

**East Kingston Board of Adjustment
Minutes
February 8, 1996**

FILE

Attending: John Daly-Chairman, Edward Cardone, David Ciardelli, David C. Boudreau, and Norman J. Freeman.

Others Attending: J. Roby Day and Glenn Clark - Building Inspector.

It was noted that Atty. Keri Marshall, Catherine A. Gilman, George V. Gilman, and Madeline Marshall were also in attendance although their presence was not required for this hearing.

This meeting convened at 7:42 PM.

Chairman Daly explained that this public meeting was solely for the purpose of determining whether or not to accept the motion for rehearing in the matter of the petitioners Catherine A. & George V. Gilman, for variance from Article X (Home Occupations), Section 10.2.4 and Section 10.3.5. (1996-01)

Chairman Daly continued that the criteria the board has to consider in determining whether or not to grant the rehearing is limited. It is limited to whether or not the board feels it made mistakes in the interpretation of the ordinance, or it's (the board's) evaluation of the evidence submitted at the original hearing December 28th, 1995, or whether new evidence has developed since the original hearing, and that the new evidence is compelling enough to require a rehearing. Those are the only basis' on which the board is permitted to grant a rehearing.

Chairman Daly noted that Mr. Norman Freeman excused himself from the original hearing on December 28th, 1995 and would not participate in the voting process throughout this hearing as well.

Chairman Daly acknowledged that Atty. Marshall has submitted a request for rehearing in which contained a chronology of events that led up to the original zoning board hearing on December 28th, 1995.

Chairman Daly continued that also submitted to the board were: (See Attached)

1. An appraisal of the property prepared by Beverly George-Appraiser which concludes that the highest and best use of the property is in the child care service.
2. Copies of excerpts from Barrington Zoning Board minutes and Exeter Zoning Board minutes:
 - a). indicating in the Barrington ordinance that a group child care center is submitted as a special exception in zone A,
 - b). in the Exeter minutes, that a child care center is submitted as a special exception to the (Exeter) zoning ordinance.

Chairman Daly stated that he did not believe that the documents described in items 1 and 2 above had any relevance to the spirit of the meeting at hand, but noted their submission.

Chairman Daly asked if the board had any questions.

Mr. Boudreau asked if there was any new evidence before the board.

Chairman Daly replied that the appraisal is new, though it may not have any relevance to the issue before the board.

Chairman Daly stated that at the December 28th hearing, the board after listening to extensive submissions from Atty. Marshall and all of the abutters, and after reviewing all the criteria, the decision came down to [at a minimum], whether or not a hardship existed. Without getting into the other criteria, the application was denied on the basis of lack of hardship.

Chairman Daly continued that the evidence of lack of hardship has not changed. He added that there was indeed a hardship that was personal to the property owners, but not to the sense of the zoning ordinance, which is required by the Supreme Court, in order to grant the variance.

MOTION: Mr. Cardone motioned that the board deny the request for a rehearing. Mr. Ciardelli second. The motion passed unanimously. (4-0)

Chairman Daly noted to the zoning board secretary that the documents submitted at this meeting be preserved and that the secretary be prepared to submit a certified copy of the record to the court, should it be requested.

Chairman Daly asked the board if the minutes from the December 28, 1995 meeting were acceptable. It was noted the board accepted and approved said minutes without objection.

At this time Mr. Glenn Clark shared with the board his comments on the State's approval of the Barney septic system plan. (Robert Jr. & Beverly Barney, 21 Rowell Cove Road, MBL# 02-01-13.) Mr. Clark noted the conditions set by the State and also noted that he would verify that those conditions be met.

Mr. Clark's concern was directed to the waiver requested by the property owners regarding the location of their own well to the septic system. After reviewing the minutes from the original meeting of the application, the board was satisfied that the waiver was between the State and the property owners.

This public meeting was adjourned at 8:00 PM.

Respectfully submitted,

Catherine Belcher