

**Preston Zoning Board of Appeals  
Regular Meeting  
Monday, January 11, 2021  
Teleconference  
6:00 pm**

**1. Call to Order**

Chairman Moulson called the meeting to order at 6:00 pm.

**2. Roll Call**

**Regular Members**

John Moulson – Chairman  
Jerry Morales – Vice Chairman  
Gregory S. Moran Sr.  
Roberta Charpentier  
Merrill Gerber

**Also Present**

Attorney Andrew McCoy  
Attorney Ken Slater  
Ken Zachem  
Numerous residents

**Alternates**

John Sacrey - absent

Roberta Charpentier (recorder) stated *Per Lamont's Executive Order 7b, Participants are reminded to state your name and title before speaking. Also note that we will be recording this meeting to comply with open meeting requirements.*

**3. Approval of Regular Meeting minutes of December 14, 2020**

A motion was made by G. Moran and seconded by J. Morales to approve the Regular Meeting minutes of December 14, 2020 as presented.

All in favor. Motion carries.

**4. Election of Officers**

A motion was made by G. Moran and seconded by M. Gerber to nominate John Moulson as Chairman.

All in favor. Motion carries

A motion was made by G. Moran and seconded by M. Gerber to nominate J. Morales as Vice Chairman.

All in favor. Motion carries.

**5. Communications**

None

## 6. Public Hearing

**ZBA-2020-0002- Kenneth L. Zachem, 350-352 Route 2, Preston, CT.** Applicant is seeking variance from 10.3, Permitted Use in Resort Commercial District, to construct a single family dwelling and detached garage. The dwelling will be on a proposed lot to be split from the subject property.

*The Regular Meeting was recessed at 6:07 pm for a Public Hearing  
The Regular Meeting reconvened at 6:25 pm*

## 7. Old Business

**ZBA-2020-0002- Kenneth L. Zachem, 350-352 Route 2, Preston, CT.** Applicant is seeking variance from 10.3, Permitted Use in Resort Commercial District, to construct a single family dwelling and detached garage. The dwelling will be on a proposed lot to be split from the subject property.

Chairman Moulson asked Attorney Ken Slater to present his opinion.

*Attorney Slater displayed a map showing the property split into 2 parcels, labeled as A and B*

Attorney Slater stated that it sounds like the GIS is wrong but the GIS is not the governing document on how something is zoned, it is the zoning maps and the history of the zoning. I suspect that the applicant, after doing the homework realizes it is zoned that way even though it is showed differently on GIS, otherwise there would be no reason to be here. For the purposes of this application it is not R40 zoned. This is a request for a use variance because in order to use parcel A (Mathewson Mill Road) for residential purposes; that's not permitted under the zoning regulations. The applicant needs to show the entire parcel including the part that is on Route 2 (parcel B) has no value at all. If parcel B is being used in some way then the whole parcel is being put to some use, and that would disqualify it for a use variance.

It sounds like there is a lot of support that the area A be residentially zoned. ZBAs can grant variances that aren't authorized under the law as long as no one appeals it, and there doesn't sound like there is opposition by the neighbors. In terms of the law, this doesn't qualify for a use variance. If the applicant agrees that the back parcel A is more appropriate residential, then the Chairman was correct in asking the applicant why there wasn't an application for a zone change.

Planning & Zoning are the ones who adopt the policies on how property should be zoned. They could have thought the whole parcel could be used as resort commercial. In my view the right steps the applicant should take is not a use variance but to proceed with an application to the P&Z for a zone change. Then the applicant wouldn't be dealing with a use that's not authorized in the zone and exist only by way of a use variance.

Attorney Slater explained the legal parameters is to decide whether there is no use in the entirety of the land to decide whether to grant a use variance.

Chairman Moulson asked ZBA members to vote aye or nay.

Gregory S. Moran Sr. - Aye  
Roberta Charpentier - Nay  
Merrill Gerber - Aye

Jerry Morales - Aye  
John Moulson - Nay

Chairman Moulson stated this does not get approved.

### **8. Other Matters**

No

### **9. Public Comment**

Donna Sharkey, Branch Hill Road stated I don't understand why this wasn't passed, he's building off of Mathewson Mill Road not Route 2 and he's a third generation here. This what we want in our community, we don't want Walmart and Stop & Shop.

Chairman Moulson commented that this should be going through the Planning & Zoning Commission. D. Sharkey asked why was this even questioned why did Ken have to take these steps? Ken pays his taxes. This lets our children choose from 3 or 4 different high schools. Why would we not want another generation here building on our community. Why did you make him take these loops? That's my biggest concern. This is something you guys should look deeper into, he should never had to take these steps. Things were not going properly when he wrote this Bill. Our Congressman should have sat down and looked at this and said "Oh you're right, that number house should be able to".

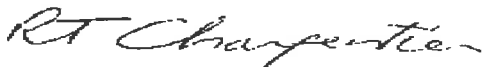
Jack Smallwood, Prodell Road stated that back in December you called out for this meeting to be held, you got lawyers involved, you got other people to get lawyers involved, you're running people into debt. It should have been discovered before this time period what the appropriate action is and give Ken guidance so we don't have to be throwing money out. Now we have to do it again, so we try another process and delay this. This is a waste of our tax money, hiring lawyers and wasting money for this. This is insane.

Steve Coli, Overlook drive commented I would just like to support Kenny and a person with 9 acres should be able to build a house on it. There's no issue with the wetland. This is something Kenny and Jerry wrote up years and years ago and it doesn't even sound like the Town has it straight whether it's zoned one way or the other. I agree with Jack, Kenny has to spend money for a lawyer, and now to do it over and over again is just wasteful.

### **10. Adjournment**

**A motion was made by J. Morales and seconded by G. Moran to adjourn the meeting at 6:42 pm. All in favor. Motion carries.**

Respectfully submitted,



**Roberta Charpentier**

**Preston Zoning Board of Appeals  
Public Hearing  
Monday, January 11, 2021  
Teleconference  
6:07 pm**

**Regular Members**

John Moulson – Chairman  
Jerry Morales – Vice Chairman  
Gregory S. Moran Sr.  
Roberta Charpentier  
Merrill Gerber

**Also Present**

Attorney Andrew McCoy  
Attorney Ken Slater

**Alternates**

John Sacrey - absent

**ZBA-2020-0002- Kenneth L. Zachem, 350-352 Route 2, Preston, CT.** Applicant is seeking variance from 10.3, Permitted Use in Resort Commercial District, to construct a single family dwelling and detached garage. The dwelling will be on a proposed lot to be split from the subject property.

Attorney McCoy explained the house is to be built on a parcel that is to be created from a split from property that is located 350 -352 on Route 2..

The purpose of the variance is to allow Mr. Zachem to build a home for his son surrounded by family. Mr. Zachem is a 3<sup>rd</sup> generation resident of Preston and he would like his son to establish the same roots. Attorney McCoy noted that 6 of the 9 abutters are the Applicant himself.

Attorney McCoy showed a GIS map with several parcels (colored blue) and noted that they were all residential and had a single family dwelling on them, so allowing this variance would be in harmony with the way this neighborhood is already set up.

Attorney McCoy stated that if the variance is denied Mr. Zachem will not have any meaningful way to develop his property because the location and makeup of it makes it impossible to develop it commercially, so residential property is the best use of that land. Denial of this application will deny the applicant proper use of his land.

Chairman Moulson asked if the Applicant has met with the Planning & Zoning Commission to rezone this parcel?

Attorney McCoy answered we have not.

Chairman Moulson thought Planning & Zoning would be the place to do this.

Attorney McCoy stated that it is his understanding that the Town does allow use variances, so this application was filed with the Zoning Board of Appeals to see if it could be approved first.

Chairman Moulson stated that Zoning Board of Appeals is not a use variance commission it is a hardship commission.

Chairman Moulson stated also you haven't had the wetlands surveyed.

Ken Zachem stated that the wetlands was designated by Uncas Health District when the septic system was done and it should be on the map marked off properly.

Chairman Moulson asked if they had a soil scientist who did this.

Ken Zachem answered yes

Chairman Moulson asked if he went through and marked all of the wetlands.

Ken Zachem answered yes.

Jack Smallwood, Purdell Road stated the property at 350 is R40 so I don't understand the variance from

commercial/resort to residential 40.

Attorney McCoy answered that on the GIS map and the Assessor's map it is still delineated as R40 but when Mr. Zachem applied he was told it was resort commercial which is why we applied for this variance.

Jack Smallwood stated that 352 is resort commercial, but if we say this is 350 then there is no variance.

Chairman Moulson stated that if it is residential then you don't need anything from the ZBA.

Jack Smallwood stated that's my point. Public records show that 350 is R40. If you look at it this way, this is a waste of all our time, and you're bringing people through a process that you shouldn't have to.

Chairman Moulson asked Attorney McCoy if he'd like to look into this further before ZBA proceeds.

Attorney McCoy answered that Mr. Zachem was told by the Planning Department that it is commercial. If they are willing to say it's residential then we will move forward without the application, but until that determination is made, we've only been told that it is resort commercial. That's why we filed this application. I believe the zoning map does indicate resort commercial and online it is zoned as R40.

Chairman Moulson asked Attorney McCoy if he would like to recess this for a month so you can take a look at it.

Attorney McCoy answered no. Us looking at it versus what the Planning Department is willing to say are two different issues.

Jerry Grabarek stated he was on Planning & Zoning when the town made that resort commercial. As I recall it was 1,000 feet off of Route 2. The Planning Department is saying one thing and Ken Zachem is saying another thing and it doesn't seem to jive with me either.

Attorney McCoy stated we are not trying to ruffle any feathers, we want to do things the correct way.

Chairman Moulson asked are you certain this is resort commercial because you can't come in and change it to something it already is. That's not the business of this Board.

Millie Peringer, Zoning Enforcement Officer stated the Planning Department insists that this is zoned resort commercial. She was in charge of the maps all these years and it probably didn't get changed, it was an oversight. It is zoned resort commercial and that's why they want to have a variance because she said it is resort commercial and you can't do it that way.

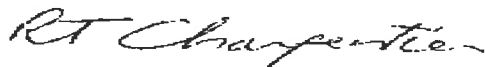
Jerry Grabarek stated that he would like to speak in favor of granting this variance. I think there's a lot of confusion here. Just grant it and the Planner can worry about it later.

Jack Smallwood stated he agrees with the last gentleman's statement.

Pat Biggins, Watson Road stated I would also like to support this variance.

*Chairman Moulson closed the Public Hearing at 6:25 pm*

**Respectfully submitted,**



**Roberta Charpentier**