

Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes
May 14, 2020

The Town of East Kingston Zoning Board of Adjustment met remotely through a Zoom web conference, Thursday, May 14, 2020 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.

Mr. Allen explained the meeting procedure: He will open the public meeting and roll call of members will be called. He will then open the public hearing and ask the applicant will give a brief description of why they are before the board and go through the five criteria. Only board members will ask questions of the applicants at this point. Once the board has finished with their questions, the floor will be opened for public comments. Please announce yourself by name and address and make any comments to the board and not the applicant. When public comments are completed, the public comment portion will be closed. Then the board will deliberate and may ask additional questions of the applicant. A motion and second will then be asked for to accept or deny the application, and there will be a vote of the board members. People were asked to mute themselves during the presentation to eliminate background noise.

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

Others Attending: Applicants Mr. and Mrs. Russell McKane and East Kingston residents Stephen and Lorna McMillon, 3 Rodham Road.

Chairman Allen opened the meeting at 7:06 pm and Mrs. White called the role.

Mr. Allen noted the approval of the April minutes will take place at a future meeting in order to allow the members to review the 19 pages and offer any corrections and/or changes before approving.

Mr. Allen opened the public hearing for Case #20-02.

Case #20-02 – Russel McKane, 2 Flower Hill Road, EK, NH (MBL 10-04-07) requests a variance from the provisions of Article XXI-B – non-conforming structures for a replacement dwelling.

Mr. McKane had supplied two aerial pictures of the property along with his application, and Mr. Ciardelli sent two pictures of the existing fire-damaged home to the members.

Mr. Allen explained Mr. McKane's home is on a lot that has two houses on it, which were put in place before zoning prohibited such; thereby they are non-conforming structures. His home was damaged by fire and he would like to replace his home. Article XXI.B.1. of the ordinance states "*any non-conforming building or structure which is destroyed by fire or other hazard may be restored to its former footprint and square footage, provided that it was not destroyed voluntarily and restoration has begun within 12 months after the casualty.*" Mr. McKane has every right to restore his home in the original footprint and square footage. It is difficult to replace the same square footage as the company does not make modular homes of the same square footage at this time, so Mr. McKane is here before the board asking for the variance needed to replace his home.

Mr. Allen asked Mr. McKane to present his application and review his answers to the Variance Criteria.

Mr. McKane explained they has a fire at their home on March 6 which destroyed the home, and they also lost their pets. They are looking to replace the existing home, which was a 24 x 48 sf modular home with an addition. The manufacturers of modular homes no longer make that same size. The closest Mr. McKane had found with the square footage that meets their needs is a 27 x 56 sf modular home. This size home would be 6-8 feet larger on the north and east sides. They would be utilizing the existing foundation, and adding on to each end to accommodate the larger modular home. Mr. McKane provided a photo of the home they are wanting to purchase and commented it was nicer looking, and more up-to-date and modern than the previous home.

1. Granting the variance would or would not be contrary to the public interest.
It will remain a single-family home, with no business being conducted out of it and no major changes. They need a 3-bedroom house as they have had a roommate for the last 5 years. The use will be the same.
2. The spirit of the ordinance would/would not be observed because.
It will remain a single-family home. They will utilize the existing septic and well. The new home would not infringe on any views of the neighbors. On the east side it will be 8' closer to the property line (from 72' to 84' to the property line.
3. Granting the variance would/would not do substantial justice.
They want to remain living in the town and have a house more in keeping with the neighborhood. The neighboring houses are more upscale than the existing house was and this would be an improvement.
4. For the following reasons, the values of the surrounding properties will not be diminished.
The property values will be enhanced because it is a nicer house. It would be bad to leave it as a burnt-out shell.
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.
* There is or is not a 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 house was destroyed by fire in March and they are unable to find the same size modular to replace it to fit on the existing foundation. They would like to get back to normalcy and would like that to be in Flower Hill.

* the proposed use is a reasonable one because:
It will still be a single-family residential home. A slightly larger house will not affect the property. The larger portion would be in the rear, which does not affect anyone, and to the east side for a distance of 8 feet. The new home will be enhanced and more in keeping with the neighborhood.

Board questions / Questions in **bold**; answers in *italics*

Mr. Falman – how old is the original house? *It was built on 1972.* Is it on a full foundation? *Yes.*

Mr. Allen – the original house was a manufactured house of a certain dimension with a bump-out, and no manufacturers meet that size now with a bump-out to meet the square footage.

Mr. Ciardelli – relative to the foundation – what you lost was rectangular and what you propose is rectangular.

You have a below-grade garage; are you still going to have that? Will you be reusing the foundation?

The contractor will prepare the foundation in advance. He will dig parallel to the north side and the east side and enlarge the foundation, joining it the existing foundation; it will be enlarged on two sides. The septic system is on the south side (front yard); the piping is already there. The well is on the south side as well and the piping comes into the basement.

Mr. Robbins – Have you had the foundation inspected by an engineer and it's ok to use the existing foundation? *No. The contractor seems confident the foundation is in good shape to reuse. The foundation was not damaged by the fire as the fire damage was all above.*

Mr. Allen – Is the existing foundation a full 7-8' foundation with concrete floor; poured or block foundation? *Yes; it is a full foundation.*

Mr. Falman – Will you have access to the new foundation areas from the existing foundation? *Mr. McKane stated he had not thought of that, and is relying on the contractor to take that into consideration. The septic and water are all on the south side of the foundation. The water already comes into the existing foundation, but the plumbing for the oil tank will need to be moved.*

Mr. Allen – What's going to happen to the bump-out? *It will be demolished and the new building will be rectangular.* Is the need for a manufactured house over a stick-built house because it would take much longer for a stick-built house? *Yes. And a stick-built house will be much more expensive.*

Mr. Ciardelli – There was an overhand on the north side of the existing house before? *Yes.* You plan on removing everything and putting the new structure on the existing foundation with a couple of extensions? *Yes*

Mr. Falman – Since you are not extending any further south, the distance to the septic and well stay the same as the old structure? *Yes*

Dimensional information from Mr. Allen. Questions in **bold**; Mr. McKane's answers in *italics*

- 1. Will the new building footprint be any closer to any property line boundaries than the original structure was?** *The new footprint may be closer to the property line on the east side by 2 to 6 feet. The property line from the foundation is 50 + feet. The north side (back yard) may increase by 2 to 4 feet. It is facing 4 Flower Hill which is 250+ from the proposed building.*
- 2. With the modified building footprint, will the structure be any closer to a well than the original structure was?** *The well is approximately 75 feet on a diagonal line from the southeast corner of the foundation. The 2- to 6-foot increase will not impact the well protected radius.*
- 3. With the modified building footprint, will the structure be any closer to any portion of the septic system than the original structure was?** *The septic system (tank and leach field) are on the south side (front yard) and no changes will be made in that direction.*
- 4. With the modified building footprint, will the structure be the same number of bedrooms as the existing structure was?** *The number of bedrooms (3) will not be changed.*
- 5. With the modified building footprint, will the structure be any closer to a wetland area than the original structure was?** *There are no wetlands involved. Most of the property is open grass field. The house is about 800 feet from Burnt Swamp Road and in the middle side to side. The only wetland is a small pond near Burnt Swamp Road.*

Mr. Maher – there seems to be a discrepancy in reference to the distance from the well. Dimensional information answers state 75'; the drawing shows 93'. From the 24x48 foundation, it is 97' to the well. It appears the 75' measurement might have been taken from the corner of the bump out. *Yes.* There also seems to be a discrepancy in the distances between the two homes noted on the dimensional information and the drawings. *Mr. McKane clarified; it is 150' from the existing foundation, and that distance will shrink by 8' – leaving 146' between the homes.* The 24 x 48 manufactured home with the 14 x 16' bump out equals approximately 1376sf. The proposed new structure is 1568sf, which is an increase of approximately 15%.

Mr. Robbins – *Looking at the plans and the picture of the new house, it appears you are going from a home with 1-2 bump outs to a rectangular building. I think it will look better than what was there and it does not appear to be encroaching on any esthetics. Mr. McKane is hoping to be granted the variance so he can put a down payment on the manufactured home and start the process to rebuild.*

Mr. Ciardelli – *The board is here tonight to grant a variance to replace an existing home with a new home.*

Verification of what makes this non-conforming is that there are two homes on one lot. The ordinance states: “No such non-conforming building may be extended in such a way to make it more non-conforming.” The non-conforming issue they are looking at has nothing to do with the size of the building; it is the fact there are two houses on one lot.

Mr. Allen concurred. *If setbacks were encroached upon or if the protected well radius was compromised, it would make it more non-conforming and not be allowed. The request is to have two houses on a lot that already contains two houses is not more non-conforming.*

Dave – *The applicant has a right to replace the home he lost.*

Ed – Agrees. Has there been any feedback from the owner of the other structure? *No.*

Mr. Allen opened the floor for public comment.

Steven and Lorna McMillan – 3 Rodham Road. They are abutters to the east. They support the McKane’s plan to rebuild their home and look forward to have them back in the neighborhood.

Mr. Allen closed the floor to public comment and stated the board will begin deliberation.

Mr. Allen stated there are two houses on one lot which is a unique characteristic and non-conforming. He opined there was nothing in the request for variance that would make the situation more non-conforming than it is now. Setbacks and distances from the septic system and well were discussed, as well as the distance between the two houses. This was a manufactured home and they no longer make the same size manufactured home to replace it in kind. The only other alternative would be to place a stick-built house on the existing foundation but that is not what it was before. They are asking to replace it with a manufactured house that is larger and more up-to-date. Mr. Robbins – If Mr. McKane decided to go with a stick-built house, he would be putting a different type of house on the property and Mr. Robbins opined that would make it more non-conforming. Mr. Allen noted if a replacement stick-built house were to be built to the exact same configuration as what was there before, it would not be more non-conforming.

Mr. Maher – based on the two existing offsets on the original house, replacing it with the proposed rectangular home would actually increase the distance between the houses.

Mr. McKane has been informed the board will need to determine if his application meets the five criteria.

BOARD DELIBERATION

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

In regard to *would not be contrary to the public interest*, state and case law notes the applicant does not need to show there is a benefit to the public or that this would be an overwhelming positive to the public; he just needs to show there will be no harm to the public by what he is proposing.

Mr. Ciardelli – *it would not be contrary to the public interest; it looks to be basically the same. The critical measurements remain the same (distances from the septic system and well); Mr. Falman – it would not be contrary to the public interest because what existed prior to the fire was a single-family home and if the variance is granted there will be a single-family home. Esthetically the new home would be no less appealing than what was there previously; Mr. Collamore – it would not be contrary to the public interest; the property can accommodate the proposed footprint; Mr. Allen – agrees it would not be contrary to the public interest; there*

does not appear there would be any public harm by a variance that allows the house to grow a few feet in each direction on a lot with the setback that Mr. McKane has; it is the same number of bedrooms and the same septic and well loading; Mr. Robbins – it would not be contrary to the public interest as there is nothing in this presentation that would show it to be contrary to the public interest.

The spirit of the ordinance would be observed because:

Why do we think the original ordinance was enacted, and is this in keeping with that?

Mr. Allen – *The spirit of the ordinance would be observed. The ordinance was enacted because the town wanted to give the owner of a non-conforming structure the right and ability to replace their home or structure. He opined that replacing in the same shape and square footage was put in place to avoid having a large structure that would overwhelm the property replacing a smaller original structure. That scenario would not be in keeping of why the ordinance was written. A structure that grows in size because the manufacturer does not make the same size is within the spirit of the ordinances as written. Mr. Ciardelli – agrees; it would be observed because the applicant experienced a loss and has a right to rebuild. Flexibility to allow him to replace his home given the choices he has is the reason the board is there tonight. Mr. Robbins – agrees it would be observed. Mr. McKane has presented a reasonable application to replace his damaged property. Mr. Falman – agrees the spirit would be observed; the original structure is was nearly 50 years old and it would be foolish to assume the same dimensions would be available today. Mr. McKane is not violating the spirit of the ordinance. Mr. Collamore – It would be observed; Mr. McKane is asking to replace what was originally there. Mr. Maher – observing the spirit of the ordinance is two-fold – the portion of the zoning law that allows for the reconstructions of non-conformance, and what makes it non-conforming is two houses on one lot. It is a 4+ acre lot with two houses on it. He opined the spirit of the original ordinance of not allowing two houses on a single lot is more focused on overcrowding cluster homes with people trying to circumvent the lot sizes with in the town. In this case there is a generous size lot which, while it doesn't meet the current standards for construction of 2 home, dimensionally it is not a concern. I do not see anything that would not be in the spirit of the ordinance. Mr. Ciardelli and Mr. Robbins agreed there was adequate room on the lot.*

Granting the variance would do substantial justice.

Mr. Ciardelli – *There is no injustice to anyone else. Allowing the applicant to rebuild after a loss is what we are here for and would do substantial justice. Mr. Robbins – Agrees; allowing the new structure would be substantial justice to the surrounding properties. Mr. Allen - Agrees; there is no negative to the surrounding properties that outweighs the positive. Mr. Falman - Agrees; the injustice would be if we allowed someone who had a misfortune to not be able to recover their loss because of a slight expansion of something they could no longer obtain as the existing structure was almost 50 years old. Frank – Agrees it would do substantial justice to allow Mr. McKane to rebuild his house.*

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

Mr. Allen – *Leaving this as a burnt-out shell would drive down property values; there was a home there before and he is proposing a home there now. It appears it will be equally if not more esthetically pleasing. It is not such a large home that would encroach on the neighboring property, thus driving down the values. It is essentially the same as what was there before. I do not see this affecting property values in any way; but it may help them come up a little. Mr. Robbins – I agree. If anything, the new home will increase the property values of both Mr. McKane's lot and the surrounding properties. Mr. Ciardelli – I agree property values would not be diminished; Mr. Falman; I agree property values would not be diminished; Mr. Collamore - I agree property values would not be diminished*

Poll - 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 / is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.** **PASS**

Mr. Allen – *there is not a fair and substantial relationship*; Mr. Robbins - *there is not a fair and substantial relationship*; Mr. Ciardelli - *there is not a fair and substantial relationship*; Mr. Falman - *there is not a fair and substantial relationship*; Mr. Collamore - *there is not a fair and substantial relationship*.

*** The proposed use is a reasonable one.** **PASS**

Mr. Allen –*It is a residential house on a residential lot and therefore is a reasonable use*; Mr. Robbins – *it is a reasonable use*; Mr. Ciardelli - *it is a reasonable use*; Mr. Falman - *it is a reasonable use*; Mr. Collamore - *it is a reasonable use*.

Mr. Allen asked for a **MOTION**.

Mr. Robbins **MOVED** to **APPROVE** the variance for Case #20-02 – Russell McKane, 2 Flower Hill Road, EK, NH (MBL 10-04-07) from the provisions of Article XXI-B – non-conforming structures for a replacement dwelling; second by Mr. Ciardelli with a unanimous vote.

Motion is unanimous and the variance is approved.

Mr. McKane thanked the board for their time.

Mr. Allen closed the public hearing for Case #20-02.

Mr. Falman **MOVED** to adjourn the meeting/ second by Mr. Robbins with a unanimous vote.

The meeting was adjourned at 8:12 PM.

Respectfully submitted,

Minutes Approved July 23, 2020

Barbara White

Tim Allen, Chairman