



KINGSTON ZONING BOARD OF ADJUSTMENT

July 13, 2017

Present:

Ray Donald
Chuck Hart
Peter Coffin
Richard Johnson
Larry Greenbaum
Tammy Bakie

Vice-Chairperson Ray Donald called the meeting to order at 7:05.

Board Business –

Minutes of May 11, 2017 Approval – Mr. Hart motion to approve, Mr. Greenbaum seconded. Mr. Coffin stated he would like to change Ms. Alessio's comment to read "discussed a compromise". The motion carried unanimously.

Public Hearings

**Wayne Pelton
26 Serino Way
Saugus, Maine 01906**

**RE: 54 Church Street
Tax Map R-33, Lot 20**

Mr. Serino stated he has a hot-dog business and wants to expand. Mr. Serino stated he currently rents property for his business near where he lives. Mr. Donald noted that a hot dog was not specifically allowed at the location. Mr. Dan Mills 52 Church Street, asked about a building with plumbing and what that would mean in the future. Mr. Mills stated the property was in his back yard and he was just looking to protect himself. Mr. Donald explained that if a variance was granted it would only be for this purpose and if the property were sold the new owner would have to come before the board and the applicant would have to go before the Planning Board. Mr. Heitz stated that he was the owner of the property and rural residential use to be open to any type of business. Mr. Heitz stated the town did not have a business district and a new zone was created – CII. Mr. Heitz stated all surrounding lots were being used for commercial activity. Mr. Heitz stated it was his understanding that anything that was allowed in the Plaza would be allowed on this property. Mr. Coffin asked why 3 particular uses were excluded, Mr. Heitz did not know why when the Plaza had a Chinese restaurant, a sandwich shop and a bar and grill. Again Mr. Heitz stated anything allowed in the plaza would be allowed on the property. Mr. Greenbaum asked about the 30 x 30 building. Mr. Donald stated the board should not discuss setbacks only whether the

business was allowed. Mr. Hart asked the applicant what he planned to use the building for. Mr. Pelton stated he needed storage for dry goods, landscaping equipment and the cart itself. Mr. Donald stated the board did not have enough information to grant a variance for a shed. A discussion followed regarding the shed size, location ... not being the boards prevue. Mr. Pelton agreed he was there to get a variance to allow the business. Mr. Coffin stated the applicant would need to go before the Planning Board for site plan review and noted that commercial set backs were different. A discussion followed whether a special exception or variance would be needed. Mr. Pelton stated the building would be immaterial if the business was not allowed. Mr. Johnson stated he had tried to have a hot dog cart a couple years ago and was told he needed numerous requirements. Mr. Donald stated the only thing the board could rule on is whether it was okay to have a hot dog cart all other requirements were out of the board's purview. **A vote was taken on a variance to allow a hot dog cart.** All five criteria passed. Mr. Coffin made a motion to allow the use of a hot dog cart at 54 Church Street and the applicant would have to appear before the Planning Board and obtain all permits from the building inspector. Mr. Hart seconded, all in favor. Mr. Donald explained the 30 day appeal period.

**Robert Kalil
24 Chase Island Road
Atkinson, NH 03811**

**John Crosby
19 Page Road
Kingston, NH 03848
Tax Map R-22, Lot 32**

Attorney Patricia DiMeo stated neither she nor her client received a copy of the decision from the last hearing and surmised it was because a three family unit was informally discussed. A copy of the decision was provided to both Attorney DiMeo and Mr. Kalil. Mr. Coffin stated he was confused by the application because there is no provision for a special exception to *Article 102.6 as requested, nor 104.5. Section J.* Attorney DiMeo disagreed and stated that was an interpretation of the statute. A discussion followed regarding requirements. Attorney DiMeo stated she wanted to amend the request to *104.4.J1* and spoke at length about a building versus use of a building as it related to the five criteria. Mr. Donald stated "G" of the criteria states it must comply with all other ordinance and a 4 apartment building does not belong in a 2 family area. Attorney DiMeo stated okay I guess we're done here. Mr. Greenbaum stated that Mr. Donald was only one vote and was expressing his opinion. Attorney DiMeo stated she was talking about structure and dwelling as it applies to uses to allow what is now a 4 family to become a 3 family. Attorney DiMeo requested a special exception for a single family with 2 accessory apartments. Attorney DiMeo stated she had given the board 2 options to do it. Mr. Coffin stated the application is to 206.A purposes and objectives. Mr. Greenbaum asked if it should be 206.4. Mr. Coffin stated a special exception only applies to single family residential and only allows a maximum of 2 units. A discussion followed regarding special exception versus 2 family units. Mr. Coffin stated ADU by special exception is specifically prohibited in a multi-family structure (206.4.A.1). Attorney DiMeo stated the board's purpose is to make adjustments to ordinances and that they were trying to fix an illegal apartment and make it legal. Attorney DiMeo stated the courts could decide, they were trying to be reasonable but did not know what else to apply for. Attorney DiMeo urged the board to vote. A discussion followed regarding how to proceed with voting. Mr. Coffin stated all 11 criteria could be discussed but the very first one states that it does not qualify for a special exception. Mr. Coffin stated if something is prohibited a variance is needed, a request for a variance was not requested or posted. Mr. Greenbaum asked if the board could discuss granting a variance. Mr. Coffin stated the applicant is asking for a special exception. **The Board did not vote on a Special Exception to Article 206** The Board returned to the request for a Special Exception to Article 104.4 Section J. Mr. Coffin said that in order for the Board to use the Special

Exception criteria found in Article 104.5.J, the Board would have to agree that these criteria were intended to have included Article 104.4, and suggested the Board vote on that matter. The Chair said that the Board did not need to separately vote on the intent of the ordinance and called for a motion for a Special Exception to Article 104.4.J. Mr. Hart made a motion to grant a special exception to allow a family unit at 19 Page. Mr. Coffin stated **to vote on the five** criteria in **104.5.J** for structure and dwelling. Mr. Johnson seconded the motion. Mr. Donald stated Attorney DiMeo had gone over each of the criteria, and the Board did not need to vote on each one. A single vote was taken on the motion to grant the Special Exception, and it passed with four yeas and one nay. All five criterial passed. Attorney DiMeo withdrew the second request for a Special Exception to Article 206. Mr. Coffin stated formal site plan review by the Planning Board is required by Article 104.

Meeting adjourned at 8:25

Respectfully submitted,

Tammy Bakie