

TOWN OF EAST KINGSTON ZONING BOARD OF ADJUSTMENT

MEETING MINUTES

May 4, 2022

Pound School
41 Depot Road
East Kingston, New Hampshire

Tim Allen, Chair
Ed Robbins, Vice Chair
7:00PM

AGENDA

Election of Officers for 2022-2023

Donahue ADU Special Exception Hearing

Bodwell ADU Special Exception Hearing

Board Members present: Tim Allen – Chair, Ed Robbins – Vice Chair, Dave Ciardelli, Frank Collamore, Nate Maher, and Alternate Paul Falman.

Applicants and members of the public who participated in the meeting: Shawn Donahue, and Tim and Judy Bodwell.

Tim Allen opened the meeting at 7:01pm with the roll call followed by an explanation of the process for the board to elect a chair and vice chair for the 2022-2023 year, term ending upon election of successor after the March 2023 Town vote. He acknowledged the change in membership status of Mr. Maher and Mr. Falman in that Mr. Maher has assumed regular membership and Mr. Falman has assumed an alternate membership. With that, he turned the meeting over to the land board secretary to facilitate the election of chair.

ELECTION OF OFFICERS

Mrs. Belcher announced the process for nominating a chairman: any voting member can nominate – no second is required. Upon final nominations, board members will cast their vote.

Chairmanship – Mr. Ciardelli nominated Tim Allen as Chairman. Mr. Allen accepted the nomination and his willingness to serve as chair. A call for additional nominations was made. With no other nominations from the floor, members voted for the single candidate by show of hand 5-0-0 in favor of Mr. Allen as chairman. Mrs. Belcher declared Mr. Allen the Chairman of the Zoning Board for the current year's appointment and then turned the meeting over to Chairman Allen to facilitate the election of vice chair.

Vice Chairmanship – Chairman Allen opened the floor for nominations of Vice Chair and nominated Ed Robbins as Vice Chair (Mr. Robbins accepted the nomination). With no other nominations from the floor, members voted for the single candidate by show of hand 5-0-0 in favor of Mr. Robbins. Chairman Allen declared Mr. Robbins the Vice Chairman of the Zoning Board for the current year's appointment.

PUBLIC HEARING - SHAWN DONAHUE AND PATRICIA GOODWIN – property located at 26 Haverhill Road (MBL# 09-02-04) on 1.6 acres in the Commercial District. Application for a Special Exception to permit an Accessory Dwelling Unit (Zoning Ordinance Article VIII.F).

Chairman Allen opened the public hearing for Shawn Donahue and Patricia Goodwin at 7:08pm and provided instruction as to the hearing's process (applicant to present, board to field questions, public comment, board discussion, board decision). He also provided an overview of the zoning article's provisions and authority for special exceptions, the purpose of an accessory dwelling unit, the definition of an accessory dwelling unit, and the special exception criteria. He noted the difference between a special exception and a variance is that a special exception allows for uses that are permitted under zoning requirements, while a variance provides relief from a zoning requirement.

Mr. Donahue informed the board he and his wife sold their home in Newton and wished to move to his mother's property in East Kingston by way of creating an in-law apartment above a proposed newly constructed garage (old garage already

demolished). The current septic system is at end of life thus Dennis Quintal will be designing a 5-bedroom system and he is hoping the board will grant him conditional approval so he can get the other work started.

It was noted one of the criteria for granting a special exception is to have an approved septic plan in place to ensure the additional septage can be accommodated. The board then reviewed the special exception criteria as outlined in Article VIII Permitted Uses. F. a-g:

- a. A single-family dwelling located in a zoning district that allows single-family dwellings may be permitted one accessory dwelling unit. – The property is located in a commercial zone where the use is permitted.
- b. Ownership. The owner of the property shall occupy one of the units as a primary residence and be owner of both the primary dwelling unit and the accessory dwelling unit. These ownership and residency provisions shall not change in the event the property is sold. Any kind of condominium ownership arrangement for the accessory dwelling unit and/or the principal dwelling unit is prohibited. – Mr. Donahue is co-owner of the property with his mother and both he and his mother will reside at the premises.
- c. Living Area Configuration. The total living area for an accessory dwelling unit shall not exceed 900 square feet. The accessory dwelling unit shall have no more than two (2) bedrooms. Dormitory-style facilities are expressly prohibited, whether seasonal or otherwise. – The total square footage of the unit including the shared breezeway is 864 square feet. It was determined the breezeway did not constitute living space.
- d. Construction. Only one accessory dwelling unit is permitted per parcel or lot. The accessory dwelling unit shall be constructed within or attached to the principal dwelling to preserve the appearance of a single-family dwelling and clearly secondary to the principal dwelling unit. Attached means having a shared wall or connected by a covered and enclosed structure. There shall be a connecting door between the primary dwelling and the accessory dwelling unit. An outside entry way to the accessory dwelling unit shall not be placed on the front/street side. – This is a single-family dwelling that will connect via a covered breezeway to an accessory unit. It was determined that the breezeway door, located at the front of the building was not contradictory to the side or rear access requirement since the door would be shared with the main house.
- e. Manufactured Housing. The addition of an accessory dwelling unit to a manufactured home is prohibited in manufactured home parks or when a manufactured home is under condominium ownership. – The home is not located in a manufactured home park or under condominium ownership. The applicant provided clarification on the newly proposed garage/ADU and the old garage footprint as depicted on his application. The new garage would be located six feet from the original dwelling with the septic to be located behind the home.
- f. Parking. Off-street parking shall be available for a minimum of two automobiles for the accessory dwelling unit. Room for vehicle ingress and egress on site shall be provided. – Ample parking is provided that includes a double width paved driveway and an unpaved extension for turnaround.

The board reviewed basic lot area and yard requirements prescribed under Article IX:

- Building setbacks: 30 feet from the road and 25 feet side and rear – met
- Minimum road frontage of 200 feet – met

Discussion then ensued on the septic plan requirement.

- g. Septic facilities and water. An accessory dwelling unit shall conform to all applicable water and sanitary standards for residential structures.

Prior to Special Exception approval by the Zoning Board of Adjustment for an Accessory Dwelling Unit, the owner shall provide evidence as part of the Special Exception application that septic facilities are adequate to serve both the principle dwelling and the accessory dwelling unit. This initial evidence shall be in the form of a replacement septic system design plan prepared by a state licensed Septic System Designer sized to accommodate both the

primary dwelling and accessory dwelling. The Zoning Board of Adjustment Special Exception approval shall be conditional upon approval of the septic replacement plan by the NH Department of Environmental Services. Alternatively, if the existing septic system is state approved and adequately sized to accommodate both the primary dwelling and accessory dwellings and conforms to state and local requirements, an applicant may choose to submit a copy of the existing septic system plan and an inspection report by a state licensed Septic System Designer detailing the condition of the existing system. – The requirement for proof that the septic system can accommodate the home and accessory dwelling unit was reiterated. Discussion ensued on not being able to begin the project until the septic plan was approved by the building inspector as well as concerns about approving a septic plan that does not exist, thus no way to confirm setback requirements are met, about the timeframe a design plan will be ready (possible three weeks), on possibly continuing the hearing until May 26th and then continuing to the June meeting should be plan not be ready by then. A straw poll was taken on continuing the public hearing or granting conditional approval on one of the conditions of approval with results reflecting a unanimous position to continue the hearing. Mr. Donahue was amenable to the continuation option as this would allow him greater opportunity to get the plans submitted without starting the process all over.

With no other board questions, Chairman Allen opened the floor to public comments. Mr. Bodwell inquired on the septic plan state approval process and the rationale for requiring state approval when state approval expires within a certain period of time. Chairman Allen offered the rationale that a submitted plan must be a valid plan that shows a new septic could be built in the event the current system fails.

Chairman Allen closed the meeting to public comments.

MOTION: Chairman Allen motioned to continue the public hearing for Shawn Donahue and Patricia Goodwin of 26 Haverhill Road, MBL# 09-02-04, regarding their application for a special exception for an accessory dwelling unit to the May 26, 2022 ZBA meeting. Mr. Robbins seconded. With no further discussion the motion passed 5-0-0.

Chairman Allen closed the public hearing for Donahue and Goodwin at 7:37pm.

PUBLIC HEARING - TIMOTHY BODWELL – property located at 96 North Road (MBL# 15-03-05) on 8.96 acres in the Residential/Agricultural District. Application for a Special Exception to permit an Accessory Dwelling Unit (Zoning Ordinance Article VIII.F).

Chairman Allen opened the public hearing for Timothy Bodwell at 7:38pm. Noting Mr. Bodwell was present for the instructions on the previous accessory dwelling unit application, Mr. Bodwell presented his plan to create an accessory dwelling unit in his existing basement by adding a bathroom, kitchen, and mudroom totaling 800 square feet of living space. He noted he has more than enough land to accommodate a septic system (25k square feet required for a 5-bedroom system, he has over 143k square feet available), has 300 feet of road frontage, entry to the new unit and parking would be behind the dwelling (walkout basement), and would have a separate entrance from the main house.

The board then reviewed the special exception criteria as outlined in Article VIII Permitted Uses. F. a-g:

- a. A single-family dwelling located in a zoning district that allows single-family dwellings may be permitted one accessory dwelling unit. – The property is located in a residential zone where the use is permitted.
- b. Ownership. The owner of the property shall occupy one of the units as a primary residence and be owner of both the primary dwelling unit and the accessory dwelling unit. These ownership and residency provisions shall not change in the event the property is sold. Any kind of condominium ownership arrangement for the accessory dwelling unit and/or the principal dwelling unit is prohibited. – Mr. Bodwell and his wife will remain owners and reside at the premises.
- c. Living Area Configuration. The total living area for an accessory dwelling unit shall not exceed 900 square feet. The accessory dwelling unit shall have no more than two (2) bedrooms. Dormitory-style facilities are expressly

prohibited, whether seasonal or otherwise. – The total square footage of the unit is 800 square feet; the proposed bathroom will be constructed under the newly proposed mudroom and the unit will have one bedroom.

- d. Construction. Only one accessory dwelling unit is permitted per parcel or lot. The accessory dwelling unit shall be constructed within or attached to the principal dwelling to preserve the appearance of a single-family dwelling and clearly secondary to the principal dwelling unit. Attached means having a shared wall or connected by a covered and enclosed structure. There shall be a connecting door between the primary dwelling and the accessory dwelling unit. An outside entry way to the accessory dwelling unit shall not be placed on the front/street side. – This is a single-family dwelling with only one accessory dwelling unit proposed with a connecting door at the bottom of the stairs to the basement, double doors proposed at the kitchen area and will add an egress window.
- e. Manufactured Housing. The addition of an accessory dwelling unit to a manufactured home is prohibited in manufactured home parks or when a manufactured home is under condominium ownership. – The home is stick-built and not a manufactured home in a manufactured home park or under condominium ownership.
- f. Parking. Off-street parking shall be available for a minimum of two automobiles for the accessory dwelling unit. Room for vehicle ingress and egress on site shall be provided. – Ample parking provided as depicted on the plan.
- g. Septic facilities and water. An accessory dwelling unit shall conform to all applicable water and sanitary standards for residential structures.

Prior to Special Exception approval by the Zoning Board of Adjustment for an Accessory Dwelling Unit, the owner shall provide evidence as part of the Special Exception application that septic facilities are adequate to serve both the principle dwelling and the accessory dwelling unit. This initial evidence shall be in the form of a replacement septic system design plan prepared by a state licensed Septic System Designer sized to accommodate both the primary dwelling and accessory dwelling. The Zoning Board of Adjustment Special Exception approval shall be conditional upon approval of the septic replacement plan by the NH Department of Environmental Services. Alternatively, if the existing septic system is state approved and adequately sized to accommodate both the primary dwelling and accessory dwellings and conforms to state and local requirements, an applicant may choose to submit a copy of the existing septic system plan and an inspection report by a state licensed Septic System Designer detailing the condition of the existing system. – Mr. Bodwell presented a septic inspection report reflecting the current system’s ability to accommodate the flow for both the main dwelling and an accessory dwelling unit as well as a septic design plan should the existing system fail.

Discussion ensued on the requirement for the state approved septic plan requirement when the existing system works. It was noted the ZBA requires a plan be submitted; however, the building inspector will require a state-approved plan to issue a building permit. It was noted that the two wells located on the property would support the needs of both the existing home and proposed new unit.

The board reviewed basic lot area and yard requirements prescribed under Article IX:

- Building setbacks: 30 feet from the road and 25 feet side and rear – met
- Minimum road frontage of 200 feet – met

Chairman Allen opened the meeting to questions or comments from the public – there were none. He then proceeded to summarized the application in that all conditions have been met thus the board can move forward and approve the plan with the condition the septic replacement plan be approved by the NH Department of Environmental Services.

MOTION: Mr. Ciardelli motioned the board grant conditional approval of the special exception for an accessory dwelling unit for Tim Bodwell. Mr. Collamore seconded. With no further discussion the motion passed 5-0-0.

Chairman Allen informed the applicant of the requirement to submit the septic plan for state approval, ascertain a building permit from the building inspector and apply for a home occupancy permit when the work is done (as prescribed provisions under subparagraph h). He then closed the public hearing at 7:55pm.

APPROVAL OF MINUTES

Board members reviewed the minutes from August 24, 2021.

MOTION: Mr. Robbins motioned to approved the August 24, 2021 minutes with corrections; Mr. Ciardelli seconded. With no further discussion the motion passed 5-0-0.

OTHER BUSINESS

Chairman Allen provided a brief update on current litigation and agreed to keep board members updated as appropriate. He then provided an overview of the zoning amendments resultant of the March 2022 election that included changes to:

- Article XIV – Septage/Sludge Disposal Facilities – such facilities are no longer allowed.
- Article VIII – Uses Permitted – changes to the language around accessory dwelling units for clarification, but no change to the process.
- Article XI – Conservation Subdivision Development – changed references to include soil type tables.

With no other business before the board,

MOTION: Mr. Robbins motioned to adjourn the meeting; seconded by Mr. Maher. The motion passed 5-0-0.

The meeting adjourned at 8:20pm.

Respectfully submitted,

Catherine Belcher

Land Board Secretary

Minutes approved on May 26, 2022.