

**Town of Kingston
Zoning Board of Adjustment
January 27, 2022**

PRESENT: Electra Alessio, Chair; Larry Greenbaum, Vice Chair; Peter Coffin, Jackie Leone, Members; Chuck Hart, Alternate Member

Chairwoman Alessio called the meeting to order at 7:02 PM, and read the notice:

**Summit Distributing, LLC
249 NH Route 125
Kingston, NH 03848**

IN RE: Tax Map R-40, Lot 15

The applicant, Summit Distributing, LLC, of Kingston, NH, seeks a Re-Hearing on the decision to Re-Hear its original application made by the Zoning Board of Adjustment (ZBA) at its December 9, 2021 meeting.

At its October 10, 2021 meeting, the ZBA granted to Summit Distributing LLC a Special Exception to the terms of Article 201, Section 4.E.14, to permit a retail fuel outlet within the Aquifer Protection District Zone B. CW Station, LLC, subsequently filed a request to the ZBA that it Re-Hear its original decision. At its December 9, 2021 meeting, the ZBA granted the Re-Hearing which was scheduled for January 13, 2022.

At the January 27, 2022 meeting, the ZBA will discuss and decide the merits of Summit Distributing's request.

The Chairwoman addressed those in attendance and said that at the January 13 hearing, the Board continued the public re-hearing to February 10, 2022, in order for the Board to adequately review the documents submitted by Summit to rehear the rehearing decision. She said that tonight the Board will review amongst themselves the reasons why or why not it should grant the rehearing to the rehearing decision. No testimony will be taken tonight.

Ms. Alessio introduced the Board, noting that Chuck Hart is a voting member for this evening's meeting.

Mr. Greenbaum said that as for the rehearing that Summit has requested, he had read the material they supplied and does agree with some of the points made. However, he said he doesn't feel the Board needs to rehear the rehearing, and should instead go ahead with the rehearing that has been agreed to, and take testimony from both parties on February 10.

Ms. Leone said she doesn't think there is a need for a rehearing, based on the information. She said it makes more sense to hear the testimony from both parties on

February 10. Questioned by Mr. Coffin, Ms. Leone clarified that she means she does not think the board needs to rehear the arguments from Dec. 9 when it was decided to rehear the October 10 decision.

Chairwoman Alessio gave an overview of the situation, saying that the attorneys for both sides have eloquently argued the situation at hand, and there are merits to both. She gave as an example the notification of the easement holders; she said there is merit to say they are interested parties, and also merit to say they are not on the parcel being developed. She said that is where the differences lie and where the courts would come in. She said she does not see any merit to rehearing the rehearing; the Feb 10 meeting should be a de novo hearing of the original petition for a special exception for Summit to locate the fueling station at the location on 125. She said this gives the parties not heard in October an opportunity to speak, and it give the petitioner the opportunity to reiterate their proposal, which convinced the Board to support it unanimously. She said maybe new things will come up, but she has not really heard that so far; she said that even the petition by CW Station did not bring forward new information, aside from two issues, one being the easement holder question, on which both attorneys argued convincingly their side of the equation. She said she did not think the Board erred on that point, and as Mr. Greenbaum had eloquently described in October, to truly research title holders, one would almost have to do a title search, and she does not see that as the intent of the law.

Ms. Alessio said one obligation they have as a board is to be fair to everyone on both sides and to clearly hear both. She said both have paid a lot of money on legal fees, and this could very well end up in court, though she hopes it does not. She said she would like to give the process one more try. Ms. Alessio said that the courts, in her experience, look to see if Zoning Boards of Adjustment do their best to be fair, equitable, and offer full opportunity to review and discuss the concerns of all parties involved. She said all things considered, she is not in favor of rehearing the rehearing, which could go on forever. She said she wants to get to the nut of the issue, a de novo hearing at the February 10 meeting, and go forward from there.

Mr. Coffin said that regardless of legislative intent, he understands what the applicant is saying, but at least 4 times, after saying CW had added wording to make their point, they (Summit, in this request) added wording that is not in the ordinance, “encumbering the land under consideration”, meaning the subject property, to the passage every time in order to make their own point. Mr. Coffin said that if the legislature *legislation* had been written just the opposite, adding “and abutters to the parcel”, it would have been clear that easement holders go with ~~abutters~~ *the applicant*. He said that his position is, where confusion exists, the default position should be to give it another go.

Mr. Coffin said that the other thing is that the only criteria used in December, because the board did not have advice of legal counsel, was the issue of notifying easement holders. He said the other question was whether the Board had to impose additional restrictions per the ordinance. The board talked about it and decided not to open the rehearing based on that. He said that whether a mistake was made or not, on the intent of the legislature, it behooves the board to go ahead with rehearing, where this point can

be argued.

Chairman Alessio said that on the subject of requiring a hydrogeologic study, she has served on the ZBA for over 20 years and that has never been asked by the ZBA, but instead deferred to the Planning Board for many reasons including that it is the most appropriate board. She added that just because the ZBA rules that a particular use may go on a particular property, does not mean that it will automatically be allowed to be there. The applicant still has to go through all the permitting processes for septic and water, etc, in order to get permission to locate on the property. She said just saying they “could” locate there doesn’t mean they “would” locate there.

Mr. Coffin added that any restrictions that may be required by the Planning Board or the State may make this property a non-payable option for the applicant. He said that while the ordinance says that further restrictions need to go in, the decision was made to defer to the Planning Board rather than go through the engineering review only to have to do it all over again for other reasons. He went on to say that the requirement in the ordinance for a hydrogeologic survey was based on the septic loading, which was not applicable in this case; but there was the option to require a study to find out whether the petrochemical elements could be absorbed into the aquifer. He said the board can still require it, but all these things are better discussed in a hearing.

Chairwoman Alessio said that according to legal counsel, the procedure was followed accordingly. She said it doesn’t mean the decision won’t be made to require a study. Mr. Coffin said that for all those reasons, barring any further comment, he is ready to make a motion:

MOTION: by Mr. Coffin, to deny the request for a rehearing of the December 9 decision to rehear the Summit application

SECOND: by Mr. Greenbaum

Ms. Leone asked for affirmation that both parties will be present to present their case on February 10. The Chair said that yes, tonight the only purpose was to deny or approve the request to rehear the rehearing decision.

All in favor.

Ms. Alessio turned down a request to ask questions, but did say she would entertain questions on procedure, of which there were none. She said both parties will be present on February 10. A letter of decision will go out to Summit and be copied to the attorneys for CW Station; abutters do not need to be re-noticed as this was a continuance.

Meeting adjourned at 7:20 PM

Respectfully submitted,
Susan Ayer, Administrative Assistant