

TOWN OF KINGSTON
ZONING BOARD OF APPEALS

MINUTES
June 1, 2022

Members:

Mr. Paul Dahlen – Chairman
Mr. Doug Dondero – Vice Chairman
Mr. Lane Goldberg
Mr. Robert Mullen
Mr. Kevin Wrightington

Mr. Dahlen called to order the public hearing of the Zoning Board of Appeals at 7:01 PM in Room 200, Mr. Wrightington seconded. Also, in Room 200: Mr. Lane, Mr. Dondero and Mr. Mullen with a vote of 5-0-0.

VOTE: 5-0-0 to open Zoning Board of Appeals Hearing of 1 Kingston Collection Way.

Appointment:

7:00 PM Applicant, 1 Kingston Collection Way, must seek a variance per §10.4.B powers subsection 3 in order to construct three signs in the commercial district in excess of allowances per §9.4.E and zoning by-law. Mainline Custom Signage Systems, Project Manager, G. Pugliese and Designer, T. Sullivan. Ardon Visual Communications.

Mr. Dahlen spoke to attendees on Zoom to let them know we were having technical difficulties.

Mr. Goldberg read the public hearing notice for 1 Kingston Collection Way.

Motion: Mr. Goldberg motioned to open the public hearing for 1 Kingston Collection Way, seconded by Mr. Wrightington with a vote of 5-0-0.

VOTE: To open the public hearing for a variance on 1 Kingston Collection Way, 5-0-0

Mark Baranski, Trammel Crow Residential, 2276 Washington St., Newton Lower Falls, Wellesley, spoke on behalf of the owner. The paperwork was properly submitted. Person who submitted the paperwork was not present. The project is very soon to be complete. These monuments signs are integral to our marketing and awareness of the property.

Mr. Dahlen offered his paperwork to Mr. Baranski to present to the audience.

Mr. Baranski explained that they are asking for the sign monuments for the three main entry points to the property. The zoning code of the Town does not specify monument signs for purposes of

multifamily housing but has worked with this variance to create something that is appropriate for the property but closely complying with the Town's requirements.

Mr. Dahlen asked Mr. Silva if he had a synopsis of the mall.

Mr. Silva, Building Commissioner stated that this case is a typical request for signs for businesses. The sign bylaw has not been changed in many years. The request is three signs on a very large property which is a reasonable request. Unfortunately, the bylaw does not allow for three independent signs. It's a residential use in a commercial zone. Brought to ZBA to make the decision because it is not clear in the bylaw.

Mark Baranski added that the square footage of the main sign is in line with other monument signs that they have built for other properties. It is 36 square feet.

Mr. Dahlen asked the Board if they had any questions.

Motion: Mr. Dahlen motioned to close the hearing of 1 Kingston Collection Way; Mr. Wrightington seconded with a vote of 5-0-0

VOTE: To close the hearing of 1 Kingston Collection Way 5-0-0

Motion: Mr. Dahlen motioned to APPROVE the variance for three signs at 1 Kingston Collection Way as written, seconded by Mr. Wrightington. Any changes to signs must come before the ZBA with a vote of 5-0-0.

VOTE: To APPROVE the variance for three signs at 1 Kingston Collection Way as written. Any changes to signs must come before ZBA. 5-0-0

Appointment:

7:05 PM Applicant, 1 Tremont St. and 163 Summer St., seeks a special permit per §4.2A Nonconforming structure, use or lot number 4(a), waivers from 8.2A intensity schedule and variance per 6.8.D.1r as applicable in order to construct two new 6-unit apartment buildings and modify the existing site plan to facilitate construction. Site Plan prepared by Grady Consulting, LLC., 3/15/2022.

Mr. Goldberg read the public hearing notice for 1 Tremont St. and 163 Summer St.

Motion: Mr. Goldberg motioned to open the public hearing for 1 Tremont and 163 Summer St., seconded by Mr. Dondero with a vote of 5-0-0.

Rick Grady, Grady Consulting, 71 Evergreen St., Ste 1, displayed the site plan which is located at the intersection of 1 Tremont and 163 Summer St. Rick Grady explained that currently there is an existing 12-unit apartment building that is in the commercial zoning district and water protection overlay district. Use is currently preexisting, nonconforming. There is also three units in the front with existing

apartments, also preexisting, nonconforming. There is also a small office building with an old garage. Requesting a special permit to increase the apartments on the property by proposing two additional buildings, six units each. The Applicant was approached by the Sewer Commission about possibly adding some flow with additional apartments. There are currently three curb cuts on Tremont St., one adjacent to Royal Garden, and one closer to the intersection. Proposing to remove the existing office and garage area and utilize that entire area for parking. Would like to eliminate the entrance closest to the set of lights on Tremont St. Preference is to move the bulk of the traffic as far away from the light as possible adjacent to the Royal Garden. No changes are proposed to the back of the property. Existing building and parking spaces will remain. Mr. Grady explained changes pointing out the site plan. Provided turning templates for emergency access for fire. Pointed out two handicap spaces. Units will be connected to town sewer and water.

Mr. Dahlen asked Mr. Grady where the storm water collection is.

Mr. Grady responded that they are proposing a large filtration system which is a deep sump hooded catch basin in the center of the parking lot that will go to a sediment trap for removal of total suspended solids. There are six rows of infiltrated chambers below the parking area. Sized to infiltrate the 100-year storm event. It's an area that has very little run off leaving the property for the predevelopment condition. Making sure that they're not increasing for the post development condition.

Mr. Dahlen asked if this has gone through Planning Board and was it approved.

Mr. Grady stated that it did go through Planning Board, and they did approve it. They have a condition of approval that there are comments to address from their review engineer. No problem addressing these conditions.

Mr. Dahlen stated that the plan has been shown and asked what relief they are seeking.

Mr. Grady stated the relief is the extension of a preexisting, nonconforming use on a preexisting, nonconforming lot. It is a special permit to extend that preexisting, nonconforming use. What's nonconforming on the lot is the frontage which is about 190 feet of frontage where 200 feet is currently required in the commercial district.

Mr. Goldberg confirmed that it is two other sections that is being asked for.

Mr. Dahlen asked if it was a setback issue.

Mr. Goldberg stated that it was a minimum open space issue and impervious surface.

Mr. Grady pointed out the required setback in each zone on the site plan.

Mr. Dahlen asked if the plan was to double the impervious surface or not.

Mr. Grady stated that currently open space is at 45.5% are proposing to decrease to 30.5% both existing and proposed are in excess of the current requirement.

Mr. asked Mr. Grady about whether the two lot lines are combined or separate.

Mr. Gardy replied that the lots are still in separate ownership but would be combined as part of this application.

Mr, Dahlen asked Jason to explain the variance.

Mr. Silva explained that there are multifaceted points of which one is the variance. If you look at that section of the bylaw it's prohibited use is basically in relationship to the pervious and impervious surfaces. The board can decide on whether this is a variance and whether it is more detrimental and be issued as a variance or waiver. Everything in the bylaw was flagged in the legal ad.

Mr. Dahlen asked Mr. Silva if it is a variance to change the impervious area because it is a preexisting, nonconforming lot.

Mr. Silva stated that in a preexisting, non-conforming, anything that's prescriptively met and then goes outside the parameters of the existing conditions is flagged as a variance. 40A does offer latitude within it to say that the board under a special permit can issue dimensional waivers. It's up to the board's position as to whether they want to take a hard line and say that this a variance or whether it's strictly a special permit. The decision can be drafted either way.

Mr. Dahlen stated that one of his issues is there is really not site acquisition because you do not have the two sites combined yet. You have two different parcels.

Mr. Grady stated that the board can and probably should make that a condition of approval that they be officially combined. Otherwise, it is not a viable project until they are. The applicant is two separate realty trust with the same trustee. Effectively they can be combined easily. What gets a little bit tricky is that we obviously want to get approvals. If for some reason it's not approved, and he has gone ahead and combined them then there's other implications.

Mr. Dahlen stated that it makes them feel like they are the hitch pin, and they should not be. This is too loose.

Mr. Grady stated that they could put together a purchase and sales agreement subject to approvals to a single entity to combine the two lots.

Mr. Dahlen responded to Mr. Grady that a tighter language is needed where one of the two LLC's is going to have ownership. Pooled the board.

Mr. Mullen had no questions.

Mr. Wrightington asked what is the main reason for the variance?

Mr. Grady stated that he does not believe that he is requesting a variance. The paperwork submitted was for a special permit for preexisting, non-conforming use for expanding the proposed apartments.

Mr. Dahlen stated that there are two different properties with two different special permits. Now we are going to combine them into one property and rewriting into one big special permit.

Mr. Grady stated that is fair to say.

Mr. Dahlen stated that not having ownership of both lots together is where he has a bad feeling. Feeling is based on two separate properties having two different special permits and then does that one property get to keep it? Is that your assumption?

Mr. Goldberg assumed that the special permits would just carry over the non-conforming use to one lot.

Mr. Grady stated that fortunately it is not like one of the lots is conforming and we are pulling it into a non-conforming. It's not like we are taking something that is conforming and making it non-conforming.

Mr. Dondero agrees that everything should be brought into one before moving any further.

Mr. Goldberg stated that he is interested in hearing from the public.

Mr. Dahlen asked if anyone from the public would like to speak.

Matt Regan has lived at 3 Burton Lane for the past 16 years. Property abuts 163 Summer St. to the rear and shares approximately 100' of property line. Properties are separated by a 6' stockade fence. Over 16 years Mr. Brown has been approached about various things such as trash on his property, excessive lighting luminating from both of his buildings, water runoff from his property onto mine. Mr. Brown has been told about the empty beer cans and liquor bottles, hypodermic needles found near the dividing fence, Mr. Brown dismissed the concerns and said that his tenants were not responsible – that there were homeless people living in the woods. There was no follow up with Mr. Brown, there were never homeless people found in the woods. Residents hang out in their parking lot right beyond the fence drinking beer and smoking pot. Mr. Regan continues to clean up the trash, shutting his windows to protect his kids from inappropriate conversations. Adding 12 units, possibly 24 more people will add to these issues mentioned. Lighting continues to be an issue. He has been in violation of the Glare Ordinance. Mentions existing issues with surrounding businesses and traffic. Runoff is an issue. Mr. Brown has not shown himself to be receptive or attentive to his neighbors concerns instead he has proven himself to be aloof, disinterested and unwilling to work with his neighbors and town officials. Speaks of 6.8.D.1r, water lay district. Speaks of proposed site plan.

Jen Case-Pouliot, 2 Burton Lane, major concern is in the ¼ mile of Tremont St. there is 4 or 5 large apartment buildings, another smaller apartment building, 2 commercial buildings, offices, gas station and Chinese Restaurant. This will bring a lot more people. It's overpopulated. The driving school drives

down and it's a lot for the neighborhood. It's been a lot for awhile and it's sad. The noise, traffic, people, fireworks, and yelling get to be too much. It's not being addressed. If they are going to do a purchase and sales and combine two lots, are they still grandfathered in?

Mr. Dahlen stated that he is pretty sure.

Todd Hammond, 6 Brewster Road has the proper photometric drawings been provided. Concerned about the lights.

Mr. Dahlen stated the board is basically in step 1B after going through planning board. This is not a 40B. This a special permit request which is the lightest way of doing things. Next step would be variance. If this was approved, the only thing that we could say to them is that they could not have light spill into other areas.

Mr. Scott Brown, 1 Tremont/163 Summer St., Applicant stated that he would like to address concerns. He has owned the property since before Stop & Shop Plaza was put in. The intersection with the lights came about at that time. The intersection was never built properly. Tenants that pull out of 163 Summer St. cannot reach over to the sensors to activate the light. All the water that flows from the light flows down Mr. Brown's driveway. The town and DOT have been contacted regarding this. Nothing has been done. It has been getting better over the years because there's a catch basin which Mr. Brown cleans and maintains. Lighting detail will be provided. Five bags of trash are being picked up every day or every week which is being blown over from the Stop & Shop Plaza. This plan is what the town needs not like what is at the mall. The proposal is 12 units, 1-bedroom apartments.

Pam Elamine, 11 Tremont St., Elamine Trust expressed multiple concerns and current problems that will escalate with additional apartments/dense living; ADA profile of the property no handicap parking adjacent to the proposed buildings, no sidewalks on Tremont or Summer St., parking in street across from apartment complex, overflowing dumpsters, trash in the road, children waiting for the school bus, children riding their bikes, people with walkers trying to get to Stop & Shop with parked cars on the side of roads and increased traffic, school buses having trouble getting down Tremont St, large density of people, dogs. If the proposed apartments are mismanaged as the apartments across the street abutters will have more problems with safety and health issues. This is all impeding on businesses. Two dumpsters facing the road in front of the apartments facing the two businesses. There's trash that goes into the yard every day. Where will the trash dumpster be, accessibility and traffic study.

Mr. Grady stated that the projected must be ADA compliant. What's proposed is ADA compliant. The two proposed spaces are slightly more than required. The dumpster proposed is adjacent to the Royal Garden.

Mr. Dahlen asked Mr. Grady if the planning board make you put in affordable units? Mr. Dahlen and Mr. Silva replied 10% affordable units.

Mr. Grady responded No.

Mr. Goldberg stated that the board was just told that the proposed apartments are 1 bedroom, but it says two 2 bedrooms or fewer.

Mr. Grady stated that is because of the way it is worded in the bylaw – parking summary. 12-1-bedroom apartments are proposed.

Mr. Goldberg believes that Mr. Regan said a lot. Doesn't believe that the owner addressed any of those concerns or proposed solutions. We have to look at whether this will create an adverse impact on the neighborhood. What Mr. Regan is saying is that it is already creating an adverse impact on the neighborhood. 12 more people doing 12 more of these things. These are my concerns.

Mr. Grady stated that he is not asking the board do disregard the comments. We would like to request a continuance tonight to prepare a suitable response and address some of the comments.

Mary Battista, 7 Dillingham Way, lives on the backside of the proposed buildings. How many parking spots are being planned.

Mr. Goldberg stated 42 parking spots, proposed new parking spots are 17 spaces.

Mary Battista asked if they assumed only one person will be in each apartment.

Mr. Dahlen stated that he assumed two.

Mary Battista explained that the parking up there is a nightmare. The parking is encroaching down Dillingham and Burton because there are no parking spots. Happy to hear about the proposed curb cut. Compares pulling out of the apartments onto Tremont St. to CVS on Summer St. Trash concerns that already exist and adding more apartments will create more trash. Proposed parking will not be enough. It's very dangerous in the area now. Concerned about combining special permits and grandfathering them. Doesn't believe it is the right move for Kingston.

Scott Brown, applicant states that everything that is being talked about is not his complex.

Mr. Dahlen stated that it's a density concern and there's already a problem there. Not necessarily the applicants building pre se but there's an overall problem in the zone. By adding a drop more in there will make it even worse.

Andrea Regan, 3 Burton Lane, expressed unhappiness over LED lighting shining into their rooms. Not happy that every Friday and Saturday nights the tenants set up outdoor video tent or movies in the parking lot until approximately midnight that abuts the family's fence. Can hear them partying. The residents leave their trash outside. Getting runoff. It is infuriating to see the light that the applicant will not do anything about.

Mr. Brown stated that in the 16 years since the Regan's have lived there, he has been asked once to fix the light and it was fixed.

Mr. Dahlen stated that as the area gets bigger the concerns do also. The board was asked to speak their concerns regarding the proposed project.

Mr. Mullen asked if the board has any reports from the police on multiple calls to those addresses. It may be a planning issue.

Mr. Dahlen stated that the planning board has not given a finals decision and there's some technical stuff like lighting design and layout.

Mr. Grady stated that the planning board did approve it. A written decision has not been seen yet. As a condition of the review the comments in Amory Engineers letter needs to be addressed. The work with Amory Engineers is primarily drainage.

Mr. Goldberg stated that he would like to see the report.

Mr. Wrightington stated that he sees the new emergency access for the new ladder truck. If you look at the layout it comes in the turn lays into the parking area of the new building.

Mr. Grady stated that the templates showed the trucks being able to maneuver around the building.

Mr. Dahlen asked if the fire department saw this and approved. The only way to get the ladder in is to get it right in the fire in between the two buildings. If there is a grade change, does not look like the fire truck can make the turn in and down.

Rick Grady replied that it drops 6' to 8' from front to back. Will meet with the fire department. It is a smooth transition and could maneuver.

Mr. Wrightington stated that he would like to hear more comments from the abutters and see what can be done to remedy the issues.

Mr. Dondero stated that it is great that the ZBA is hearing from the neighbors as it is very important and quite informative.

Mr. Goldberg commented that for a project like this it is appropriate to have some open space to congregate as it has been stated that residents are congregating in the back parking lot. Is it going to be pet friendly and dog relief area. Asked applicant to take into consideration what the abutter's are saying and come back with some solutions.

Mr. Grady understood.

Mr. Dahlen stated that the applicant could always make the units 55+ to avoid some of the other issues.

MOTION: To **CONTINUE** 1 Tremont and 163 Summer St. to June 15 at 7:00 PM by Mr. Goldberg and seconded by Mr. Wrightington with a **VOTE:** of 5-0-0.

Appointment:

7:10 PM Applicant must seek a special permit from the Zoning Board of Appeals per section 5.2 table of uses in order to construct and run a dog daycare business and boarding of dogs. Caitlin Anderson, 114R Main Street, Map 58, Lot 132. Continued from March 2, 2022, March 16, 2022, and May 4, 2022.

Mr. Dahlen asked the board to read the letter from the Animal Control Officer. ZBA is now at the conditional stage if decided to move forward.

The Zoning Board's conditions stated in this meeting are specified in the Final Decision.

Scot Wolf stated spoke of landscaping, catch basin and buffering.

Kelly Conte, 7 Brightside questioned whether she would have arborvitaes or a fence along her property.

Mr. Dahlen suggested arborvitaes in front of the fence for noise absorption.

Paul Vantagnoli, 5 Brightside Ave. spoke of age of fence.

Board recommended that the fence be replaced and gave Caitlin Anderson and abutters 9 months to see how the new establishment and see if there are any issues. The fence was left up to the applicant to replace either with 6' or 8' fence in the best appropriate location.

MOTION: by Mr. Goldberg to **APPROVE** the findings and decision for 114R Main St. Doggy Daycare ZBA case 22-02 with the conditions as written and as discussed by the ZBA tonight and seconded by Mr. Dahlen with a VOTE of 5-0-0.

VOTE: 5-0-0

MINUTES: Mr. Dondero APPROVED minutes and seconded by Mr. Goldberg with a vote of 5-0-0.

VOTE: 5-0-0

Mr. Dondero motioned to ADJOURN the hearing and seconded by Mr. Wrightington with a vote of 5-0-0.

VOTE: 5-0-0

ADJOURNED: 9:07 PM

Respectfully submitted,
Debora Barry
Executive Secretary - Zoning Board of Appeals