

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

April 24, 2014
7:00 PM

The Chairman called the hearing to order at 7:05 PM; there were no challenges to the legality of the hearing.

Board Members in Attendance:

John Daly, Chairman
Catherine Belcher, Vice Chair
Dave Ciardelli
Paul Falman
Tim Allen

ZBA Hearing #14-01:

Thomas K. and Lisa L. McCarthy
59 Sanborn Road
E. Kingston, NH 03827
MBL 08-2-27

Mr. Daly opened the public hearing for this application by reading the public notice; the applicant is asking for a Special Exception under Article VIII, Section F to permit an Accessory Dwelling Unit. Mr. Daly welcomed Thomas and Lisa McCarthy and noted that supplemental information had been provided to the Board along with the original submission. Mr. Daly distributed the Accessory Dwelling Units Special Exception Worksheet to the Board members.

Mr. McCarthy explained his proposal to the Board. He stated that they are the property owners and will continue to live at the location; the addition is 468 sq. ft.; there is a single bedroom; 1 kitchen/living area and 1 bathroom. Mr. McCarthy continued that there is interior passage through the dwellings explaining that the unit is attached via a breezeway attached to the garage; there is no outside entry on the front of the building, the entry is on the left (east) side of the building; there is currently a two car turnaround that is being expanded to accommodate 3 to 4 cars.

Mr. Daly explained that the applicant has to meet the factual tests in order to get the approval for the Special Exception. (Board note: Ms. Belcher arrived at this time). Mr. McCarthy referenced a narrative of the proposal he had submitted; Mr. Daly confirmed that the Board members had received this information. The submission included front and back elevations of the building.

Mr. McCarthy explained that the addition is being used for a family member to provide their own space. Mr. Falman stated that he had no additional questions as it looked like all the requirements have been met. Mr. Daly agreed that it was clear that the size of the addition meets the ordinance. Mr. McCarthy stated that they had worked very hard to meet this requirement; it was difficult keeping the size under 500 sq. ft. Mrs. McCarthy added that the builder had done a good job to get the needs to match the size requirements. Mr. Allen asked if the application for the new septic was due to this proposal.

April 24, 2014
East Kingston ZBA

Mr. McCarthy stated that it was and was ready to go to the State for that approval. Mr. Daly explained that regardless of the Board's action on the application, Mr. McCarthy would still have to comply with State and Town regulations. He added that he had been concerned with parking but Mr. McCarthy addressed that concern during this hearing. Ms. Belcher stated that the ordinance states that the accessory dwelling needed to have its interior door meet the interior door of the house. Mr. McCarthy stated that it did; Mr. Daly confirmed this. Mr. Daly added that the updated submission shows the parking. There were no further questions from the Board.

Mr. Daly reviewed the conditions with the Board for granting the Special Exception.

- Ownership – there was unanimous approval that this condition was met.
- Living Area Configuration – there was unanimous approval that this condition was met.
- Construction – there was unanimous approval that this condition was met.
- Parking – there was unanimous approval that this condition was met; Mr. Daly noted that the space is currently parking 2 cars and expanding to 4 with no new curb cuts.
- Pre-existing Conditions – not applicable.

Motion: Mr. Falman moved to approve the application for the Special Exception to permit an Accessory Dwelling unit as presented. Mr. Ciardelli seconded the motion. The motion passed unanimously.

The applicant asked about any waiting period regarding the decision. Mr. Daly explained that anyone can appeal the decision within 30 days but based on the lack of attendance it would be unlikely. Mr. Ciardelli asked for clarification regarding square footage calculations; Ms. Belcher explained that the calculations are based on living space.

ZBA Hearing #14-02:

**Henry and Ann Marie Obara
41 Hill Street
Newburyport, MA 01950**

Property Location:

**32 Willow Road
East Kingston, NH 03827**

Mr. Daly read the notice regarding the application requesting a waiver of dimensional requirements with respect to the requirements of Article VII, Section D.6; septic system boundaries are to be at least 20 feet from any property boundary. He handed out the worksheet for Equitable Waiver of Dimensional Requirements to the Board members. Mr. Daly explained that this was a revised application; the original application was for a variance to the wetlands setbacks. He added that this issue had been in existence for so long that it may be grandfathered but better to approve the request, if that is the Board's decision, and straighten the issue out; currently there is no information before the Board that says that the issue is, or is not, grandfathered.

Tim Obara and Henry Obara appeared before the Board for this application; Tim Obara explained that the system had existed for a long period of time; it was last modified in 1978; it currently is considered a

failed system. Ms. Belcher asked for a quick recap of the issue before the Board. The plan was reviewed by the Board. Mr. Daly explained that the application started out as a request for a variance due to the setback requirements to the wetlands; prior to the Ordinance change at Town meeting, the setbacks weren't met. Due to the change in the Ordinance, those setbacks were no longer an issue. Tim Obara explained that the current septic system was from 1965; the State did not have either that copy or the modified copy. Mr. Daly stated that at this point, the only waiver was from the sideline setback requirements. Mr. Tim Obara confirmed that the replacement system would be going in the original footprint; there is nowhere else to put it on the lot as the north side is surrounded by wetlands and there is a small pond in the front. Ms. Belcher expressed concern for granting a waiver for a system in failure. Mr. Daly stated that the issue before the Board was the waiver of the dimensional requirements. Mr. Allen noted that systems prior to 1999 must meet the State requirements, which this could; he questioned the need for granting the waiver. Mr. Falman agreed, questioning why the application was before the Board at all. Mr. Daly explained that the application had evolved from a request for a variance from wetlands setbacks, which was no longer necessary after the Town voted to change the requirements; this was no longer a variance request but a request for equitable waiver. Ms. Belcher raised concern regarding granting a waiver for a failed system. Mr. Daly suggested taking the failed system out of the discussion and just focus of the dimensional issue. Ms. Belcher suggested that a variance would be simpler. Mr. Allen noted that the applicant didn't need a variance. Ms. Belcher suggested that on its face, it is an equitable waiver but the Board was aware that it is actually a failed system. Mr. Allen said that the design can meet the State minimum requirements so there would be no need to grant a variance. Mr. Daly confirmed that the applicant now does meet the Town's setbacks. Ms. Belcher suggested that applicant did not require any relief. Mr. Falman agreed that nothing may be required. Mr. Ciardelli noted that the only thing before the Board was the request for the equitable waiver. Mr. Falman stated that this is a pre-existing, non-conforming use that really doesn't need any relief.

Mr. Daly stated that the Board, during its discussion, has concluded that this is a pre-existing, non-conforming use; the Board agreed. Ms. Belcher stated that she was going to abstain from voting on this matter; she explained that she did not think that the applicant shouldn't get the waiver but was uncomfortable with the issues as a matter of principle.

Mr. Daly reviewed the criteria for the Equitable Waiver of Dimensional Requirements.

1. Dimensional requirement – 4 agree; one abstention (Ms. Belcher)
2. a. Existed for 10 or more years – 4 agree; one abstention (Ms. Belcher)
b. Substantially completed – 4 agree; one abstention (Ms. Belcher)
c. Good Faith – 4 agree; one abstention (Ms. Belcher)
3. No constitution of nuisance or diminution of value – 4 agree; one abstention (Ms. Belcher)
4. Cost of correction – 4 agree; one abstention (Ms. Belcher). Mr. Daly stated that the cost of correction would be incalculable; Mr. Falman added that there was only one location for this to be sited without having to move the house.

Mr. Daly noted that all the answers were affirmative.

Motion: Mr. Ciardelli moved to approve the equitable waiver of dimensional requirements to construct the new septic system. Mr. Falman seconded the motion. The motion passed 4-0-1 with Ms. Belcher abstaining.

Mr. Falman stated that Ms. Belcher had a good point regarding the applicant's time and expense when they might not have had to do anything to move forward with the septic system. Mr. Ciardelli said that it was the way the issue that evolved as the application started before the Ordinance change. Ms. Belcher said that the Board should not have heard it and refunded the applicant's money. Mr. Obara stated that he was glad to do it this way and he wanted to feel comfortable in the process. Mr. Daly said that this will no longer be non-conforming. He announced that Mr. Obara got his waiver.

Motion made by Ms. Belcher and seconded by Mr. Falman to adjourn at 7:40 PM. Motion passed unanimously.

Respectfully submitted,

Ellen L. Faulconer

Ellen L. Faulconer
Recording Secretary

John Daly
Chairman

April 24, 2014
East Kingston ZBA