

Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes
May 24, 2007
7:30 PM

AGENDA

Joseph Ferrandi – applicant (ZBA 07-02)
22 Maple Avenue, Newton, NH
(Richard and Camille Goff- owners)
(MBL #02-04-03- 31 Powwow River Road, EK)

AND

John Rossop - applicant (ZBA 07-01)
45 Riverside Drive, Freemont, NH
(Kathleen and Richard Rose - owners)
(MBL #02-01-32 - 6 Cove Road, EK)

Members Attending: Chairman John V. Daly, Vice Chairman David A. Ciardelli, Peter Riley.

Alternate Members: Catherine Belcher, Paul Falman, Tim Allen

Others Attending: Mr. John Rossop, applicant; Mr. Vernon Dingman, Engineer; Mr. Joseph Ferrandi, applicant; Sharon and Steve Ridlaw, abutters.

Mr. Daly opened the meeting of the East Kingston Zoning Board of Adjustment (ZBA) at the East Kingston Town Hall on May 24, 2007, at 7:35 PM.

Mr. Daly addressed the attendees and explained the procedure of the public hearing for this variance.

PUBLIC HEARING FOR JOSEPH FERRANDI—APPLICANT (ZBA07-02), 22 MAPLE AVENUE, NEWTON, NH (RICHARD AND CAMILLE GOFF- OWNERS) (MBL#02-04-03)31 POWWOW RIVER ROAD, EAST KINGSTON)

This hearing is to consider an application seeking variance from Article VIII – USES PERMITTED, Paragraph F for an accessory dwelling unit. Mr. Daily opened the hearing.

Mr. Daly recognized the applicant, Mr. Joseph Ferrandi, who explained that he wanted to build an in-law apartment for his mother. He explained that the property had been acquired 6 months ago at auction. They had discovered there was an apartment on the top floor of the barn, which did not look to be up to code, so they tried to make some of those areas safer. There was then a fire in the apartment, and to put the building back to where it was would violate the existing codes for the 30 ft setback for the leach field. They were now looking at replacing that structure and attaching it to the original house. The plan was to reconfigure the building on the lot to conform to existing lot setbacks of 30 feet, and replace the existing septic system (which was original to the house) with a new system as required for the size of the new house. Mr. Ferrandi had already had a test pit drilled, and the perk test was performed.

Mr. Ferrandi was before the Board tonight for special exception so that when the house was replaced, the apartment could be rebuilt as a legal in-law apartment. Mr. Ferrandi understood the in-law apartment was not allowed to be more than 500 sf in size. Mr. Daly explained that a special exception was different than a variance. There were five conditions that had to be met for a special exception, and if the Board was convinced that all the five conditions were satisfied, the special exception would be granted.

Mr. Ferrandi said he had also reconfigured the new garage on the lot to conform to town set backs of 30ft; the previous garage was not in conformance to the present setbacks. Mr. Falman asked if they were proposing to rebuild the garage on the same footprint, and Mr. Ferrandi stated they were not. He showed the Board a drawing of the proposed layout. There was discussion of just what was to be the new footprint of the proposed house and garage as opposed to the old footprint. Mrs. Belcher informed Mr. Ferrandi that the set backs were 30 feet from the road and 25 feet at the sides and rear of the house.

Mr. Ciardelli asked if the original building had been a total loss, and Mr. Ferrandi said it had not been; only the garage portion. There was a kitchen, which joined the original house and the garage, and had no real foundation; only two walls had been attached. They wanted to reconfigure and rebuild this portion of the structure as well.

Mr. Daly asked Mr. Ferrandi if the Building Inspector had told him he needed any variances, and he said he had not told him any variances were needed. Mr. Daly ascertained that Mr. Ferrandi only needed the special exception from the ZBA for the in-law apartment. He would also need to comply with the zoning ordinances with respect to rebuilding the structures. Mr. Ferrandi would like to rebuild the existing fire-damaged barn into a house and turn the first floor of the original house structure into the in-law apartment, with the second floor of the original house being turned into attic space for the house. His plan would also eliminate both the stairs to the attic and the basement and relocate them, rebuilding them to conform to present codes for stairways; at the present time they are quite steep.

Mr. Daly asked about parking, and Mr. Ferrandi stated that there was plenty of area for parking. Mr. Daly informed Mr. Ferrandi that there needed to be 2 spaces allocated for the in-law apartment for parking and a place to turn around, and this needed to be shown on the plan, as well as the parking area for the house.

Mr. Ciardelli asked about the garage drawing Mr. Ferrandi had submitted, and was told he had chosen a plan that was the same square footage as what they were proposing to build. The design had changed since the original submittal; where the plan showed three garage doors, there would now be a door and a window in place of one of the doors.

The Board requested Mr. Ferrandi to submit a better drawing of the in-law apartment. The present one did not include measurements so the Board could easily determine the size of the proposed apartment. Mrs. Belcher reminded Mr. Ferrandi that the outside entrance of the in-law apartment could not be on the front, street side of the residence, and would therefore need to be relocated from where it was on the proposed design. Mr. Ferrandi stated he could easily move the door.

The Board determined that it was quite confusing to try and picture what Mr. Ferrandi had in mind for the house and in-law apartment without an updated drawing, and noted that 2 parking spaces for the in-law apartment and the house needed to be depicted on the drawing as well.

Mr. Daly opened the floor to abutters; there being none, he closed the floor to abutters.

The hearing was continued until June 28 at 7:30pm. Mr. Ferrandi will submit a new updated drawing of the proposed in-law apartment, a drawing showing the front elevations of the buildings, and another drawing showing where the parking spaces will be for each residence.

Mr. Ferrandi thanked the Board for their time.

Mr. Daly closed this public hearing.

PUBLIC HEARING FOR JOHN ROSSOP—APPLICANT (ZBA07-01), 45 RIVERSIDE DRIVE, FREEMONT, NH (KATHLEEN AND RICHARD ROSE—OWNERS) (MBL#02-01-32) 6 COVE ROAD, EAST KINGSTON

This hearing is to consider an application seeking an area variance from Article VI— WETLANDS CONSERVATION DISTRICT, Paragraph E, and Article VII – GENERAL PROVISIONS, Paragraph D. Mr. Daly opened the hearing.

Mr. Daly recognized the applicant, Mr. John Rossop, who explained that he wanted to build a house and septic system on MBL 02-01-32. He had spoken to the Building Inspector and it was ascertained that because of the proposed location of the house and septic system, he would need to apply to the ZBA for two area variances: one for Article VI- WETLANDS CONSERVATION DISTRICT, Paragraph E for the proximity to the wetlands, and Article VI—GENERAL PROVISIONS, Paragraph D for the septic system leach field boundaries.

Mr. Rossop ascertained that the minimum square footage of a house he could build on the property was 800 sf, which was larger than the original house he had intended to build. It had brought the house closer to the wetlands area at the rear of the property (hydric B soil) and therefore, he was applying for an area variation for that change in distance to the wetlands. He was asking for variances from the setbacks to 10 ft in the front, 8 ft on one side, 10 feet on the other side, and 2 feet at the rear. The house position had been moved so the leach field would not infringe on the well radius of the abutters present.

He was also applying for a variance for the septic system leach field boundaries. Since the smallest septic system he could install was for a 3-bedroom house, it therefore resulted in the boundaries from the leach field to the well radii being shorter in distance than the ordinance called for.

Mr. Allen asked how far the proposed dwelling and septic was from hydric A soil, and Mr. Dingman answered 200 ft.

At the start of his project, Mr. Rossop had received a building permit in error, and had submitted his septic plan for the property to the State, which had been approved. When the Building Inspector realized the error, he had informed Mr. Rossop he would need to go before the ZBA to apply for the variances required for his proposal. The location of the septic system had stayed the same as the original application; only the configuration of the house had been changed.

Mr. Dingman explained his septic plan to the Board members. He explained that the State's requirements were not as stringent than the requirements of the Town, and argued that since the State had already approved the septic plan, the Town should also accept it and grant the variances needed.

Mr. Dingman also submitted a plan that showed the abutters present, Mr. and Mrs. Ridlaw, had granted permission to another property owner to allow that septic system to overlap their well radius. His contention was that if they had granted permission to those property owners, why could they not grant permission to Mr. Rossop for the same overlap

Mr. Rossop presented a statement to the Board showing that the lot in question was being taxed as a buildable lot. Mrs. Belcher agreed it was, but stated that as a buildable lot, it did not necessarily mean that any building on the property would need to be one requiring a septic system.

The Board also noted, looking at the plan presented, the configuration of the driveway would need to be changed to conform to driveway regulations; Mr. Dingman stated the driveway could be moved with no problem.

Mr. Daly asked Mr. Rossop to state to the Board the points applied for from the area application and his response to those points. The points are in boldface, and the Mr. Rossop's responses are in italics.

This variance is being requested from Article VII, Section D.6. *The proposed 2-bedroom house to be built on MBL 02-01-32; the boundary of the leach field is located 10 feet from the front and 8 feet from the side property lines.*

1. **The proposed use would not diminish surrounding property values because:** *This is an old subdivision with small lots. The proposed 2-bedroom, single-family home will be consistent with other single-family homes in the area.*
2. **Granting the variance would not be contrary to the public interest because:** *The proposed use, single-family residence, is permitted in this zone. Three variances are being requested.*
3. **Denial of the variance would result in unnecessary hardship to the owner because:**
 - a. **the following special conditions of the property make an area variance necessary in order to allow the development as designed.** *The lot consists of 13,500 sf, has 75' frontage and about 250' in depth. The lot has wet areas in the rear, and there is a limited area on which to place the house and the septic system.*
 - b. **the same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because** *the proposed layout is the only way to fit this house, septic system and well on the lot.*
4. **Granting the variance would do substantial justice because:** *it will allow the applicant to use the lot for an allowed purpose.*
5. **The use is not contrary to the spirit of the ordinance because:** *the proposed use is consistent with the existing uses of the surrounding lots in the area.*

Mr. Dingman stated that all the lots in the area were substandard lots; that the lot next to it had just built a garage last year that had required a variance.

Mr. Daly turned the floor over to the Board members for questions to the applicant.

Mr. Falman asked how long Mr. Rossop had owned the property, and he stated he had been making payments to the owners, Mr. and Mrs. Rose, for 2 years. He was purchasing the lot as a pre-existing, non-conforming lot, as he had done with others in the past. Mr. Daly asked if Mr. Rossop had a purchase and sales agreement. He stated he did and had submitted it to the Town. He would get a copy to the Town Offices.

Mr. Riley asked about the distance from the leach field to the abutter's well radius. There was extensive discussion among the Board members, Mr. Dingman and Mr. Rossop about the septic system and the ordinance specifications. It was Mr.

Dingman's opinion that the ordinance did not clearly state just where the measurement was to start— at the end of the leach field or at the end of the actual leach field components. There was also a question of the definition of the leach field itself.

Mr. Daly opened the floor to abutters.

Mr. & Mrs. Ridlaw, 13 Cove Road, East Kingston. Mrs. Ridlaw referred to Article 10.H.2.a. of the Floodplain Development ordinance which states ...*"all new construction...of residential structures have the lowest floor elevated to or above the 100-year flood elevation"*, and stated that the property was in Zone A of the floodplain. She asked if Mr. Rossop's proposed building would be built above the floodplain.

Mr. Ridlaw stated that when heavy rains occurred, the water already comes over Mr. Rossop's property, across the road and down his driveway, and they were concerned with the effect a building and septic system on the property would have on the natural water flow.

Mr. Dingman asked how high the water came up onto the Ridlaw's house, and what measures had they taken to prevent it in the future? Mr. Ridlaw answered that they had just jacked their house up three feet. It was ascertained that the Building Inspector would have to take that question into account before issuing a building permit.

Mr. Allen asked if there was any type of septic system that could be installed that was smaller and would require a smaller leach field. Mr. Dingman answered that there was, but it was quite expensive both to install and to maintain.

Mrs. Ridlaw asked if the footprint of the proposed structure had been changed to meet the minimum footprint as per the ordinance, since she only had the first version of the plan presented to the Board previously. Mr. Rossop answered that the house had been enlarged to meet the 800sf minimum size.

Mrs. Ridlaw stated that the area where the property was located was already overtaxed with houses and septic systems, and that Mr. Rossop recognized it was a non-conforming lot when he purchased it.

Mr. Riley asked if the leaching system was flood proof. Mr. Dingman answered that it would be located above the FEMA flood elevation and at a higher elevation than all other septic systems in the area.

Mrs. Ridlaw was still concerned with the leach field boundaries, and firmly believes that the leach field boundary is outside of where Mr. Dingman was showing the leach field on the plan, which is clearly *inside* the 75 ft radius.

Mr. Dingman referred to the Ridlaw's letter of permission granted for the abutting leach system, and stated that plan showed the measurement was taken from the well radius to the *edge* of the actual leach component and not the slope. Mr. Dingman offered this as one more example of where the measurement should be taken from. Mrs. Ridlaw explained that the septic system in question had failed and there had been raw sewage pouring onto their property. The Ridlaw's thought it in their best interest to allow the overlap so the property owner could install a new system that would rectify the sewage leakage.

There was more discussion about the State inspection versus the Town inspection, and just where the measuring should be taken from. Mr. Rossop wanted to know why the State's approval of the proposed septic plan would not be good enough for the Town to accept.

Mr. Dingman explained that even though the proposed house had two bedrooms, Mr. Rossop was required by Town ordinance to install a 3-bedroom septic system.

Mr. Ridlaw wanted to know if the three trees at the front edge of the property would need to be removed to make room for the septic system and the house, and how badly it would tear up the road, which was not in good shape now. One tree was clearly on his lot and he could remove it, but the other two were not. It was Mr. Ridlaw's contention that if the other two trees were removed, it could tear up the road and he wanted to know who would be responsible for fixing it, as it was a private road. Mr. Dingman stated that there was the possibility that only the one tree would need to be removed, but he was not even sure it would be necessary. Mr. Dingman then argued that since it was a private road, and the property owners had a non-fee simple right to the middle of the road, then there was plenty of room for the septic system.

A concern of Mrs. Belcher's was that the front edge of the septic system was so close to the edge of the road, there could be the possibility a snowplow could tear up the edge of the leach field. Mr. Dingman answered that it was 8 feet to the bottom of the slope in the front of the property.

Mr. Allen offered that the State defines well radius in terms of "leach bed trenches", and the Town defines the setbacks as the leach field, not the bed. It is a difference in terminology and a question of how the Board interprets it. Mr. Daly closed the floor to abutter comment.

Mr. Rossop asked if there was someone who would inspect the construction of the septic system to ensure it met all the codes, and he was told that was the Building Inspector's responsibility.

Mr. Dingman still was of the contention that the Board should accept the approval of the State, even though their own ordinance was more stringent.

Mr. Daly asked the Board if they had enough information to make a decision.

Mrs. Belcher stated she had enough information to make a decision. It was her belief that until the Town defined it clearly and amended the ordinance, they should go by the State documents that had been offered by the applicant. Mr. Ciardelli stated he would follow the State's measurement to the edge of the chamber; Mr. Allen agreed. Mr. Riley's opinion was that the measurement was from the leach field and not the component.

The hearing was closed for Board deliberation.

Mr. Daly announced the Board would be going through the criteria.

1. *There (would – would not) be a diminution in value of surrounding properties as a result of granting this variance because...*

Mr. Riley, Mr. Ciardelli and Mr. Allen determined it *would not* diminish the property value of surrounding properties; Mrs. Belcher thought it *would*. The vote was 3-1 it *would not* diminish the property value.

2. *The granting of this variance (would– would not) be contrary to the public interest because...*

Mr. Riley, Mrs. Belcher and Mr. Ciardelli determined it *would* be contrary to the public interest; Mr. Allen thought it *would not* be contrary to the public interest. The vote was 3-1 it *would* be contrary to the public interest.

3. *Since–*

- a. *the following special conditions of the property make an area variance necessary in order to allow the development as designed...*

and

- b. *the same benefit cannot be achieved by some other reasonably feasible method what would not impose an undue financial burden because...*

Mrs. Belcher, Mr. Riley, Mr. Allen and Mr. Ciardelli all agreed an area variance would be necessary to allow the proposed development of the property. The vote was 4-0 that an area variance *would* be necessary.

4. *By granting this variance substantial justice (would– would not) be done because...*

Mr. Allen and Mr. Ciardelli determined substantial justice *would* be done; Mrs. Belcher and Mr. Riley determined substantial justice *would not* be done. The vote was 2-2; Mr. Daly cast a vote to break the tie. His vote was that substantial justice *would* be done. The vote was 3-2 that substantial justice *would* be done.

5. *The use contemplated by a applicant as a result of obtaining this variance (would – would not) be contrary to the spirit of the ordinance because...*

Mrs. Belcher, Mr. Riley, Mr. Ciardelli and Mr. Allen all agreed that the use contemplated would be contrary to the spirit of the ordinance. The vote was 4-0 that the variance *would* be contrary to the ordinance.

Mr. Daly reviewed the criteria - #1 was satisfied, #2 was not satisfied, #3 was satisfied, #4 was satisfied, #5 was not satisfied.

Mr. Daly entertained a motion to deny the application.

MOTION: Mr. Riley **MOVED** to **DENY THE APPLICATION** of Mr. John Rossop for 6 Cove Road (MBL 02-01-32) (ZBA 07-01) seeking area variances from Article VI.E and Article VII.D. Mr. Ciardelli seconded the motion. The motion passed unanimously, with Mr. Allen, Mr. Ciardelli, Mr. Riley and Mrs. Belcher all voting aye to deny the application.

Mr. Rossop thanked the Board for their time.

Mr. Daly closed the hearing.

BOARD BUSINESS

New information. Mrs. Belcher submitted a letter that had been received during the evening in pertaining to Mr. Ferrandi's hearing for 31 Powwow River Road to the Secretary to be added to the file. A copy would be distributed to the Board members.

Worksheets. Mr. Riley said he had some new worksheets he would share with the Board. He will e-mail them to the Secretary.

Cell Tower Hearing May 31. Mr. Falman asked if there were any results from the RF Engineer as of yet. Mr. Ciardelli said there were no results yet and the meeting may just be an update meeting, but the date had needed to be scheduled so abutters did not have to be re-notified. Mr. Ciardelli would be showing pictures he took at the balloon test to the public.

The meeting was adjourned at 9:35 PM.

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary