

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

April 30, 1998

FILE

AGENDA

7:30 Richard Cook – Light Industrial Park - Request for Variance from Article XII.7 (1998-05)

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

Others attending: Richard Cook, Peter Craig, David Sullivan, Joe & Mary O'Sullivan, Jack and Beverly Fillio, Ray & Gail Donald, Mr. & Mrs. Moul, James Glatfelter, Dennis Quintal, Bob & Janet Reagan, Chip Dodge, Joe & Debbie Kiesel, Ellen Cardone, Cathy George, Mary Jane Bowley, David & Donna Toothaker, Richard Leith, Richard Friese, David Lewis, Brett Smith, Alan Dacey, Roby Day, Jim Nupp, Becky Hanna – Seacoast News Correspondent and other members of the public who did not address their concerns.

Richard Cook–Light Industrial Park- Request for Variance from Article XII.7: Chairman Daly opened the public hearing for Richard Cook's request for variance from Article XII.7 at 7:35 PM.

Building Setbacks: Side and rear setbacks shall be 200 feet from lot lines that abut any other district....

The applicant proposes the development of the light industrial park located on Haverhill Road, identified as MBL# 11-2-11, and owned by Mary Jane Bowley.

Chairman Daly stated that although the Board will try to accommodate all comments and questions, the issue before the Board is to consider a variance from the 200-foot building setback. All comments and questions should be relevant to the 200-foot issue. He then directed Mr. Richard Cook to present his request for variance.

Mr. Cook stated that he is requesting a variance for the light industrial park because of the nature of the property. He stated that he had no choice but to request a variance to begin the development of the light industrial park. He went on to say that an informal citizen's petition was circulated throughout the town which collected about 200 signatures of residents who support and endorse the development of the light industrial zone.

He stated that the purpose of the variance request is to allow a small contingency of buildings, to be placed in a very minimal building area. Although this proposal does create abutter hardships, he is willing to work hard and resolve these issues.

Mr. Cook further stated that in addressing the five criteria required for a variance, the only one anyone could argue is the valuation of the surrounding properties. He stated that he has contacted Kane Corporation, DeMatteo Corporation, and Mr. Dow – Exeter Planner to obtain documented facts that a light industrial park located next to a residential zone diminishes the residential zones property values. None could be found.

1. *The proposed use would not diminish surrounding property values because no such proof could be found to prove otherwise. There are no hard facts that could be found supporting this proposal would diminish the surrounding property values.*
2. *Granting the variance would be of benefit to the public interest because it would give small businesses a chance, it would alleviate some of the potential problems with home businesses in town, and it would create new jobs. Although it will not lower property taxes, it will not raise them as it would if the property were used residentially. This project may help the local economy.*
3. *Denial of the variance would result in unnecessary hardship to the owner because of the following circumstances of the property that distinguish it from other properties similarly zoned because there are a number of restrictions placed on this parcel that the owner has no control over. There is a power line easement, a gas line easement, and lots of wetlands to work around. Once these obstacles were cited, and the property was shaped up, this was the only way to go. These are the many hardships to the property.*

4. *Granting the variance would do substantial justice because the property would be used in a positive, productive way for the town, the property owner, and citizens of the town. The phases that follow this phase are open to public and resident's participation.*
5. *The use is not contrary to the spirit of the ordinance because the towns people voted this light industrial park in nine years ago and with the signatures presented earlier, they still want it.*

Mr. Cook stated that Ashlie Road residents should have known that there was a potential to develop the park when they bought their property. He also stated that he is willing to work closely with the two direct abutters of the light industrial zone to resolve their concerns.

He continued to say that the project must receive a variance to continue. This project is currently before the Planning Board. He stated that this area was chosen to begin phase I because it was part of the land that was buildable and had the least amount of wetland problems. It is most feasibly economic to begin here.

At this time, the technical engineering details were presented by Dennis Quintal, PE of Civil Management Consultants. Mr. Quintal presented a plan and indicated the boundaries of the property, the easements, and the wetlands. He stated that in looking at the plan's original design for residential zoning, the land was too wet. The state would not approve it.

He continued to say that in meeting the state septic setbacks, the only area to work with was the area along the district's boundary. He stated that he was asked to draw a conceptual plan showing a proposed driveway and buildings. He pointed out the location of the buildings and stated that the well and septic were placed in an area that would cause the least amount of wetland disturbance. There are wetland applications before the state addressing the crossing of wetlands to access the dry land.

Mr. Quintal explained that the intent of the 200-foot setback is to protect the abutters from visual and noise impacts. Given the intent of that rule, he has designed a sufficient buffer to accommodate this. He stated that an earth berm of 4 to 5 feet along the perimeter of the boundary, with appropriate vegetation (to be specified by the Planning Board) and fencing can be used.

He noted the location of the abutter's wells and septic systems. The new setbacks proposed by Mr. Cook would not impact the wells, septic or drainage of the other properties.

Going back to the buffer, he stated that the buffer designed for the presentation tonight, addresses noise and sight issues. He presented a cross-section of a proposed buffer of earth berm, fencing, and vegetation. The buildings in the light industrial park would be shielded from view from the abutting houses.

At the inquiry of Chairman Daly, Mr. Quintal stated that more than 50% of the land located in the light industrial park is wet. The soils data is still currently being collected. He stated that a dry area includes the area surrounding the gravel pit owned by Dewey Bowley. He also stated that Mr. Cook is considering digging a pond on the property for recreational purposes.

Chairman Daly asked if other possibilities have been explored for the use of the property.

Mr. Cook responded that the other possibilities would be coming up with the next phases of the project. Other alternative uses for the light industrial park are not economically feasible.

Discussion of moving the parking lot and the buildings around transpired. It was noted that placing the building's backside against the abutting district provided a better buffer from sight and noise. Adequate space for vehicles to turn around also had to be accommodated.

Mr. Quintal stated that the Board could set specific restrictions/conditions that would make the buffer better.

Chairman Daly opened the meeting to public questions and comments.

Mr. David Toothaker of 10 Ashlie Road stated that he is a direct abutter to the light industrial park. He stated that the plan presented to the Zoning Board tonight is not the same plan that was presented to the Planning Board with the original application, thus it is not an approved plan and it hasn't gone through the proper channels.

He went on to say that he disagrees with Mr. Cook's claim that the surrounding property values will not be diminished by this proposal to reduce the buffer between the two districts. He then presented an appraisal statement from Northeast Appraisal Service

stating that an abutting light industrial park has a negative impact on property values. Also submitted was a letter from Marshall Law Office.

Mr. Toothaker further stated that granting the variance would be of benefit to the public interest is a matter of opinion. He then inquired how many names on the citizen's petition lived within eyesight and ear distance from the proposal.

He continued to say that the hardship criteria has not been met as there are other areas within the light industrial park that can be developed without getting a variance.

Mr. Richard Friese of 9 Ashlie Road stated that the hardship was created by Mr. Cook himself. He has other areas within the light industrial zone to work with. These proposed buildings could go somewhere else.

Mr. Toothaker stated that many of the Ashlie Road residents bought their property knowing there was a light industrial park next door that had the potential of being developed. These residents also bought their properties with the intention that the zoning ordinance and setbacks would be upheld to protect them. The ordinance was put in place for a reason.

Mr. David Lewis of 7 Ashlie Road stated that he has concerns with the proposed earth berm, trees, and the possibility of erosion. He also stated that the cost of large trees would be very high.

Mr. Quintal responded that those specifics can be regulated by the Planning Board.

At Mr. Friese's concern of this plan being different from the one presented to the Planning Board, Chairman Daly stated that the Planning Board has not approved any plans, it has only invoked jurisdiction on the proposal. Any variance considered will be based on the plan presented to the ZBA.

Mr. Quintal replied that the plan has not changed. The building locations have not changed, they just reflect the berm and trees.

Mr. Alan Dacey of 5 Ashlie Road stated that at an earlier Planning Board meeting, Mr. Cook admitted to other options to develop this property. He stated that Mr. Cook said other phases would begin on the other side of the power lines.

Mr. Dacey continued to say that money is an issue here and that it cannot be considered when hardship is measured. He stated that if this proposal started with a different phase, there would be no variance request. He added that he is not against the development of the light industrial park, he just wants the regulation upheld.

Mr. Cook responded that money is not the issue here. He stated that he didn't start on the other side because the wetland hardship is much more involved. Given the easements and wetland, phase I has the least amount of state problems.

Mr. Dacey stated that the project could start with phase III on the other side.

Mrs. Deborah Kiesel of 4 Ashlie Road inquired if Mrs. Bowley was selling the land and if Mr. Cook had an option to buy from her. At Mr. Cook's affirmative response, Mrs. Kiesel stated that only the owner can apply for hardship.

Chairman Daly stated that Mrs. Bowley signed the application for variance and Mr. Cook is acting as her agent.

Mrs. Kiesel went on to say that her hardship is different from his hardship. The original zoning of the area is light industrial/residential, thus there is another possible use for the land. It can be used for residential purposes instead of light industrial purposes.

She further noted that property values are determined by capital improvements, costs, size, less depreciation, less money received for easements. She stated that the light industrial park has power lines running right down the middle of the wetlands. She further claimed that Mrs. Bowley received money for those easements located in the wetlands.

Chairman Daly informed that the issue is hardship to the land, not a personal hardship.

Mr. Brett Smith of 3 Ashlie Road questioned the location of the trees in the buffer zone. He stated that trees cannot be located closer than 10 feet from a septic system. He also asked what type of recreational pond was being considered.

Mr. Quintal stated that there is plenty of space to work with for a septic system and a buffer of trees, details which can be addressed at a later date.

Mr. Cook stated that in speaking with the Conservation Commission, there is a possibility of putting in some trails throughout the parcel as well as a small duck pond. This pond could be used for fire protection as well as ice skating in the winter.

Mr. James Glatfelter of Haverhill Road stated that Mr. Cook never came to him to discuss this plan. He also stated that two-thirds of the light industrial park has an artesian lake under it. The proposed septic systems could contaminate this lake. He further stated that he was not notified in 1989 when this light industrial zone was voted in.

Mrs. Catherine George of 96 Depot Road responded that this was a town meeting issue and a warrant was posted of the zoning change. She also stated that in her opinion, she would rather see the town get some type of income from the light industrial park than from residences, which never generate enough taxes to break even.

At Mr. Glatfelter's inquiry, Mr. Cook stated that there are no confirmed businesses to locate into the light industrial zone. He cannot offer buildings which have not yet been permitted.

Mr. Toothaker stated that adding 15 to 20 businesses to the light industrial zone would further burden our police and fire protection services. The town is not adequately prepared to cover these issues.

Chairman Daly responded that those issues would be addressed by the Planning Board.

Mr. Cook stated that Exeter's setback for district boundaries is 50 feet. They stated that they thought East Kingston's 200-foot buffer was excessive.

Mrs. Kiesel replied that this is not the town of Exeter. East Kingston voted in a 200-foot setback. She stated that Mr. Cook has not proved this proposal would not diminish surrounding property values. He has not established reasonable use, as a residence can be put there. She went on to say that the whole plan has not yet been looked at. The entire project has not yet been established.

Mr. Cook stated that another option was to put an accumulative logging storage business there. This would be considered agricultural and would not need any variance. He then stated that this was not in the best interest of the town.

Mrs. Kiesel stated that hardship must be proven. Mr. Cook is an option holder and has no hardship, Mrs. Bowley has other choices.

Mr. Cook responded that the development of the light industrial park was the best of all possible options. This development will benefit both Mrs. Bowley and the town. He stated that he is willing to work with abutters to resolve the buffer issue.

Mr. Nupp stated that he is a member of the Conservation Commission and considering the wetlands on the property, there is a tremendous hardship to the property whether used for residential or light industrial purposes. The hardship case has been made.

Mr. Cardone stated that Charlie Marden is also located within the light industrial zone and he does not need a variance.

Mr. Marden responded that he does not have the wetlands Mrs. Bowley's property has. Each case is unique.

Mr. Leith stated that he has concerns about noise pollution from the proposal. He is located 1/4 mile from Mr. Marden's property and he can hear the air compressors running from his property. One welding shop located closer will generate even more noise. He stated that the proposed gravel road will create noise and dust.

Mrs. Kiesel stated that this is a uniformity issue between the land and the town. Ashlie Road has protective covenants and if this proposal is allowed, then the covenant is meaningless.

Mr. Cook responded that Ashlie Road's protective covenants do not govern other parcels in town.

Mr. Friese stated that the ordinance requires a 200-foot setback and that the ZBA should deny this request.

Chairman Daly asked Mr. Cook to address why the variance is not contrary to the spirit of the ordinance.

Mr. Cook explained that spirit of the industrial zone was for light industry, which was voted in by the town. He stated that there are other options, but feel this is the best option.

He went on to say that the hardship of the property makes it impossible to comply with the 200-foot setback. The easements along with the wetlands don't allow for the 200-foot setback and to make use of the property.

Chairman Daly stated that Mr. Cook has indicated there are other options, but that this is the best option. He stated that one of the problems with coming to the ZBA early in the scheme of the process is that the project has not really taken shape yet. Despite all the obstacles, the property does permit other options.

Mr. Cook replied that the other options are not in the best interest of the town.

Mr. Kiesel questioned if the 200-foot setback was part of the spirit of the ordinance. He stated that he didn't think Mr. Cook answered that question. This variance request is contrary to the spirit of the ordinance.

Chairman Daly noted that the letter from Marshall Law Offices indicates a question of whether or not all abutters have been notified. He stated that in looking at the record, proper notice has been given. He further stated that if such allegations are made, then representation should be present to back them up.

Mrs. Beverly Fillio of 21 Main Street read Article XII.7 and asked who interprets the intent and what factors go into that. She also asked why Exeter's setbacks are closer than East Kingston's.

Chairman Daly responded that the ZBA will interpret the ordinance and that all that has been presented as well as the literal intent of the ordinance will factor into the ZBA's decision. He stated that the Planning Board established a 200-foot buffer and the Board has to consider that East Kingston wants to look like East Kingston and not like Exeter.

Discussion of who owned the abutting properties back in 1989 transpired. Again abutters claimed that they do not oppose the light industrial park's development, they only want the setback requirements upheld.

Mr. Cook directed another response in relation to the proposed variance not being contrary to the spirit of the ordinance. He stated that the town voted for the light industrial zone to help alleviate some of the tax burden. The state says that these provisions must promote the health, safety, and welfare of the town. The current proposal will do just that. There are no other options for the placement of buildings, whether it is started in this phase or another. All the buildings must be constructed to make this a viable project. There is only so much land that can be used.

Mr. Friese stated that there is no guarantee this project is going to be successful. These few buildings may be the only buildings built because the project may not pan out. He stated that he thinks Mr. Cook should start the development on the other side of the land to see if the project will pan out, then he can come before the ZBA for a variance.

Mrs. Kiesel stated that Mr. Cook has a capital problem. She stated that at the first Planning Board meeting, Mr. Cook stated that he did not have unlimited financial resources.

Mr. Kiesel again stated that Mr. Cook has not yet addressed the contrary to the spirit issue. Reducing the buffer from 200 to 50 feet is contrary to the spirit of the ordinance.

At this time the Board reviewed the five criteria that was presented. Regarding the proposed use not diminishing surrounding property values, the Board discussed as follows:

Mr. Ciardelli stated that the fact that a 200-foot buffer is written into the ordinance reflects the Planning Board's recognition that a light industrial zone located any closer may reduce abutting property values. He stated that he doesn't think this criteria has been met.

Mr. Boudreau stated that as soon as any development occurs, the property values would be effected. He stated that he is not sure if this proposal to reduce the buffer diminishes it even more.

Chairman Daly stated that the surrounding property owners were effected when the light industrial district was zoned back in 1989. The existence of the light industrial park has a negative effect on those surrounding properties. He stated that he leans more toward the concept that the closer the setback, the larger the impact is on the abutting properties.

Mr. Riley stated that the light industrial zone was established prior to the construction to most of the homes around it. People still bought property around it even though it was zoned light industrial. He stated that he doesn't see a difference between 50 feet v. 200 feet.

Mr. Ciardelli responded that if he were one of the abutters, 150 feet would make a big difference.

In granting the variance would be of benefit to the public interest, Chairman Daly stated that the weight the evidence goes to the applicant because everyone wants to see this park succeed. Mr. Ciardelli agreed.

In denying the variance would result in unnecessary hardship, Chairman Daly stated that Mr. Cook has presented a good argument. With the easements and the wetland, the property is very difficult to develop, however, the Board may take into account other uses and configurations of the property. He stated that he is not sure this criteria has been met.

Mr. Cardone stated that the applicant has other options.

Mr. Ciardelli quoted the ZBA handbook:

Unnecessary hardship cannot be based on the fact that a variance will allow the landowner to make a greater profit with his land; or that the granting of the variance will be a convenience to the landowner; or that the abutters have no objections; or that the use of the land by the landowner, after granting the variance, will bring more taxes to the community. "It is irrelevant that the land cannot be used for a particular purpose."

Mr. Boudreau stated that the landowner would be here for a variance even if the property were used for residences. There are many hardships to this property.

Mr. Ciardelli stated that the objections of the abutters for a house being built too close v. a light industrial building would be very different.

In granting the variance would do substantial justice, Chairman Daly stated the argument for productive use of the property was good and this criteria is satisfied.

In the use is not contrary to the spirit of the ordinance, Chairman Daly stated that this was not adequately addressed. The town has established a 200-foot buffer between district boundaries and it is the Board's responsibility to evaluate that language in relation to what's in the best interest of the town and of what is intended by the ordinance. He stated that the 200-foot setback is really the substance of the ordinance. The intent of the setback was to prevent the abutters from being right on top of the light industrial zone.

Mr. Boudreau stated that the 200-foot setback was written to eliminate as much noise and sight as possible. Considering the earth berm, fencing, and vegetation; these issues are being dealt with. The Board has the authority to set conditions on the use of the buildings involved in the variance. The use of these buildings can be limited.

Mr. Marden stated that when the light industrial zone was zoned, the acreage of the zone totaled about 93 acres. Given this, a 200-foot buffer did not seem unreasonable at all. Now that the useable land has been acknowledged, keeping a 200-foot setback is difficult. The total land now considered usable is 35 acres or less. This is something the town, as a whole, should consider.

Chairman Daly announced voting members as Mr. Ciardelli, Mr. Cardone, Mr. Boudreau, Mr. Riley and himself.

MOTION: Mr. Boudreau motioned to approve Mr. Cook's request for variance from Article XII.7. Mr. Riley second.

DISCUSSION:

Mr. Boudreau stated that in going back to the spirit of the ordinance, everyone should work together to develop this light industrial park. It was a majority vote by the town to establish it. He stated that abutting property owners have no right to dictate how another property can be used. He continued to say that he felt this proposal would benefit the best use of the property.

Mr. Riley stated that he has second the motion based on the schematics of the property and given the proposed fencing and earth berm, which shield the visible sight of the proposed buildings from the abutting properties.

Chairman Daly called the vote.

The motion failed 3-2. Mr. Boudreau and Mr. Riley in favor; Chairman Daly, Mr. Cardone, Mr. Ciardelli opposed.

MOTION: Mr. Ciardelli motioned to deny the application for variance from Article XII.7 as the applicant has failed to satisfy the criteria. Mr. Cardone second.

DISCUSSION:

Mr. Cardone stated that the applicant has other options for the property.

Mr. Ciardelli stated that although the light industrial park is good for the town, the spirit of the ordinance, the diminishing of property values and the hardship criteria was not met. Although few, there are other options.

Chairman Daly stated that he feels the applicant has not satisfied all the criteria. The diminishing of surrounding property values was not met, the hardship test was not met, and the variance would be contrary to the spirit of the ordinance.

Chairman Daly called the vote.

The motion passed 3-2. Chairman Daly, Mr. Ciardelli and Mr. Cardone in favor: Mr. Riley and Mr. Boudreau opposed.

With no further discussion, Chairman Daly closed the public hearing and this April 30, 1998 Zoning Board of Adjustment meeting adjourned at 9:27 PM.

Catherine Belcher
Minutes completed and on file May 4, 1998.