

TOWN OF KINGSTON
ZONING BOARD OF APPEALS

MINUTES
September 20, 2023

Members:

Mr. Paul Dahlen – Chairman
Mr. Doug Dondero – Vice Chairman
Mr. Lane Goldberg
Mr. Robert Mullen
Mr. Kevin Wrightington
Mr. Brian Woods – Associate Member
Ms. Marsha Smith Meekins – Associate Member

In attendance in Room 200: Mr. Dahlen, Mr. Dondero, Mr. Goldberg, Mr. Wrightington, Mr. Mullen, Ms. Marsha Smith Meekins and Mr. Jason Silva (Building Commissioner)

8:19 PM – Mr. Goldberg was present to vote on 1 Tremont St. 163 Summer St. and excused himself for the rest of the meeting.

Mr. Dondero recused himself from the 60 Country Club Way hearing.

Mr. Goldberg was present only to vote for 1 Tremont St. and 163 Summer St.

Mr. Dondero recused himself from the 60 Country Club Way hearing.

One abutter, Andrea Regan was present in opposition to the Applicant's request for 1 Tremont St. and 163 Summer St.

Approximately 40 abutters were present for the 60 Country Club Way hearing in room 200 and via Zoom.

Mr. Dahlen opened the meeting of the Zoning Board of Appeals at 7:05 PM, seconded by Mr. Goldberg with a **VOTE of 7-0-0.**

Mr. Goldberg read the Public Hearing Notice for 3 Grandview Ave. and motioned to open, seconded by Mr. Wrightington. **VOTE of 7-0-0.**

APPOINTMENT:

7:00 PM – (CONTINUED TO 10/18/2023 AT 7:00 PM.) - Applicant, Susan Larson, 3 Grandview Avenue, Map 38 Lot 93, must seek a special permit from the Zoning Board of Appeals per section 4.2.A nonconforming structure use or lot subsection 4(a) in order to remove the roof on a nonconforming structure on a nonconforming lot and build a second floor for living space. Renovation plans to existing residence prepared by Doug Friesen of Duxborough Designs on 2/13/2023. Plan of Land prepared by Stephen Moran of Moran Surveying Inc., on 12/30/2022.

MOTION: CONTINUE 3 Grandview Avenue to **October 18, 2023, at 7:00 PM** and seconded by Mr. Woods with a **VOTE of 7-0-0.**

MINUTES: Ms. Smith Meekins motioned to approve the minutes of September 6, 2023, and seconded by Mr. Goldberg with a **VOTE** of 4-0-0. Absent from the September 6, 2023, meeting were Mr. Dondero, Mr. Wrightington and Mr. Woods.

Agenda rearranged due to a member needing to leave and vote needed for 1 Tremont St. and 163 Summer St.

Mr. Goldberg read the Public Hearing Notice for 1 Tremont St. and 163 Summer St.

Appointment:

7:10 PM - Applicant, Scott Brown, 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.

Attorney Kraus spoke on behalf of the Applicant, Scott Brown. Rick Grady (was available via Zoom). Attorney Krause stated that they reduced the size of the project and stated that the lone question remaining was about the variance mentioned in the legal advertisement. He mentions that this was a suggestion of the Building Inspector but not necessary as plans have changed and impervious coverage has been reduced. Water Quality Certificate was received. The variance is not necessary. The applicant has complied with all the requests, issues, and directive set forth as posed by the Board. Respectively asked that the hearing be closed and vote on the matter.

Mr. Dahlen asked Mr. Silva if the variance issue has been taken care of properly.

Mr. Jason Silva, Building Inspector and Zoning Enforcement Officer stated that there was a letter from Rick Grady in the file that based on the plan changes made, relief request changed due to impervious coverage and no longer required the variance. Originally the impervious coverage was noncompliant. They adjust the plans making the impervious coverage compliant. The relief from the Special Permit request still stands.

Mr. Dahlen asked Rick Grady if he had anything to add.

Rick Grady stated that no he believes everything has been covered and the Applicant does not need a variance.

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

Andrea Regan, 3 Burton Lane spoke of her continued concerns. Andrea asked the Board if the Applicant is grandfathered in for impervious surfaces and questioned the Special Permit. Expressed concerns on density in the neighborhood. Asking the Board to say no but if not hoping that the concerns mentioned are taken into consideration.

Mr. Dahlen stated that Scott Brown needs the Special Permit because he is changing things requires a modification by coming in front of ZBA. Nothing has changed since the last submitted plans.

Mr. Dahlen polled the Board members.

Mr. Goldberg expressed his concern about the variance and doesn't see why it does not require a variance and questioned how much impervious surface is there now.

Jason Silva explained that the ratio of the original proposed plans required a variance due to nonconformity. That relief is no longer needed due to changes in plans and impervious coverage. The variance was added to the legal ad to cover if needed. Jason asked Rick Grady to comment about the impervious coverage ratios.

Rick Grady, Grady Consulting, LLC. responded that there is an exemption in the bylaw that the water quality review committee may in accordance with §6.8g and in accordance with §6.8f certificate of water quality compliance exempt roof surfaces from the calculation of the impervious area.

Mr. Krause states that there was a letter sent to the ZBA on July 18, 2023. It took one year to get the Water Quality Certificate. The goal was to alleviate variance by getting the Water Quality Certificate.

Rick Grady also said that is on the site plan itself on sheet one, left hand side. If infiltration is provided for the roof run off, then that gets deducted from the impervious coverage on the property. A very large intricate infiltration system was designed. Therefore, the roofs can be deducted from the impervious coverage. It is noted in the Water Quality Certificate.

Mr. Dahlen asked what the percentage of impervious coverage is.

Mr. Grady replied that the percentage of impervious coverage is 54.3% which is outlined on the site plan.

Andrea Regan spoke of site and landlord not being on the property with the changes. Alarm had been going on all day since the morning. Andrea tried to reach the Applicant and reached him at 11 PM. Called the Police during the day to somehow get the alarm turned off.

Mr. Brown spoke of no police reports or problems with current tenants.

Mr. Dahlen stated that neighbors can always call Jason the Building Inspector/Zoning Enforcement Officer, Police or Fire Department. Mr. Dahlen questioned who the point person will be if another situation arises.

Attorney Kraus Stated that is people are congregating and being loud or in case of an emergency call Scott. Signs with emergency contact numbers with be posted on the property.

Mr. Goldberg expressed his concern that the Applicant has been adversarial and doesn't think this is a location for this plan and that it will adversarial affect the neighborhood.

Attorney Kraus replied that the Town of Kingston needs housing that is relatively affordable. It's desperately needed.

MOTION: Lane motioned to close the hearing of 1 Tremont St. and 163 Summer St.; Mr. Dondero seconded with a **VOTE** of 5-0-0.

MOTION: To **DENY** the Applicants request to withdraw the variance request. No second, No vote.

MOTION: By Mr. Dahlen to **APPROVE** the Special Permit for 1 Tremont St. and 163 Summer St., seconded by Mr. Dondero with a **VOTE** of 4-1-0

CONDITIONS on the project for 1 Tremont St./163 Summer St. as follows:

1. Green space near abutters, green giant arborvitaes that grow tall to be done first near rear neighbors.
Occupancy permits to be withheld until work/condition is completed.
2. 8' fence behind the tall arborvitaes and shall be maintained and immediately replaced if the arborvitaes die.
3. Property to be always maintained – grass, potholes, pavement
4. Snow Removal must be met so that all spaces are always open. No parking on the street.
5. Lighting, for any neighbor or residential area that is having a problem. If lighting is damaged, needs to be

continually corrected.

6. Signage in various locations requesting residents to be respectful and not congregate outdoors with an emergency number for contact. Police and Fire will also have 24-hour contact numbers.
7. Cameras on buildings not invading abutters privacy.
8. 10% affordable housing required. 1/8 – One affordable unit for all buildings.
9. Impervious surface to stay at 54.3% for example if future paving is done.

8:19 PM – Mr. Goldberg excused himself for the rest of the meeting.

Mr. Dondero recused himself from the 60 Country Club Way hearing.

Mr. Mullen read the Public Hearing Notice for 60 Country Club Way.

MOTION: Mr. Mullen motioned to open the hearing for 60 Country Club Way and seconded by Mr. Woods.

VOTE: 5-0-0

Appointment:

7:05 PM - Applicant, Fred Tonsberg, 60 Country Club Way, Map 74, Lot 4 must seek a modification to an existing special permit from the Zoning Board of Appeals case #888 of 1997 in order to construct a golf course maintenance building in a different location as originally detailed in 1997 approvals. Site Plan for proposed maintenance building at Indian Pond Country Club, Inc. prepared by Joseph Webby, Jr. and Richard DeBenedictis of Webby Engineering Associates, Inc. dated 7/11/2023.

Attorney John Fleming representing Fred Tonsberg and Indian Pond spoke of original Special Permit in 1997, pointed out plans that were displayed and the proposed move of the maintenance building. Attorney Fleming states that he is being evicted from the current building by estranged son. Mr. Jason Silva stated that Fred Tonsberg would need to go in front of the ZBA for a modification to the existing Special Permit.

Mr. Dahlen stated that it sounded like the Applicant modified his Special Permit on his own by allowing the building to be put into a separate trust. The original maintenance building was granted to the Applicant by the Building Inspector through the Special Permit given.

Attorney Fleming agreed.

Mr. Dahlen questioned how the Applicant gave it to someone else. The Special Permit should have been amended by going in front of the ZBA before it was allowed to be put into someone else's hands.

Attorney Fleming stated that it was transferred/sold.

Mr. Dahlen questioned and reiterated how and why this was done if it was part of the original Special Permit.

Attorney Fleming State that technically it was not done.

Mr. Dahlen stated that you must amend the Special Permit with any changes each time. The roads are part of the Special Permit. ZBA members will need to know all deeded land from point to point for case #888. Roads are part of the parcel and permit.

Ms. Smith Meekins proceeds to speak with Attorney Fleming regarding case #888 and the details of the issuance of the Special Permit. Questions High Pines Corporation of whom the permit was issued to originally and owns the

roads. Questions the current applicant being under Indian Pond Country Club Inc. Why? The condition of the roadways is a big issue for the abutters that showed up at the meeting this evening.

Mr. Mullen followed up by stating that if High Pines does own the existing building, what will happen to that? Is it going to be demolished? If he does not own it, is he just going to let it deteriorate?

Attorney Fleming stated that High Pines does not own the existing building. It is owned by a trust that was set up by Frederick W. Tonsberg (son).

Mr. Dahlen stated that the Applicant cannot keep transferring without a paper trail, so where is this paper trail?

Mr. Mullen stated that it must go to the Plymouth County Registry of Deeds for ownership.

Ms. Smith Meekins asked Attorney Fleming if it was the whole parcel or did High Pines Corporation retain title to the roadways in 1999 when it transferred title to the Indian Pond Country Club, Inc. There is no deed work or reference for that title transfer seen.

Mr. Fleming stated that he will supply the ZBA with legal documentation showing that High Pines transferred its rights of the Special Permit.

Ms. Smith Meekins questioned the transfer and rights under Special Permit #888. Proceeded to confirm that applicant will provide documentation to that effect showing that transfer.

Attorney Fleming stated that the Applicant and Attorney will provide the information requested.

Mr. Dahlen stated that the Applicant is requesting a modification to a Special Permit, but they just deeded out their property.

Bob Roundtree, 263 Country Club Way spoke of the roads, asked who the original owner of the land and development plan was approved for High Pines Corporation and his understanding is the plan approved for High Pines Corporation which included to construct roads and definitive requirements regarding the roads. Was there an agreement entered into with High Pines Corporation to construct the roads and keep them in condition suitable for travel. Now it seems to be that High Pines sold a series of lots and built a nice neighborhood but the problem is was there an agreement with High Pines Corporation to bring the roads up to speed upon completion of the development. If that agreement exists, then High Pines Development when it made transition of all these properties via one deed, or another was in complete violation of the agreement with the Town of Kingston. There have been lawsuits by the Town of Kingston against the principles involved in all of these corporations, primarily High Pines Corporation. How can you do anything for them? They're in violation. They prove their unwillingness to comply with agreements. The original contract exists, and Mr. Tonsberg has been asked to honor that. There's an obligation at hand. There are rusty machines out back that look awful. Questioning where those rusty machines will be relocated, where residents can see them. There's a maintenance issue that if allowed the property that currently houses the maintenance to be destroyed but how are residents to believe that a construction of a new building is going to improve everything? Mr. Roundtree asked that before anything gets considered, the town must consider as its responsibility to the citizens of the community and town due to the developer willfully violating the agreement multiple times.

Dick DeBenedictus, Engineer from the beginning spoke of construction plans, wastewater, and DEP. Spoke of taking a bad situation and improving it. Believes they should be taking care of the roads and making a deal with Mr. Tonsberg.

Mr. Dahlen stated that he wanted to know what the percentage of the PE is.

Dick stated that is isn't the PE it is the condition of what the construction is.

Mr. Dahlen stated that this started in 1997.

Mr. Mullen asked what this has to do with the permit that we are talking about now. If you're using the building for storage, paint it, fix it – curb appeal. If it is two separate entities now and you build a new one, you get it up and running, that's a separate entity, haven't fixed it, leave it like that and let it rot? What provision is there to now tear that down and fix that lot?

Mr. DeBenedictus stated that is his building and he can do whatever he wants with it.

Mr. Mullen questioned - so it's just going to sit there and rot? We are going around in a circle.

Mr. DeBenedictus proceeded to speak of engineering aspects of the 6,200 Sqft. footprint, drainage and recharges.

Mr. Dahlen asked about the housing of equipment, excavators etc. Asked if there is a rendering of the building.

Mr. Tonsberg, Applicant stated that the current maintenance building is too small. 80 golf carts and the building will only hold 62 golf carts. It does not hold any maintenance or utility vehicles. The sand piled up will go into the parking lot and will not be there anymore. Explains maintenance building and cart path. Everything will be put in another location.

Ms. Smith Meekins stated that in Jason believes that your submission lacks some specificity in several areas. Would you be willing to rectify your submission? Jason's memo states some of the neighbor's concerns about screening and a buffer for adjacent residents. It is very comprehensive. Suggested coming back after these issues identified are looked at.

Mr. DeBenedictus stated absolutely.

Mr. Mullen agreed with Ms. Smith Meekins. The ZBA cannot approve anything that the rest of town agencies and departments haven't blessed. ZBA wouldn't even think about trying to do that if the fire department, sewer department is not on board with recommendations. Doesn't see how they can approve a zoning permit. Look at Jason's concerns.

Mr. DeBenedictus speaks of elevations and will get an architectural rendering. This will be a steel building.

Mr. Dahlen stated that the building cannot be over 35' and requested a rendering.

Jason Silva, Building Commissioner proceeded to explain the appropriate department reviews in able for the board to make a decision and the submission. Building structurals were not supplied. It isn't what Jason wants but a requirement for ZBA to come up with a determination. Without construction drawings no one knows what the building looks like. There's a lot of information that the building and other departments were not able to figure out because that was not supplied. Valerie Massard, Joe Webby and Jason Silva sat to explain many months ago all of these the concerns. They were all pointed out in the plan review which were missing on the plan suggested that it be modified to include all of that information but regardless of that the petitioner moved forward with a single dimensional civil plan.

Mr. Mullen stated that if you're storing golf carts on the second floor, have occupancy loads been determined? How big is the steel going to be, how big are the supports and concrete floor?

Mr. Dahlen stated that the application is very incomplete. Need a drawing and idea of what the building is going to look like and if it fit the neighborhood. You cannot go over 35'.

Mr. DeBenedictus stated that they have to have a 20' second floor to have a 35'

Mr. Woods stated that they're not saying they are opposed to the location but there's many things that have to get done prior to moving forward.

Mr. Fleming stated that they have a disagreement over who owns what.

Mr. Dahlen wants some sort of linear line. You're using ZBA case #888 as your case to ask for this special permit, are you not?

Mr. Fleming replied yes.

Mr. Dahlen stated that once you use case #888 as your original vortex every line that is skewed off of it has to have a way back to the beginning coming back to the original special permit. Held up the color copy front page of abutters list and stated that they own all of the red in the permit.

Kim Irvine, 24 Putters Place an abutter and lived there for seven years expressed her concern over the mess. Theres more equipment than he has ever had. Where is he going to put a backhoe? Parking? It's dangerous. Gets golf balls in the backyard as well. Rents the property and does not maintain it. That is part of his lease and what he is supposed to do and that is not being done either. Fred Tonsberg makes promises and does not keep them. Moving the building is only going to cause another problem.

Ms. Smith Meekins asked if that is an improvement over what was just described.

Kim replied no.

Attorney John Denehy representing Debora and Peter Hooper residing at 475 Country Club Way. The issue right out of the gate is that the lot where the maintenance building facility was built on was sold in May of 2011. It was sold to EBF, LLC. They currently own it today. When you sell land, the building goes with it. The issue with the special permit was it was a part of High Pines Corporation. Has not gotten a title done but was sold to the golf course but they didn't in this case so and will find out shortly because the rendering that you're talking about from 1998 rendered where the building was going to be cited. That is exactly where it was built. Then the building department issued the permit. The building has been there for 10 years plus. They sold it in 2011. In 2016, you've raised this issue – we're going to assign the rights to High Pines, LLC. That is not an entity owned by the applicant or by the golf course. Another issue is legally if they have a right to reserve if they could saying they are going to reserve it, which is what Attorney Fleming was suggesting. Once you have sold the property, you cannot reserve anything else. It is a quick claim deed. Those are legal issues and may need town counsel to be involved with this because that is the issue of standing. Do they have the right to come before you and ask you now because of their own actions. To decide now unilaterally, asking to rebuild this structure on the other side. They have created their own problems. They could screen very easily the current house where the maintenance building is. They could screen it so that the machinery can't be seen. Showed photographs of what they have been doing there. They park all over the front and don't maintain it. People on the other side of the golf course have to endure. That's unfair. Good neighbors usually keep good fences and good fences make good neighbors. You build something, you protect

it. Now they're saying they're going to put the maintenance building on the other side. There are no guarantees they are going to maintain it. Let's look at the other side. Parking lot with all the parking that is supposed to do with the use for all of the uses they were approved by whether it was for the restaurant that failed, current ballroom, banquets and the golf course, that's there and now they are going to put a facility there. Glad to hear that ZBA is asking for a rendering of the facility because as part of the special permit process you have to see what the rendering is because is it going to adversely affect the neighborhood because this is being shoehorned directly on the neighbor line. They should be cleaning up the other side regardless of their application, but it is one of these it is so ugly over here, we'll fix it over there. That's what we call in law unclean hands. They're walking in asking for something that hasn't been done properly from the beginning.

Hillary Cerak, 414 Country Club Way spoke against Fred Tonsberg's proposal and expressed the following concerns over noise, addition of the building will exacerbate the noise, clean up the neighborhood, uneven p-pavement, can't walk on sidewalks because it is too dangerous to walk around the neighborhood. This is unacceptable.

Debora Hooper resides at Lot 23, 425 Country Club Way and is a direct abutter across the street from the petitioners proposed maintenance building. In opposition to the petition's request for a modification to the special permit issued 26 years ago and respectfully request that this board deny the petition. Debbie Hooper has lived at her current home since 2008. A proposed building to be constructed in the parking lot across the street from her property. If she had known this building was going to be proposed she would not have chosen that location to live. The parking lot across from the residence has never been maintained. It is not landscaped and never has been. One attempt in 2015 by the applicant to plant shrubs that were not watered, died and was unsightly for about one year until they were pulled out and dumped across the street. The parking lot across from Debora Hooper's house continuously has piles of sand, dirt, stone, and asphalt all of which are always dumped haphazardly in the parking lot. In 2021 and 2022 there was an attempt made numerous times to be neighborly and reached out to the country club and requested numerous times for the dirt piles be moved to the farthest end of the parking lot and noted to them that this area seemed to be used by them as an "out of sight, out mind area". The sand constantly blows into her yard and destroyed her new lawn and covers her house and windows. There are two very unsightly storage containers, a utility trailer and all of last year an SUV car. Surrounding the container is old lumber that keeps piling up, bricks and cement. The container on the left side has never been used. The container on the right side contains the chairs for outdoor weddings. Speaks of what she sees from her at home office. Patrons, limousine drivers going behind the trailers to urinate. It should be duly noted that the area in question is a parking lot. Understanding that the special permit is not transferable. If understanding correctly, there is no special permit. Then why are they there? The petitioner's statement is very vague. No rendering. This steel building is not something that you pop into a residential neighborhood. Spoke of tight tank in extreme circumstances. Against the special permit and asks that the ZBA does not approve as it would be a direct detriment to not only her property but the entire property.

David Fuller, 233 Country Club Way, is against this request of the applicant. Spoke of the special town meeting on 10/24/2023 and the warrant. Article #15 to approve wastewater leaching fields – the town is preparing to replace the leaching fields at the country club and to build new leaching fields. Believes the applicant has options but may not be disclosing all of their options to the board.

Dick DeBenedictus spoke of the wastewater and the town doubling the size to another 375,000 gallons that going to the field. The town is not abandoning the current one.

Mr. Fleming asked if there is anything else needed in way of documentation or information.

Mr. Dahlen explained that the board needs to figure out how the applicant got to this position. Civil engineering is good but needs a lot more.

Elizabeth Webster-Buffa, 13 Eagle Drive questioned why they didn't build a proper maintenance shed when the country club was built and why does it need to come up now. Why an industrial building in a residential neighborhood. Does not make sense. The current one is in disrepair, unsightly and needs to be torn down. Why can't they tear that down and put the new one there but not an industrial one. Finish the roads in the neighborhood before you start a new project.

MOTION: To continue 60 Country Club Way to November 1, 2023, at 7:00 PM made by Mr. Mullen and seconded by Ms. Smith Meekins.

VOTE: 5-0-0

Minutes were approved.

ADJOURN: At 10:09 PM, Ms. Smith Meekins motioned to adjourn and seconded by Mr. Wrightington.

VOTE: 5-0-0