

TOWN OF EAST KINGSTON ZONING BOARD OF ADJUSTMENT

MEETING MINUTES

August 24, 2023

Pound School
41 Depot Road
East Kingston, New Hampshire

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

AGENDA

Request for Variances – George & Jill Whiteman – 18 Rowell Road – MBL# 10-02-17 (Case# 2023-02)
Special Exception for ADU – Jennifer Smith – 91 Powwow River Road – MBL# 03-01-02 (Case# 2023-04)

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

Others present: George and Jill Whiteman, Attorney Will Warren, Jennifer Smith, Corey Smith, Brian VanderMeer, Jeff Miller, Dan Bodwell and other members of the public who did not participate in any of the cases.

Mr. Allen opened the meeting at 7:00pm followed by the roll call. Noting the absence of Dave Ciardelli, he designated Alternate Paul Falman as a full voting member for the evening.

He announced there were new ZBA recruits in the audience who had expressed an interest in serving on the board and asked them to introduce themselves and explain why they are interested in serving. Once those introductions are complete, he will provide an overview of the responsibilities of the board. The recruits were then invited to stay as long as they wanted through the hearings to observe.

Brian VanderMeer stated he has been a resident of the town for the past six years and is currently employed as an engineer at the Seabrook Nuclear Station, having served as an engineer in Massachusetts prior to that. He is interested in learning more about the community and how he can serve.

Jeff Miller stated he has been a resident of East Kingston for 14 years, works as an environmental engineer for a firm in NH, is also interested in getting more involved in his community and sees this as a good opportunity to do so. He is familiar with some of the rules and regulations and would like to utilize his skills and experience.

Chairman Allen provided an overview of the functions of the ZBA in that it is an important and powerful board that serves as a pressure relief valve for the town's ordinances. There are situations where the town ordinances do not fit and there needs to be some level of relief, which comes through the variance, special exceptions, and appeals processes. Appeals allow members of the community to appeal decisions of town officials. Though powerful, the board cannot do whatever it wants, it must adhere strictly to the provisions set forth in each of the processes (case law, specific criteria, etc.). It's important for board members to learn the ordinances and read up on case law so they can adjudicate matters accordingly.

Mr. Maher added since he is the person who recruited both applicants, what he continues to look for is to have people with both knowledge and varied backgrounds to help balance the board's ability to enforce, what are at times, very black and white issues and to walk through the subtle nuances of how evaluation criteria allow the board to provide latitude when an exception is warranted. Providing some redundancies to membership is a key part of that so in the event they have an absence, there's somebody who can serve. Additionally, there's always some measure of turnover from runtime to experience and having alternates available allows for a productive and meaningful transition into service. He stated that tonight is the exception where there is an extraordinarily full agenda when in most cases the board can go months without meeting.

Chairman Allen stated the standard process for interested persons is to send an e-mail to the land board secretary. Once received the board will make recommendation to the Board of Selectmen to appoint, the candidate will sign an

oath of office, and serve as designated by the chair when regular members are unable to attend or vote. It is important to attend as many meetings as possible to learn the board's function and be able to serve on a case at any moment in time.

VARIANCE REQUEST – GEORGE & JILL WHITEMAN – 18 ROWELL ROAD (CASE #2023-03)

Chairman Allen opened the public hearing at 7:08pm on CASE# 2023-03: VARIANCE request submitted by GEORGE G. WHITEMAN and JILL A. WHITEMAN seeking variances from East Kingston Zoning Ordinance Article III-B.1, Article III-B.2, Article XVI.A, Article XVI.C.3, Article XVI.C.6, Article XVI.C.7, Article XVI.D.2, Article XVI.F, and Article XVI.G. The applicants propose to operate G&J Transportation, LLC, a business office with the parking and storage of a commercial vehicle exceeding 14,000 GVW at 18 ROWELL ROAD, MBL# 10-17-02. He noted this was a continuation from the July 27th hearing which went long into the evening. The board decided to continue the hearing to take time to absorb and reflect on the testimony and evidence provided. Since that time, he has read through the meeting minutes and given the case thoughtful consideration, which has resulted in needed clarification on the course of this process.

He stated as members of the board, they are townspeople, are human, and get tired when the meetings run late. They are sympathetic and don't want to be the people that have to say no. They may get off track sometimes, going off on tangents to which it is important to correct back on course when needed. He will be making that correction this evening. In reading through meeting minutes, he noticed the board spent a lot of time talking through things like the town's delay in enforcement, discussions with town officials over a decade ago, and vesting. Although interesting and enticing to talk about those things, and as humans and members of the town and neighbors of the people that sit before us, the board may feel sympathy about those sorts of things; but, at the end of the day and at a variance hearing, the board must make its decisions on the five variance criteria set forth in the statutes, not whether the board agrees or disagrees with how things have played out over the past decade. Although some of the things that the board talked about could play into the different five variance criteria, none of those items are directly relevant to the issuance of a variance. The five criteria are the only criteria that allow the board to issue variances. The board will now go through those five variance criteria. As previously stated, they don't want to be the “no” people, but board members have sworn an oath of office to uphold this board's work. He then directed the board to move forward with the hearing, noting they left off from the last meeting in the beginning phases of deliberation. He asked the applicant if there were any additional final comments they wanted to make before the board continued with deliberation.

Attorney Warren stated he agrees completely that there are criteria to be met and that one point he would like to raise is that in addition to those various criteria, the board also has the authority under case law to determine if a variance is needed in the first place. There were some comments from the board last month with respect to all of the requested variances might not be needed in order to obtain a visible or invisible home occupation permit. As such, the applicants would ask, rather than denying the other variances, simply make a determination that the variances are not needed and to include that in the notice of decision.

Chairman Allen responded the alternative to that is for the applicant to withdraw a request at any time should they feel the board need not vote on them.

Attorney Warren further explained that if the board ended up granting variances on the Article III items and determined that was all that was needed to allow the applicant to operate their home occupation, then the remaining variance would no longer be needed.

PUBLIC COMMENT

Chairman Allen opened the meeting to public comment and noted one letter submitted by abutter Julie Ostopchuk which he read into the meeting minutes:

Dear Zoning Board,

In the matter of the Whiteman's request for variances:

I would like to first state that the Whiteman's have been very respectful and considerate neighbors, and I have never had any issue with their storing their tractor trailer at their property. However, I believe the town erred in not requesting input via a public hearing regarding the proposed construction and intended use when the Whiteman's proposed their plans to the town in 2012. I have always wondered how this occurred but have read the minutes from the last meeting and now understand. They are nice neighbors, but my longstanding concerns have been outlined beginning on Line 510 from the July 27, 2023 Zoning Board meeting minutes.

Line 510; "The use is vested and has a long-standing use in the community, given the character of the use, and its history for an extended period of time without any public outcry or upset, the proposed use change will not change the character of the neighborhood because it has become part of the essential character of the neighborhood." This was my greatest concern that I had hoped would not occur.

I bought my home in 2009 specifically because it was zoned agricultural and residential. I owned sheep with the intent to grow my agricultural operation. I never expected the zoning laws to change. What is to happen when another applies for a variance to store their commercial vehicles? The Select Board has opened the possibility of another arguing discrimination based upon an allowance that did not allow public input. In the words of the Whiteman's, this use has changed the character of my neighborhood. I'm quite torn here because I want the Whiteman's to be able to continue their operation because they have done so considerately, but what about another homeowner proposing the same in my neighborhood? The abutters to the Whiteman's have inconsiderately stored junk in the front of their property that is my front view each day. Is that considered the character of the neighborhood?

I appreciate the certified letter I received regarding this hearing, and apologize that because I work 2nd shift, I am not able to attend. The road agent, Select Board, and building inspector do not live on Rowell Rd. They should not be making variance decisions for the residents who do live here. A public hearing was warranted in 2012, and thus the town did err in not scheduling such and providing certified letters to the neighborhood residents.

My concern is not at all about the Whiteman's. They have displayed good citizenship. Therefore, I support their continued storage of their vehicle and business operation. I do not support the continued variance in the event of a property transfer because although the Whiteman's have operated considerately, the next owner may not.

My concern is what this variance has potentially opened my neighborhood to. No variance should ever be allowed without a public hearing and proper notification so residents may consider all implications including future arguments that would change the character of a neighborhood. The only way to assure that the changes to the character of the neighborhood are approved by the neighbors is to ask them. I ask the Zoning Board to consider the following:

- 1. Secure public input and approval for all future considerations done in the manner in which the Planning Board alerted the residents to the July hearing with the addition of a full description of the variance proposed enclosed in the certified letter. We all know that public meetings are not well attended usually, therefore, providing the greatest amount of information regarding a proposed variance via mail will encourage residents to participate in the process. Add this clause of public notification to the zoning laws in East Kingston.*
- 2. Please either enforce NH RSA 236:112, the State junkyard/junk yards law, to preserve property values on Rowell Rd, or schedule a hearing to address such.*

Thank you for your time and consideration. Sincerely, Julie Ostopchuk, 19 Rowell Road.

With no other input from the public, he closed the public comment section of the hearing.

BOARD DELIBERATIONS

Chairman Allen opened the meeting to board deliberations and instructed board members that they will be voting on each variance individually.

Variance Request #1

Article 111-B.1 Residential/Agricultural District: The parking of not more than one commercial vehicle of 14,000 GVWR or less is permitted and shall not have the appearance of business operations from the property.

Chairman Allen stated the applicant proposes the parking of a commercial vehicle exceeding 14,000 GVWR in the residential district. He then went through the five variance criteria as set forth in RSA 674:33:

Discussion/Deliberation/Vote

1. Granting the variance would not be contrary to public interest.

Chairman Allend explained that in the first prong of the variance criteria, the applicant does not need to show how the variance would benefit the public, but only that it would not harm the public.

Vice Chair Robbins stated the applicant has shown over the years, in first building the garage, parking his vehicle there, and going through the process as far as he knew, that he has been concerned with the public's perception of the property and also the way in which he was using it. The applicant was trying to meet the spirit of this regulation. He opined he felt this criterion had been met.

Mr. Maher asked a procedural question noting his understanding in granting variances is that the board would nullify the requirement to seek a home occupation permit based on the contents of the applicant's request which, in essence, is asking the board to waive every single zoning ordinance that would require a home occupation permit or is otherwise violated by storing the vehicle on the premises.

Chairman Allen responded if the board was to grant every single one of the variances requested, there would be the ability to park the truck on the premises and operate a business from the residence without the need of a home occupation permit. However, this particular ordinance and request simply addresses the parking of a vehicle over 14,000 pounds gross weight.

Mr. Maher then inquired if the variance stays with the property owner or applies to the property to which Chairman Allen responded the variance remains with the property in perpetuity. Mr. Maher noted the abutter's concern that the variance be applied to the current owner as there is no guarantee a future owner would be nearly as considerate as the Whiteman's. Chairman Allen stated this would be part of the board's consideration as they look at granting the variance or not. How this situation came to be in not directly relevant to these decisions. They need to make decisions from the position that the Whiteman's are coming before the board asking to park the tractor trailer truck on the property. The variance would allow any future owner to park their truck there. Mr. Maher stated in this case he would be very concerned about the precedentially-setting nature of granting this variance.

Chairman Allen stated he does not see any issues with the public interest; granting this variance would cause any harm to the public.

Mr. Falman added the testimony from the neighbors is that the Whiteman's are respectful and the neighbors support this operation, which speaks for itself.

2. The spirit of the ordinance would be observed.

Chairman Allen stated when it comes to the spirit of the ordinance, they need to look at what the ordinance was trying to obtain in its creation. The board must determine the legal purpose the ordinance serves and the reason it was enacted. He then read aloud Article III.B:

The intent of this district is to provide areas for single-family dwellings and agriculture in a traditional small-town rural setting separate from industrial, commercial and business operations. The district shall maintain strict adherence to residential and agricultural uses except as otherwise permitted by the East Kingston Zoning Ordinance. All development shall be carried out with the objective of preserving the natural and scenic environment of this rural district.

1. *The parking of not more than one commercial vehicle of 14,000 GVWR or less is permitted and shall not have the appearance of business operations from the property. Agricultural vehicles and equipment are excluded from this requirement.*
2. *Business operations (wholesale or retail), operations of commercial equipment owned by the property owner and/or resident, operations of commercial equipment not owned by the resident (i.e., equipment operated for others), commercial or industrial operations, such as, but not limited to, trucking, hauling, excavation, mining, manufacturing, or any such similar operations are strictly prohibited within this district. Agricultural vehicles and equipment are excluded from this requirement.*

He stated when it comes to the spirit of the ordinance, the board must decide if they think the spirit of the ordinance is upheld by allowing a tractor trailer truck to park in the neighborhood.

Vice Chair Robbins stated in this particular case and, because there is no business activity taking place, there's no loading the truck up and hauling things or bringing things back, and there's nobody coming to the property to do business, it is his position the applicant is keeping within the spirit of the ordinance.

Chairman Allen then countered this with an example: FedEx parks all of their trucks at their terminal, both coming in empty and going out empty every night, and they do their bookkeeping there. They do all their packing and shipping, but only park their trucks elsewhere. Does this mean that a FedEx terminal is not a business operation? The town has encountered this situation many times when business owners say they are not operating a business from their home, they are just parking all of their equipment every single night and doing all of the bookkeeping. Does the board think that the spirit of the ordinance is observed in allowing a tractor trailer truck to park there?

Mr. Collamore stated the drawback is the rural character of the neighborhood. Other than that, the fact that the vehicle is put away out of sight, he thinks the parking of the truck on the premises is within the spirit of the ordinance.

Mr. Falman stated he believes because of how Mr. Whiteman met the first criteria (not contrary to the public interest) and has maintained the residential/agricultural setting, that just because it's a truck over 14,000 pounds, it still meets this criterion with respect to how he operates daily.

Mr. Maher expressed concern on the size of the vehicle relative to the size restriction, whereby the town says it was uncomfortable with something over 14,000 GVW. At the last meeting, the board discussed that this vehicle, unloaded, was around probably three to four times that amount. To him this seems like not a little relief, but a massive relief with respect to the original residential and agricultural nature of the district. This is difficult for him to reconcile.

Chairman Allen stated this is an uncomfortable and a hard one for him. The ordinance very clearly puts a weight restriction on the vehicles and it very clearly states no trucking and hauling in the district. He looks at it from a perspective of would the spirit of this ordinance still be met if the next owner is not as conscientious, and the truck goes down the road loud, and the road is small and there are kids on the road? In his opinion this section of the ordinance is clear that the town has stated they want the area to be residential. Although Whiteman's operate wonderfully, the next owners may not. The board must remember it would be granting this variance forever – it would remain with the property. The town put the weight restriction there, it does not allow commercial operations there, and does not allow trucking in a residential neighborhood. Because the streets are smaller and the neighborhood is small and close, it is not an appropriate area in which commercial operations should operate. There are safety, noise and nuisance concerns.

Vice Chair Robbins spoke to the term “shall” and stated in his experience, this term is definitive and absolute; it is not “may” or “could.” He does not believe the Whiteman’s have the appearance of business operations.

Mr. Collamore added the sign on the road says vehicles over 10,000 pounds are prohibited. This is clearly stated on the road, meaning the town determined they do not want heavy vehicles going up and down that road.

Both Vice Chair Robbins and Vice Chairman Allen agreed there is a weight limitation on Rowell Road.

3. Granting the variance would do substantial justice.

Chairman Allen stated in this next prong, any loss to the individual that's not outweighed by a benefit to the town is not substantial justice. In this case he doesn't see any benefit to the town that would be outweighed by the negative to Mr. and Mrs. Whiteman. Vice Chair Robbins stated the only thing the town might lose is taxes.

Mr. Maher, Mr. Collamore, and Mr. Falman concurred.

4. The value of the surrounding properties would not be diminished.

Mr. Maher stated this was the challenge with the variance carrying forward with the land. Everyone is in agreement the way the Whiteman’s have chosen to operate is the way all of us would hope every neighborhood would act. However, by granting the variance the board is essentially waiving the limitation on parking commercial vehicles there. It could be six the next time someone decides to live there and there would be nothing the town could do about it. This is why he asked the question earlier - the board may feel like granting the variance should be the right thing now, but then end up watching it bite them back later. In terms of how this diminishes the property value now, there is no impact, but should someone reconfigure the operations and have no limitations in the future, then the property values would be substantially affected.

Board members noted they could set limitations on the number of trucks, but they cannot set limitations on human behavior. The letter read earlier indicated the Whiteman’s have been excellent neighbors, but that the abutter’s main concern was about future homeowners. The board also noted they could not grant a variance specific to the ownership of the property.

Mr. Falman stated the issue at hand is that currently there are no issues with the Whiteman’s; however, the board cannot control the future.

Chairman Allen stated it is difficult to know if there has been any change in property values as this has been going on for a long time. There is no data to support whether the operations from 2013 have diminished the property values of the surrounding properties.

Vice Chair Robbins spoke to researching the database from over a decade ago to analyze any change in property values.

Chairman Allen responded that lacking both data and testimony to the effect on surrounding property values, the board is well within their rights to make a determination of whether they think parking a large commercial vehicle would alter the property values. With the lack of data, it's now a judgment call on the board's part as to whether they think this would affect property values. Being that the truck has been there for over ten years, he surmises the property values have probably already been affected if they were going to be, and that moving forward they would probably be stable unless the next owner operated in a different manner.

Board members concurred.

5. Unnecessary Hardship

- a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.*

- (i) There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.*

Chairman Allen stated this one is always a mouthful and a bit of a tongue twister; but at the end of the day, the board has to determine if the property has some unique distinguishing characteristic that makes it different from all the other properties around it that would justify this variance being granted. He spoke to area and use variances in that both still require a distinguishing characteristic about the property.

Mr. Maher stated the fact that the town has allowed this to exist by approving the building permit that allowed the structure to be constructed on this site, and that the distinguishing characteristic is that there's a pre-existing condition of an extraordinarily large structure that allows for out of sight parking of a particular vehicle. The size of the building is the only thing he could characterize as unique. As was discussed at the last meeting the property is very similar to the surrounding properties. The building has been in existence more than 12 years. Vice Chair Robbins, Mr. Collamore and Mr. Falman agreed with Mr. Falman adding that one would not expect to see a building of this size on a residential/agricultural parcel.

Chairman Allen responded for due diligence purposes and as the board's responsibility to the rest of the townspeople, he provided a counterpoint by stating this unique characteristic was built by the current owner of the property during a period of time when the ordinance would not have allowed the business without a permit to operate. As stated at the last meeting, this building was built specifically for the business and for the parking of the business truck. It was built 20 plus years after the town had an ordinance that said you had to have a permit to operate a business. And now the owner is leveraging this building as a special condition to get a variance.

He then provided the scenario where the neighbor next door asks to build a 40 by 60 structure which they don't need a variance to do. They can go to the town hall and they can ask for a building permit. And then two years from now those same neighbors come before the ZBA asking for a variance because they have this unique structure. What makes this so different from the two-acre lot parcel right next to them if they build a big building and want to park a commercial vehicle? Or the next house or the next house?

Or another scenario: The neighbors build an ice-skating rink in their backyard and then say they want to start an ice-skating rink business. Then, later, there was an ordinance passed that said you can't have an ice-skating rink business. Eventually the ice-skating rink business went away and a lot of time elapsed. Some new owner came along and said wow this property is perfect for an ice-skating rink and applied for a rink variance citing the unique characteristic of the property that used to house an ice-skating rink. In this situation, this would be considered a pre-existing nonconforming lot, unique to the surrounding properties.

He stated he is having a hard time with a property owner creating the uniqueness and then leveraging that against the town for a variance. It's not that he doesn't sympathize with the Whiteman's; he does. But he has to ask the question, is it truly unique?

Mr. Maher stated he had introduced this as a concept to kind of drive the discussion because he wrestled with it as well in trying to find some characteristic of the parcel that he felt would tip the scale in that direction. But ultimately, he ended up coming back to a similar conclusion, which is the conversion of any existing structure into a new nonconforming use. The board wrestled with that on other cases where somebody wanted to take an existing property that only had a garage and turn it into a massively nonconforming residence. The board held significant deliberations about the appropriateness of doing that and leveraging the unique characteristics of that lot. He stated the board would actually be inconsistent if they were to leverage an existing structure. He wanted to have a conversation about it because it is a very unique and different thing that exists on this particular piece of property. As previously stated, any property that's big enough to support something like this could then become the next nonconforming thing that gets requested as a variance just because they built it and then argue they should be allowed to use it in a nonconforming way.

It was noted this was a very uncomfortable situation for which the ZBA may not be able to provide relief; however, this was not the end of the line for options for relief to the applicants. All of the concerns noted at the last meeting (vesting, decade's old town approvals, etc.) can all be considered at the next level. The ZBA has an obligation to the town to grant variances appropriately and per the statutory requirements.

Mr. Maher added that in the end, the property, as indicated in the requirements, is not the structure; it is generally interpreted to be the land only.

Chairman Allen stated if they expand that out to the characteristics, the property is definitely not unique. It's flat, two acres, just like everyone else's in the neighborhood. It is not down a hill or hidden out of sight, it's just another lot in that neighborhood.

Board members spoke to a previous case where they granted a variance because a fire cistern located on a property interfered with the location of a driveway and wiped out a significant portion of road frontage. That was considered a unique characteristic of that property.

Mr. Falman stated the hardship piece is a physical attribute or a dimensional setback.

Chairman Allen responded it could also be for a use variance and gave an example of a piece of property that had a great big slope and at the bottom of the slope was a perfect for the operation the ice-skating rink or some other characteristic of the property that made it really appropriate for a specific use, and unlike other properties. In this case and for all the other folks in town, if they built a huge building, why would they not get a variance for a nonconforming use as well?

Vice Chairman Robbins stated since the building was not a pre-existing condition, he does not believe the board can consider it a hardship.

(ii) The proposed use is a reasonable one.

Chairman Allen noted that if the criteria in subparagraph (a) has not been established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property. He then opined that the property is primarily a residence, and, from earlier testimony, more than half of the large structure is used for personal use. This would mean both the property and the structure are reasonably used. There is no reason why the structure could be deemed unusable.

Mr. Maher stated he can't get through determining there is an unnecessary hardship because the land is still largely unencumbered. There's case law that shows the size of the property isn't even a contributing characteristic. It really comes down to what does the zoning criteria say about how the town says the property can be used. Granting a variance would be contrary to that zoning ordinance, and therefore, there is no unique feature created by the structure.

Mr. Collamore stated the structure itself does not meet the hardship criteria, and there is nothing that he sees that would prevent the owners from using the property within the strict conformance of the ordinance.

Mr. Falman opined there is a reasonable use of the property and the structure as there is both a residence and a usable garage which could be used for various purposes. It is not like they are denying the homeowner the use of the property in not granting the variance. They have a useable structure.

Mr. Maher added previous discussion with applicant indicated roughly $\frac{3}{4}$ of the structure was not used for the storage of the tractor trailer and that most of the garage space was used mostly for other things.

Vice Chair Robbins stated he could not get around the fact that the building is not a pre-existing condition and that is being used for other things besides the storage of the vehicle. He cannot see any real hardship that could be used to grant the variance.

Chairman Allen then called for a vote on each of the criteria for the first variance request which would then be followed by a motion to grant or deny the request:

Article 111-B.1 Residential/Agricultural District: The parking of not more than one commercial vehicle of 14,000 GVWR or less is permitted and shall not have the appearance of business operations from the property.

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed.
Rationale:		The parking of the tractor trailer truck exceeds weight limitations on both the road and for the residential/agricultural district as well as conflicts with the sizing of the roadway and the neighborhood. The intent of this ordinance is to designate residential/agricultural districts that provide areas for single-family dwellings and agriculture use in a traditional small-town rural setting separate from industrial, commercial and business operations as well as ensure the safety on the smaller roads, a quiet rural atmosphere, and minimize dust, noise and disturbances.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #4 – VALUES The values of the surrounding properties would not be diminished if granted.
Rationale:		This criterion has been satisfied.	

ARE	ARE NOT	VOTE	
	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:		The property is not different from any other property in town that might have a structure this size, there are no characteristics of the property that make it different from other properties (frontage, size, topography), the building is used for multi purposes (personal use and not just the storage of the tractor trailer truck). The building is not pre-existing to the current use of storing the truck.	

MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.
Rationale:		There is no special condition about the property that make it different from other properties.	
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it.
Rationale:		The property can be used as a residence and the garage for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.	

MOTION: Mr. Falman motioned to deny the variance from East Kingston Zoning Ordinance Article III-B.1 which would have allowed for the parking of a vehicle in excess of 14,000 pounds in the residential district for all the reasons noted in the board’s review of each of the variance criteria; seconded by Mr. Maher. The motion passed 5-0-0.

Variance Request #2

Article 111-B.2 Residential Agricultural District: Business operations (wholesale or retail), operations of commercial equipment owned by the property owner and/or resident, operations of commercial equipment not owned by the resident (i.e. equipment operated for others), commercial or industrial operations, such as, but not limited to, trucking, hauling, excavation, mining, manufacturing, or any such similar operations are strictly prohibited within this district.

Chairman Allen noted the applicant proposes to park a commercial vehicle where the ordinance prohibits commercial operations which includes trucking and hauling activities.

Discussion/Deliberation/Vote

1. *Granting the variance would not be contrary to public interest.*

Mr. Maher stated he was struggling with how to place a reasonable restriction if they were to grant the variance that would prohibit future more aggressive uses of the property. If they didn’t, they would be allowing any business operation, wholesale, retails, etc. to be conducted on the property in a residential area which is directly conflicting with the public interest.

Vice Chair Robbins responded he is agreement that right now this is not contrary to the public interest, in the manner that the Whiteman’s are utilizing the property; however, they cannot guaranteed a new homeowner would be as considerate. Anyone else that could come in at a later date could turn around and cut trees in the backyard, load them on their truck and drive them out. This would be more of a commercial operation, and he doesn’t know how the board can prevent this.

Chairman Allen reminded board members that this particular criterion is seeking to determine if there would be public harm if the variance were granted to park a commercial vehicle where the ordinance prohibits trucking and hauling operations.

Mr. Maher stated there would be nothing to prevent someone from causing excessive noise, dust, vibration and any other things that would be inconsistent with not only the ordinance but could do substantial harm to the public interest, or the surrounding community in general.

Vice Chair Robbins agreed adding that any kind of operation under this Article (commercial or industrial operations, such as, but not limited to, trucking, hauling, excavation, mining, manufacturing, or any such similar operations) would be contrary to the public interest.

2. The spirit of the ordinance would be observed.

Chairman Allen, wanting to pick up the pace of the meeting so they are not in session all night, and to be respectful of the applicants, directed the board move onto the second prong. He asked if the spirit of the ordinance would be observed with the operation of the coming and going of the trucking and hauling equipment.

Members agreed it would not, and stated the nature of the vehicle is commercial and designed for hauling to which the ordinance states clearly, no trucking or hauling is permitted. The spirit of the ordinance is to create a separate zoning district for those types of operations and that the road, itself, has a weight limit restriction far below the total weight of the tractor trailer truck.

3. Granting the variance would do substantial justice.

Mr. Maher stated his opinion on this is the same as the first request – there isn't any benefit to the town that would be outweighed by the negative to Mr. and Mrs. Whiteman. Board members concurred.

4. The value of surrounding properties would not be diminished.

Mr. Maher stated he feels different about this one where relaxation of this could substantially diminish property values in the future if someone were to take up an entirely different operation more than parking a vehicle on the property.

Vice Chair Robbins agreed, adding it would greatly affect property values in a negative way.

Chairman Allen stated the coming and going in the current manner would not cause any property value issues; however, without bounds put on this request, it could exponentially affect the surrounding properties negatively.

Vice Chair Robbins stated the board needs to look at this from not just a current view, but from the possible impact this would have in the future should this particular commercial activity restriction be waived.

Mr. Maher stated the town has a history, as stated in the letter read earlier, of not upholding seemingly otherwise custom dry provisions of existing town ordinances. So the board should be cautioned that putting boundaries around some of these things encumbers the town in perpetuity to enforce that. The current landowner has shown himself to be exemplary in his willingness and interest in preserving the nature of that neighborhood, and any sort of deviation from this opens the huge door. Then you're counting on someone else enforcing whatever brackets the board puts around this. That is like saying, let's respect how Mr. Whiteman is coming and going on the property only once per day and the next person decides to do it five times per day, thus sending a resident to sit out at the property with the clock and pad of paper to document the five times a day, and then call the police and try to get them to come and issue a citation. This would ultimately end up in court for remedy which is not a position they should be putting abutting neighbors in.

Chairman Allen stated that if this were a large neighborhood, he does not think he would have a big of issue with this one; but it's a small neighborhood on a tiny road where houses are tightly settled. It's a very large vehicle to come and go. It would give people pause with respect to the overall value of surrounding properties.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.

i. There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.

Chairman Allen asked if the board feels there is a uniqueness of the property that justifies granting relief to the ordinances for the parking of a commercial vehicle and for trucking and hauling.

Mr. Maher stated he cannot find anything particular about the property that makes it unique from other properties similarly zoned.

Chairman Allen reference the exact same discussion they had on the first request as it relates to the uniqueness of the property (see pages 7 through 12 of these minutes). These two requests are very similar, and the discussion held at length for the first request applies to this request as well. All were in agreement.

Chairman Allen then called for a vote on each of the criteria for the second variance request which would then be followed by a motion to grant or deny the request:

Article 111-B.2 Residential Agricultural District: Business operations (wholesale or retail), operations of commercial equipment owned by the property owner and/or resident, operations of commercial equipment not owned by the resident (i.e. equipment operated for others), commercial or industrial operations, such as, but not limited to, trucking, hauling, excavation, mining, manufacturing, or any such similar operations are strictly prohibited within this district.

Chairman Allen noted the applicant proposes to park a commercial vehicle where the ordinance prohibits commercial operations which includes trucking and hauling activities.

MET	NOT MET	VOTE	
	X	2-3-0 (Maher/Allen in favor)	Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		The proposed use directly conflicts with the public's interest, setting up for potential noise, vibration, etc., and other negative impacts for allowing commercial trucking and hauling activities into this tightly settled little neighborhood.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed .
Rationale:		The parking of the tractor trailer truck and its coming and goings directly conflict with the ordinances stated prohibition of commercial equipment activities, including trucking and hauling in a residential/agricultural district. The ordinance also addresses safety concerns surrounding residential streets.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
	X	2-3-0 (Allen/Falman in favor)	Variance Criteria #4 – VALUES The values of the surrounding properties would not be diminished if granted.
Rationale:		Relaxing or waiving this criterion could dramatically change the nature of the activity on this road affecting adversely surrounding property values.	

ARE	ARE NOT	VOTE	
	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:			The restriction on the property is necessary to prohibit the commercial activities associated with trucking and hauling. Nothing on the property makes it unique to other properties similarly zoned. The discussion associated with this criterion shall apply to the rationale for this decision.

MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.
Rationale:			There is no special condition about the property that make it different from other properties.

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it.
Rationale:			The property can be used as a residence and the garage for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.

MOTION: Mr. Collamore motioned to deny the variance from East Kingston Zoning Ordinance Article III-B.2 Residential Agricultural District which would have allowed the applicants to park a commercial vehicle where the ordinance prohibits commercial operations that includes trucking and hauling activities for all the reasons noted in the board's review of each of the variance criteria; seconded by Vice Chair Robbins. The motion passed 5-0-0.

Variance Request #3

ARTICLE XVI.A - HOME OCCUPATIONS Definitions: A Home Occupation is a professional occupation, service business or the production or selling of a product that is carried out from the primary dwelling which is clearly accessory and subordinate to the residential use of the property. A Home Occupation may not be conducted in an Accessory Dwelling Unit. An Invisible Home Occupation is one with no visible activity conducted outside the home.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance would prohibit visible activity conducted outside the home.

He clarified the applicants are asking for a variance to the home occupation ordinance from the section that states an invisible home occupation is one with no visible activity outside the home as they would like to come and go with the tractor trailer truck associated with the J&G business operations.

Discussion/Deliberation/Vote

Vice Chair Robbins asked for further clarification about the coming and going of the truck and/or the administrative support (books) associated with the business. Chairman Allen confirmed the request is for the coming and going of the tractor trailer.

1. Granting the variance would not be contrary to public interest.

Mr. Maher asked if the board had a copy of the actual application where the requests and ordinance is referenced because this request is about Article XVI.A which is the definition of a home occupation; it's not the standard – it looks like they are asking to grant a variance to the definition of what a home occupation is. This means the board is looking at definitions only, nothing else.

Chairman Allen took the opportunity to inquire with the applicants if they wanted to withdraw any of the variance requests stating, as a board, they we're not going to dismiss any of the variance requests, and if the applicants so wanted, they would go through each one them for cleanliness and respect of the requests. Atty. Warren responded they wanted the board to address all of the requests as submitted.

Mr. Maher stated that the variance request specific to Article XVI.A is a request to waive the definitions of what home occupation is, which surmounts to evaluating some of the variance criteria relative to simply definitions. Should the board waive the definition of a home occupation, they will not have an ordinance to withhold the rest of the criteria because the board would have essentially invalidated the defining information that makes the whole ordinance work. Granting a variance from Article XVI.A would wipe out the home occupation ordinance in its entirety.

Chairman Allen confirmed the article in question is a definition of a home occupation which states an invisible home occupation is one with no visible activity conducted outside the home – the applicants are asking for a variance to the definition so they can conduct an invisible home occupation with the truck coming and going from the property.

Mr. Falman stated he sees this as a variance to the definition with the intent to allow the parking of the truck.

Vice Chair Robbins stated the applicants are asking to operate a visible home occupation (truck coming and going) as an invisible home occupation. The board just denied the variances that would have allowed the parking and trucking activities.

Mr. Maher stated the request is only to park the vehicle there. If granted, it literally means they can't come and go. Because of the way the application is written, which is to permit an invisible home occupation to include the indoor parking for tractor trailer where the ordinance would prohibit visible activity conducted outside the home, they can park the truck there, but they can't ever leave. This is the literal taking of this request.

Chairman Allen stated he cannot see how there would be any public harm in allowing the truck to park inside the building on the property. Mr. Maher agreed, no harm with just the parking of the truck in the existing garage.

2. The spirit of the ordinance would be observed.

Chairman Allen stated the home occupation ordinance clearly defines there are three types of home occupations: visible with activity outside the home, invisible with no activity outside the home, and grandfathered nonconforming uses which are business activities that were pre-existing prior to 1989 when the home occupation ordinance was put in place allowing them to continue doing what they were doing. In this case, the spirit of an invisible home occupation is provided in its definition – there is not supposed to be any activity outside of the home, thus, a business operation that has activity outside the home is not within the spirit of what this ordinance was trying to accomplish. All members were in agreement.

3. Granting the variance would do substantial justice.

Chairman Allen opined that the benefits of the town are not outweighed by the negative impact to the applicant's should the variance be denied. Board members concurred.

4. The value of surrounding properties would not be diminished.

Mr. Falman opined the board should be consistent with this prong with both Chairman Allen and Vice Chair Robbins stating the surrounding properties would not be diminished.

Mr. Maher spoke to the lack of data to support changing property values, but that they are making a judgement call on whether the proposed use, or future use could diminish property values. Creating an invisible, nonconforming home occupation that will remain with the property for future homeowner use could have a serious impact to the surrounding property values. If the board is waiving the definition of what an invisible home occupation is allowed to be, they are opening the door to any kind of business, and he does not know how the board could put limits on this to protect the neighbors from future business operations. There is a real and substantial possibility that the surrounding property values could be diminished, although not by this current homeowner.

5. Unnecessary Hardship

a. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.*

i. *There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.*

With respect to unnecessary hardship, Chairman Allen directed the board to talk through the unique characteristic of this particular piece of property and why it requires relief from the home occupation ordinance where the applicants should be granted an invisible home occupation when they have visible activity.

Vice Chair Robbins stated the very nature of the question is a conflict of terms – an invisible home occupation that has visible home occupation activity.

Mr. Maher stated he finds nothing unique about the property that would substantiate allowing this. Chairman Allen and Mr. Falman concurred with Chairman Allen asking what unique characteristic would allow for a visible business operation to be deemed invisible. He stated he couldn't find anything about the property that would justify that relief. Vice Chair Robbins agreed.

Chairman Allen then called for a vote on each of the criteria for the third variance request which would then be followed by a motion to grant or deny the request:

ARTICLE XVI.A - HOME OCCUPATIONS Definitions: A Home Occupation is a professional occupation, service business or the production or selling of a product that is carried out from the primary dwelling which is clearly accessory and subordinate to the residential use of the property. A Home Occupation may not be conducted in an Accessory Dwelling Unit. An Invisible Home Occupation is one with no visible activity conducted outside the home.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance would prohibit visible activity conducted outside the home.

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		This criterion has been satisfied.	
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed.
Rationale:		The spirit of the ordinance is clearly stated in the definitions of an invisible home occupation. Operating a visible home occupation as an invisible operation conflicts with the spirit of the ordinance.	
MET	NOT MET	VOTE	
X		4-1-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice .

		(Falman opposed)	
Rationale:		This criterion has been satisfied.	
MET	NOT MET	VOTE	
	X	2-3-0 (Allen/Falman in favor)	Variance Criteria #4 – VALUES The values of the surrounding properties would not be diminished if granted.
Rationale:		By waiving the definition of an invisible home occupation, the board would be allowing a visible home occupation that could have negatively affect surrounding property values.	
ARE	ARE NOT	VOTE	
	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:		The home occupation is defined as invisible or invisible and each is specifically further defined.	
MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.
Rationale:		There is no special condition about the property that make it different from other properties.	
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it.
Rationale:		The property can be used as a residence and more than half of the garage is currently used for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.	
MOTION: Mr. Maher motioned to deny the variance from East Kingston Zoning Ordinance ARTICLE XVI.A - HOME OCCUPATIONS Definitions which would have allowed the indoor parking of a tractor trailer, where the ordinance would prohibit visible activity conducted outside the home for all the reasons noted in the board’s review of each of the variance criteria; seconded by Vice Chair Robbins. The motion passed 5-0-0.			

Variance Request #4

ARTICLE XVI.C.3 - HOME OCCUPATIONS Standards: Adequate off-street parking must be provided for customers and deliveries. All businesses must provide adequate turnaround, drop-off, and pick-up areas in order to prevent cars from waiting in the street right-of-way and to prevent cars from backing up into the public right-of-way. The Home

Occupation shall not require regular need for delivery of materials to and from the premises by commercial vehicles over twelve- thousand (12,000) pounds GVWR (e.g., tractor trailers and heavy commercial vehicles).

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance prohibits Home Occupations requiring regular delivery of materials to and from the premises by commercial vehicles over 12,000 pounds GVWR.

Discussion/Deliberation/Vote

Vice Chair Robbins stated the parking of the vehicle has nothing to do with the regular deliveries by commercial vehicles over 12,000 pounds. Additionally, there are no customers coming and going, thus no customer parking is required. He questioned why this variance request was even submitted.

Mr. Maher responded because it has a reference to parking. The applicants have stated throughout their application that there are no deliveries, there are no customers, and they provide adequate parking for their own existing vehicles. He too, questioned what the board is being asked to evaluate.

1. Granting the variance would not be contrary to public interest.

Mr. Maher stated he is not sure how best to determine public interest relative to this; however, they will try. Most of the prongs have stayed pretty consistent throughout. There is no undue traffic, parking, or deliveries so granting this variance wouldn't be in directly in conflict with the interest of residents in a residential/agricultural district.

Chairman Allen stated the home occupation ordinance doesn't want businesses operating in the residential agricultural districts that requires commercial vehicles over 12,000 pounds to have to come and go on a regular delivery basis. He questioned why the applicants would need relief from this ordinance for this operation and stated it would be inappropriate to simply grant a variance when they (applicants) state they don't have these things happening at their property. He also doesn't see how this particular situation justifies relieving the applicant from this ordinance.

Vice Chair Robbins stated he too does not see how this particular article has anything to do with the proposed parking of the truck.

Chairman Allen opined granting this particular variance would not be contrary to public interest. Other board members agreed.

2. The spirit of the ordinance would be observed.

Chairman Allen stated in this particular case, the spirit of the ordinance would not be observed. The requirement was placed in the ordinance to maintain the quiet, residential atmosphere of the neighborhood. This neighborhood is small and the roadway throughout the neighborhood is small. They do not want heavy vehicles coming and going on a regular basis for a home occupation. Even though there are no deliveries happening, the applicant, by way of this request, is asking for relief that would allow the deliveries of commercial vehicles in excess of 12,000 pounds. Mr. Maher concurred, adding he does not see how they can grant a variance that wipes out the prohibition of parking and deliveries. This would allow for future uses to park on the street and have deliveries on the street unless the board tries to set boundaries around it, which would create an enforcement issue.

Chairman Allen noted the portion of the ordinance the applicants are asking relief from is the 12,000-pound GVW coming and going.

3. Granting the variance would do substantial justice.

The board's position on this remains unchanged, the variance would provide substantial justice to the applicants.

4. The value of surrounding properties would not be diminished.

Mr. Maher's position on this remains unchanged, here is a real and substantial possibility that the surrounding property values could be diminished, although not by this current homeowner.

5. *Unnecessary Hardship*

- a. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.*
 - i. *There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.*

Board members agreed there were no special conditions that would justify an unnecessary hardship and further justify the need to relieve the applicants from this portion of the ordinance regarding the coming and going of trucks for heavy deliveries for all the reasons previously stated.

Chairman Allen then called for a vote on each of the criteria for the fourth variance request which would then be followed by a motion to grant or deny the request:

ARTICLE XVI.C.3 - HOME OCCUPATIONS Standards: Adequate off-street parking must be provided for customers and deliveries. All businesses must provide adequate turnaround, drop-off, and pick-up areas in order to prevent cars from waiting in the street right-of-way and to prevent cars from backing up into the public right-of-way. The Home Occupation shall not require regular need for delivery of materials to and from the premises by commercial vehicles over twelve- thousand (12,000) pounds GVWR (e.g., tractor trailers and heavy commercial vehicles).

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance prohibits Home Occupations requiring regular delivery of materials to and from the premises by commercial vehicles over 12,000 pounds.

MET	NOT MET	VOTE	
	X	2-3-0 (Falman/Allen in favor)	Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		Granting this variance to allow heavy trucking deliveries within this small neighborhood would be in directly in conflict with the interest of residents in a residential/agricultural district.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed.
Rationale:		For the reasons discussed: coming and going of heavy trucks for a home occupation, and in this case an invisible home occupation is in direct conflict with what the town has made clear in their ordinance. Business should be able to operate on their properties but should do so maintaining the residential, quiet, and safety of roads as has been discussed through the hearing.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
X		3-2-0 (Maher/ Collamore opposed)	Variance Criteria #4 – VALUES The values of the surrounding properties would not be diminished if granted.

Rationale:		This criterion has been satisfied.	
ARE	ARE NOT	VOTE	
	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:		The restriction of commercial truck deliveries, off street parking, etc. would be eliminated by granting the variance which would frustrate the ordinance.	

MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.
Rationale:		There is no special condition about the property that make it different from other properties.	
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it.
Rationale:		The property can be used as a residence and more than half of the garage is currently used for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.	

MOTION: Mr. Falman motioned to deny the variance from East Kingston Zoning Ordinance ARTICLE XVI.C.3 - HOME OCCUPATIONS Standards which would have allowed for the indoor parking of a tractor trailer truck, where the ordinance prohibits Home Occupations requiring regular delivery of materials to and from the premises by commercial vehicles over 12,000 pounds GVWR for all the reasons noted in the board's review of each of the variance criteria; seconded by Vice Chair Robbins. The motion passed 5-0-0.

At this point during the hearing (8:55pm) Chairman Allen set a time of 9:30pm to continue the public hearing should it not have ended by then to allow adequate time for the second case of the evening to be heard.

Variance Request #5

ARTICLE XVI.C.6 - HOME OCCUPATIONS Standards: Home occupation must not cause excessive vibrations, store or handle combustible or explosive materials, or negatively impact the physical condition, safety, access or traffic volume of existing roads.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer truck, where the ordinance prohibits Home Occupations that cause excessive vibrations or negatively impact the physical condition, safety, access, or traffic volume of existing roads.

Discussion/Deliberation/Vote

1. Granting the variance would not be contrary to public interest.

Mr. Falman stated the requested relief would definitely be contrary to public interest, specifically to vibration, traffic volume, and the physical impact to the road. The coming and the going of the truck could cause harm to the public interest.

Mr. Maher stated he is in the “not met” camp on this one.

Mr. Collamore agreed, stating the impact to the future use of the property, the potential for an increase in the number of vehicles could cause public harm.

Chairman Allen stated providing relief from safety, traffic volume, noise, disturbances, and dust standards would certainly cause public harm.

2. The spirit of the ordinance would be observed.

Vice Chair Robbins stated the spirit of the ordinance would not be observed based on the fact that the tractor trailer truck’s coming and going is going to impact the road and the condition thereof.

Mr. Maher stated the spirit of the ordinance is to create a safe and accessible area that limits traffic volume on the existing road. Granting relief from this standard does the exact opposite.

3. Granting the variance would do substantial justice.

The board’s position on this remains unchanged, the variance would provide substantial justice to the applicants. The negative to the applicant outweighs the town.

4. The value of surrounding properties would not be diminished.

Chairman Allen asked if providing relief to an ordinance that limits traffic, noise, dust and things of that nature would affect surrounding property values.

Mr. Maher and Vice Chair Robbins responded affirmatively with Vice Chair Robbins further stating that as the road deteriorates, the property values will go down. Even though there is only one truck now, they cannot predict the future should this standard be waived to the future homeowners as well.

With respect to just the single truck, Mr. Maher stated this is not the case; however as stated by the testimony from an abutter, the implications this variance could have on the future homeowner could.

Vice Chair Robbins asked how long it would be with just this single truck to when the road will need to undergo substantial repair.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.

i. There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.

Chairman Allen asked if there were any changes of opinion with respect to special conditions of the property to those opinions previously stated. There were none.

Chairman Allen then called for a vote on each of the criteria for the fifth variance request which would then be followed by a motion to grant or deny the request:

ARTICLE XVI.C.6 - HOME OCCUPATIONS Standards: Home occupation must not cause excessive vibrations, store or handle combustible or explosive materials, or negatively impact the physical condition, safety, access or traffic volume of existing roads.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer truck, where the ordinance prohibits Home Occupations that cause excessive vibrations or negatively impact the physical condition, safety, access, or traffic volume of existing roads.

MET	NOT MET	VOTE	
	X	1-4-0 (Allen in favor)	Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		Relief from this standard would be contrary to public interest, specifically with respect to vibration, traffic volume, and the physical impact to the road.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed .
Rationale:		The intent of the ordinance was to limit noise, vibration and to maximize safety on the road and the board feels a large truck deteriorates from that.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
	X	2-3-0 (Falman/Allen in favor)	Variance Criteria #4 – VALUES The values of the surrounding properties would not be diminished if granted.
Rationale:		For reasons stated during discussion: the waiving of these standards for future homeowners and the current deterioration of the roadway.	

ARE	ARE NOT	VOTE	
	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:		For reasons stated in the previous discussion: The intent of the ordinance is to create a safe and accessible area that limits traffic volume on the existing road. Granting relief from this standard does the exact opposite.	

MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.

Rationale:		There is no special condition about the property that make it different from other properties.	
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it.
Rationale:		The property can be used as a residence and more than half of the garage is currently used for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.	

MOTION: Vice Chair Robbins motioned to deny the variance from East Kingston Zoning Ordinance ARTICLE XVI.C.6 - HOME OCCUPATIONS Standards which would have permitted the indoor parking of a tractor trailer truck, where the ordinance prohibits Home Occupations that cause excessive vibrations or negatively impact the physical condition, safety, access, or traffic volume of existing roads for all the reasons noted in the board's review of each of the variance criteria; seconded by Mr. Collamore. The motion passed 5-0-0.

Variance Request #6

ARTICLE XVI.C.7 - HOME OCCUPATIONS Standards: The Home Occupation must not utilize more than 25% of the gross floor area including dwelling, basement and accessory structures.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance prohibits Home Occupations that utilize more than 25% of the gross floor area including dwelling, basement, and accessory structures.

Discussion/Deliberation/Vote

Vice Chair Robbins stated that at the last meeting it was determined the applicant does use less than 25% of the gross floor area, as the parking of the truck is less than 25% of the total area between the house and garage.

Mr. Falman stated he does not know why this is being requested because it was determined met at an earlier presentation.

The applicants were then asked if they wished to continue with this request, specifically to request an invisible home occupation be allowed to utilize more than 25% of the gross floor area including dwelling, basement and accessory structures.

Atty. Warren responded that because the Planning Board determined the proposed use violated this provision of the zoning ordinance and then this board at its meeting in July affirmed that decision, they would like a decision on this request for a variance from this provision.

1. *Granting the variance would not be contrary to public interest.*

Chairman Allen opined this would not be contrary to public interest.

Mr. Collamore opined that it would be contrary to public interest because down the road someone can increase their home occupation to any size they want to which could negatively impact traffic or any number of things.

Mr. Maher stated he did not think waiving this standard would be contrary to public interest.

Chairman Allen stated he does not see any public harm in waiving this requirement for the home occupation to consume more than 25% of the gross floor area.

2. *The spirit of the ordinance would be observed.*

Mr. Maher stated it would not be observed because the intent is to not create pseudo business structures in a residential area. Mr. Falman agreed stating this is a specific measured requirement to limit the size of the home occupation. There is nothing special about this case to increase that measurement.

Chairman Allen stated the spirit and interpretation of this 25% was so that businesses would be ancillary or secondary to the residential structure and residential use of the property. In this particular case, if it was to consume 30%, he doesn't think it would make any difference or cause any public harm.

Mr. Maher opined the spirit of the ordinance was to create and allow for the creation of small business areas within an otherwise residential structure. If they violate 25%, then the spirit of the ordinance is gone.

Chairman Allen stated he understood that perspective and noted it would not change the overall outward appearance if it was 25%, 30% or 40%.

3. Granting the variance would do substantial justice.

The board's position on this remains unchanged, the variance would provide substantial justice to the applicants. The negative to the applicant outweighs the town.

4. The value of surrounding properties would not be diminished.

The consensus was the surrounding property values would not be diminished.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.

i. There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.

Chairman Allen asked if there were any changes of opinion with respect to special conditions of the property to those opinions previously stated. There were none.

Chairman Allen then called for a vote on each of the criteria for the sixth variance request which would then be followed by a motion to grant or deny the request:

ARTICLE XVI.C.7 - HOME OCCUPATIONS Standards: The Home Occupation must not utilize more than 25% of the gross floor area including dwelling, basement and accessory structures.

Chairman Allen noted the applicant has requested the indoor parking of a tractor trailer, where the ordinance prohibits Home Occupations that utilize more than 25% of the gross floor area including dwelling, basement, and accessory structures.

MET	NOT MET	VOTE	
X		4-1-0 (Collamore opposed)	Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		This criterion has been satisfied.	
MET	NOT MET	VOTE	
	X	2-3-0 (Allen/ Robbins in favor)	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed.

Rationale:	The intent of the ordinance was to allow for the creation of small business areas within an otherwise residential structure. Waiving the size restriction violates the small business intent.		
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MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #4 – VALUES The values of the surrounding properties would not be diminished if granted.
Rationale:		This criterion has been satisfied.	

ARE	ARE NOT	VOTE	
	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:		For reasons stated in the previous discussion: The intent of the ordinance was to allow for the creation of small business areas within an otherwise residential structure. Granting relief from this standard is contrary to that intent.	

MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.
Rationale:		There is no special condition about the property that make it different from other properties.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it .
Rationale:		The property can be used as a residence and more than half of the garage is currently used for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.	

MOTION: Mr. Maher motioned to deny the variance from East Kingston Zoning Ordinance ARTICLE XVI.C.7 - HOME OCCUPATIONS Standards which would have allowed the indoor parking of a tractor trailer, where the ordinance prohibits Home Occupations that utilize more than 25% of the gross floor area including dwelling, basement, and accessory structures for all the reasons noted in the board's review of each of the variance criteria; seconded by Mr. Falman. The motion passed 5-0-0.

Variance Request #7

ARTICLE XVI.D.2 - HOME OCCUPATIONS Exceptions: Administrative support for businesses or services that are conducted on or off-site of the residential premises are exempt from the public hearing of the application process but must complete a Home Occupation application for the purposes of municipal record keeping, pay the annual Invisible Home Occupation Permit Fee, and meet with the Planning Board to present the application and receive a favorable recommendation from the Planning Board.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance would prohibit visible activity conducted outside the home.

Vice Chair Robbins stated this request is very loosely connected to the proposal to park a tractor trailer truck inside the garage. This section speaks to support for business services.

Chairman Allen stated there is an exemption in the home occupation ordinance that allows for the administrative support of businesses that are conducted off site for which an applicant would not need to go through the formal process. They pay the annual invisible home occupation permit fee, there's no public hearing, and they move forward. In this case, the applicants appear to be asking for a variance that would allow them to park the tractor trailer when the ordinance would prohibit visible activity conducted outside the home. This would be essentially more activity than just the administrative support portion.

Discussion/Deliberation/Vote

1. *Granting the variance would not be contrary to public interest.*

Chairman Allen stated he does not see any issue with public interest.

2. *The spirit of the ordinance would be observed.*

Chairman Allen stated he sees a problem with the spirit of the ordinance prong in that the ordinance was written to allow administrative work, i.e. people own businesses and they want to have a home office, they can register their vehicles from there, and they can do all the books from. There's no reason to make them go through a full public hearing as there's will be no activity at the property other than administrative support. Allowing visible activities to fall under that exemption seems like a direct conflict with the spirit of why that section of the ordinance was written.

Mr. Falman agreed stating they are taking an administrative section of the ordinance and trying to shoehorn in the parking of a tractor trailer truck, which is a physical activity.

Vice Chair Robbins added the ordinance says you have to pay for an annual invisible home occupation permit fee; however, the parking of the truck is a visible aspect of the business.

Mr. Maher stated per the applicant's application, they are referring back to the Planning Board's decision that the parking of a tractor trailer truck does not constitute administrative support and that the ZBA's review of the Planning Board's recommendation and subsequent decision made by the Selectboard, that they were correct in their determination that the parking of a tractor trailer commercial vehicle is not an administrative support function.

3. *Granting the variance would do substantial justice.*

Consistent with the other determinations the board concurred substantial justice would be done.

4. *The value of surrounding properties would not be diminished.*

Chairman Allen asked if allowing the administrative support exemption to be utilized for the parking of a tractor trailer truck would affect surrounding property values.

Mr. Collamore stated he did not have a problem with this to which Mr. Maher countered stating the parking of the tractor trailer, otherwise determined to be invisible administrative support business, is asking the board to basically amend the language of Section D.2 to include the parking of tractor trailer for this specific relief.

Vice Chair Robbins agreed stating the ordinance specifically states, “invisible” home occupation.

6. *Unnecessary Hardship*

- a. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.*
 - i. *There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.*

Chairman Allen asked if the board felt there were special conditions that would justify relief from the exception portion with this property.

Mr. Maher responded consistent with all of the previous discussions, the answer is no.

Chairman Allen then called for a vote on each of the criteria for the seventh variance request which would then be followed by a motion to grant or deny the request:

ARTICLE XVI.D.2 - HOME OCCUPATIONS Exceptions: Administrative support for businesses or services that are conducted on or off-site of the residential premises are exempt from the public hearing of the application process but must complete a Home Occupation application for the purposes of municipal record keeping, pay the annual Invisible Home Occupation Permit Fee, and meet with the Planning Board to present the application and receive a favorable recommendation from the Planning Board.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance would prohibit visible activity conducted outside the home.

MET	NOT MET	VOTE	
X			Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed .
Rationale:		For the reasons stated in the deliberation: Allowing visible activity to fall under that exemption seems like a direct conflict with the spirit of why that section of the ordinance was written, the parking of the truck is a visible aspect of the business, and the parking of a tractor trailer commercial vehicle is not an administrative support function.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
	X	2-3-0 (Falman/Allen in favor)	Variance Criteria #4 – VALUES The values of the surrounding properties would not be diminished if granted.
Rationale:		For reasons stated during discussion: The parking of the tractor trailer, otherwise determined to be invisible administrative support business, is asking the board to basically amend the language of Section D.2 to include the parking of tractor trailer for this specific relief.	

ARE	ARE NOT	VOTE	
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	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:		For reasons stated in the previous discussion: The intent of this portion of the ordinance is to differentiate between an invisible and visible home occupation.	

MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.
Rationale:		There is no special condition about the property that make it different from other properties.	
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it.
Rationale:		The property can be used as a residence and more than half of the garage is currently used for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.	

MOTION: Mr. Maher motioned to deny the variance from East Kingston Zoning Ordinance ARTICLE XVI.D.2 - HOME OCCUPATIONS Exceptions which would have allowed the indoor parking of a tractor trailer truck, where the ordinance would prohibit visible activity conducted outside the home for all the reasons noted in the board's review of each of the variance criteria; seconded by Chairman Allen. The motion passed 5-0-0.

Variance Request #8

ARTICLE XVI.F - HOME OCCUPATIONS USES NOT PERMITTED: The following uses are not permitted as a Home Occupation: adult oriented business; fireworks storage, manufacture and sales; industrial and commercial manufacturing or activity; vehicle restoration and auto body shops; storage, handling or sales or regulated substances.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance prohibits Home Occupations that involve industrial and commercial manufacturing or activity.

Discussion/Deliberation/Vote

1. *Granting the variance would not be contrary to public interest.*

Mr. Maher opined there would be no public interest issue.

2. *The spirit of the ordinance would be observed.*

Mr. Maher that waiving this requirement would be allowing a commercial function in a residential neighborhood which is not permitted – the coming and going of a commercial vehicle is a commercial function and in reading through the applicant’s documentation, this is the specific relief they are looking, which he feels is in direct in conflict with the ordinance.

3. *Granting the variance would do substantial justice.*

All agreed substantial justice would be done.

4. *The value of surrounding properties would not be diminished.*

Mr. Maher stated he has been consistent with how he has addressed this criterion for each of the requests – applying the same basis that surrounding properties would be diminished.

Chairman Allen stated the request would allow for commercial activity in a residential zone where it is not permitted.

5. *Unnecessary Hardship*

a. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.*

i. *There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.*

No special conditions were raised, rationale consistent with all other discussions on this criterion.

Chairman Allen then called for a vote on each of the criteria for the eighth variance request which would then be followed by a motion to grant or deny the request:

ARTICLE XVI.F - HOME OCCUPATIONS USES NOT PERMITTED: The following uses are not permitted as a Home Occupation: adult oriented business; fireworks storage, manufacture and sales; industrial and commercial manufacturing or activity; vehicle restoration and auto body shops; storage, handling or sales or regulated substances.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer, where the ordinance prohibits Home Occupations that involve industrial and commercial manufacturing or activity.

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed.
Rationale:		The intent of the ordinance was to prohibit commercial activity in a residential district.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice.
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
	X	2-3-0	Variance Criteria #4 – VALUES

		(Falman/Allen in favor)	The values of the surrounding properties would not be diminished if granted.
Rationale:		For reasons stated during discussion: Allow for commercial activity in a residential zone where it is not permitted would diminish surrounding property values.	

ARE	ARE NOT	VOTE	
	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:		For reasons stated in the previous discussion: The intent of the ordinance is to prohibit commercial activity in a residential zone.	

MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.
Rationale:		There is no special condition about the property that make it different from other properties.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it.
Rationale:		The property can be used as a residence and more than half of the garage is currently used for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.	

MOTION: Mr. Maher motioned to deny the variance from East Kingston Zoning Ordinance ARTICLE XVI.F - HOME OCCUPATIONS USES NOT PERMITTED which would have allowed the indoor parking of a tractor trailer, where the ordinance prohibits Home Occupations that involve industrial and commercial manufacturing or activity for all the reasons noted in the board's review of each of the variance criteria; seconded by Mr. Collamore. The motion passed 5-0-0.

Variance Request #9

ARTICLE XVI.G - HOME OCCUPATIONS, PERMIT REQUIRED: An annual permit to operate each home occupation must be obtained from the Board of Selectmen during the second quarter of the calendar year beginning in 1989. Agricultural/Farm home occupations and Family Day Care operations (up to six preschoolers plus up to three school-age children (Section E.5)) shall be exempt from these permitting procedures.

There shall be an annual permit fee charged to cover the costs for Board of Selectmen review, administration and enforcement of the ordinance.

Businesses whose owners can demonstrate that they do not create any traffic, visual, or other impacts on the neighborhood may be deemed by the Selectmen as being an “invisible business with a reduced permit fee. An invisible status does not relieve these businesses from compliance with the provisions of this and all other sections of the zoning ordinance. A minimum annual fee shall be charged to those home occupations identified as “invisible” to defray the administrative costs of annual review and Board of Selectmen oversight.

Chairman Allen noted the applicant proposes the indoor parking of a tractor trailer truck, where the ordinance would prohibit visible activity conducted outside the home.

Vice Chair Robbins stated this article differentiates the costs between a visible and invisible home occupation.

Chairman Allen stated this speaks once again to the parking of a tractor trailer and visible activity outside the home does not meet the requirement of the invisible home occupation reduced fee.

Mr. Maher stated that with no clarifying information, he can only take the request as a waiver from the fees of a home occupation specific to an invisible home occupation. Given that the applicants have requested to create an invisible home occupation that would require seven other requests for relief to get there, it would appear this last request is to waive the fees, presumably on the basis the homeowners create so little traffic that they should not be assessed a fee.

Vice Chair Robbins stated that he could read this request as since the applicants don’t meet the other provisions of this, as well as other sections of the zoning ordinance for an invisible status, that would mean they would be assessed an annual fee as a visible home occupation.

Chairman Allen stated that by waiving this section, they would be essentially granting a variance for the requirement to have a permit.

Discussion/Deliberation/Vote

1. Granting the variance would not be contrary to public interest.

Chairman Allen asked the board if it was contrary to public interest to grant a variance from having to get a permit. Board members responded affirmatively.

Mr. Maher added the permit process is in place is to regulate what the town allows for home occupations.

Chairman Allen stated the harm there would be an uncontrolled permitting process or regulations.

2. The spirit of the ordinance would be observed.

Chairman Allen asked the board if the spirit of the home occupation ordinance would be observed to waive the requirement to have a permit. Board members responded negatively.

3. Granting the variance would do substantial justice.

Mr. Maher stated substantial justice would still be done by granting this variance.

4. The value of surrounding properties would not be diminished.

Mr. Maher stated he does not think surrounding property values would be diminished in waiving the permitting process. Other members concurred.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.

i. There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because.

Board members agreed there were no special circumstances about the property that would result in unnecessary hardship.

Chairman Allen then called for a vote on each of the criteria for the ninth variance request which would then be followed by a motion to grant or deny the request:

ARTICLE XVI.G - HOME OCCUPATIONS, PERMIT REQUIRED: An annual permit to operate each home occupation must be obtained from the Board of Selectmen during the second quarter of the calendar year beginning in 1989. Agricultural/Farm home occupations and Family Day Care operations (up to six preschoolers plus up to three school-age children (Section E.5)) shall be exempt from these permitting procedures.

There shall be an annual permit fee charged to cover the costs for Board of Selectmen review, administration and enforcement of the ordinance.

Businesses whose owners can demonstrate that they do not create any traffic, visual, or other impacts on the neighborhood may be deemed by the Selectmen as being an “invisible business with a reduced permit fee. An invisible status does not relieve these businesses from compliance with the provisions of this and all other sections of the zoning ordinance. A minimum annual fee shall be charged to those home occupations identified as “invisible” to defray the administrative costs of annual review and Board of Selectmen oversight.

MET	NOT MET	VOTE	
	X	1-4-0 (Allen in favor)	Variance Criteria #1 – INTEREST Granting the variance would not be contrary to the public interest .
Rationale:		For reasons previously mentioned: The permit process is in place to regulate what the town allows for home occupations with public harm in having an uncontrolled permitting process.	

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #2 – SPIRIT If the variance were granted, the spirit of the ordinance would be observed.
Rationale:		The intent of the ordinance is to provide a permitting process, waiving it would result an uncontrolled permitting process.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #3 – JUSTICE Granting the variance would do substantial justice .
Rationale:		This criterion has been satisfied.	

MET	NOT MET	VOTE	
X		5-0-0	Variance Criteria #4 – VALUES The values of the surrounding properties would not be diminished if granted.
Rationale:		This criterion has been satisfied.	

ARE	ARE NOT	VOTE	
	X	0-5-0	Special Conditions Determination to Inform on Hardship Criterion There are special conditions of the property that distinguish it from other properties.

MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part one) a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

			i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? If the latter is so, then no fair and substantial relationship exists and this criterion is met.)
Rationale:		For reasons stated in the previous discussion: The permit process is in place to regulate what the town allows for home occupations.	

MET	NOT MET	VOTE	
	X	0-5-0	ii. The proposed use is a reasonable one.
Rationale:		There is no special condition about the property that make it different from other properties.	
MET	NOT MET	VOTE	
	X	0-5-0	Variance Criteria #5 – HARDSHIP (part two) b. If the criteria in subparagraph (a) are not established, unnecessary hardship exists because special conditions of the property distinguish it from other properties in the area , and the property cannot be reasonably used in strict conformance with the ordinance, whereby a variance must be necessary to enable a reasonable use of it.
Rationale:		The property can be used as a residence and more than half of the garage is currently used for personal use beyond the storage of a tractor trailer truck, thus no relief is necessary to use the property.	

MOTION: Mr. Maher motioned to deny the variance from East Kingston Zoning Ordinance ARTICLE XVI.G - HOME OCCUPATIONS, PERMIT REQUIRED which would have waived the permitting process for the indoor parking of a tractor trailer truck as it relates to the home occupation ordinance for all the reasons noted in the board’s review of each of the variance criteria; seconded by Vice Chair Robbins. The motion passed 5-0-0.

Chairman Allen thanked the applicants for their patience as the board walked through each of the nine variances and informed them their attorney would likely provide guidance on their next steps. He reiterated the board has specific criteria that must be met in their review of the requests to responsibly grant variances within the confines of the five criteria. The process was very uncomfortable for the board, and they wished the applicants good luck moving forward with the case. He stated he personally was sorry that had to deny the variances, but the board had to operate within the confines of those five criteria.

Atty. Warren thanked the board for their time and consideration and stated they will be following the statutory rehearing process. He further stated he felt compelled to tell the board there is a substantial likelihood that they will also be filing a civil rights complaint lawsuit against the town and the ZBA for unconstitutional taking. As such, he requested the board preserve the following:

- All handwritten notes.
- The recording of the hearing.
- All personal notes taken for the purpose of the hearing whether subject to RSA 91-A or not.
- All personal, business or town emails related in any way to the Whiteman’s or G&J Transportation.

Chairman Allen responded the request will be noted in the record. He then closed the hearing at 9:37pm for Case #2023-03: VARIANCE request submitted by GEORGE G. WHITEMAN and JILL A. WHITEMAN seeking variances from East Kingston Zoning Ordinance Article III-B.1, Article III-B.2, Article XVI.A, Article XVI.C.3, Article XVI.C.6, Article XVI.C.7, Article XVI.D.2, Article XVI.F, and Article XVI.G. The applicants propose to operate G&J Transportation, LLC, a business

office with the parking and storage of a commercial vehicle exceeding 14,000 GVW at 18 ROWELL ROAD, MBL# 10-17-02.

SPECIAL EXCEPTION FOR ACCESSORY DWELLING UNIT – JENNIFER SMITH – 91 POWWOW RIVER ROAD – MBL# 03-01-02 (CASE# 2023-04)

Chairman Allen apologized to the applicants for the late hour and for how long the first hearing took. He noted the agenda had been posted with the order of the hearings and with the first hearing being a continuation from the previous month, it is customary to place them first on the agenda.

He then opened the public hearing at 9:40pm for Case# 2023-04: Special Exception for an Accessory Dwelling Unit submitted by Jennifer Smith for property located at 91 Powwow River Road, MBL# 03-01-02. The applicant proposes to construct an accessory dwelling unit as permitted under East Kington Zoning Ordinance Article VIII – Uses Permitted which allows that accessory dwelling units may be approved on any legally existing parcel or legally approved building lot where single family dwellings are permitted, provided they meet the criteria set forth in the ordinance.

PRESENTATION BY THE APPLICANT

Chairman Allen asked the applicants to provide an overview of their plans to construct an accessory dwelling unit (ADU) at their home, providing specifics about how and what the unit will consist of, as well as the setbacks and configuration of the property. After that the board will ask questions and go through their ADU checklist.

Ms. Smith stated the ADU will be constructed within an existing barn consisting of 796 square feet, with two bedrooms on the second floor and a kitchen, livingroom, full bath, and utility room on the first floor. The ADU will be connected to the main house by an enclosed breezeway that will match the look of the house on the outside. She confirmed she will reside in the main house and her adult son will reside in the ADU and that the ADU is only in the barn.

Chairman Allen reviewed the application, plans, and septic information noting the entryway on driveway side of the barn with the connected breezeway on the opposite side of the barn. The driveway side of the barn is located next to the barn. All of the property line setbacks are met (house, barn and proposed breezeway).

The septic system will include a new 2500-gallon tank with new lines running to the barn and the house. The existing system will be updated as it was originally constructed in the 1960's. Though the water and sewer lines will be separate, the two buildings will share the well and septic system (tank/leach field).

Chairman Allen informed the applicants he is a septic designer and recommended they contact their septic designer to get their state septic approval document updated to reflect the actual number of bedrooms reflected in the approved septic design. Having reviewed the flow rate and design which is appropriately sized for the three-bedroom home and two-bedroom ADU, he said it appears there is a typographical error on the approval. The document should be updated so that it is recorded properly with the state. The value of the home will increase with a five-bedroom septic plan.

BOARD QUESTIONS

Vice Chair Robbins asked about the fence currently running between the house and barn to which Ms. Smith stated the fence will remain even after the breezeway is constructed.

Mr. Collamore inquired about the breezeway. Ms. Smith and her son, Corey Smith, stated it will be enclosed as required by the ordinance with an entrance on each side (one to the house and one to the ADU). Ms. Smith asked if she could be permitted to use a 6-foot by 30-foot shed as the breezeway to connect the barn to the house. – this would be a custom-built shed with white vinyl siding and a black roof so that it would match the house.

Chairman Allen replied that would be a question for the Building Inspector as that detail, as are building codes, outside the purview of the ZBA.

Mr. Maher stated the breezeway needs to be considered an addition to the main dwelling and not the ADU as any increase to the square footage of the breezeway which could bring it out of conformity as it can not be more than 900 square feet. Mr. Smith agreed the breezeway will be used to get to the ADU.

FINDING OF FACT

Chairman Allen then reviewed, with the board, the criteria set forth in Article VIII.F for an accessory dwelling unit:

- 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. – Requirement met.*
- b. Ownership. The owner of the property shall occupy one of the units as a primary residence and be the 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. – *Ownership of both the home and the accessory dwelling unit will be Jennifer Smith and she will reside in the main dwelling. – Requirement met.*
- 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 unit shall measure 796 square feet as presented on the plan. – Requirement met.*
- 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. – *The accessory dwelling unit is secondary to the main home, the plan depicts a shared connection of an enclosed breezeway, and the outside entry is not located at the front of the building. – Requirement met.*
- 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. – *This is not a manufactured home in a manufactured home park or under condominium ownership. – Requirement met.*
- 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. – *The driveway can easily accommodate four vehicles, a minimum of four is required. – Requirement met.*
- 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. – *In this case, the applicants have an approved septic design that will accommodate both the main house and the ADU (eCA2023062003). The board agreed this criterion has been met.*

The board then reviewed the Lot Area and Yard Requirements (Article IX) for conformity of a building structure.

1. Every building lot shall have 200 feet of frontage. – *The property has over 300 feet of frontage – requirement met.*
2. Every building lot shall have a minimum of 87,120 square feet. – *The parcel consists of 27 acres – requirement met.*
3. Every building shall be set back from the front property line at least 30 feet and 25 feet from adjacent side and rear property lines. – *The buildings are set back 40 feet from the road, and over 100 feet from side and rear boundaries – requirement met.*
4. Septic system leach field boundaries shall be located more than 20 feet from any property boundary, 75 feet from any surface water, 75 feet from existing or proposed private wells, and 125 feet from existing or proposed community wells. – *There are no community wells, the portions of the septic system are outside the well protection radius, and the septic system design meets the property and surface water setbacks. – requirement met.*

Chairman Allen opened the floor to board questions. Mr. Maher inquired about the error on the septic approval plan and if the board should only grant conditional approval to which Chairman Allen stated since he reviewed the plans personally, he is comfortable with moving ahead with approving the ADU proposal as is. The system is designed for five bedrooms. Upon further review, the approval document did note the approval was for three bedrooms in the main house and a two-bedroom apartment.

Chairman Allen advised the applicants when they get the approval to use the system (the approval on hand is to build the system) they should be sure the approval for use states five bedrooms.

MOTION: Chairman Allen motioned to approve the special exception for an accessory dwelling unit for Jennifer Smith of 91 Powwow River Road, MBL# 03-01-02 per the information submitted in their application; seconded by Mr. Maher. The motion passed 5-0-0.

Chairman Allen then informed the applicant of the requirements upon this approval:

Prior to a dwelling renovation or accessory dwelling unit construction, the owner shall provide evidence to the East Kingston Building Inspector that septic facilities are adequate to serve both the principal dwelling unit and the accessory dwelling unit and obtain the necessary Town and State permits. Such evidence shall be in the form of a replacement septic system plan prepared by a State of New Hampshire licensed septic system designer and approved by the State and the Town. This means the septic plan submitted to the ZBA needs to be submitted to the Building Inspector.

In order to get a certificate of occupancy for the ADU: When renovation or construction is complete, and an accessory dwelling unit is ready for occupation, the owner shall request a Certificate of Occupancy from the Building Inspector. Occupancy of the accessory dwelling unit is prohibited until a Certificate of Occupancy is obtained.

A notice of decision will be forthcoming, and a \$12 recording fee is required as the notice of decision will be filed at the registry of deeds. For the purposes of this record, Ms. Smith submitted a check to the Land Board Secretary made out to the Rockingham County of Deeds for \$12.

With no further discussion, Chairman Allen closed the public hearing at 10:01pm.

At this time Mr. Dan Bodwell engaged in discussion with the board about the possibility of creating an accessory dwelling unit for his mother-in-law's property by attaching a modular home to the existing home.

APPROVAL OF MINUTES

The board agreed to move forward and approve the March meeting minutes but wanted additional time to review the July 27th set.

MOTION: Chairman Allen motioned to approve the March 23, 2023 meeting minutes as presented; seconded by Mr. Maher. The motion passed 5-0-0.

Chairman Allen tabled the 2024 Submission Dates Schedule.

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

The meeting ended at 10:08pm.

Respectfully submitted,

Catherine Belcher

Land Board Secretary

Minutes approved on October 16, 2023.