

**Zoning Board of Adjustment
Town of Kingston, New Hampshire
Draft Minutes – March 12, 2020**

PRESENT:

Electra Alessio, Chair; Larry Greenbaum, Vice Chair; Peter Coffin, Jacquelynn Leone, Members; Charles Hart, 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 February 13, 2020 as written

SECOND: by Mr. Greenbaum

Chair Alessio pointed out one spelling error, which will be corrected.

In favor: Alessio, Greenbaum, Coffin, Hart, Leone; **Abstain:** Johnson

Election of Officers:

Mr. Coffin nominated Ms. Alessio to continue as Chair, and Mr. Greenbaum to continue as Vice Chair. There were no other nominations.

The secretary cast one vote to elect Ms. Alessio as Chair and Mr. Greenbaum as Vice Chair for one year.

PUBLIC HEARINGS

7:05 PM: **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 continuance of a public hearing that began on January 9, 2020, 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.

Chairman Alessio stepped down for this case; she named Mr. Johnson as a voting member and Mr. Greenbaum to act as Chair.

Applicant:

Stephen Pascoe approached the Board and said he would present his own case, without an attorney. He gave background on his property, saying that when he purchased it, it appeared to have three units, and that the septic had been updated prior to when he bought it. He said he pulled electrical permits for separate service to the

units, which were approved. He said he continued improvements on the exterior, and put the property on the market. At that time, he said the Town informed him it was a two-unit property, not three. He said unfortunately he had bought it as a three-unit property, but fortunately this board has the power to grant relief. He said that the unit over the garage has been called a studio, or living space, but asked why he would separate the electric and put a meter in the basement if it was only two units.

Mr. Pascoe addressed the five criteria, starting by saying that Article 104.4 J calls for single or two-family dwellings, accessory dwelling units or apartments but does not specify a number of apartments.

Granting will be of benefit to Public interest? Mr. Pascoe said that he has improved the property that was used as three units since the 1980's. He said he has kept the property in good shape, no overcrowding, and has been a good neighbor.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? Mr. Pascoe said that the ordinance allows for residences or small businesses, and whether two or three units, the spirit is to keep a small town feel while allowing businesses to remain.

Will substantial justice be done if granted? Mr. Pascoe said he bought the property with financing to support three units, and there is paperwork back to the 1980's supporting this so he thinks it should remain.

Will there be a diminution of value of surrounding properties? Mr. Pascoe said that the values have not been diminished but have been going up for years, adding that he thinks his improvements make the neighborhood look better.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant?

Mr. Pascoe said that he started out with a hardship case, bought it as such and pulled permits to make improvements. He said after doing this and paying taxes on the finished space, he believes it would be a hardship to him if he loses the unit and the rental income, maybe an issue with the bank as well.

Mr. Pascoe ended by saying the board heard a similar case last month, but that these are not usual cases.

Public comment: None heard

Questions of the Board:

Mr. Hart asked if there are now three electrical meters for the property, and Mr. Pascoe said there are four, including one for the basement. Mr. Hart asked how many units are rented now, and Mr. Pascoe said all three were rented until last month, when he ended the lease on the garage apartment in preparation of having to do some work that the building inspector has discussed with him, such as a second egress.

Mr. Coffin asked about the square footage of the garage apartment (under 600 square feet) and said that will be a significant problem if there is no ability to expand, as the minimum size for an apartment is 600 square feet. Mr. Pascoe said he can offer a solution to that, by using additional space in the downstairs, which is currently an empty garage used for storage. He said it has been closed off from the upstairs as pipes were freezing. Mr. Coffin said that if approved, the apartment would have to meet all criteria of

the building department. Mr. Pascoe said he was willing to take on the expense of doing so.

Mr. Greenbaum said that he had not been able to find an occupancy permit in the property file, and said he was trying to determine if the apartment was being rented without an occupancy permit. Mr. Pascoe said that the apartment had been there the whole time and he did not know if an occupancy permit had ever been pulled.

Mr. Coffin said that the point of going forward now is to have a legal third apartment, which will involve the Planning Board and permits.

Mr. Coffin also responded to a comment by Mr. Pascoe, saying that this board does not set precedents, and does not use previous cases as precedents.

The five criteria for granting a Variance criteria were reviewed and voted on:

Will there be a diminution of value of surrounding properties? Mr. Coffin noted that the apartment has been in place since the 80's. All five voted no; passes

Granting will be of benefit to Public interest? Mr. Coffin said that this will allow the apartment to be inspected and up to code, which is in the interest of the renters if no one else. All five voted yes, passes.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant?

Mr. Coffin said that everything in the property records indicates three apartments, and the applicant bought it in good faith. He said he thinks the town does share some responsibility in this. All five voted yes, passes.

Will substantial justice be done if granted? All five voted yes, passes.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? All five voted no, passes

MOTION: by Mr. Coffin, to grant a Variance to the terms of Article 104.4, Section J, of the Town of Kingston Zoning Ordinance, to allow for a third apartment at 62 Mill Road in accordance with Town ordinances and building regulations.

SECOND: By Ms. Leone

All in favor.

Mr. Pascoe was reminded that he will need to go to the Planning Board next, and follow through with all inspections, including by the fire department.

**James and Beth Scanlon
11 Wadleigh Point Road
Kingston, NH 03848
Tax Map U-5, Lot 41**

This is a public hearing whereby the applicant seeks a Variance from the terms of Article 301.1 Section D, of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit the continued location of a shed that is 10 feet from the boundary. A 10-foot Variance is required.

James and Beth Scanlon were present to discuss their application. Ms. Alessio returned as Chair; Mr. Johnson will vote on this case.

Applicants:

Ms. Scanlon said that they had lived at the property for 18 years, and the first year they were there they were given the shed by a neighbor. She said they did not pull a building permit, as they had not been aware it was needed, but have used it ever since with no issues until this year.

Mr. Scanlon said their lot is long and narrows toward the lake. He said it is a football field length from house to lake, and that is why they would like the shed to remain where it is, near the lake. He said if they have to bring it back toward the house and center it, it would not be a monetary hardship, but would be a hardship for usage, and would block the view. He said that the neighbors also use the shed for various water items, including the neighbor who complained that the shed is too close to the property line. He said that neighbor runs an Air BnB and the tenants use the shed. Mr. Scanlon said that there was an argument with the neighbor which resulted in them being before this board.

Public comment:

James Voss, 19 Wadleigh Point Road, had a sketch of the property to share with the Board. He said the property is like a slice of pizza down to the water front, and as the house is 300 feet from the water, a little shed is needed. He said he did not believe the owners should have to be here; the shed has been in place for 18 years, and is no problem to the neighbors but moving it would constitute a hardship. He said it is in a perfect place as it is, and is in the middle of a grove of trees. Mr. Voss added that there is no public interest in moving it, and is in the spirit of the ordinance, because the shape of the property is difficult to deal with but he thinks is being used in the right way. As for Substantial Justice, he said he believes that is served by leaving the shed where it is.

Chairman Alessio read a letter from Claire McCoy of 13 Wadleigh Point. She said that they use the lake often, and never had an issue with the shed, in fact she was allowed to put her inflatables in it on windy days.

Questions of the Board:

Ms. Leone questioned the timing of the building regulations regarding sheds, wondering whether they were the same when the shed was put in. Chairman Alessio said that it does not matter when the regulations were implemented, as the complaint is today, and current regulations apply. She added that many properties along the lake have problems complying with setbacks.

Mr. Coffin asked if it would be physically possible to move the shed; Chairman Alessio said that it would not be easy, and this might also constitute a hardship.

Mr. Hart asked if a recent survey had been done. Mr. Scanlon said that the neighbor had reportedly had one done but never registered it. It was noted that it would be a good time to make any corrections to the footage for future reference, but the request is for a 10 foot variance, which should be more than enough, according to Ms. Scanlon.

There was some discussion about the lack of registered survey, and having to go with what is known. Chairman Alessio said that it was reported that the neighbor removed a granite marker, which is illegal, along with surveying sticks. She said that for the case at hand, though, these issues are not germane.

Mr. Coffin noted that he found it confusing that the neighbor who complained did not submit anything for the case. In addition, it is a renter at that property who wrote a letter in support of leaving the shed where it is.

Mr. Greenbaum said that he had driven down to look at the shed with Mr. Hart, and it did not seem feasible to move it to the center of the property. Looking at the pictures provided, he noted the trees and that the shed does not obstruct anyone's view of the water.

The five criteria for granting a Variance criteria were reviewed and voted on:

Will there be a diminution of value of surrounding properties? All 5 voted no, passes.

Granting will be of benefit to Public interest? Four voted yes, one voted no; passes.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant?

All five voted yes, passes.

Will substantial justice be done if granted? All five voted yes; passes.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? All five voted no; passes.

MOTION: by Greenbaum to grant a 10- foot variance in order for the shed to remain in its current location at 11 Wadleigh Point Road.

SECOND: by Mr. Johnson

All in favor.

Chairman Alessio pointed out that there is a 30-day appeal period, and that in order to have a new hearing there would have to be new information that might change the minds of the board.

**Jason and Kelly Regis
21 Meadow Wood Road
Kingston, NH 03848
Tax Map R-38, Lot 17-11**

This is a public hearing whereby the applicant seeks a Variance from the terms of Article 301.1 Section D, of the Town of Kingston Zoning Ordinance, and asks that terms be waived to permit the construction of a shed that is 13 feet from the boundary. A 7-foot Variance is required.

Jason Regis was present to discuss his case.

Mr. Johnson remains a voting member of the Board for this case.

Applicant:

Mr. Regis explained to the board that he had initially planned to put the shed in a few years ago, and at that time was granted a variance to do so. He said that due to personal issues the project was delayed, and when he went to get a building permit he was informed that the variance had expired.

Mr. Regis said that the proposed location of the shed has not changed from the original application. He described where it needs to be located due to the shape of the property as well as trying to fit it between two sections of fence, as close as possible to the pool and also near to the garage. He said that looking from the neighbor's property, there is no obstruction of views.

Chairman Alessio questioned whether there was a lot of water on the property, and Mr. Regis answered that there was, to the west and coming off the hill behind the house. He said the front left side is under water in the spring, and that the placement of the house and driveway were dictated by other areas being too wet.

Public Comment: None

Questions of the Board:

Mr. Greenbaum asked if Mr. Regis had talked to the neighbor on that side of the property. Mr. Regis said he had hoped the shed would not obstruct his view, and found that the neighbor's back window looks out beyond that. This neighbor did not respond to his abutter letter.

Mr. Coffin asked if it can't go any closer to the pool because of the wet areas and Mr. Regis answered that he did not want it too close to the pool because he had to put a drainage ditch in that area.

The five criteria for granting a Variance criteria were reviewed and voted on:

Will there be a diminution of value of surrounding properties? All five voted no; passes

Granting will be of benefit to Public interest? All five voted yes; passes.

Will literal enforcement of the ordinance result in unnecessary hardship to the applicant? All five voted yes, passes.

Will substantial justice be done if granted? All five voted yes; passes.

Will the use contemplated, if granted, be contrary to the spirit of the ordinance? All five voted no; passes.

MOTION: by Mr. Coffin, to grant a variance of seven feet to allow construction of a shed on the property at 21 Meadow Wood Road.

SECOND: by Ms. Leone

All in favor.

Chairman Alessio pointed out that there is a 30-day appeal period, and that in order to have a new hearing there would have to be new information that might change the minds of the board.

Meeting adjourned at 8:05 PM.

Respectfully submitted,
Susan Ayer