

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

May 23, 2013
7:00 pm

MINUTES

Public Hearing 13-01

Bradley Jamieson with respect to property located at 14 Powwow River Road, East Kingston, NH (Tax Map 10, Block 3, Lot 9). The Applicant requests an Equitable Waiver of Dimensional Requirements under Article IX, Section C of the Zoning Ordinance.

Members Attending: Chairman John Daly, Vice Chairman Catherine Belcher, Dave Ciardelli, Tim Allen and Paul Falman.

Also present: Mr. Bradley Jamieson

Mr. Daly opened the meeting of the East Kingston Zoning Board of Adjustment (ZBA) at 41 Depot Road (Pound School) on May 23, 2013 at 7:00 pm.

Mr. Daly opened this public hearing and acknowledged that Mr. Jamieson was in attendance.

Mr. Daly asked Mr. Jamieson to give the Board some information on the situation and how there came to be an issue with the greenhouse at 14 Powwow River Road.

Mr. Jamieson noted he did not understand why there was a situation. Mr. Daly explained the green-house did not meet the frontal dimensional requirements (setbacks) as stated in the ordinance.

Mr. Falman asked how it came about Mr. Jamieson put the greenhouse where it was located.

Mr. Jamieson answered that an old-fashioned and classic greenhouse was an integral part of his initial vision to give his property an identity. As a result of installing the greenhouse and the garden, he has generated much interest in the property and the ability to attract a better quality of prospective tenants. He also thinks it shows a level of seriousness on his part that he's willing to put out a quality feature.

In speaking with the neighbors, it appears at some point in time in the past, there had been a straightening of Powwow River Road which shifted the road towards his property (at that time belonging to Marshall Bean). In checking the ordinance, he noted the setback was 25 feet. For placement of the greenhouse, his measurements were 31' on one corner and 32' on the other from the edge of the pavement. He noted those measurements on his building permit application and staked out the location.

He contacted Unutil to make sure he was a proper distance from a primary electrical wire that came in at an angle, and they asked if he could maintain at least a 15' buffer from the roof ridge to the wire for ease of future service on the wire, which he did.

On the opposite side of the greenhouse there is a 400' artesian well. He called Subsurface Bureau to find out if there were any setback requirements and was told to maintain a 10' distance.

Mr. Jamieson also noted on his original plan, he had shown the entry to the greenhouse on the front side, but for aesthetics he had shifted the entrance to the rear to give a more pleasing appearance from the road.

Mr. Falman asked if Mr. Jamieson had taken out a separate application for the greenhouse; he answered he had submitted an application for a building permit and drawings to go with his application to the Building Inspector.

Mr. Falman asked if a copy of that was available for review at this time. Mrs. White answered she did not have a copy of either in this file, but could get it. In trying to understand the process, Mr. Falman noted it appears Mr. Jamieson had followed all the requirements.

Mrs. Belcher asked where the Town was claiming the boundary is, if it was not where Mr. Jamieson measured from the edge of the pavement? Mr. Jamieson did not know where they were claiming the boundary was. Mr. Falman noted that in the past, he had learned the edge of the pavement was not the edge of his property.

Mrs. Belcher opined she felt she did not have enough information to make an informed decision. She asked if the greenhouse was part of the original site plan review application to the Planning Board?

He answered it was. Mrs. Belcher asked if Mr. Jamieson had an engineered plan he submitted; he answered that Thistle Designs had produced a drawing of the greenhouse for him to submit to the Building Inspector with his application.

Mr. Jamieson had measured 31' and 32' and had staked out for the foundation of the greenhouse. Since then, the state mandated that he add the deceleration lane.

Mr. Daly read paragraph two from an August 2012 letter to the Planning Board from the RPC Planner Julie LaBranche: *"On the original approved site plan, the greenhouse is located 30' from the front property boundary. However, it appears the location of the greenhouse, under construction, may have changed. Per the ordinance, every building shall be set back from the front property line at least 30' or where existing buildings on adjacent lots are reasonably close to each other, in line with existing buildings. From an air photograph of the site, it is not clear whether the current location of the greenhouse and pond is reasonably in line with existing buildings on the adjacent lots. It is recommended Mr. Jamieson provide a revised site plan showing the existing distance of the greenhouse and pond from the front of the property line."* Mr. Daly asked if this is when the issue first came to light. Mr. Jamieson Stated it was.

Mr. Jamieson asked if anyone had reported a problem with the location of the greenhouse where it was; Mrs. Belcher stated it was not an issue if there had been any complaints, but an issue of complying with the ordinances. It was up to the Board to ascertain if the present location was legal or not, and then ascertain if Mr. Jamieson met the requirements for an equitable waiver of dimensional requirements to be granted if it was not legal.

Mr. Falman opined the Board needed to research the issue more in-depth and follow the progression from the beginning. They needed to see where the calculations on the original site plan were from the front property boundary; what did that refer to - the edge of the road or the deceleration lane.

Mr. Jamieson explained when the greenhouse issue first came about, he had contracted with Dennis Quintal to have an entire survey produced of the site. He emphasized that he had never in his life tried to deceive anyone in any regard; the Board noted they were not in any way questioning his integrity or assuming he had tried to deceive anyone. They were only trying to understand how the situation came about and needed to understand from the very beginning.

Mrs. White offered the following information regarding this property. When Mr. Jamieson had first approached the Planning Board with his project, and since his work on the two existing buildings (the chicken coop and the garage) were to be inside the structures, the Board had decided it was not necessary for him to go the expense of having an engineered site plan produced. They accepted a drawing he had submitted of the site which had been supplied by Mr. Bean. He then presented the second plan, by Thistle Designs, after the state mandated he install the deceleration lane and have only one entrance/exit which changed the plan; the Planning Board agreed that was acceptable. She noted that to her knowledge, no one had ever said where the measurement should be taken from. Mr. Jamieson and Mr. Donald had looked in the ordinance, which stated 25' and measured from the edge of the pavement.

When changes progressed on the outside of the buildings, that's when the Planning Board asked for an existing conditions plan of what was presently there, and told him to include anything he might want to add in the future so he wouldn't have to come back to amend the plan. That's the latest plan you have before you.

Mrs. Belcher opined if the Building Inspector inspected the property and granted a building permit based on the existing location, it would have been reasonable for the applicant to have built the greenhouse and invested in the property believing he was receiving Town approval.

Mr. Ciardelli asked if any Town official had verified the location of where the greenhouse was installed; and was it installed where it was stated it would be? Mr. Jamieson responded that he had it staked out and it had been verified by the Building Inspector. In fact, the Building Inspector was standing right next to him when the concrete truck came to pour the footings.

Mr. Jamieson asked if the Board was proposing to ask him to tear down the greenhouse? Mr. Ciardelli noted that they were trying to avoid that. Mr. Falman said that was not the intent; the Board needed to understand how things got to this point. He opined that to him, it appeared Mr. Jamieson had followed all the requirements, and submitted all the necessary paperwork.

Mr. Daly stated the Board needed to follow the documentation in order to make an informed decision. Mr. Jamieson stated he did not need any notes to keep his story straight; he lived it and he built it. That was the nice thing about telling the truth; it comes out the same every time.

Mr. Daly opined the Planning Board perhaps should have required an engineered plan from the start and conceivably these problems would not have come up. Mrs. Belcher opined in defense of the Planning Board, on its face it probably did look like a minor site plan and they most likely wanted to save Mr. Jamieson some money. As it got deeper into the project and they realized more work was required, they also have to make sure certain items are done. An engineered plan can be required for anything, not just excavation.

Also, since there is such a small amount of commercial area in East Kingston, the Planning Board are not professional experts when it comes to developing and allowing the development of commercial property.

Mr. Jamieson was grateful for the Planning Board's decision to allow him to go forward with the development of the property on the original plan he submitted, as it allowed him the ability to continue with two tenants contributing to his financial status.

Just for Mr. Jamieson's information, Mrs. Belcher clarified with Mr. Daly that in the event the Zoning Board decided not to grant the waiver, it would not be the Zoning Board's responsibility to tell Mr. Jamieson to tear down the greenhouse; it would be the Selectmen as there is no separate Code Enforcement Officer.

The Board came to the conclusion they needed to see all the paperwork pertaining to this project so they could follow the progression of what happened along the way. Mrs. White will compile a packet of information for the members, including the Building Permit and drawing submitted with it, to be reviewed before the next meeting. Also, Mr. Daly will ask Mr. Donald to provide a witness statement that he approved the location of the greenhouse. He will also ask that Ms. LaBranche attend the meeting if possible.

Mr. Daly polled the Board, who were all in agreement to continue the meeting until June 13th. Mr. Jamieson thanked members of the Board.

The meeting was adjourned at 8:00 PM.

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

John Daly
Chairman