

**ZONING BOARD OF ADJUSTMENT
KINGSTON, NH**

**August 8, 2019
Public Hearing**

The Chairperson called the hearing to order at 7:00 PM.

Members in attendance:

Electra Alessio, Chairperson
Peter Coffin
Charles Hart, alternate

Larry Greenbaum
Jackie Leone

Absent Members: Richard Johnson

Also present: Phil Coomps, Board of Selectmen; Glenn Coppelman, Planning Board Chair;
Ellen Faulconer, Administrative Assistant/Planning Board, PB Alternate

Ms. Alessio introduced the Board members; she announced that Mr. Hart would be a voting member due to Mr. Johnson's absence.

MM&S to accept the July 13, 2019 minutes as presented. (Motion by Mr. Hart, second by Mr. Coffin) **PUNA** (passed unanimously)

Ms. Alessio passed out copies of the "draft" by-laws for the Board; she stated that they were modeled after the ones used by the Planning Board with modifications; these will be taken up by the Board during the September hearing. Ms. Alessio added that if there were no hearings scheduled for September, the by-laws will be delayed to the October hearing. She suggested that if the Board members had any questions, they should contact her directly or simply wait until the next meeting. Ms. Alessio said that she would send them out to the Board electronically. Mr. Coffin cautioned the Board members to send comments just to the Chair and not send out through a "reply all" due to the right-to-know law requirements. Ms. Alessio added that the information regarding ZBA's, provided by the State, was also used in preparing the draft by-laws.

**James Dufresne
Diamond Oaks Golf Club, LLC
PO Box 175
Plaistow, NH 03805**

**Re: #7 Route 125
Kingston, NH
Tax Map R3 Lot 4 and 4 Land Unit 3**

Ms. Alessio read the public notice whereby the applicant is seeking a variance to Article 110 and to permit conversion of the second floor to apartments; the notice continues that this is a re-hearing per a decision by the ZBA on April 11, 2019.

Ms. Alessio stated that she had received a request from the applicant, through the project engineer Charlie Zilch, requesting a continuance and additional information changing the initial request from apartments to condominiums; condominium documents were included.

Ms. Alessio explained that, through multiple emails, she had felt that this was a change in the original notice and needed a re-posting. She read a memo, dated August 8, 2019, received from the town's Planner, Glenn Greenwood, into the record; it explained the need for the re-hearing. Ms. Alessio stated that she agreed with Mr. Greenwood and there was a need to notify the public. She continued that this was different from something that might be able to evolve at the Planning Board level; this was a specific request to the ZBA and those requests should be specifically noticed to the public. She stated that she would defer to the Board's decision. Mr. Dufresne explained that the adding in condominiums was to be able to guarantee that the housing would only be for veterans. Mr. Greenbaum said that this was an issue for the Selectmen. Mr. Hart said the choice would be to either grant a straight continuance to the September hearing or require that the applicant re-apply due to the new information and would be on the September hearing. There was discussion about possibilities that included the applicant withdrawing the initial application and applying, with abutter notification, for September; continuing the initial hearing based on the request for the continuance or continuing to September with the change to the condo. request without additional notice. Ms. Alessio noted that the legal notice used the word "apartment"; a "condominium" is a subdivision and was not in the notice. Mr. Greenbaum stated that the variance request is from 1000 ft. to 700 ft. Ms. Leone asked why the Chairperson is cautioning the Board; she noted the Planner's comments. She continued that there had been concerns raised about guaranteeing that the housing would go to veterans over 55 and by creating condos there could be restrictions that would satisfy the concerns which is the purpose of making them condos. She suggested that the Board could vote to continue the hearing and put a caveat to go back to the Planning Board to look at the condo. docs. Ms. Alessio stated that it would be up to the Planning Board to fine-tune the condo. docs; the way the Planner reads the zoning for the commercial zone, it is not allowed in the zone.

Mr. Coffin said that the Board of Selectmen (BOS) had more to say about the Board's decision than just restrictions for veterans; he said there had also been concerns that the ZBA did not adequately address the required criteria to grant the variance. He stated that the notice issue had gotten complicated and suggested going for legal advice. He said that the condo. docs. may need to go to a new hearing.

Phil Coombs, the Selectmen's representative, addressed the Board. He stated that there are a few issues being raised by the BOS; one was the five criteria required to be met to grant a variance which was not met by the application. He said that the applicant went to the Planning Board with a plan for apartments which was denied; the request for condominiums can't be heard by the ZBA for a variance as it was outside of the scope of the original denial. Mr. Coffin said the

the re-hearing was granted by the ZBA; the re-hearing request wasn't specified that it was just for the 1000 ft. setback and the vagueness of the conditions regarding use. He added that the key reason for the re-hearing vote were the issues mentioned by Mr. Coombs. Ms. Alessio agreed that the vote for the re-hearing included more than just the 1000 ft. issue. There was continued discussion regarding the condo. docs., veterans, deed restrictions. Ms. Faulconer noted that the initial request and granting of the re-hearing had nothing to do with condo. docs.

Ms. Alessio suggested contacting Town Counsel regarding the re-posting issue. Mr. Hart agreed to put it out for legal review and add it to September, continuing the hearing until September pending legal advice. Mr. Coffin clarified that the legal advice would need to be received soon to clarify the notice issue in time for the September hearing. Ms. Alessio agreed. Mr. Greenbaum asked why the Board was accepting an application for apartments and condos. when the variance is just for residential use. Ms. Alessio answered that there are ancillary regulations. Mr. Greenbaum questioned if the ZBA denied the continuation then the sole remedy would be for the applicant to re-apply adding that if that was the case he would vote in favor of the application. Ms. Faulconer reminded Mr. Greenbaum that the hearing hadn't been held yet. Ms. Alessio noted that the Board would have to hold the hearing prior to his voting for it. Mr. Dufresne asked who the Board's attorney was; Ms. Alessio answered Peter Loughlin. Mr. Greenbaum stated that he made his position clear; if the applicant needed to withdraw, he would make a motion to grant the hearing. Mr. Dufresne said that he would agree with whatever Attorney Loughlin recommended. Ms. Alessio added that the neighbors need to know what the Board is voting on.

MM&S that the Board directed the Chairperson to contact legal counsel to review the matter at hand (regarding notice); continue this re-hearing to September 12, 2019 pending that information. (Motion by Mr. Coffin, second by Mr. Hart) PUNA

Southern District YMCA/Camp Lincoln
67 Ball Road
Tax Map R25 Lot 3

Peter Coffin questioned whether he should recuse himself; if this was a procedural issue, he could sit. He decided to remain on the Board pending the progression of the discussion.

George Fredette, SFC Engineering, and Alex Turet, YMCA, introduced themselves to the Board representing the applicant. Mr. Fredette stated that they are asking for a re-hearing as they believe the jurisdiction of the issue is with the ZBA. He reviewed the actions up to this point; he stated that the ZBA denied the administrative appeal because Camp Lincoln with to the Planning Board asking for a denial to get to the ZBA; he said there had been questions about the lapse in overnight accommodations and questions of safety; he noted the possibility of going to the BOS for permits for special events for this summer.

Board note: Mr. Coffin recused himself at this point as the merits of the decision were being discussed, not the procedural issues regarding a re-hearing. Ms. Alessio noted that now only 4

people would be voting; the applicant can ask for a delay to be able to have 5 people present. The applicant agreed to continue the deliberations.

Mr. Fredette stated that the YMCA asked for a denial, the Planning Board rendered the denial request; he stated that they didn't want a denial. He stated that it wasn't a proposal for overnight camping; they stated that they are not proposing to do anything new and they got a letter to go to the ZBA but they don't agree with what happened. Mr. Fredette started to discuss events that happened 40-50 years ago. Ms. Alessio said that the ZBA is not debating the merits at this time, this is a request for a re-hearing. Mr. Fredette stated that they have never stopped overnight use. Ms. Alessio that when the YMCA came to add 2 cabins they clearly said that it had no overnight use. Mr. Fredette agreed but only for those 2 cabins. He would like to have them grant the re-hearing to spell it out more clearly. Ms. Alessio said that she would like Attorney Loughlin's advice about this. The Board agreed. Mr. Fredette said that Ms. Alessio had a solid understanding of the issue. There were suggestions for combined hearings with the Planning Board and ZBA. There were questions regarding the ability to have the information prior to the next hearing. Mr. Fredette had no problem with waiting an additional month.

MM&S to grant the re-hearing to the October 10th hearing at 7:00 PM. (Motion by Mr. Greenbaum, second by Ms. Leone) Discussion: Ms. Alessio will contact Mr. Fredette for any other dates/hearings.

Mr. Coppelman, Chairman of the Planning Board, as a point of clarification, stated that if there was a joint hearing at the request of an applicant, it required legal notification; needs to be duly noticed. Ms. Faulconer said that usually there would need to be a project before both Boards to have a joint meeting; there is currently nothing before the Planning Board for this applicant at this time; she suggested contacting legal council about this. Mr. Fredette said that Mr. Coppelman suggested that, at an applicant's request, the Planning Board can call a meeting. Ms. Faulconer explained that the Planning Board can't have a hearing on a specific parcel for a specific use without notifying abutters and there is currently nothing before the Planning Board at this time. She suggested, rather than go back and forth and guess, contacting legal counsel for advice. Ms. Alessio said that idea sounded good and she'll take the lead.

Vote on the Motion: **PUNA**

MM&S to adjourn at 7:55 PM. (Motion by Mr. Greenbaum, second by Mr. Hart) **PUNA**

Respectfully submitted,

Ellen Faulconer

Temporary Board Secretary