

**Zoning Board of Adjustment
Town of Kingston, New Hampshire
FINAL Minutes – January 9, 2020**

PRESENT:

Electra Alessio, Chair; Larry Greenbaum, Vice Chair; Peter Coffin, Member; Charles Hart, Ben Romano, Richard Johnson, Alternate Members

Chairman Alessio called the meeting to order at 7:00 PM.

BOARD BUSINESS

Approval of Meeting Minutes:

MOTION: by Mr. Coffin to approve the minutes of December 12, 2019 as written, with one amendment, the addition of the vote that followed the last motion and second to continue the 62 Mill Road case. The vote had been unanimously in favor and will be added in.

SECOND: by Mr. Greenbaum

In favor: Alessio, Greenbaum, Coffin, Johnson. **Abstain:** Hart, Romano

PUBLIC HEARINGS

SFC Engineering Partnership
1 Industrial Drive
Windham, NH 03087

IN RE: South District YMCA Camp Lincoln
67 Ball Road
Kingston, NH 03848
Tax Map R-25, Lot 3

This is a public hearing whereby the Applicant seeks an Appeal of an Administrative Decision made by the Kingston Planning Board. The applicant alleges that an error has been made in the decision, determination or requirement by the Planning Board, on or about February 19, 2019, whereby the Planning Board denied use of the site as an overnight use as it was not previously approved by the Planning Board and is not allowed in the Single Family Residential zone, in relation to Article 1, Section C.2, of the Town of Kingston Zoning Ordinance.

Mr. Coffin recused himself from this hearing. Ms. Alessio gave background of the case for the benefit of Mr. Romano, who had not been on the board during prior hearings. She explained that the position of the Planning Board was that overnight stays at the camp had intermittently lapsed and therefore Camp Lincoln had lost the ability to have overnight camping. The Zoning Board, with legal advice, felt that the camp still kept the ability to have overnight campers, as there was enough history to support it even with lapses. However, she said that then the issue of non-camping events such as weddings had come up. The question was then how to help them to do that, and Ms. Alessio said

that they should have gone to the Planning Board but wanted to work with the ZBA. She said she realized it was beyond the abilities of the ZBA to make the restrictions needed, and at that time talked to Attorney Peter Loughlin to review the issue. Attorney Laughlin reviewed what Mrs. Alessio had drafted as a proposed decision, including excerpts from Atty. Loughlin's recommendations. It reads as follows:

Proposed ZBA Decision on Camp Lincoln (1/9/2020)

Camp Lincoln YMCA is located in a Single Family Residential Zone in Kingston, NH, and its use as a camping facility for children has been "grandfathered" in its current location.

While there has been testimony that there have been occasional lapses over the last 30 years in continual, uninterrupted offerings of overnight camping opportunities at Camp Lincoln, it is not the intent of the Kingston ZBA to shut down the facility. However, health and safety issues will take priority.

The following stipulations will prevail from this point forward:

Camp Lincoln will operate as a three-season camping/outdoor event facility from April 1st through December 1st.

Prior to opening in April, the Camp's Executive Director and/or Board of Directors will arrange for the Kingston Fire Department to come in to inspect the facilities to ensure that the cabins and other buildings are up to code as appropriate. A detailed drawing of the camp facilities that designate the type of buildings, their purported use, and their location on the site, will be made available annually to the Planning Board, the Building Inspector, and the Fire Department.

While prevailing law allows some expansion of the prevailing non-conforming use, it must reflect the same nature and purpose, it must not be different in character, nature or kind, and it must not have a substantially different effect on the neighborhood.

To this end, camp activities, including occasional overnight camping, is allowed. Concerts, weddings, or recreational activities such as an ATV Center, are not considered traditional "camp" activities, and are not consistent with established non-conforming use. Variance relief would be necessary for that activity to be allowed on the property.

Reid Van Keulen, Camping Director for Camp Lincoln, Attorney Mark Sullivan, and YMCA Board of Directors Chair Kate Cook were present to speak for the applicant. Ms. Alessio gave them a copy of the proposed decision. Mr. Greenbaum had prepared alternate wording that would replace the last paragraph of Attorney Loughlin's proposal. This would delineate more specifics rather than just calling for variance relief; Mr. Greenbaum said that he had tried to incorporate some suggestions received from the YMCA. There was a discussion of the proposal suggested by Attorney Loughlin and whether or not to apply the changes proposed by Mr. Greenbaum.

Attorney Sullivan questioned the steps outlined in the Vice Chairman's suggested amendment to the proposed decision, which included going to the Board of Selectmen for a "Special Event Permit". Ms. Alessio made the point that this option has been available and could have been used last summer, that this was clearly stated as an alternative at the time. Attorney Sullivan questioned further details from Mr. Greenbaum's proposed amendment, and Ms. Alessio said that is why her preference is to stay with Attorney Loughlin's proposal. The board agreed on this point.

Attorney Sullivan stated that the Loughlin proposal would not be acceptable to the YMCA. Ms. Alessio affirmed that under this proposal a site plan review would be necessary, including inspections to see where the cabins are and that all is up to date, as this has not been done in a long time. She said that all this is beyond ZBA purview, and that is why she proposes that the camping part should be cleared up and then the YMCA would go to the Planning Board for expansion of use. This could trigger a joint meeting of the boards so that the applicants do not have to go back and forth to meetings.

Mr. Hart commented that he thinks getting the camping part settled is good. He then asked if they go to the Planning Board as suggested and the Planning Board agrees with the expanded use, do they then have to go to the Selectmen every time they have an event? Ms. Alessio said they do not, and reminded him that technically the Planning Board cannot give final approval; this would be why they have to come back to the ZBA for a variance for nonconforming use in a Single Family Residential zone. It was affirmed that if all is approved, then for future events all that will be needed is to notify the town departments.

Mr. Van Keulen said that the camp already conducts a fire inspection every spring and has a strong connection with the police chief. He cited various expansions over time and that plans are already on file with the town. He said that they would not be able to accept this decision tonight because it is the first time they have seen it.

Ms. Alessio said that there is no choice, that it is not a matter of negotiation. She said she would like to bring closure to this matter. She suggested that the applicants may want to sit down with Glenn Greenwood, the town's Planner, and Ellen Faulconer, the Planning Board Secretary, to review the YMCA file and put a proposal together. She said many of the drawings may already be in place and they will just need to organize and define what is needed for the specifics of what they want to do. She said that the YMCA is a good neighbor is not in contention, but that now it is known they have other plans, the town has a fiduciary responsibility to ensure safety. She said that the board is trying to do this the right way, more defined, so they don't have to go to the Selectmen every time.

Attorney Sullivan asked if it would not be more economical to go the route of Special Events permits and also questioned whether a variance could be granted before the site plan review. Mr. Romano said that it could not be done tonight, as all the pieces are not known. He said that usually the board would get all the notes from a Planning Board Site Plan review. Ms. Alessio said that there needs to be a plan for what is being requested, and that has to be denied by the Planning Board before they come back to the ZBA. She said that this is why she is proposing a joint meeting of the boards.

Ms. Cook addressed the board saying they have been going through this process for over a year. She said the process has delayed planning and programming and caused the loss of a lot of revenue. She said that they believe, and think there is legal basis for this belief, that weddings and other events on site are a natural outcropping of the

camp's legal use. She said that the proposal does not meet the legal standard they believe they already have, and that as a result, the Board of Directors will not be happy with it. She said they have had events for numerous years, with oversight from fire and police, with regular inspections, and that there were never any complaints. She said it is frustrating to be brought here for over a year just to continue a grandfathered conforming use, and that this will be the position of the Board of Directors.

Ms. Alessio said that while the applicant may not have seen the present proposal before, it is almost identical to one offered not long ago. She said it is not a total surprise, it has only evolved a click from the last time. Ms. Alessio added that in a previous meeting the applicant was told they could get relief on a temporary basis from the Selectmen for special events; then at subsequent meeting it was stated that events had to be cancelled at a loss of \$50,000. She said that on this point they would have to agree to disagree.

Mr. Romano asked Ms. Cook if the YMCA would go ahead and do weddings and other special events if this administrative relief for camping was granted. Ms. Cook answered that they would, as they believe it is part of a legal grandfathered use. Ms. Alessio said that the town's attorney says that those events are an expansion of a non-conforming use. She then read into the record a portion of the attorney's letter:

While it is the general policy of zoning to carefully limit the extension and enlargement of nonconforming uses (based on the premise that the extension or enlargement of nonconforming use may be more detrimental to zoning than a variance) so-called "natural expansion of a nonconforming use" may be allowed under some circumstances, but only a limited expansion is permitted and a landowner has the burden to show that the expansion is not such that it constitutes an entirely new use, thus violating the intent of the zoning ordinance.

The determination of whether a particular use is substantially the same kind of use as that which was originally established as nonconforming is based on the facts and circumstances of each particular case. In deciding whether a particular activity is within the scope of the established nonconforming use, consideration may be given to, among others, the following factors:

- 1. To what extent does the use in question reflect the nature and purpose of the prevailing nonconforming use?*
- 2. Is it merely a different manner of utilizing the same use or does it constitute a use different in character, nature, or kind?*
- 3. Does the use have a substantially different effect on the neighborhood?*

Chairman Alessio said that in her opinion, normal camping meets the three criteria cited, but a wedding does not. Mr. Greenbaum said that a private function of any kind that is not camp sponsored does not meet the criteria. Ms. Cook asked if this meant that when the Girl Scouts use the camp privately they are not in compliance. Ms. Alessio read an additional section of Attorney Loughlin's opinion, "...if the camp proposed to use its land as a venue for concerts, or weddings such activities might not be considered to be traditional "camp" activities and may indeed have a different impact on the neighborhood" and concluded that girl scout camping fits but a wedding does not.

Asked if she would like a vote on the request for administrative relief, Ms. Cook said she does, but that her opinion remains.

MOTION: by Mr. Greenbaum to adopt the proposal of Attorney Loughlin dated January 9, 2020, which concludes that “camp activities, including occasional overnight camping is allowed. Concerts, weddings, or recreational activities such as an ATV Center, are not considered traditional “camp” activities, and are not consistent with established non-conforming use. Variance relief would be necessary for that activity to be allowed on the property.”

SECOND: by Mr. Hart

In discussion, Mr. Hart said this is the most expedient way for the camp itself, and that they should get on the Planning Board agenda.

Ms. Alessio said that the applicant had her vote until Ms. Cook spoke; she said that if Ms. Cook thought that everything Camp Lincoln was doing was within their purview she disagrees. Ms. Cook said that she would not go against the ruling of the board; Ms. Alessio said that clearly Ms. Cook thought she had the legal right to do so. Ms. Cook said that she had spent a year not holding events even though she thought they had the right to do so. Ms. Alessio said that her vote is back in the yes column, that she felt she needed to be upfront.

The vote for adopting the ZBA decision dated 1/9/2020 was called:

All in favor; Motion passed.

OSP Realty LLC
52 Colby Road
Danville, NH 03819

IN RE: 62 Mill Road
Kingston, NH 03848
Tax Map R-22, Lot 26

This is a public hearing whereby the applicant requests a Variance and/or Special Exception to the terms of Article 104.4, Section J, of the Town of Kingston Zoning Ordinance, and asks that said terms be waived to allow for a third apartment in a two-family Rural Residential Zone.

Applicant Stephen Pascoe said that as he was waiting for his attorney, the Board could take the next case out of order.

Robert Kalil
6 Lakeside Drive
Atkinson, NH 03811

IN RE: 19 Page Road
Kingston, NH 03848
Tax Mao R-22, Lot 32

This is a public hearing whereby the applicant requests the Town of Kingston ZBA grant a re-hearing on a decision it made on November 14, 2019. This decision denied the applicant a Variance to the terms of Article 104, Section 4 J, of the Town of Kingston Zoning Ordinance, to permit a three (3) family dwelling. Approval for this was originally granted on July 13, 2017, and the Variance has since expired.

Mr. Romano stepped down as a voting member for this case.
Attorney Patricia DiMeo was present to represent her client, Mr. Kalil.

Ms. Alessio said that if this rehearing is granted, the applicant will have until next Wednesday, January 15, to file a new application with applicable fees.

Atty. DiMeo said that in 2017 a special exception was granted for 3 units, though the original request was for 4 units. (There was a brief conversation about the term Special Exception as opposed to Variance; it was determined that Article 104 had been amended to remove the Special Exception option, but that what was granted in 2017 was a Special Exception.) Atty. DiMeo then said that Mr. Kalil went to the Planning Board in September of 2019, but the Planning Board told him they could not accept the application as the Special Exception had expired, and that he needed to come to the ZBA for an extension. Atty. DiMeo said that at the ZBA hearing on November 14, 2019, Mr. Kalil applied for a variance and an extension, but the extension was not addressed. Mr. Coffin said that was because it could not be extended once expired.

Atty. DiMeo said that the Board can grant an extension for good cause, and she and Mr. Kalil talked about improvements he has made on the property. She said Mr. Kalil would like a rehearing to ask for an extension, and there are good reasons why it should be granted. Mr. Greenbaum said the board needs to know why he should be granted a rehearing; Ms. Alessio said new evidence needs to be presented.

Mr. Coffin said that the RSA specifically allows an extension of 6 months if he had gotten to the Planning Board before the deadline. But once expired it cannot be extended. Atty. DiMeo said she would argue that there was no final approval, so that the two years are not up. Mr. Cotton said that there had been a final approval for the Special Exception through the ZBA, and this was not a conditional approval.

Mr. Coffin then said that the point can be taken that while he recalled a discussion of the expiration in November, it was not reflected in the minutes, and that if the applicant wants a rehearing to ask for an extension, or extension after the fact, that was a mistake of the Board. Atty. DiMeo said that she had heard no discussion on the video. Mr. Coffin said he remembered mention of it by the Chairman. Mr. Coffin added that Mr. Kalil was advised that he needed to get to the Planning Board before the deadline and he felt that not getting there on time was not the fault of the Board.

There was a discussion on the basis for the rehearing. Ms. Alessio said that the ability to put in the 3rd apartment had expired. There was a discussion of work done on the building, but that the house is still a 2-family house that is in compliance now. She said

that technically Mr. Kalil can start all over. Mr. Romano outlined the process going forward, saying that if it was granted in 2017, all that is needed is to redo this piece of the puzzle in order to go before the Planning Board. Ms. Alessio said they had not addressed the request for an extension and now what is needed is a new hearing on the issue.

Ms. Alessio said that if a rehearing is granted it would be a new hearing of the original request, with the need to repost and notify abutters.

MOTION: by Mr. Greenbaum, to grant a rehearing of Mr. Kalil's application for a Variance to allow a third apartment at his property at 19 Page Road.

SECOND: by Mr. Hart

All in favor.

The Board then revisited the passed over earlier, for OSP Realty. Mr. Pascoe said that he had gotten no answer from his attorney.

MOTION: by Mr. Hart, to grant a continuance of the application of OSP Realty to allow a third apartment in a 2-family Rural Residential zone, to February 13, 2020.

SECOND: by Mr. Greenbaum.

All in favor, Motion passed.

Meeting adjourned at 8:22 PM.

Respectfully submitted,
Susan Ayer