

**TOWN OF EAST KINGSTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES**

April 3, 1997

AGENDA

FILE

7:30 Norman Adams - Variance - Article VI:C (1997-01)
8:00 Ronald Dawson - Variance - Articles IV:D:6 & VIII:E:3 (1997-02)

Members attending: Chairman John V. Daly, David Ciardelli, David C. Boudreau, Edward Cardone, Norman J. Freeman, and Alternates Charles F. Marden and Peter A. Riley.

Others attending: Building Inspector Glenn P. Clark, Selectman Andrew L.T. Berridge, Applicants Norman & Ethel Adams and Ronald Dawson, Dennis Quintal, and Abutters Lewis (Chip) Dodge, Richard Leith, Richard Friese and David Toothaker.

Norman Adams- Case# 97-01 - Public Hearing: Chairman Daly opened the public hearing for Norman Adams, 9 Rowell Cove Road, MBL# 02-01-07 at 7:35 p.m. Mr. Adams is requesting a variance from Article VI Section C of the East Kingston Zoning Ordinance.

Every building shall be set back from the front property line at least 30 feet or where existing buildings on adjacent lots are in reasonable proximity to each other to the line of said existing buildings. Every residence shall be at least 25 feet from adjacent side and rear property lines... Mr. Adams proposes to construct a two-room addition to the residence.

Chairman Daly noted that this public hearing is a re-scheduled public hearing from March 27, 1997. Mr. Adams would be representing himself in the matter of his variance request.

Mr. Adams began by reviewing a sketch he submitted with his application showing the layout of his property. The board noted the existing house, garage, driveway, porch and the proposed addition. The proposed two-room addition reflects an approximate 8 foot setback distance from the property side line. The current setback requirement is 20 feet.

Mr. Adams also pointed out that the existing porch and garage are closer to the side property line than the proposed addition would be. The house has been there for 50 to 75 years.

Chairman Daly explained that five criteria must be satisfied in order for the board to consider granting a variance.

Mr. Adams addressed them as follows:

1. The proposed use would not diminish surrounding property values because it would increase his own property value up to some of the surrounding property values. Presently his home is of less value than his neighbor Chip Dodge.

Building Inspector Glenn Clark stated that he has not yet inspected the premises, however, if a new bedroom is added, it is likely that the septic system would need to be upgraded.

Mr. Adams stated that he has had no problems with the septic system. He also stated that his home currently has one bedroom and that one room of the proposed two-room addition may be a bedroom.

At the inquiry of several board members, Mr. Adams stated that his home currently consists of four rooms and this addition would accommodate the possibility of his son and son's family moving in with him. The son's family includes a wife and child. The proposed addition dimensions would be 28x30 feet. The existing house dimensions are approximately the same.

Building Inspector Glenn Clark stated that the increase of family members residing at the premises would most definitely create a strain on the current septic system.

Mr. Adams stated that because of their lot sizes, many of the surrounding properties on Rowell Cove Road do not meet the current setback requirements.

2. Granting the variance would be of benefit to the public interest because his (Adams') taxes would go up which would be beneficial to the town.

3. Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property that distinguish it from other properties similarly zoned. Mr. Adams stated that he has no hardship now, but may in the future and would like his son to move back home.

Chairman Daly explained that the hardship as defined by the courts is not a personal hardship to the owner, but a hardship to the property because of the property's unique make-up, (i.e.: shape or layout of the property).

Mr. Adams reiterated that although he is healthy now, he expects that in his later years, he would like to be in the care of his son. He stated that he has resided at the 9 Rowell Cove Road premises for 19 years. His son has also resided there in the past.

At the inquiry of the board, Mr. Adams stated that the house is currently one-story. He considered building up instead of out, but considering his age, a one-story home was more practical. He further stated that he has not had his septic system tested in the last 5 years and he believed his septic system consisted of a 1000 gallon cement tank, which he repeated has had no problems with.

The board noted that should the present septic system fail, the owner of the property would be responsible for its repair or replacement. The minimum town requirement for replacement would be a three bedroom system, which would accommodate Mr. Adams's proposed addition.

Selectman Berridge stated that a variance may be required to change or replace the septic system if it failed.

The board discussed the dimensions of the lot which was under an acre, none in any wetlands, and reviewed the sketch submitted by Mr. Adams. Mr. Adams pointed out areas on the property which could accommodate a new septic system.

Chairman Daly stated that the location and shape of the property with relations to the location to the water may possibly constitute a hardship to the property.

Mr. Chip Dodge stated that Mr. Adams' house is approximately 85 feet from his own house (a direct abutter). It was noted that 50 feet between residences is necessary for fire safety purposes.

4. Granting the variance would do substantial justice because the owners wishes would be realized.
5. The use is not contrary to the spirit of the ordinance because the addition would fit in with the existing neighborhood.

Chairman Daly then asked for any abutter comments or concerns.

Mr. Dodge stated that although the proposed addition is close to the lot line, it does conform with the rest of the neighborhood. He reiterated that the Adams' garage is closer to the lot line than the proposed addition and that large hemlocks create a barrier between his and Adams' property. He has no problems with this request for variance.

MOTION: Mr. Boudreau motioned to grant the variance for Norman Adams, 9 Rowell Cove Road, MBL# 02-01-07 from Article VI Section C of the East Kingston Zoning Ordinance. Mr. Freeman second.

Discussion:

Mr. Boudreau stated that although the hardship criteria is most difficult to prove, he (Boudreau) feels that it is proven in this case by reason of the already undersized lot. The existing house is closer to the lot line than the proposed addition would be, therefore, no harm is done. The septic issues can be addressed when necessary, even if no addition is built.

Mr. Boudreau then reviewed the 5 criteria:

1. This proposed addition is similar to the surrounding homes.
2. This will increase taxes - a benefit to the town.
3. Hardship exists as the lot is undersized. The current setbacks are for 2 acre lots.
4. The proposed addition would not encroach on the property line more than the house or garage already does.
5. 50 foot distance between residences is maintained.

Chairman Daly called the vote. The motion failed 1 - 3. (Mr. Freeman, Mr. Cardone, Mr. Ciardelli opposed.)

The board found that the hardship criteria was not satisfied.

Ronald Dawson - Case # 97-02- Public Hearing: Chairman Daly opened the public hearing for Ronald Dawson of 145 Haverhill Road. Mr. Dawson is seeking a variance from Articles IV Section D:6 and VIII Section E:3 for property located at 11 Ashlie Road, MBL# 11-02-35.

IV:D:6 - Septic system leach field boundaries shall be located more than 20 feet from any property boundary and 100 feet from any surface water, and 100 feet from any well.

VIII:E:3 - Permanent facilities (septic systems, buildings, roads, driveways, etc.) shall be located no closer than 100 feet from Hydric A soils, or 75 feet from Hydric B soils with the exception of driveway or road crossings necessary to access the buildable land.

Mr. Dawson proposes to construct a single family residence with driveway, well and septic system.

It was noted that Dennis Quintal would be representing Mr. Dawson.

Mr. Quintal began by informing the board that the Ashlie Road subdivision was approved by the East Kingston Planning Board in 1987 and submitted a copy of the approved site plan.

Mr. Quintal stated that wetlands consist of poorly and very poorly drained soils and although the issue of standing water Vs surface water can be debated, this lot was approved as a buildable lot in 1987 by the planning board. He then pointed out the buildable area on the plan noting that a variance was necessary to meet the septic/wetland setbacks.

Mr. Quintal presented the board with a new plan showing a proposed house, driveway, and septic system. This new plan showed all proposed construction being kept within the NH State approved septic/house/wetland setbacks. Those being 75 feet from Hydric A (very poorly drained) soil and 50 feet from Hydric B (poorly drained) soil. He added that the State has relaxed these setbacks within the last 8 to 10 years as the State feels the new setbacks are reasonable.

Mr. Quintal informed that the proposed building plan for 11 Ashlie Road allows for a 138 foot setback from an abutters well, where only 100 feet are required. He stated that the septic system setback variance should be addressed first. If denied, there is no reason to seek the second variance.

Mr. Quintal understanding the conditions necessary to grant such variances, addressed the 5 criteria as follows.

1. The proposed use would not diminish surrounding property values because this subdivision is already built up and one more house will not diminish any property values. This lot meets all other zoning requirements as well as all State requirements.
2. Granting the variance would be of benefit to the public interest because it allows another family to live in town who could add support to community activities, functions, and the spirit of the town.
3. Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property that distinguish it from other properties similarly zoned: The amount and configurations of hydric soils on the lot create a hardship. This subdivision was designed and approved by the planning board and taxed as a buildable lot.
4. Granting the variance would do substantial justice because it would add value to the town. This proposed home would be equal to or closer to other existing homes and their location to wetlands. New homes are well constructed and will only increase the overall value of the town.
5. The use is not contrary to the spirit of the ordinance because this lot was created by the planning board in 1987 for use of a single family home.

Chairman Daly opened discussion for any questions and comments.

Selectman Berridge stated that the town presently holds the title to this lot and that the Selectmen would like to let the title go. The Selectmen would like to see this lot a buildable lot Vs the town maintaining it. He further stated that the planning board's understanding was that this lot met all requirements at the time of it's approval. The ordinance has since been amended for clarification.

Mr. Dawson has a purchase and sale agreement when all the subdivision criteria has been met. The subdivision will be complete upon the approval of a fire pond by the NH Wetlands Board.

Mr. Ciardelli stated that the fact that the town has an interest in the property is irrelevant to the issue at hand.

Mr. Cardone questioned whether RSA 671:39 is relevant to this issue.

Every plat or site plan approved by the planning board and properly recorded in the registry of deeds shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, and zoning ordinances adopted by any city, town, or county in which there are located incorporated towns or unorganized places, except these regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of four years after the date of recording; provided however, that once active and substantial completion of the improvements as shown on the plat have occurred in compliance with the approved plat, or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations or zoning ordinances shall operate to affect such improvement...

Mr. Boudreau stated that the regulations have not changed, they are just re-defined. The prior setback was not clear.

Mr. Marden responded that in 1987 the lot was approved, now it is not. That constitutes a change.

Mr. Quintal inquired if any past ZBA decisions have been based on the result of this wetlands definition. Does 100 feet mean wetlands or open water? Does standing water mean "year round" standing water?

The board discussed the definitions of Hydric A and Hydric B soils and the types of vegetation found in each.

Mr. Richard Leith stated his concerns for the amount of backfill on the lot and where the water run-off will be directed. He then presented the board with a copy of the covenants to the subdivision. One of the covenants was to leave the land alone, not to build it up.

He further stated that his property value will be diminished by the simple fact of having a house sitting directly across the street from his own.

The board agreed that the covenant is a civil matter and not an issue for the town to enforce.

Mr. Quintal went on to explain the soil types of the lot and the type of septic design proposed. A small as possible leachfield as allowed by the State as well as it being an elevated system would be installed. He stated that the direction of the run-off is up to the excavating company. It is illegal to send run-off to an abutting property.

Mr. Leith stated that the water table is already high on his property and he does not want it raised because of the fill necessary for this lot.

Building Inspector Glenn Clark stated that a year ago, he witnessed perc tests done by Paul Nichols. At the time it did not appear that the lot would pass and there wasn't any standing water on it then.

The board reviewed the newly amended ordinances of Article VIII:E:3 and Article IV:D:6 regarding Hydric A, Hydric B setbacks and the change of standing or running water to "surface" water.

Building Inspector stated that there is no surface water on this lot as defined by the State.

At the inquiry of Chairman Daly, Selectman Berridge stated that the Board of Selectmen recommended that Mr. Dawson seek a variance from the ZBA as the proposed building plans did not meet the town requirements.

Mr. Friese inquired as to what point the town would be making to set a 100 foot setback if the State's own setback supersedes it.

Chairman Daly reviewed the 5 criteria as presented to the board:

1. Diminishing property value to surrounding properties may or may not apply. One abutter states it does, this criteria is at the discretion of each voting member.

2. Beneficial to public interest by additional family is satisfied.
3. Hardship - The history and design of the property does satisfy the hardship test.
4. Adding value to the town does satisfy substantial justice.
5. Spirit of the ordinance is satisfied as the planning board created this lot in 1987.

Mr. Cardone under RSA 673:14 disqualified himself from the voting process as he is an abutter to 11 Ashlie Road. Chairman Daly then designated Charles F. Marden to vote in Mr. Cardone's place.

MOTION: Mr. Freeman motioned to GRANT the variance of Ronald Dawson from Articles IV Section D:6 and VIII Section E:3 of the East Kingston Zoning Ordinance for property located at 11 Ashlie Road, MBL# 11-02-35. Mr. Ciardelli second.

No discussion.

The motion passed 3-1. (Mr. Boudreau opposed.)

It was noted that the Chairman does not vote unless there is a tie.

November 14, 1996 Minutes: Mr. Freeman motioned to approve the 11/14/96 minutes of the Zoning Board of Adjustment as prepared. Mr. Cardone second. The motion passed.

March 27, 1997 Minutes: Mr. Freeman motioned to approve the 3/27/97 minutes of the Zoning Board of Adjustment as prepared. Mr. Marden second. The motion passed.

OSP Annual Spring Conference: The board discussed the OSP Annual Spring Conference to be held on May 31, 1997. It was noted that interested board members should submit their completed registration forms to the Selectmen's Office no later than May 9, 1997 to allow for the prepayment of registration fees.

At this time board members expressed their interest in meeting with the planning board for communication purposes as recommended by the Office of State Planning. Chairman Daly requested that Selectmen Berridge arrange such a meeting with the agenda to include mock ZBA applications and hearings.

DES Letter: The board was in receipt of a letter from the Department of Environmental Services regarding a ZBA decision for Jeremy Russman, Powwow River Road. Selectmen Berridge requested that the ZBA receive copies of the Selectmen's response to this letter for informational purposes.

This April 3, 1997 public Zoning Board of Adjustment meeting ended at 9:25 p.m.

Catherine Belcher
Secretary

Minutes completed and on file April 7, 1997.