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**TOWN OF KINGSTON
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING
JUNE 1, 2023**

PRESENT: Peter Coffin, Chair; Meghan Kelley, Vice Chair; Kyle Bache (alternate); Peter Broderick; Richard Russman; Michael Rohulich (alternate); Benedetto Romano (alternate); Members

ABSENT: Shaw Tilton, member

Also Present: Robin Carter, Land Use Administrator

Mr. Coffin said that this is a special meeting of the ZBA and called the meeting to order at 7:01 PM.

Mr. Coffin stated that Mr. Rohulich would be a voting member tonight.

A quorum was present at the meeting.

BOARD BUSINESS

Approval of Meeting Minutes (May 11, 2023):

Ms. Kelley had the following revision, page 7, correct the first bullet under Lorraine Mascioli to read glyphosates, "the same active ingredient as Roundup."

MOTION: by Ms. Kelley to accept the minutes of the May 11, 2023 as amended.

SECOND: by Mr. Russman

All In favor (5-0-0)

PUBLIC HEARING

<Board note: hearing opened at 7:06 PM>

**Summit Distributing, LLC Kingston Crossing, Inc.
249 N.H. Route 125
Map R40 Lot 15**

Mr. Coffin commented that at the May 5, 2023 meeting the Board made the determination for development of regional impact (DRI) for this application and that this is the reason the hearing was delayed until to tonight.

Mr. Coffin read the legal notice:

The applicant is requesting a **Special Exception (Article 109:7)** to allow a retail motor fuel outlet with a 5,100 sf convenience store/quick service restaurant and 5 retail fuel dispenser islands (10 fueling locations) and 3 high speed commercial diesel islands (2 fueling locations) within the Commercial II District.

Mr. Coffin gave the background and explained that the Commercial II District does not list filling stations as a permitted use or a prohibited use. It does say that if it is consistent with the area and meets certain criteria that will be voted on that a special exception can be granted. There are five (5) special exception criteria found in the Town ordinance Article 109.7. Four (4) will be discussed tonight, the 5th one pertains to notification of the hearing and that has already been done.

49
50 Mr. Coffin read the Special Exception Section Article 109.7 of the Commercial Zone C-11
51 Ordinance. He referenced the standards outlined in Article 109.7., A. & B.

52
53 **Applicant:** Tom Frawley, President and Owner of Summit Distributing, LLC introduced himself
54 and his team: Brian Bouchard, Attorney with Sheehan Phinney Bass & Green, PA, Portsmouth,
55 NH office; Heather Monticup, P.E., Vice President/Director of Land Development of Greenman-
56 Pedersen, Inc. (GPI) is the traffic engineer; Frank Monteiro, P.E., Senior Vice President/Senior
57 Director of Land Development of GPI is the lead engineer for the project.

58
59 Mr. Frawley said that they are a New Hampshire based firm and have gas stations and
60 convenience store locations throughout New England.

61
62 Attorney Bouchard introduced himself and stated that he represents the applicant. He reminded
63 the Board that this project has a lengthy procedural history. In October, 2021 the Board granted a
64 special exception for this project under the Town’s Aquifer Protection ordinance. The decision was
65 appealed to the NH Superior Court and in January, 2023 the court upheld and affirmed the
66 decision of the Zoning Board of Adjustment for the special exception in the aquifer protection zone
67 allowing this property to be developed. Mr. Bouchard mentioned that prior to going to the Planning
68 Board, Mr. Coffin noticed that the C-II zone ordinance didn’t include a gas station as being
69 expressly permitted nor prohibited. Thereafter, the Town attorney established that this application
70 would require a special exception for the C-II zone. Mr. Bouchard commented that the Board has
71 already determined in the past that this project will have no adverse impact on the aquifer and
72 made that decision in October, 2021.

73
74 1. Mr. Coffin clarified a couple of misconceptions. The decision of the ZBA to grant the special
75 exception was not appealed, it was the decision for a rehearing that was appealed. Mr.
76 Bouchard replied saying an abutter requested a rehearing and the Board granted the
77 rehearing, it was the decision for the rehearing that was appealed. Once the case came to
78 the Superior Court the parties then took up the appeal of the underlying decision as well. The
79 Superior Court affirmed that the decision that was made by the Board was proper and that a
80 rehearing was not necessary based on procedural grounds. Mr. Bouchard said that Mr.
81 Coffin’s clarification was correct, it was an appeal of rehearing; however, once it was at the
82 Superior Court it also became an appeal of substantive underlying decision of the Board. Mr.
83 Coffin addressed the comment, *this project will have no adverse impact on the aquifer*. Mr.
84 Coffin explained that the ZBA granted the special exception with conditions that any
85 requirements to protect the aquifer protection zone, that the applicant would comply by any
86 conditions that may be set by the Planning Board for the safety of the aquifer. Mr. Coffin
87 further explained that the special exception was granted by the Board, but any conditions to
88 meet the safety requirements of the aquifer would be put on the plans for the Planning Board.
89 Mr. Bouchard referred #1 required for the special exception criteria for the aquifer protection
90 zone. 1. *“The proposed use will not detrimentally affect the quality of the groundwater
91 contained in the aquifer by directly contributing to pollution or by increasing the long-term
92 susceptibility of the aquifer to potential pollutants.”* He noted that the Board did make the
93 finding that this application met the criteria. This information is found in the October 14, 2021
94 ZBA meeting minutes. Mr. Broderick asked Mr. Bouchard *if what is being said is that the
95 previous ZBA found that it didn’t affect the aquifer?* Mr. Bouchard explained that the previous
96 ZBA made the decision for the criteria (#1.) above was satisfied, subject to the condition that
97 the Planning Board can add restrictions to protect the quality of the groundwater.

98

99 Mr. Monteiro provided three (3) handouts to the Board. A copy of an Aerial Overlay Plan of the
100 property dated 02/14/2022, a Site Plan dated 03/15/2023 and a design sketch of the building
101 dated 03/15/2023. Mr. Monteiro described the exhibits:

102 Overlay Plan -

- 103 • He explained that there will be a lot line adjustment that will be handled through the
104 Planning Board process to square off the lots.
- 105 • There are two (2) parcels involved with the development, R40-Lot 16 is the larger parcel in
106 the rear and R40-Lot 15 to the front right. Lot 15 is approximately 13.8-acre parcel, and the
107 proposed new lot size will be 10.2 acres. Lot 16 is about a 25-acre parcel and the
108 proposed new lot size will be 28.6 acres.

109 Site Plan –

- 110 • This plan was submitted to the Planning Board.
- 111 • Mr. Monteiro described what would be located on the property. A convenience store with
112 drive-through quick service restaurant, a retail fuel canopy in the front, and a diesel
113 canopy on the side of the store for the trucks.
- 114 • Mr. Monteiro stated that the special exception to the C-II zone only applies to the gas
115 station portion. Convenience stores and a drive through quick service restaurant within
116 the store are permitted by right.
- 117 • There are three (3) underground tanks.
- 118 • They are proposing a 4th lane to a signalized intersection to access the site. These details
119 will be handled through the Planning Board and DOT approval processes.

120

121 Mr. Monteiro went through the special exception criteria and responses outlined in the letter
122 dated April 19, 2023 from Nicole Duquette, P.E., LEED, AP, Project Manager at GPI. (Copy
123 available in the ZBA/Land Use office).

124

125 Mr. Monteiro provided a summary of information in support of the special exception:

126

127 1. *No detriment to property values in the vicinity or change in the essential characteristics of any*
128 *area including residential neighborhoods or business and industrial districts on account of the*
129 *location or scale of buildings and other structures, parking area, access ways, odor, smoke,*
130 *gas, dust or other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of*
131 *equipment, vehicles or other materials.*

- 132 ○ Lot R40-15 - Neighbors included Allied Clearwater, Mark's Auto Center to the
133 East, Kingston Crossing (R40-16) to the north and west, moving storage company
134 and DOT owned land between Rte. 125 and Rte. 107 to the south.
- 135 ○ Closest residential use is R34-41 along Bluebird Lane and from the property line
136 to the house is approximately 1,300+/- feet away. "Due to its distance from any
137 residential lots, it is our professional opinion that there will be no detriment to the
138 property values or change in essential characteristics of any residential
139 neighbors."
- 140 ○ Down the street is Carriage Towne Plaza which has a drive-thru component.
- 141 ○ Mr. Monteiro referred to the architectural exhibit provided. The design is a barn
142 type structure. The canopy compliments the building and has a peek roof and
143 some dormers on the front.
- 144 ○ This fits in with the character of the neighborhood.

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146 Mr. Monteiro said they meet this standard.

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2. *No creation of traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity.*

- Mr. Monteiro mentioned that there will be other people reviewing this on the state level- the DOT, Planning Board, 3rd pier reviewer.
- “The proposed retail motor fuel outlet will not create a traffic safety hazard or substantial increase in level of traffic congestion in the vicinity of the project site. Driveway permitting authority on this section of Route 125 is under the jurisdiction of the New Hampshire Department of Transportation (NHDOT). Based on a thorough traffic engineering analysis, as required by NHDOT, the applicant has demonstrated that the proposed project can be safely and appropriately accommodated, based on the projected site generated traffic volumes. In order to ensure safe and efficient access and egress to and from the site, the Applicant is committed to substantive off-site mitigation measures, including traffic signal control, and the construction of auxiliary turn lanes on Route 125. NHDOT has preliminarily consented to these off-site mitigation measures as commensurate with the project’s impact on the adjacent roadway system, and the Applicant is anticipating issuance of a NHDOT Driveway Permit upon review of final design plans.”

Mr. Monteiro turned the presentation over to Ms. Monticup, Traffic Engineer (GPI). She gave an update on the traffic component of the proposed project.

- A full traffic and access study was prepared and has been submitted to the Town and the DOT.
- They have received comments back from the Bureau of Traffic, NHDOT from district 6 as well as highway design.
- The full traffic study was prepared in accordance with a scoping meeting that was with DOT. It includes existing conditions, no build conditions and future conditions.
- The access is across from Rte. 107. There is a distribution center down the street that was approved locally to the north. The DOT asked them to look at the impact and any associated mitigation of the project with or without the distribution center traffic. Looked at the intersection with a traffic signal and without one. As part of the distribution center project down the street it does require mitigation of a signalized intersection. Whether the Summit Distributing, Inc. project goes through or not, it is expected that there would be a traffic signal in place for the distribution center should that project move forward.
- For the development of the project, the applicant will be responsible for having the roadway expanded to have a south bound left turn lane and a north bound right turn lane into the site.
- The NHDOT has asked for minor comments on their plan, for example, they would like to see a 12-foot right turn lane vs a 10 foot one.
- They have no inclination from NHDOT that they can’t move forward with more formal design documents.
- With the project in place and with the mitigation that will be in place they do not expect any adverse impacts due to traffic.

Mr. Monteiro returned to the floor to continue his presentation.

Mr. Monteiro said they meet this standard.

3. *No excess demand on municipal services including, but not limited to: water, sewer, waste*

196 *disposal, police, fire protection, and schools.*

- 197 • Mr. Monteiro commented that no excess demand will be placed on municipal services.
- 198 ○ There will be a private septic system located behind the site and will be approved
- 199 by the NHDES as part of the approval process.
- 200 ○ The applicant will contract with a private waste disposal company.
- 201 ○ They have a fire suppression system proposed for both of the fuel canopies. It's a
- 202 fully automated dry chemical extinguishing system.
- 203 ○ There would be no increase to the school system for a commercial entity.
- 204

205 Mr. Monteiro said they meet this standard.

206

207 4. *No hazard to the public or adjacent property on account of potential fire, explosion or release*

208 *of toxic materials.*

- 209 • They have a state-of-the-art fuel system proposed.
- 210 ○ Double-walled underground petroleum storage tanks, with double-walled piping
- 211 with fuel lines that run between the tanks, and several types of leak detection
- 212 equipment. He mentioned they are outlined in the handout "Proposed Fuel
- 213 System Components & Safety Features", dated August 30, 2021.
- 214 ○ Drainage: They are designing safety and treatment systems as part of the
- 215 stormwater system.
- 216 ▪ The design shows redundant features. The system is fully designed and
 - 217 has been submitted to the Planning Board.
 - 218 ▪ Any stormwater that runs off will go through several oil/water separator
 - 219 components and discharge into a line aboveground in a bioretention pond
 - 220 in the back. There are two (2) of them.
 - 221 ▪ The drainage system has been approved by the NH DES.
 - 222 ▪ In the retention ponds there are oil/water separators, underground there
 - 223 are two (2) chambered systems, deep sump catch basins, other oil
 - 224 removal devices, first offense systems that click inside each catch basin
 - 225 that trap potential oil.
 - 226 ▪ If any product flows beyond the catch basin they all come together through
 - 227 a water separator structure.
 - 228 ▪ There are two (2) oil/water separators are concrete tanks, a 3,500 and a
 - 229 1,500-gallon tank. These are sized based on DES criteria for containment.
 - 230 This is an additional capture point for a potential minor spillage that may
 - 231 occur in the fuel lines. If the containment didn't meet this warrant, that
 - 232 would flow into the lined bioretention ponds. If any contamination were to
 - 233 go past the redundant features, they would end up in this basin and it can
 - 234 be isolated and cleaned if necessary. The system is designed with a series
 - 235 of redundancies.
 - 236 ▪ With the aquifer zone and some of the standards that the Town has they
 - 237 need to provide tracers. They separate out the nonpetroleum fueling areas
 - 238 with the way the site is graded. For example, the roof runoff from the
 - 239 buildings and canopy is piped through differently. A lot goes into the design
 - 240 of the stormwater runoff.
- 241

242 Mr. Monteiro brought up as mentioned earlier by Mr. Bouchard, the ZBA did grant the special

243 exception in October 2021, under Article 201, that the proposed fueling components will not have

244 any adverse effect on the aquifer or the quality of the groundwater.

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Mr. Monteiro said they meet this standard.

- 5. *Notification of the hearing will be provided to the Planning Board, Conservation Commission and Board of Selectmen.* Mr. Monteiro noted that this has already been done.

Board comment(s):

Mr. Coffin asked once the oil/water is separated where does the oil & gas compounds go. Mr. Monteiro explained that they are stored in concrete chambers underground and any accumulated oil over time would float to the surface and during annual maintenance would get vacuumed out. Mr. Coffin brought up that there was a question at a hearing from a couple years ago whether the oil or gas materials were removed from the basins on the site, the Board was told no in a prior meeting that no oil or gas is brought offsite. He commented that the periodic maintenance of contaminants must have to be removed from the site. Mr. Monteiro explained that there is a typical schedule for ongoing maintenance assuming no spills. When it rains if there are minor drippage/spills, and they end up in the drainage system they want to capture them and remove them physically by vacuuming the structures. There would be an annual maintenance contract with a stormwater compliance company. The NH DES requires as plan as part of the submission process. In the winter catch basin sumps are designed to capture sediment and pumped out occasionally.

Attorney Bouchard read a sentence from the October 14, 2021 minutes in response to Mr. Coffin's question regarding where the oil & gas compounds go. *"She described the retention area materials. Asked what happens to oil in the catch basins, Ms. Duquette said that if it's just a film, it remains in the catch basins until they are maintained and vacuumed out."* Mr. Monteiro asked if this helped clarify his question. Mr. Coffin replied yes. He wanted to make sure that there was a system, and the oil/gas wasn't just put into retention ponds and allowed to evaporate, there has to be a way of removing it from the site. Mr. Monteiro said that there are extra design features incorporated into this site because of the aquifer situation and sensitivity of the location. Some of the redundancies are not required by the state, but they go above and beyond.

Mr. Russman asked if it was class B fire retardant. Mr. Monteiro explained that it is a dry chemical extinguisher that puts out a gasoline fire. They are proposing having this system at both the gas and diesel canopies. In the state of NH, it is not required to put in a fire suppression system in at a gas station. This applicant is proposing to put them in for safety and caution.

Mr. Coffin mentioned the items brought up that may not be done now, i.e., the maintenance procedures, emergency response systems will need to be developed. Mr. Monteiro said that some of this information has been provided to the Planning Board.

Mr. Broderick mentioned that they have other gas stations, and asked if there were any problems with leaks. Mr. Frawley explained that he is a petroleum distributor and supplies over 140 stations across New England. He is the Chairman on the Oil Fund Disbursement Board for the State of NH. He has been on the board for 27 years that manages underground storage tank leaks and these systems. With the systems today compared to gas stations that were built 20 years ago they see a diminishing amount of spills and leaks and issues because of the systems that Mr. Monteiro described. Problems they might see today are service spills and things from older gas stations. They see a diminished number of new gas station issues related to leaking underground storage tanks.

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295 Mr. Broderick referred to the GPI information on Proposed Fuel System Components & Safety
296 Features, dated August 30, 2021 and it says that the attendants need to be trained. There are 6
297 items on fuel dispersion, 7 on fuel storage systems and emergency preparedness and training. He
298 commented that because there was so much prevention and training are there any concerns. Mr.
299 Frawley said they do a lot of preventative maintenance and go above and beyond to protect the
300 environment.

301
302 Mr. Coffin brought up the DES 20-22 Preventing of Groundwater Contamination for gas stations
303 bulletin and read a section from it. *“Given the likelihood that UST systems will release gasoline*
304 *constituents commonly in the form of vapor leaks from underground piping systems or overfills of*
305 *the UST, vehicle tank or portable container and the possibility to spill fuel be carried off the fueling*
306 *area by stormwater.”* Mr. Coffin summarized this saying that the DES is saying that there is a
307 likelihood. Mr. Frawley commented there is a likelihood when you don’t include systems that are
308 included in the additional systems that are in this proposal.

309
310 Mr. Monteiro explained that everything is monitored electronically in the store. Every gallon of gas
311 that is delivered in the underground tank is reconciled with every gallon of gas that leaves the
312 facility. There are electronic sensors that will set off an alarm inside the store. Mr. Frawley said
313 that the alarm systems and electronic monitors can also be managed remotely, and they do not
314 just depend on the station operators. Ms. Kelley asked if a leak is found, how long and who
315 responds to these situations. Mr. Frawley explained that what typically happens is if the line finds
316 a leak, it shuts the line down. If a leak happens, the lines are double lined, and it could leak into
317 the outer line but still shuts it down. Then they have the ability to respond quickly with a
318 contractor. Fuel deliveries are shut down when 90% full and they are also measured with a stick.
319 Mr. Monteiro said that there is a monitor gage physically in the tank and they know exactly what
320 the volume is in the tank and how much it can take for additional fuel. Mr. Frawley explained that
321 the delivery trucks are 4 or 5 compartments and before another compartment is open the driver
322 verifies if another compartment can fit in the tank.

323
324 **Department comment(s):**

325 Evy Nathan, Chair of the Conservation Commission provided comments on behalf of the
326 Conservation Commission. *“In spite of our aquifer protection ordinance (201) which specifically*
327 *states that “subsurface storage of petroleum and other refined petroleum products is a prohibited*
328 *use of the land”, this project received a variance from the ZBA. This makes it incumbent upon every*
329 *town board to take responsibility for the protection of public health and general welfare of the*
330 *citizens and the environment by careful monitoring of each step, and every aspect of the project.*
331 *Since there will be potentially significant environmental effects, a monitoring and reporting program*
332 *for construction, and for any changes made to the plans, should be a prerequisite for the special*
333 *exception. In addition, this project certainly has regional impact.*

334 *Once the project is complete, the Conservation Commission would like to know who, or what entity,*
335 *will be responsible for monitoring the site for environmental safety measures and ensure that they*
336 *are being maintained and in working order going forward.*

337 *It should be a condition of the project to mitigate or avoid any significant effects to the environment.”*

338 Ms. Nathan asked who and where are the highly skilled contractors that handle any spills and how
339 soon can they get to the site. Mr. Frawley said they use Clean Harbors located regionally and have
340 a location in Portsmouth.

341 Mr. Coffin clarified Ms. Nathan the term variance mentioned in her comments and that it was a
342 special exception that was given by the Board in October, 2021. He explained that it is prohibited
343 now and was prohibited then, but special exceptions allowed for gas stations and that is how the
344 special exception came about. It was not a variance that was given.

345 Mr. Coffin said that a response plan and a quick response to spills needs to be assessed by
346 someone that has experienced in this field.

347 Mr. Rohulich asked if there has ever been any significant spills that have affected the ground water
348 at any of the stations, they are responsible for. Mr. Frawley replied, none and that there hasn't been
349 any in his history of being there. Mr. Rohulich commented that their concern is the aquifer.

350 Ms. Kelley asked Mr. Frawley how long he has been operating. Mr. Frawley said he has been
351 operating Summit Distributing for 16 years and has been in the petroleum business for over 40
352 years.

353 Mr. Coffin provided some comments from Dennis Quintal, Town Engineer. Mr. Quintal noted that
354 he is not a traffic expert and will differ to another engineer on that part of the review. A hydrologist
355 should review this, they will probably want monitoring wells around the site, and they can
356 recommend how many and placement. The plans show pavement drainage through Oil Separators
357 which are intended to capture surface oils and other contaminants before entering the stormwater
358 treatment structures. He sees no other obvious hazards proposed.

359 **Public comment(s):**

360 Public comment opened at 8:16 PM.

361
362 Christopher Swiniarski, Attorney with Devine Millimet representing CW Station, LLC who is a
363 direct abutter to the rear of the property.

364 Mr. Coffin asked Mr. Swiniarski to go over only comments that apply to the special
365 exception because some of the comments are for the Planning Board, and they cannot
366 address them at the ZBA.

- 367
- 368 • Mr. Swiniarski said that in order for the applicant to have his rights under the prior zoning
369 ordinance, that were amended on March 14, 2023, they had to have a plan on file, and it
370 had to be filed prior to the first public notice before the zoning amendment and had to
371 remain on file. He stated that this law is very clear and is outlined in RSA 676:12 . The
372 applicant voluntarily withdrew his plan.

373
374 Mr. Coffin spoke and said that Mr. Swiniarski was about to argue a case for the special exception
375 for the aquifer protection zone and that is not something the ZBA can answer. The Board is only
376 going to review the special exception request for C-II zoning.

- 377
- 378 • Mr. Swiniarski commented that the applicant did state earlier tonight that the other uses
379 are permitted by rights; the restaurant, the drive-thru, the convenience store. Mr. Coffin
380 explained that drive-thru is not a unique business and is being used as an adjective in this
381 case, it is a drive-thru window for a particular business. Mr. Swiniarski said they are not
382 accessory uses in the Town ordinance under section 109.5.D. Mr. Coffin said this is
383 something the Planning Board would take up and not the ZBA.
 - 384 • Mr. Swiniarski said that a convenience store is not an allowed use in the aquifer
385 protection district. That would require a conditional use permit. Mr. Coffin spoke and said

386 again that is something for the Planning Board. Mr. Swiniarski said that clarifying that is
387 not a by right use and that is what is being represented to this Board. He noted that a
388 restaurant is not permitted in the aquifer protection district by right, this also requires a
389 conditional use permit. The drive-thru window in the C-II district also requires a special
390 exception from the Planning Board, and also requires a variance from the ZBA in the
391 aquifer protection district.

- 392 • Self-service storage with petroleum and other refined petroleum products in the character
393 aquifer protection district is prohibited. A variance is required under section 201.E.4.
- 394 • The use or generation of hazardous materials greater than 25 gallons or regulated
395 substances in the aquifer protection district is prohibited. It requires a variance as
396 required by section 201.E.18. of the ordinance.
- 397 • Mr. Swiniarski explained that he is not saying these for the Board to take these matters
398 up, he brought them up to clarify a misrepresentation or a mistake that was made for the
399 record.
- 400 • Mr. Coffin asked Mr. Swiniarski to quote the rest of section 201.E.18 “except where
401 permitted in association with 14 and 17 above.” Mr. Coffin noted that #14 is Gas stations.
- 402 • Mr. Swiniarski pointed out that this is in the aquifer protection district and is the character
403 of the area, regardless of interpretation if a special exception is valid for this use.
- 404 • He referred to criteria #1 for special exceptions – whether the property values or the
405 essential characteristics are negatively impacted. He mentioned that the residents of the
406 Town specifically disallowed these uses to protect the essential character of this area. His
407 client’s property is a wholly natural farm, and a gas station use would be detrimental to
408 this business, its incompatible with the area.
- 409 • Mr. Swiniarski said that the Board has to follow the ordinance that it has and is going to
410 have to make a writ finding on why it is not seeing an impact on the gas station, on the
411 property values and essential character of the area.
- 412 • He mentioned that a traffic study is a criteria of the special exception.
- 413 • He referred to the 3rd question for special exception criteria, whether or not there is
414 demand on the municipal services. Pointed out in the Town’s ordinance section 207.8.E.,
415 requires a Fire Department approved Spill Prevention and Response Plan. The ordinance
416 requires that the plan be in place before approval, and that the fire department approve
417 that plan.
- 418 • 4th criteria for special exception – no hazard or release of toxic materials. Having a
419 qualified 3rd party consultant at the applicant’s expense to review this and possibly the
420 whole application would be important.
- 421 • 5th criteria – Legal notice must be sent to the Planning Board, Conservation Commission
422 and Board of Selectmen. This is a requirement for special exception applications. Not
423 sure if this was done but pointing it out.
- 424 • Mr. Swiniarski said that the applicant hasn’t provided any evidence that the 5 special
425 exception criteria have been met.

426
427 Mr. Swiniarski stated that he doesn’t believe it is possible for the Board to issue a decision
428 approving this special exception application that would withstand traditional scrutiny as a test of
429 truthfulness.

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431 Mr. Coffin mentioned that the Board will discuss the possibility of having a hydrogeologic study
432 done and possibly a traffic study.

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435 Phillip Coombs, 6 Little River Road –

- 436 • Mr. Coombs said that he was the owner of CW Station, LLC on the abutting
437 property.
- 438 • Mr. Coombs commented that he followed up with the previous Board and no one
439 had the qualifications to render a decision that this was safe for the surrounding
440 area. The decision was basically made on promises from the applicant.
- 441 • He pointed out some areas on the map that was provided from the applicant. There
442 are 2 streams. One stream runs right through his property and is fed by a spring and
443 feeds into the Little River.
- 444 • At the back of the property there is a 25-foot drop-off that used to be a gravel pit.
445 He owns 4 ponds, and this is the low point of the property. The property line is
446 about 1,465 ft. to the pond and the other is about half that. The upper level of water
447 has a predetermined channel down to the low point. Anything that happens on the
448 site is going to go to his property. He's put a lot of work into restoring the ponds,
449 stocking them with fish, plants for aquaponics, this is a direct part of his farm and
450 his livelihood.
- 451 • Mr. Coombs stated that the applicant cannot guarantee that this will not spill or
452 create a problem.
- 453 • Mr. Coombs commented that every gas station in the Town of Kingston has been
454 cited by the DES for a leaking tank. Most recent one was the Shell station in 2012.
- 455 • He said we are taking a risk by putting a toxic substance (Benzine, gasoline or
456 diesel) in our water.
- 457 • The Town has more water reserves than any other surrounding community in all of
458 New England.
- 459 • There's a reason why 70% of the people in Town supported in March, 2023 to
460 remove gas stations from the aquifer. They do not want the risk. If the risk is not
461 zero, then it is a risk that is not worth taking.
- 462 • Mr. Coombs asked what storm year this was built for. We are getting 25-50 year
463 storms every 5 to 6 years.
- 464 • On the plans that he saw there were no snow storage plans. Where is all the stuff
465 that is scraped up on the ground going to go? Will it be treated?
- 466 • Regarding the monitor of levels of gas, gas expands and contracts with ambient
467 temperature, so monitoring an exact amount of what goes in and out on a daily
468 basis is not 100% accurate.
- 469 • Mr. Coombs commented on the detriment of property values. Besides the obvious
470 of a spill that will affect his livelihood, there is the hours, the Town does not have
471 the capability to monitor a project like this effectively. Can put all the rules,
472 regulations and conditions on there but unless they are going to be followed, they
473 are worthless.

474 Mr. Coombs emphasized that this is too much of a risk for our Town.

475
476 Doug Finan, Town of Brentwood, NH Planning Board member and Economic Development
477 Committee member -

- 478 • Mr. Finan mentioned that normally it is a hardship that is involved to ask for a
479 special exception. The only hardship he does see is there is an aquifer there
480 and if there is leakage and there is not 100% guarantee, then the hardship will
481 be with the residents of the Town.
- 482 • If it is decided that there is going to be an independent third part consultant, he
483 recommended Danna Truslow, PG of Truslow Resource Consulting, LLC.

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- Mr. Finan asked for clarification on the special exception that was already approved. Mr. Coffin explained that the special exception that was granted was for the aquifer protection zone. This special exception application is for Commercial Zone II and that gas stations are only permitted in C-III. This application does have the requirement that it be evaluated for the harm to the environment.
 - Mr. Finan mentioned that although all the materials will be new now, they will become old. Everything is manmade with a life and at the end of the life we do not know what the potential may be for any leakage into the aquifer.

494 Steve Kent, 9 Bluebird Lane -

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- His property is located close to the site.
 - Concerns about the noise impact, increased lighting and impacts to property values. If there is a leak it is going to affect his property value.
 - Heavy construction vehicles during construction. What type of containment will there be for the fuel and oil. This is an item that usually gets addressed at the Planning Board.
 - There are no guarantees that property values won't go down.
 - Is it necessary to put a gas station there. Consider the citizens of this Town.

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504 Virginia Morse, 188 Main Street –

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- Brought up the water and how it moves in the Town. There are natural drainages on our properties. Snow storage and the water needs to go somewhere. Check the snow water storage and make sure it does not impact the aquifer.
 - Lot coverage is a Planning Board issue. Wanted to bring up and caution here, that what is being talked about is the land around the site. In this area the lot coverage for imperviable material can be no more than 35% for recharge. Retention pond is not a recharge area, specifically it is contained and does not recharge the surface water. Check carefully for the lot coverage, no more than 35% recharge.

516 Mr. Coffin mentioned it was brought up that the fire ponds are lined so if they had a spillage, they

517 would not leach into the ground. In aquifer protection zone B. Mr. Coffin referred to Ms. Morse's

518 comment and mentioned 35% increased up to 60% recharge systems.

519

520 Mr. Monteiro said there is snow storage area on the plan. There are 4 different ponds on the

521 proposed site. Two are bioretention ponds with liners that no not infiltrate. Because of the

522 requirement to recharge the groundwater, there are 2 additional ponds that do recharge

523 groundwater to meet the requirements. All these calculations are in the stormwater report that is

524 filed with the Planning Board.

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526 Jocelyn Lavoie, 17 Castle Court –

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- Ms. Lavoie brought up there was mentioned of a traffic light that will go in at 107 and 125 intersection. If the project at 266 Rte. 125 does not happen, who will be responsible for the traffic light.

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531 Mr. Coffin said this is something that is dealt with the state DOT and the traffic study. The

532 widening of the lanes is the responsibility of this applicant.

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- Ms. Lavoie had concerns about the operating hours. Mr. Coffin explained that this is something that would get handled during the Planning Board review process. This is not one of the criteria that the Board is evaluating tonight.
 - She brought up light and noise pollution and air quality. Are these something this Board addresses. Mr. Coffin said that these are something they would have to satisfy.
 - Traffic concerns. Mr. Coffin explained this is handled primarily by the DOT.

542 Pam Brown, 23 Sunshine –

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- Supportive of economic development but concerned about gas stations and the Town's aquifer because it is very valuable. She is strongly opposed to this application.

547 Attorney Bouchard –

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- The ordinance did not require a traffic study. It was required for the special exception for the aquifer protection criteria. If the Planning Board wants to hire someone to analysis this, they may be better suited to analyze the data.
 - There is no hardship here, this is not a variance.
 - Mr. Bouchard listed many businesses that are permitted in the C-II zone.
 - When talking about noise and light, this is a commercial zone.
 - He explained that the only thing here that requires a special exception is the gas station component.
 - He mentioned that this Board did already determine that this did not have an adverse effect on the aquifer and the Superior Court has already upheld this decision too.

560 Mr. Coffin pointed out that the Town does have a lighting and noise ordinance that would have to
561 be complied with. It applies more to the use of the abutter and not the zone of the abutter. Mr.
562 Bouchard said that they fully intend to follow the light and noise ordinances.

563
564 Mr. Coffin explained to the Board that they can decide on what professional reviews they may
565 want to have, if they want any at all. He commented, does the Board have enough information to
566 vote and go through the criteria for special exception in the C-II zone.

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568 Muriel Ingalls, 100 Main Street –

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- Ms. Ingalls said she is not an abutter but is a loyal Kingston resident.
 - She doesn't hear any concrete evidence only opinions. She is concerned about traveling on Church St. and going up Rte. 125. Over the years, a lot of accidents have occurred in this location. The traffic impact on Rte. 125 is going to be huge.
 - This project is an insult to the character of Kingston. What good is this going to bring to the Town of Kingston.

576 Public comment ended at 9:20 PM.

577
578 **Board discussion:**

579 Mr. Coffin explained that the Board is obligated to collect facts so they can make an informed
580 decision. Should a third-party consultant(s) be hired to provide an analysis of the information that
581 has been provided.

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584 Mr. Broderick asked if the state DOT has already done an analysis of the traffic. Ms. Monticup
585 mentioned that the traffic, district office, NHDOT highway have submitted comments on the
586 project. Mr. Coffin explained it would have to go through the Planning stage before they start on it.
587 Ms. Monticup said that they are conceptually through NHDOT.

588
589 Mr. Broderick raised the question that doesn't the fire department have to inspect for fire safety.
590 Would this be redundant to have a third party do an analysis of this. Mr. Coffin said that it is part of
591 their ordinance and that it be completed before approval. In this case it is access to municipal
592 services. It doesn't state there has to be a fire plan approved. He suggest that this goes into the
593 Planning process.

594
595 Mr. Bache commented that the number one priority should be protecting the aquifer and a
596 hydrologist study is very important and if the Board is going to allocate any resources it should be
597 to address this first. Mr. Coffin noted that the Board can request any analysis study that they need
598 in order to reach a decision based on fact.

599
600 **MOTION:** by Mr. Broderick to request a hydrology review of the applicant's proposal by a
601 hydrogeologist.

602 **SECOND:** by Mr. Coffin

603 Board discussion:

604 The Board discussed if a hydrology study or a hydrogeologic study is needed at this time. Ms.
605 Kelley asked for clarification on the difference between the two types. Mr. Coffin referred the
606 question to Mr. Monteiro. Mr. Monteiro explained that hydrology is a drainage study (i.e., surface
607 flow) and hydrogeologic is underground, this would be aquifer. Mr. Coffin mentioned that having a
608 hydrogeologic study was discussed at a prior meeting and that the Planning Board would be
609 better suited to request this if they felt it was necessary. Mr. Monteiro said that the Board already
610 made this a condition on the last Notice of Decision. Mr. Monteiro believes the Board is talking
611 about surface runoff drainage issues.

612
613 Mr. Coffin mentioned that Danna Truslow, Resources Consulting LLC could do this study.
614 Mr. Broderick noted that the underlying concern is the water so getting the answers from an
615 expert will help the Board be able to make a more informed decision regarding the C-II ordinance,
616 Article 109.7, Special Exceptions, A.1.

617 **A vote was taken, all were in Favor, the motion passed (5-0-0).**

618
619 **MOTION:** by Mr. Russman to have an engineering review of the hazards listed in item #4 of
620 the special exception criteria.

621 **SECOND:** by Ms. Kelley

622 Board discussion:

623 The Board discussed item #4 on the special exception criteria and should a consultant be hired to
624 do a further review. Mr. Broderick spoke in opposition to this because the Town has a fire
625 department and hazmat people, and this is redundant. We already have experts that are going to
626 make sure this is done before the place is built and doesn't believe that this should be an incurred
627 expense before the place is allowed to open. Ms. Kelley said more information is needed for the
628 Board to make a decision based on fact.

629 **A vote was taken, 4 in favor, 1 opposed (Mr. Broderick), the motion passed (4-1-0).**

630

631 **MOTION:** by Ms. Kelley **to have the applicant's traffic study analyzed by a third party.**
632 **SECOND:** by Mr. Rohulich
633 Board discussion:
634 The Board discussed that additional information is needed on this to make an informed decision to
635 make a determination on the C-II ordinance, Article 109.7, Special Exceptions, A.2.
636 **A vote was taken, 4 in favor, 1 opposed (Mr. Broderick), the motion passed (4-1-0).**
637

638 **MOTION:** by Mr. Broderick **to establish an escrow account for and analysis and the review**
639 **the traffic, hydrology, and engineering for fire and hazards in the amount of \$10,000 and**
640 **subject to actual proposal.**

641 **SECOND:** by Ms. Kelley

642 Board discussion:

643 Mr. Coffin commented that bear in mind if this amount is insufficient, they could ask for more from
644 the applicant. Mr. Frawley questioned that if more than the \$10,000 is needed then they can
645 decide to be done. Mr. Coffin said that yes, they can decide to withdraw their application, or the
646 Board may vote on the information that they have received and that there is a number of things
647 that could be done.

648 **A vote was taken, all were in Favor, the motion passed (5-0-0).**
649

650 Mr. Coffin mentioned that there is a state law now that requires the Board to make a decision
651 within 90 days. The Town's procedure is to have a public hearing within 45 days of the
652 application.
653

654 **MOTION:** by Mr. Coffin **to continue Summit Distributing, LLC public hearing to 7:00 PM on**
655 **July 13, 2023 at the Kingston Town Hall.**

656 **SECOND:** by Ms. Kelley

657 **A vote was taken, all were in Favor, the motion passed (5-0-0).**
658

659 Mr. Coffin explained that there will not be another notice in the paper and abutters will not receive
660 another notice in the mail. The public is advised that this is the notice to continue for this hearing.
661 **The Summit Distributing, LLC public hearing will begin at 7:00 PM on July 13, 2023 at 163**
662 **Main Street, Kingston, 2nd floor of the Town Hall.** A notice will be posted on the Town, ZBA
663 website and will be posted downstairs at the Town Hall.
664

665 *<Board note: hearing closed at 10:04 PM>*
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667 **ADJOURNMENT**

668 Meeting adjourned at 10:05 PM.