

TOWN OF EGREMONT, MASSACHUSETTS  
MEETING OF THE ZONING BOARD OF APPEALS (ZBA)  
MINUTES

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Date: June 30, 2022  
Time: 5:00pm  
Place: Via Zoom Meeting & Town Hall  
Egremont

Present at the meeting via zoom were ZBA members Cathy Fracasse, Mark Holmes, Rolfe Tessem. Other present were Attorney Alex Glover, Attorney Michael Martin, Attorney Jeremia Pollard,

The meeting was audio and video recorded.

The Board will not reorganize at this time.

The hearing for the remand of the special permit issued to Lannon Killea and Jon Herman was called to order at 5:00pm. The hearing notice was read into the record. The court ruling on appeal was read into the record. (Both documents are made a part of the file.)

The court ruling asks that the ZBA amend the special permit to limit closing on all nights to 11:00pm, include specific findings under zoning Bylaw Sections 4.2.1.3 and 4.3.1.5 and under zoning bylaws 6.2.4.1 to 6.2.4.5, and to make a finding under zoning bylaw 4.1.2.3(b)ii if strict compliance with the 50' setback for commercial parking cause unnecessary hardship.

Attorney Glover, representing the applicants has proposed new conditions and findings.

Attorney Martin, representing the appellant, said they have no issue with findings as proposed if the hours of operation are amended.

Attorney Pollard, representing the Town, agreed to the findings as proposed.

Zoning Board of Appeals members voted unanimously in roll call vote to approve the application for a special permit for the proposed restaurant and bar with venue for live music, under the Zoning Bylaw section 4.3.1.5, 4.3.1.3 and 6.3.2.2, for a restaurant as per the application with the following conditions:

1. Hours of operation: closing at 11:00 PM.
2. Indoor music only.
3. Lighting in the parking area in support of safety with down lighting to the greatest extent possible to control light pollution.

Members voted unanimously in roll call vote to find under zoning bylaw 4.1.2.3(b)ii that the Board finds that the parking areas as depicted in parking plan B filed with the application may be located within fifty feet of the East and West sides of the property, as strict compliance with the prohibition on locating a parking area or driveway within fifty feet of the side/rear property lines may cause unnecessary hardship. The parking is so located because of limitations due to lot configuration and topography, likely location of the septic system, and significant cost to the applicant for creating new parking. The proposed parking plan (per the Parking with Variance map shown in the ZBA Continuance document) addresses concerns of safety and providing sufficient parking for a viable business. Section 4.1.2.3(b)(ii).

Members further voted, unanimously in roll call vote, under zoning bylaws 6.2.4 that it finds that the project:

*6.2.4.1 Is in compliance with all provisions and requirements of this Bylaw, and in harmony with its general intent and purpose;*

The proposed restaurant is in harmony with the general intent and purposes of the Bylaw in that it adds a new social and recreational service to the Town without impairing any of the protected interests under the Bylaw as set forth specifically in Section 1.3.1, while bringing business to the Town which contributes to the general welfare of the Town. The project will support other businesses in the area, such as Catamount Ski Area, to which it is in close proximity. The project will also revive and restore a historic building that has long been in a state of disrepair and restoring a restaurant use that had operated since 1946.

*6.2.4.2 it is essential or desirable to the public convenience or welfare at the proposed location;*

The project will reimagine a previous restaurant, creating a new venue for casual dining and socializing in Egremont. The location is the same site used for the previous restaurant, and the existing building will be restored. The restaurant will provide local employment. For the reasons set forth in (a), above, the proposed restaurant and bar with venue for live music is desirable both for public convenience and welfare.

*6.2.4.3 will not be detrimental to adjacent uses or to the established or future character of the neighborhood;*

The addition of the restaurant will have no detrimental effect at all on the neighborhood. The restaurant will be operated in the existing building. The restaurant will not have obtrusive outdoor lighting; the only lighting will be downward lighting in the parking lot for safety. There will be no amplified, outdoor music; the only music will be indoors. There will be no significant change in traffic patterns or parking. The hours are limited. The traffic on Hillsdale Road already generates noise, and the restaurant will not create additional noise. There will be no change to the character of the neighborhood.

*6.2.4.4 will not create undue traffic congestion or unduly impair pedestrian safety;*

The restaurant will not create any undue traffic congestion or impair pedestrian safety, as pedestrian traffic is not expected and the site was operated as a restaurant for decades.

*6.2.4.5 Will not overload any public water, drainage, or sewer system or any other municipal facility to such an extent that the proposed use of any existing use in the immediate area or in any other area of town will be unduly subjected to the hazards affecting public health, safety or general welfare.*

The proposed restaurant will have no impact on any municipal services as it is serviced by private water and sewer. See also findings (a) – (d) above.

Members voted unanimously in roll call vote per the above findings, that the Board finds that the application and proposed project are not substantially more detrimental to the adjacent uses. The amendment to the Special Permit is allowed.

Hearing closed at 5:45pm.

Applicants Lannon Killea and Jon Herman joined the meeting after the hearing was closed.

At 5:50pm the hearing on the application of Kenver Real Estate, 39 Main Street, to install a seasonal ice skating rink was called to order.

Present were Zoning Board of Appeals members Cathy Fracasse, Mark Holmes, Rolfe Tessem. Also present were Attorney Alex Glover, Rory Rogan, Lucinda Vermeulen, James Warwick, Andre Gordon and Harvey Weiner, Susan Bachelder, Chuck Ogden.

The hearing notice was read into the record.

The nature of the application is for a seasonal ice skating ring to be installed on what was a cement pad for a tennis court. Hours operation would be the same as the Kenver store. Exhibits included in the application showed the location of the rink on the property and a description of the rink.

Attorney Alex Glover represents the applicant. Rory Rogan also represents the applicant. The applicant seeks to expand the pre-existing, non-conforming use by installing a low impact skating rink, only in the winter, with no additional lighting. The applicant contends that the 50' set back for parking does not apply. The location is be on the former tennis court pad. The ring will be approximately 100'x40' on the 118'x50' pad, fully contained liner for water, 4' high sides, and only naturally frozen. Proposed lighting at the rink is string lights. No generator. Hours of operation to be the same as the store which is currently closing at 5:00pm, but soon will be extending to 7:00pm. The 50' setback to the property line will be maintained. All safety precautions will be taken. Parking will be same as for the store on both sides of the building. There will be an attendant at the rink at all times. Skaters will be limited to no more than 20 at a time and a booking process will be used. There will be a charge to use the rink and to rent skates. No food or beverage will be served though there will possibly be a food truck sometimes. Though it is hoped to have skating beginning before the Holiday season realistically because of the temperatures it may not be until mid-December and likely ending in February. The ice will be maintained daily. No music. When asked, Mr. Rogan said that there may be times slots set aside for Hockey Team ice time - during normal skating time no pucks will be allowed. The lights will be off when the rink is not open. Security cams will be installed to ensure no after hours use.

Abutter James Warwick, 37 Main Street, expressed his displeasure with the application and his wish to have the special permit be denied, saying that this was a thickly settled historic area and he didn't feel that this use was appropriate. He added that the extension of hours was news to all, string lighting was not safe, this would attract people from out of the area, that is a structure as the rink will be built, parking issues as the lots are small and the lot is shared by too abutting property owners as access to their homes, 20 skaters would mean more than 20 people. He questioned the legality of a food truck and noted that the banners put up by Kenver were not appropriate. Mr. Warwick has also put his concerns in writing.

Andre Gordan and Harvey Weiner abutters at 41 Main Street, seconded and supported James Warwick's comments and have also supplied the Board with written comments. Mr. Gordan argued that the set back requirement should require a variance as the use of the tennis courts has lapsed for many years. Attorney Glover contented that this was not relevant and in fact the rink would be outside the 50' setback. ZBA Chairwoman Fracasse concurred. Mr. Gordan asked that specifics be included regarding the hours, not just the same as the store, and also on the lighting.

A discussion took place around the Food Truck issue as no one is clear as to what town department would have jurisdiction for the placement of food trucks. Chuck Ogden agreed that the Board of Health would have to permit from a food safety and health perspective.

Susan Bachelder, 26 Main Street, also has presented the Board with written comments. She questioned the water source, water disposal and freezing of the water. Mr. Rogan said that there would be no refrigeration, that the ice would only be frozen naturally by cold temperatures. The liner will contain the water when it melts and it will not be released into the brook but may be pumped into the storm drain. There are no chemicals in the water. Water volume will be approximately 5600 gallons. Conversations have been held with the Fire Department about pumping in the water and pumping out the water and possibly taking it to the Greenagers facility on Route 41. The rink will be run as environmentally friendly as possible. Ms. Bachelder liked the proposed hours of operation and noted that would deter the use of alcohol. She said that string lighting could mean anything. Mr. Rogan stated that no additional lighting will be added in the parking lots.

Mr. Warwick pointed out that Mr. Rogan was a resident of San Diego CA. Kenver's has a local manager named JC who was not present at the meeting. Mr. Rogan said he was from New England so understood the area. He said the company wanted to maintain Kenver's as a community based business and would remain respectful to the legacy and retain the historic nature.

Lucinda Vermeulen, seller of Kenver's to Kenver Real Estate LLC, said she was very careful about the sale and the need to sell to someone with the same sensibilities. She had planned a skating rink there for years but it never came to fruition. She supports the application.

Currently the store is open Wednesday through Sunday from 10am to 5pm. As business picks up in the winter the days and hours will extend to 7 days and the hours will be 10am to 5pm on weekdays and 10am to 7pm on Friday, Saturday, and Sunday.

There was some discussion over the string lighting and the difference in actual lights that would make a considerable difference in lighting. There will be poles holding the string lights up. An example is the lighting will be comparable to string lighting around a deck. A lighting designer is being utilized and the lights will come down with the skating rink. Power will be gained through the garage under the Kenver building with the use of extension cords that will not just be run on top of the ground unprotected.

The members of the Zoning Board of Appeals voted unanimously in roll call vote to approve the application with the following conditions and findings.

#### Conditions

1. Rink shall be constructed in respect of the 50 foot sideline setback set forth in section 4.1.2.3(b)(ii)
  2. The Rink shall be open only during operating hours of Kenver, and no later than 5PM on weekdays and 7PM on Saturdays and Sundays
  3. No artificial refrigeration shall be used to freeze the rink water; only natural freezing will be used
  4. Only string lights will be used to light the rink, and lighting will only be used during the above hours of operation
  5. No outdoor music will be presented as part of the operation of the rink
  6. Number of skaters on the ice will be limited to twenty (20) at any given time
  7. The applicant will comply with all other applicable bylaws, laws and regulations
- All other conditions referenced in the application will also apply

#### Criteria & Findings

6.2.4.1 *Is in compliance with all other provisions and requirements of the Bylaw, and in harmony with its general intent and purpose.*

The use is in line with the existing use of the property as a purveyor of outdoor equipment. The proposed new use is in harmony with the bylaw as it affords an additional recreational opportunity within the town. The conditions are defined such that impact to neighbors and abutters is limited in scope and time.

*6.2.4.2 Is essential or desirable to the public convenience or welfare at the proposed location.*

The seasonal rink will afford town residents and visitors with a recreational opportunity that does not currently exist in town and is beneficial to both residents and the Kenver's business.

*6.2.4.3 Will not be detrimental to adjacent uses or to the established or planned future character of the neighborhood.*

Care has been taken to limit the light, traffic and noise concerns of neighbors. The low impact and seasonal nature of the use further limits its impact. The number of skaters at any given time is limited, as are the hours of operation of the rink. The use is further constrained by the weather.

*6.2.4.4 Will not create undue traffic congestion, or unduly impair pedestrian safety.*

The existing driveway and parking at the location are of sufficient size to handle any additional traffic. Further, the limitation of the number of skaters on the ice will control traffic impact. Kenver staff will be present at all hours of operation to ensure safe use of the parking areas.

*6.2.4.5 Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to the hazards affecting public health, safety or general welfare.*

There will be no such impact as the water will be contained within the rink, with no chemical additives that could be discharged into the ground.

The Board voted unanimously, in roll call vote, based on the conditions and findings to grant the special permit.

Hearing closed at 8:00pm.

Meeting adjourned.

Mary Brazie,  
Office Administrator

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*The recording of the minutes is on record at the Town Hall for 90 days. Anyone who wishes to may obtain a copy or listen to the recording at Town Hall. Attachments are on file at Town Hall.*