



KINGSTON ZONING BOARD OF ADJUSTMENT

May 11, 2017

Present:

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

Chairperson Electra Alessio called the meeting to order at 7:00.

Board Business – Vice Chairperson Donald motioned to elect Ms. Alessio as Chairman, Mr. Hart seconded. The motion carried unanimously.

Mr. Coffin motioned to elect Mr. Donald as Vice Chair, Mr. Greenbaum seconded. The motion carried unanimously.

Minutes of March 8, 2017 Approval – Mr. Donald motion to approve, Mr. Greenbaum seconded. The motion carried unanimously.

Public Hearings

Robert Kalil
24 Chase Island Road
Atkinson, NH 03811

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

Ms. Alessio asked Mr. Robert Kalil and his Attorney Patricia DiMeo if they were requesting a re-hearing. Attorney DiMeo stated that was her understanding. Ms. Alessio stated the board would need to vote on the Appeal from an Administrative Decision because both the appeal and the re-hearing were noticed. A discussion followed regarding the Appeal from an Administrative Hearing versus a Re-hearing. Attorney DiMeo withdrew the Appeal from an Administrative Decision. Attorney DiMeo requested a copy of the voting sheets from the December 8th meeting and the minutes from the January 11th meeting. Ms. Alessio stated the minutes should reflect that the applicant should have asked for a Re-hearing. Attorney DiMeo asked again about the minutes from December 8th and the explanation of why the 5 criteria failed. Ms. Alessio explained the process. Attorney DiMeo went through a history of the property referring to a worksheet created by a prior building inspector. Attorney DiMeo stated agents of the town were aware of

the apartments and acknowledged that it was not always pleasant dealing with the property owner. Attorney DiMeo stated the property owner never received a cease and desist notice. Attorney DiMeo acknowledged that the property owner sent a letter to the town to keep officials off the property but town officials did go on the property both inside and out. Attorney DiMeo spoke about decisions had to be based on the criteria and spoke about decisions in the Simplex case and other cases. Attorney DiMeo described where the property was located and the abutting properties. Attorney DiMeo stated 4 apartments were a reasonable use and they had been there for 20 years. Ms. Alessio stated it was zoned for 2 family rural residential. Attorney DiMeo stated the town ordinances allow for a duplex or an apartment with a family member. Ms. Alessio stated there is no longer that restriction. Attorney DiMeo stated nowhere is multifamily allowed. Ms. Alessio stated there were many legal multifamily apartments in Kingston. Attorney DiMeo spoke about the lack of affordable workplace housing and the spirit of the ordinance. Attorney DiMeo spoke of abutting properties values and there being no diminution of property values. Mr. Kalil added that he would clean up the property. Attorney DiMeo stated that there was no basis for the board proclaiming there would be no benefit to public interest and no basis for why criteria failed. Attorney DiMeo reiterated the December 8th hearing was held without the petitioner present and no reason was given for why the criteria failed. Attorney DiMeo again reiterated the property has been multifamily for 20 years and no town agent took any action, a cease and desist was not issued nor did the property owner receive a letter saying the apartments were illegal. Attorney DiMeo spoke of the Doctrine of Laches based on action or lack thereof. Attorney DiMeo stated this was a huge violation of Mr. Crosby's constitutional rights as a home/land owner. Attorney DiMeo asked what the remedy would be would the town request the house be torn down. Attorney DiMeo asked the board to grant the variance and the applicant would make the property look nice and go before the Planning Board and acquire all necessary permits. Mr. Donald thanked Mr. Kalil for the walk through of the property. Mr. Donald spoke about code enforcement and how permitting works for sheds etc. and stated the health officer is not responsible for counting units and building inspector is not a code officer. Mr. Donald stated that if a variance is not granted the property owner may expect legal action. Mr. Donald stated the board voted on criteria based on personal opinion and information provided by applicant. Mr. Donald stated the property owner is responsible for complying with ordinances and owner obviously knew he was doing something wrong. Mr. Coffin stated it was the applicant's burden to prove it was in the public's interest. Mr. Coffin stated he did not believe the property owner had suffered any financial loss and if the Mr. Crosby was taxed unfairly he could apply for abatement. Ms. Alessio stated two letters were presented at the site walk: one allowing the board to go on to property and one a limited Power of Attorney for Mr. Kalil. Mr. Coffin asked if Mr. Crosby had suffered any loss. Attorney DiMeo stated no. Mr. Coffin stated the town notified the property owner that he was not in compliance but did not act on it. Attorney DiMeo stated the town hasn't done anything about the home being a multi-family unit and Mr. Crosby can't sell the property as it is. Mr. Coffin stated the zoning ordinance was in effect when Mr. Crosby built apartments. Building Inspector Robert Steward stated the fact that Mr. Crosby pulled a permit to change from one unit to two then did not from two to three or three to four speaks volumes. Mr. Steward stated that Mr. Kalil brought it to his attention and when he looked into the property he found there were no building permits, electrical permits or plumbing permits. Mr. Kalil spoke about his first encounter with the Building Inspector. Mr. Steward stated no one is objection to the apartment being there but that they are illegal. Mr. Kalil stated they had received code violations from the Fire Department and the electrical inspector has been inside. Mr. Steward stated he was comfortable with a two family home in a two family neighborhood. Ms. Alessio asked why Mr. Crosby can't sell. Mr. Greenbaum stated it was listed as a 2 family. Ms. Alessio stated people come before the board for exceptions to rules and the board tries to get as close to regulation as possible. Ms. Alessio stated the intent of ordinance is for a two family. Ms. Alessio offered a compromise of a three family only until the occupant of the third smaller studio apartment no longer resided there and then it would revert to a two family. Ms. Alessio stated the sale price being the value of the land and that Mr. Crosby had not suffered any hardship collecting the amount charged for rents. Mr. Kalil stated that Mr. Crosby put all his money back into the property and the situation was not fair to him. Ms. Alessio stated he could not paint Mr. Crosby as a victim. Attorney DiMeo stated the town can't assume Mr. Crosby knew he needed a permit. Mr. Donald stated he got a permit for other buildings on the property. Mr.

Hart stated there was a lot of history and there are two illegal properties with people living in them, he would hate to see the families moved out. Mr. Hart stated it was zoned for two family and if variance is granted it would set precedence. Mr. Hart stated it is illegal apartments and the town knew it; something should have been done many years ago. Mr. Hart also stated the town has a significant amount of apartments in town above state criteria. Mr. Coffin stated it is the intent of the zoning ordinances to limit to two family and it's the board job to enforce the ordinances. Mr. Coffin explained the process to change the ordinance. Mr. Greenbaum noted that the chairperson made an offer of compromise and asked if there was a response. Attorney DiMeo stated that granting variance does not set a precedence and disagrees with that argument, stating if they go to Superior Court it will open the flood gates of legal action. A discussion followed regarding the sale and square footage of the studio apartment it was agreed that this was not germane. Mr. Coffin stated the intent of the ordinance is very clear whether one agrees with it or not, four apartments are not allowed. Mr. Greenbaum would vote as there were two alternates present.

Ms. Alessio read each of the five criteria and each were discussed. 1) Mr. Coffin stated could not consider whether it would look nicer or not. Attorney DiMeo read a statement from Berkshire Hathaway who had completed a market analysis on the property. 2) Ms. Alessio stated it will not be a benefit. Mr. Coffin asked about more affordable housing, Ms. Alessio stated neighbors may not think so and there would be no benefit to the public. 3) Ms. Alessio stated it would not create a hardship all properties can be sold and can adjust rents to align with number of apartments. Mr. Coffin stated the ordinance was not restrictive. Mr. Donald stated this was not about the condition of the building. 4) Mr. Donald stated if variance was granted it would double what was allowed by the ordinance. Ms. Alessio stated there were other areas in town where a multi-family can be placed. 5) Mr. Coffin stated this was addressed previously and was explicitly stated. Mr. Donald stated it was totally in conflict. Ms. Alessio state all 5 criteria must pass. Mr. Donald spoke about decision being based on personal knowledge. Only the first criteria passed; all others failed. Ms. Alessio stated that all 5 did not pass. Mr. Donald made a motion to deny the request Mr. Hart seconded all in favor.

Meeting adjourned at 8:45

Respectfully submitted,

Tammy Bakie