

COPY

January 27, 1994

East Kingston Board of Adjustment

Attending: John V. Daly, Chairman; David Ciardelli, and Stewart Aronson. David C. Boudreau, Jr. attended at 7:15pm.

The meeting was called to order at 7:10pm by Mr. Daly.

Mr. Daly read the published notification of this Public Hearing for Robert Sharkey. (1994-01)

Mr. Daly noted the ground rules governing the requirement of three members to be present to make a quorum. It was noted that with three in attendance, the statute would require all three votes to be cast in unison to be valid. He gave Mr. Sharkey the opportunity to proceed or hold in abeyance until a full board was present.

Mr. Sharkey stated he was not a gambler, but his abutters were present and he didn't foresee any opposing issues and stated he would proceed with the hearing.

Mr. Sharkey stated when he bought the property in 1987, he was given the plot plan (as submitted with his application). He stated there was a garage on site, but it was too small for a car. The original garage was shown on the plan. He stated he put in new footings and Mr. John Cashins told him the garage was on his land. He felt the issue was resolved when he looked for the boundary and determined that he was pretty near ten feet away. He said he did not want to take the footings out. Mr. Cashins then had his land surveyed in November 1988 and it shows the boundary is actually 8 feet from the edge of the garage.

Mr. Daly read the ordinance requirement of ten feet from the boundary line for accessory buildings.

Mr. Daly stated Mr. Sharkey would need to address the five criteria to grant a variance.

Mr. Sharkey addressed the criteria individually:

1. No diminution suffered, the garage has been there since 1987; may be better for the adjacent lot (to have the newer garage).
2. Not sure of public interest. Mr. John Cashins stated, if he is the public, he has no problem. Mr. Sharkey stated he discussed it with his neighbors and no one objected.
3. Would be hardship: A Purchase & Sales Agreement is in place on this property. Mr. Sharkey is moving to Dover, loss of sale would be financial hardship. (Mr. Daly stated the hardship must run with the land, affecting the property).

Mr. Sharkey stated that at the back corner there is a dogwood tree in the way, he stated he personally could not remove the tree, and that he wanted to keep close to the other one (tree) and therefore he sited the garage closer to Mr. Cashins property, but he didn't realize at the time he was doing anything wrong.

Mr. Aronson asked if there was anything (physical) between the road and the garage.

Mr. Sharkey stated there was a tree 2-3 feet from the back corner; an apple tree which is now gone.

4. Substantial Justice: Mr. Boudreau questioned an illegal variance.

Mr. Daly stated the Board must have the authority to grant the variance and cited difference to grant a special exception.

Mr. Sharkey stated other than personal justice, he doesn't know what would constitute substantial justice.

5. Use not being contrary to the spirit of the ordinance: Mr. Sharkey stated this was rather subjective relative to the placement of the garage. He felt the Master Plan was to prevent the mishmash of uses; the garage would not create any problems, not for the neighbors nor for the neighborhood.

Mr. Cashins stated that there are no other buildings near this site of this garage. He and his wife are planning to move up in the near future, and his house is on the river end of the lot.

Mr. Sharkey noted an alternate would be to have a boundary adjustment. Mr. Cashins has agreed to do this if required. They were hoping this would not be necessary as Mr. Sharkey is scheduled to move February 18th.

Mr. Aronson asked if he already has a Purchase & Sales Agreement on the property.

Mr. Sharkey answered yes.

Mr. Aronson then asked for an explanation of where the garage is and why it was not placed elsewhere.

Mr. Sharkey stated at the time of construction, he felt he owned the land adjacent; he tore down the old garage and used the old site. If he knew prior to pouring the foundation, he could have changed the distance siting.

Mr. Ciardelli re-stated the chronological happening of the event.

Mr. Sharkey stated he tried to determine where the boundary line was, he measured off about ten feet. There was talk about the swampy area of land nearby and he figured he was close to ten feet from the bound and felt it was reasonable to continue with the construction.

Mr. Daly acknowledged receipt of a letter from Building Inspector, Joseph Conti noting that he had issued a violation notice.

Mr. Sharkey said he issued a Building Permit and he felt it was okay when it was completed.

Mr. Cashins said Mr. Conti advised him to have a survey done.

Mr. Daly asked if either gentlemen recalled being told it was too close to the lot line.

Mr. Sharkey said Mr. Conti did not tell him to remove the garage as it was read from Mr. Conti's letter.

Mr. Sharkey stated the he and Mr. Cashins have agreed to do a lot line adjustment if necessary.

It was noted that Mr. Cashins daughter and son-in-law will be purchasing the Sharkey home.

Mr. Aronson asked if Mr. Conti suggested Mr. Cashins' have a survey.

Mrs. Cashins stated they attended a meeting and it was determined then that they would have a survey done.

Mr. Cashins felt Mr. Conti told him to get a survey.

Mr. Aronson noted the frontage was there prior to the survey; and determined that within a couple of months, Mr. Sharkey began the new garage.

Mr. Sharkey noted there is a hot top driveway to the street; there are lilacs about 8 feet from the driveway.

Mr. Boudreau asked if there were 8 ft. from the front of the garage to the side; and ten ft. from the back to the side. It was determined it was the opposite...8 ft. from back; 10 ft. from front to the side lot line.

Mr. Daly asked for other comments; none coming forth; asked for a motion or further discussion from the Board.

Mr. Ciardelli motioned to grant the variance based on the presentation by Mr. Sharkey.

Mr. Aronson second.

Mr. Boudreau questioned if there was a possibility of getting a Lot Line Adjustment, could the Board then grant a variance.

Mr. Daly stated yes, they can grant. The only reason the Board knows the LLA is possible is because the abutter is present and confirming the possibility.

The motion was passed, 4-0.

Mr. Sharkey then questioned asked if there would be any benefit to do a LLA to make the garage fit the ordinance in the future.

Mr. Aronson stated it might be protected in the future.

Mr. Daly noted that the Town would look carefully at what happened in the future.

Mr. Cashins son-in-law, Richard Urwick, asked the requirements to do this.

Mr. Cashins stated that he has less than two acres now, and he can't lose any more.

Mr. Daly stated that if members have names of persons to submit for Board membership, to please run them by him first and he will then discuss appointments with the Selectmen.

The meeting was adjourned at 7:55pm.

Respectfully submitted,

Nancy J. Marden, Administrative Assistant

Typed: February 17, 1994