plan was correct.**

Ms. Kelley questioned the possibility of putting in more lots and can this be eliminated from any plan for future development. Mr. Quintal answered that because of the size of the cul-de-sac that would be needed and location where they want to build the house you might be able to get two (2) house lots, and for the long road, excavation expense and wetlands crossing, and only to get two (2) lots, it wouldn't be feasible. Mr. Coffin asked if the variance is granted and the Planning Board approves the two (2) lot subdivision, what is the possibility a larger subdivision would be done. Mr. Quintal explained that would require a new road with a cul-de-sac to get the frontage for the other lots. Mr. Coffin said that the ordinance is designed to limit density, and the idea for two (2) lots is good for this land use but want to make sure that in subdividing this someone doesn't come along and put in a subdivision. Mr. Quintal said that as you can see on the plan there is a stream, some wetlands and crossing contours. He added if there was more acreage and was lateral that would be a possibility, but in this case, he doesn't think there is any way unless rules change.

Mr. Russman questioned why the applicant is on the upcoming Planning Board agenda on March 21st. Mr. Coffin was able to answer this because he was at the Planning Board hearing on January 16, 2023. On the letter from the Planning Board, it shows that there is no intention on the part of the Planning Board to assume that the applicant would get the variance. It was very clear that the ZBA is under no obligation to grant a variance. If the variance isn't granted the Planning Board hearing for this would be cancelled. The Planning Board put in on the agenda and publicized it so the hearing wouldn't have to go another month if the variance was granted by the ZBA tonight. If the ZBA grants a variance they applicant still needs to go back to the Planning Board for subdivision approval.

Mr. Coffin asked the applicant when this lot was created. The applicant wasn't sure. Mr. Coffin asked if this lot was subdivided from another lot. The applicant said it wasn't. Mr. Quintal said there were some other lots on Danville Rd.

Ms. Kelley brought up that the applicant's intent is not to subdivide it further, but asking if it is possible to put a condition in that it can't be subdivided any further. Mr. Coffin said he doesn't believe the ZBA could but possibly the Planning Board could put conditions of approval. Mr. Quintal said that the variance request is for the existing house lot. Ms. Alessio remarked that the decision on the request before the Board should be on the request before them and that the Board cannot anticipate what someone might do many years from now. Mr. Coffin mentioned that the Board can put conditions of approval on certain things, but not for the future development; this would be something the Planning Board could possibly do. Ms. Alessio said that you could put a Stormwater condition on that would show safeguards to protect the outflow to the surface impervious. She went on to say that there are situations when you would and should put on conditions of approval but doesn't believe the Board can restrict future development.

Mr. Coffin opened public comment at 7:43 PM. There was none. Public comment was closed at 7:43 PM.

<Board note: the hearing was closed at 7:43PM>.

The Board went into deliberative session and went over the five (5) required criteria worksheet to determine whether a variance can be granted.

1. The Variance will not be contrary to the Public Interest:

The Board agreed that the essential character of the area would remain unchanged, and there would be no added threat to the public health, safety or welfare. The existing driveway had plenty of sight distance, and the *apparent* frontage was greater than the 200' required. Additionally, the house was set back 300' from the roadway, and with only one other lot being created, the rural character would be maintained.

VOTE: All 5 vote "yes"

2. The Spirit of the Ordinance is observed:

The Board agreed that the variance, which would allow for the construction of a single new house on a 17.7 acre parcel, would not alter the density that the ordinance seeks to protect; in fact, the proposal would be far more preserving of the intent of the ordinance than the alternative plans, which would not require a variance, of subdividing the 20.7 acre parcel into four or five house lots.

VOTE: All 5 vote "yes".

3. Substantial Justice is done:

The Board agreed that the variance, which would allow for the construction of a single new house on a 17.7-acre parcel, would not alter the density that the ordinance seeks to protect; in fact, the proposal would be far more preserving of the intent of the ordinance than the alternative plans, which would not require a variance, of subdividing the 20.7 acre parcel into four or five house lots.

VOTE: All 5 vote "yes".

4. Values of surrounding properties are not diminished:

There would be no change in the location of any structures on the subject lot, and the house on the newly created 17.7 acre lot would be set 450' back from the road, and not easily seen from the roadway or by neighbors. In contrast, the Board felt that the alternative plan if the variance was not granted would, in fact, create a diminution in the values of the surrounding properties.

VOTE: All 5 vote "yes".

5. Literal enforcement of the two ordinances would result in unnecessary hardship:

Owing to special conditions of the property that have been previously described, particularly the small jog in the southerly abutter's property line near the road, that predates Kingston's zoning ordinances, and the large land area of the parcel which maintains the low density purpose of the ordinance, (1) there is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property, and (2) the proposed use is a reasonable one. Forcing the landowner to construct a new Town road and a subdivision against his, the abutters' and the Town's interests would not only create an unnecessary hardship, but would be contrary to the intent of the ordinance.

VOTE: All 5 vote "yes".

All five criteria having passed unanimously, Mr. Coffin asked for a vote.

MOTION: by Mr. Russman to grant a variance up to 25 feet to the frontage of the existing lot with the existing house.

SECOND: by Mr. Rohulich

All in favor

Mr. Coffin said a Notice of Decision will be sent out within 5 days.

BOARD BUSINESS CONT.

The Board recognized and thanked Ellie Alessio for all her years of service on the Zoning Board.

ADJOURNMENT

The meeting adjourned at 7:50 PM.