

Town of East Kingston, New Hampshire  
Zoning Board of Adjustment  
Meeting Minutes

February 25, 2021

The Town of East Kingston Zoning Board of Adjustment met remotely through a Zoom web conference, Thursday, February 25, 2021 at 7:00 PM. Due to COVID-19, and pursuant with NH Emergency Orders, no public meeting location was utilized.

Chairman Allen made a statement regarding video bombing:

*If tonight's meeting is interrupted by outside sources, this meeting will be immediately terminated and the public hearing will be continued and rescheduled to another date and time to be announced and published. If anyone has a problem during the meeting connecting, Mr. Allen provided his phone number so he would be informed that someone could not connect with the meeting and either provide guidance to connecting or terminate the meeting as it a requirement the meeting be available to the public.*

**Members Attending:** Chairman Tim Allen, Vice Chairman Ed Robbins, David Ciardelli, Frank Collamore, Paul Falman, and Nate Maher.

**Others Attending:** Applicants Davis and Susanna (Suki) Farmer and their daughter Sarah Farmer, the Farmer's attorney Justin Pasay, Donahau Tucker and Ciandella, and engineer Henry Boyd, Millenium Engineering; and Julie LaBranche, Rockingham Planning Commission as notetaker.

Chairman Allen opened the meeting at 7:04 pm and called the roll.

Mr. Allen asked for a **MOTION** to approve the January 2021 minutes.

Chairman Allen **MOVED** to approve the January 2021 minutes; seconded by Mr. Ciardelli. **Roll Call vote:** Mr. Allen – aye; Mr. Robbins – aye; Mr. Ciardelli – aye; Mr. Collamore – aye; Mr. Maher – aye; Mr. Falman - aye. Vote was unanimous.

Mr. Allen opened the public hearing for Case #21-01.

**Case #21-01.** C. Davis and Susanna Farmer, 97 Giles Road, NH (MBL 06-01-42).

The applicants are seeking variances from Article IX.B.2. – size of existing lot of record; Article IX.B.4. – minimum frontage of backlot and remaining lot; and Article IX.B.7 –driveway location within the 40' area to create a backlot.

Mr. Allen explained the meeting procedure. The Farmers representative Attorney Pasay will give a brief description of why they are before the board and explain how they meet the five criteria for the three variances requested. The Board will then ask questions.

Attorney Pasay presented the applicant's statements supporting the five variance criteria:

1. Granting the variance would not be contrary to the public interest:

*The proposal would preserve the rural character of the town, preserve or improve the attractiveness of the town, and not alter the essential character of the neighborhood by eliminating a second curb cut. .*

2. The spirit of the ordinance is observed because:

*The proposal does not conflict with or violate the basic objectives of the Zoning Ordinance, will be consistent with the character of the area and will not threaten public health, safety or welfare.*

3. Granting the variance would do substantial justice:

*The public does not stand to gain anything from denying the variances requested as the proposal will create an additional lot which is bigger than the majority of abutting properties and consistent with the nature of the neighborhood and area along Giles Road. Because there would be no additional curb cut on Giles Road, the proposed backlot subdivision would be indiscernible by the public traveling along Giles Road.*

4. For the following reasons, the values of the surrounding properties will not be diminished:

*Due to the size of the two proposed lots, the surrounding properties would not suffer any diminution of value and the existing and proposed dwellings can not be seen from the road.*

5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

*The special conditions of the property include its large size, its irregular shape and limited existing frontage, and the existence of a cistern in the northeast portion of the lot which prevents creation of a driveway for a new back lot (Lot B). The presence of a dense wooded buffer near the road also shields views of any new construction.*

b. The proposed use is a reasonable one because:

*The proposed lots will be larger than the majority of lots in the area and the new dwelling on Lot B will be largely screened from view to surrounding properties. Denial of the variances requested would not advance the purposes and objectives of the Zoning Ordinance. The requested relief advances the express and implied purposes of the Zoning Ordinance by preserving rural character of Giles Road without a new curb cut and facilitates the exercise of real property rights in a manner consistent with the neighborhood.*

Chairman Allen opened the meeting to Board questions.

Dave Ciardelli asked whether the Board would vote on three variance requests at once. Chairman Allen replied each variance would be voted on separately.

Paul Falman asked whether there would be any setback issues moving forward to the Planning Board for a subdivision application. Consultant Henry Boyd replied that give a site walk and survey of the property he is confident setbacks can be met fully. Chairman Allen noted a ZBA decision of approval would be conditioned on Planning Board approval of the subdivision proposal.

Paul Falman asked whether it was likely that the applicant would need to return to the ZBA for additional relief. Chairman Allen replied it's impossible to predict depending in future decisions made by the Planning Board.

Chairman Allen opened public comment on the proposal. Roseanne Seiler (93 Giles Road) expressed concern about impacts of headlights from increased use of the driveway across her front and side yard. Chairman Allen read an email from Carrie Sullivan (77 Giles Road) stating her opposition to the proposal in that its sets precedent for others to request similar zoning relief. John Coppens (87 Giles Road) had no objection to the proposal.

Chairman Allen acknowledged a letter of support signed by abutters and residents submitted by the applicant. Chairman Allen closed the public comment.

## **BOARD DELIBERATION**

1. Granting the variance would not be contrary to the public interest. The board is tasked with showing there will be no harm done by approving the variance.

Paul Falman offered

Dave Ciardelli offered

Chairman Allen agrees with comments made by other Board members and noted the frontage variance was a minimal request of 40 feet.

Nate Maher offered that share driveways double the intensity of use and services on this site, noted the depth of the proposed lots, and noted the setback was not in keeping with others nearby.

2. The spirit of the ordinance is observed because:

3. Granting the variance would do substantial justice:

The state's guidance is that any loss to the individual that is not outweighed by benefit to the public and is an injustice to the individual.

Board members unanimously agreed that there would not be substantial benefit to the public or town in denying the variances requested.

4. For the following reasons, the values of the surrounding properties will not be diminished:

Dave Ciardelli offered there was no evidence presented that surrounding properties would be diminished.

Paul Falman offered there would be no substantial impact to the neighborhood.

Nate Maher noted the importance of considering the long term impact of 10 abutting properties and their actions to modify property over time as well as possible change in ownership of either or both proposed Lots A and B.

5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- a. there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property. Is there something unique about the piece of property that applying the ordinance to it directly would cause an unfair burden?
- b. the proposed use is a reasonable one.

Nate Maher offered that no value would be lost to the property without zoning relief, only increase in value to the family in the case of zoning relief and subdivision.

Chairman Allen offered the property does not appear unique in the neighborhood or other similar sized and shaped properties in town.

Dave Ciardelli offered the positive aspects outweigh any negative aspects of the proposal.

Paul Falman asked when the backlot ordinance was adopted, was the need for zoning relief anticipated? The ordinance offers residents to subdivide for family members.

Ed Robbins noted the property is substantial, both proposed lots exceed the minimum area required, and the property shape is unique making the shared driveway configuration necessary.

Chairman Allen asked Board members to elaborate on criteria #5. He noted that reducing frontage for Lot A would create a nonconforming lot where one does not exist currently and a backlot with less than the required 40 feet of frontage.

Ed Robbins noted that the existence of the cistern near the frontage makes the property unique to need a shared driveway.

Nate Maher noted that there are many lots in town and most are uniform to town zoning requirements, noting only 2 that are similarly nonconforming as the proposed configuration.

Dave Ciardelli noted hardship needs to be looked at from the use of property.

Frank Collamore noted similar properties in the neighborhood, cistern location a limiting factor to creating back lot frontage and the proposal does meet the hardship criteria.

Mr. Allen closed the Board deliberation and opened voting on the variance requests.

**Variance from Article IX.B.2. – size of existing lot of record is deficient in area to create a back lot.**

Criteria #1 – Granting the variance would not be contrary to public interest.

**Roll Call vote:** Chairman Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Falman – would not. Vote was unanimous.

Criteria #2 – the spirit of the ordinance would be observed.

**Roll Call vote:** Chairman Allen – would be; Mr. Robbins – would be; Mr. Ciardelli – would be; Mr. Collamore – would be; Mr. Falman – would be. Vote was unanimous.

Criteria #3 – granting the variance would do substantial justice.

**Roll Call vote:** Chairman Allen – would; Mr. Robbins – would; Mr. Ciardelli – would; Mr. Collamore – would; Mr. Falman – would. Vote was unanimous.

Criteria #4 – the values of surrounding properties would not be diminished.

**Roll Call vote:** Chairman Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Falman – would not. Vote was unanimous.

Criteria #5a – Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property.

**Roll Call vote:** Chairman Allen – is; Mr. Robbins – is not; Mr. Ciardelli – is not; Mr. Collamore – is not; Mr. Falman – is not. Vote: 1 nay, 4 aye

Criteria #5b – the use is a reasonable one.

**Roll Call vote:** Chairman Allen – is; Mr. Robbins – is; Mr. Ciardelli – is; Mr. Collamore – is; Mr. Falman – is. Vote was unanimous.

This variance passed on all five criteria.

Chairman Allen asked for a **MOTION** to approve the variance from Article IX.B.2. – size of existing lot of record is deficient in area to create a back lot.

Dave Ciarelli **MOVED** to approve the variance for lot size; second by Frank Collamore.

**Roll Call vote:** Mr. Allen – aye; Mr. Robbins – aye; Mr. Ciardelli – aye; Mr. Collamore – aye; Mr. Maher – aye. Vote: 1 nay, 4 aye.

**Variance from Article IX.B.4. – lack of required minimum frontage for backlot and existing/remaining lot**

Criteria #1 – Granting the variance would not be contrary to public interest.

**Roll Call vote:** Chairman Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Falman – would not. Vote was unanimous.

Criteria #2 – the spirit of the ordinance would be observed.

**Roll Call vote:** Chairman Allen – would be; Mr. Robbins – would be; Mr. Ciardelli – would be; Mr. Collamore – would be; Mr. Falman – would be. Vote was unanimous.

Criteria #3 – granting the variance would do substantial justice.

**Roll Call vote:** Chairman Allen – would; Mr. Robbins – would; Mr. Ciardelli – would; Mr. Collamore – would; Mr. Falman – would. Vote was unanimous.

Criteria #4 – the values of surrounding properties would not be diminished.

**Roll Call vote:** Chairman Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Falman – would not. Vote was unanimous.

Criteria #5a – Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property.

**Roll Call vote:** Chairman Allen – is; Mr. Robbins – is not; Mr. Ciardelli – is not; Mr. Collamore – is not; Mr. Falman – is not. Vote: 1 nay, 4 aye.

Criteria #5b – the use is a reasonable one.

**Roll Call vote:** Chairman Allen – is; Mr. Robbins – is; Mr. Ciardelli – is; Mr. Collamore – is; Mr. Falman – is. Vote was unanimous.

This variance passed on all five criteria.

Chairman Allen asked for a **MOTION** to approve the variance from Article IX.B.4. – lack of required minimum frontage for backlot and existing/remaining lot.

Ed Rollins **MOVED** to approve the variance for reduced frontage; seconded by Dave Ciardelli.

**Roll Call vote:** Chairman Allen – nay; Mr. Robbins – aye; Mr. Ciardelli – aye; Mr. Collamore – aye; Mr. Falman – aye. Vote: 1 nay, 4 aye.

**Variance from Article IX.B.7 –driveway location within the 40 foot frontage area to create a backlot.**

Criteria #1 – Granting the variance would not be contrary to public interest.

**Roll Call vote:** Mr. Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Falman – would not. Vote was unanimous.

Criteria #2 – the spirit of the ordinance would be observed.

**Roll Call vote:** Mr. Allen – would be; Mr. Robbins – would be; Mr. Ciardelli – would be; Mr. Collamore – would be; Mr. Falman – would be. Vote was unanimous.

Criteria #3 – granting the variance would do substantial justice.

**Roll Call vote:** Mr. Allen – it would; Mr. Robbins – it would; Mr. Ciardelli – it would; Mr. Collamore – it would; Mr. Falman – it would. Vote was unanimous.

Criteria #4 – the values of surrounding properties would not be diminished.

**Roll Call vote:** Mr. Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Falman – would not. Vote was unanimous.

Criteria #5a – Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property.

**Roll Call vote:** Mr. Allen – is; Mr. Robbins – is not; Mr. Ciardelli – is not; Mr. Collamore – is not; Mr. Maher – is not. Vote was unanimous.

Criteria #5b – the use is a reasonable one.

**Roll Call vote:** Mr. Allen – is; Mr. Robbins – is; Mr. Ciardelli – is; Mr. Collamore – is; Mr. Maher – is. Vote was unanimous.

This variance passed on all five criteria.

Chairman Allen asked for a **MOTION** to approve the variance from Article IX.B.7 –driveway location within the 40 foot frontage area to create a backlot.

Mr. Ciardelli **MOVED** to approve the variance to locate a driveway within the 40 foot frontage area to create a backlot; second by Mr. Collamore.

**Roll Call vote:** Mr. Allen – aye; Mr. Robbins – aye; Mr. Ciardelli – aye; Mr. Collamore – aye; Mr. Maher – aye. Vote was unanimous.

The Farmers and their representatives thanked the Board for their time.

Chairman Allen closed the public hearing for **Case #21-01**. C. Davis and Susanna Farmer, 97 Giles Road, NH (MBL 06-01-42) seeking variances from Article IX.B.2. – size of existing lot of record; Article IX.B.4. – minimum frontage of backlot and remaining lot; and Article IX.B.7 –driveway location within the 40 foot area to create a backlot.

Mr. Rollins **MOVED** to adjourn the meeting; second by Mr. Ciardelli. Vote was unanimous.

The meeting was adjourned at 8:58 PM.

Respectfully submitted,

Minutes Approved \_\_\_\_\_

Julie LaBranche

Tim Allen, Chairman