

MINUTES SUBJECT TO APPROVAL

DATE MINUTES APPROVED:

EAST KINGSTON BOARD OF ADJUSTMENT
May 23, 1991

Members attending: John V. Daly, Chairman; Richard Smith; Joseph Conti and David Boudreau, Alt.

The Public Hearing for Curtis & Lucienne Jacques, 17 North Road, East Kingston was opened at 7:37pm. (1991-02)

Mr. Daly read the Public Notification for request for the Variance to Article VI, Section A-1 of the Zoning Ordinance.

Anne Bialobrzkeski, Stockton Services was present on behalf of Mr. & Mrs. Curtis Jacques.

Dennis Jacques, son of Mr. & Mrs. Jacques as well as their two daughters-in-law were present.

Ms. Bialobrzkeski showed the Board the print of the preliminary subdivision to be presented to the Planning Board in June. She included the topos.

Ms. Bialobrzkeski explained there are 11.67 (+,-) acres in the piece that Mr. Jacques wants to subdivide into three houselots. Each of the additional lots would be conveyed to his sons. She stated there is adequate frontage to comply with the Zoning Ordinance and the property can support the three lots under the strict terms of the Zoning Ordinance. The request for the variance is for frontage requirements.

Ms. Bialobrzkeski said it would be a more reasonable configuration of Lots. Lots 2 & 3 combined have 417ft. +/-; Lot 1 has drainage swales which would be used as an approximate natural boundary for this lot.

Mr. Conti questioned if giving 200 ft. frontage to Lot 3 would include the driveway of Lot 2.

Ms. Bialobrzkeski stated that it would not, it just misses. Mr. Jacques wants the land in front of his house to be his. Using the 60 ft. frontage would allow this to happen and the waiver of the frontage requirement would be more reasonable.

Mr. Daly asked for a history of the proposed subdivision to date.

Ms. Bialobrzkeski stated they went to the Planning Board in April for discussion purposes and were told they could not go before the ZBA without denial of sorts. She said the following week they talked informally with the ZBA and were told essentially the same. They were then placed on the Planning Board agenda to hold a Public Hearing and allowed to come back this week. She noted that during the Planning Board's Public Hearing last week they got approval of the Lot Line Adjustment. The exchange will be completed prior to going before the Planning Board in June.

Mr. Daly asked if the Jacques were denied a variance at the ZBA, the Lot Line still remains.

Ms. Bialobrzkeski stated that was the case. The Lot Line Adjustment does not have any bearing on the Subdivision.

Mr. Conti asked if there would be any objection to have a condition that this house lot (pointing to Lot 2) will not be a duplex house if the variance is granted to allow Lot 3 a 60 ft. frontage. He noted the frontage retained at Lot 2 would be 300 ft. or more and would qualify that lot for a Special Exception.

Mr. Jacques questioned the consequences if the Board put on a condition to never allow a duplex, two family or mother-in-law apartment.

The Board pointed out the 300 ft. and five acres allows a duplex now.

Mr. Jacques stated he cannot foresee a disadvantage as he does not intend to do such a thing. He stated one reason for the variance to be granted would be that granting a ROW would be a financial hardship.

Mr. Conti reminded him that a financial hardship was not the concern for this Board.

Mr. Jacques stated he wished to benefit the town by making three lots to continue the rural atmosphere and provide housing for his sons.

Ms. Bialobrzkeski stated the situation again, regarding the configuration of the natural boundaries which exist and the problems of having the lot line convoluted to such a degree.

Mr. Jacques stated he may be agreeable to such conditions if the Board granted the variance.

Ms. Bialobrzkeski stated no surrounding property is affected, it is a residential area. The requirements are met to place two more dwellings on the property in harmony with the Zoning Ordinance. It will not decrease the values. The use is the same with or without the variance. Addressing the vehicle of public interest, it was discussed last month that it would be a benefit to the public to avoid a convoluted frontage. In addressing the hardship, the placement of a strip in front of the house would limit the right to enjoy access of the property to the street. There is already a house on this property. The physical characteristic of the land is the primary reason for the request and strict adherence would be unreasonable enforcement of the Ordinance. The strict enforcement is a needless or unnecessary restriction, nothing is gained by such strict enforcement. She noted the use is not being altered in any way.

Mr. Conti again brought up his problem with the house on Lot 2 being allowed a duplex preogative.

Ms. Bialobrzkeski continued that substantial justice is done in that it would be better for the owner now and in the future. There is no injustice done to anyone else. In the spirit of the ordinance, the frontage is to control density and discourage overcrowding. The lots are well in excess of the requirements for spacing. There would be three houses on eleven acres. They would not be placed too close nor would there be too many houses. Ms. Bialobrzkeski said that this variance can be granted with the understanding this is respected.

Mr. Daly asked for questions from the Board.

Mr. Boudreau asked if it was necessary to put the conditions in the deed.

Mr. Conti stated this (granting a duplex, etc.) would be done by Special Exception.

Mr. Daly stated the condition was proposed to be placed on Lot 2, and the affected Lot is Lot 3. He stated the Special Exception give no discretion. Mr. Daly doubted the validity of this kind of action.

Mr. Dennis Jacques stated the intent is to make the property a homestead. He felt the Board is placing an impediment to the future of Mr. & Mrs. Jacques. He cited elderly caregiving as the prime example.

Mr. Boudreau noted they would not be able to qualify for Special Exception on Lot 2, if Lot 3 were to have 200 ft. of frontage.

Mr. Daly stated the issue is that the Ordinance provides seven conditions to be met for Special Exception and if they are met then the applicant is then entitled to be granted.

Mr. Daly also stated the suggestion is good to condition the variance, and make a recommendation to the Planning Board. The Board could condition the Subdivision to prohibit a two family dwelling because of impact.

Mr. Jacques pursued the caregiving issue again.

Mr. Dennis Jacques suggested grandfathering for Curtis & Lucienne Jacques and dissolve after their demise.

Ms. Bialobrzkeski asked if the condition would run with the land. She noted the condition stated by Mr. Jacques would no longer be an Ordinance from which relief could be sought. She noted she would not suggest a condition that would bind forever.

Mr. Conti expressed his objections.

Mr. Daly asked to address hardship again.

Ms. Bialobrzkeski felt the configuration which placed the property in front of the house on Lot 2 which would be owned by others was a hardship.

Mr. Jacques cited the possibility of a "spite" fence being erected. He noted the possibility of this happening has no regulation and such a happening would penalize him.

Ms. Bialobrzkeski stated the entire length of frontage could end up under different ownership.

Mr. Conti asked if there was a definitive depth for the 200 ft. frontage requirement.

Ms. Bialobrzkeski stated there is nothing, no regulation and this is the hardship inherent in the land.

Ms. Bialobrzkeski noted she wanted to be careful with the condition that it not be a permanent part of the land.

Mr. Daly doubted the enforceability of such a condition. He noted some conditions are enforceable and some are not. Conditions placed on Lot 2 to receive a variance on Lot 3 would

have problems once conveyed out of the family.

Mr. Conti asked, once sold, would the subdivision plat would be incorporated on the deed.

Mr. Daly asked if it were put into the conveyance of the deed, what would the Town do if it were violated.

Mr. Conti said if the conditions mean you can't do it, the Town then goes to court an make them remove or cease the violation.

Ms. Bialobrzkeski noted if the condition were placed on Lot 2, the plan gets recorded, the plan would have to reference the plat. The plat becomes a part of the description of the property and the description of Lot 2 will have to list the condition.

Ms. Bialobrzkeski then wrote a notation which she agreed would be placed within the Lot 2 configuration on the plan.

Mr. Daly asked if there were any further questions.

There were no abutters present.

Mr. Dennis Jacques again stated it was intended to remain as a family homestead.

There was brief discussion about the wording to be placed on the plan.

Mr. Dennis Jacques said he feels this is better than proceeding with a 200 ft. frontage requirement.

Mr. Conti stated the condition is better than a fencing problem.

Mr. Smith had no comment and did not participate in the discussion as he will be sitting in judgement of the subdivision at the Planning Board in June.

Mr. Conti motioned to grant the variance subject to: "CONDITION OF ZBA APPROVAL: LOT 2 DOES NOT QUALIFY FOR TWO FAMILY DWELLING WITHOUT VARIANCE FROM THE ZBA." being written on the approved Subdivision Plan.

Mr. Daly second.

The motion carried 3-0.

Mr. Daly stated the variance has been granted.

Mr. Daly requested a copy of the minutes be provided to Mr. Smith as soon as possible in order that they may be used at the Subdivision hearing.

Mr. Conti requested and was given a copy of the prints.

The Public Hearing for Mr. & Mrs. Jacques was closed at 8:35pm.

The minutes of April 25, 1991 were approved as amended.

The Board discussed the application format and revisions to be made. A revised copy will be mailed to the Board for review.

The meeting was adjourned at 8:50pm.

Respectfully submitted,

Nancy J. Marden, Secretary

Typing completed: May 25, 1991