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May 26, 1994

East Kingston Board of Adjustment

Attending: John V. Daly, Chairman; Joseph Conti, and David Ciardelli

The Meeting was called to order at 7:35pm by Chairman Daly.

Chairman Daly read the Public Meeting notification regarding the application for variance submitted by Dennis & Denise Jacques of 43 North Road who are seeking a variance to the frontage requirements for a two family dwelling.

(1994-03)

Mr. John Chagnon of Ambit Survey; Keri Marshall, Attorney; Dennis Jacques, Denise Jacques, Carol Nupp, Curtis Jacques, Virginia Nichols-Kiley and Timothy Kiley were present.

Mr. Daly noted that three members were sufficient to conduct the Public Hearing, but a unanimous decision would have to be attained in order to grant the requested variance if the Board so chose to vote in the affirmative. The decision to proceed or to table until another meeting could be scheduled was left to the applicants.

Mr. Jacques inquired as to when the next meeting could be scheduled.

Mr. Conti asked if a discussion could be held and then ask the members to hold for another meeting to be scheduled if the applicants desired.

Attorney Marshall stated she was willing to go forth with a discussion at this time if her client were agreeable. Mr. Jacques concurred.

Mrs. Nichols-Kiley asked the Chairman to read the paragraphs from the Ordinance which were indicted on the notifications sent to abutters.

Mr. Daly did. It was determined that the frontage was the only issue to be determined from this hearing.

It was noted by Attorney Marshall that the two family dwelling was grandfathered since 1968.

Mr. Conti noted that the Town adopted the Ordinance in 1963 that no lot shall have more than one family dwellings. However, since the Town did not pursue the existing two family dwelling, the Selectmen recently agreed to give Mr. Jacques the benefit of the doubt for two tenements. Occupancy of this building by two families occurred after the death of Mr. Hinman.

Mr. Conti described the existence of the 20 ft. ROW, which was used for a cow crossing by Mr. L. Tilton.

Mr. Chagnon noted that this property was from the original Tilton property and the ROW came off per deed footage and cited the reference as noted on the plan. This 20 feet does not include the 300 feet for the house. Mr. Chagnon cited frontage figures of 179' + 79" + 258.25' which makes the frontage short by 43.75' for the proposed subdivision.

Attorney Marshall stated the plan was prepared for UNH on January 27, 1985 and referenced a 1959 deed which plats approximate location of the easement.

Mr. Conti asked why the Jacques do not put in a road to the rear (to access the rear acreage).

Attorney Marshall noted the building of a road to the rear property would impact the Town greatly. By developing the rear it could enhance the opportunity to develop far more lots than to allow this variance request.

Mr. Conti feels the Board should adhere strictly to the 300 ft. frontage requirement.

Attorney Marshall stated that this is a difficult situation and Mr. Conti agreed that the road would open up the backland. Mr. Conti also stated there would be other ways to open up the rear.

Attorney Marshall stated it would be more likely (to open the backland to development) if the road goes out to it. She further stated there were two families in occupancy prior to the ordinance; there were always two families. The design was for two apartments; there are two septic systems, two wells; it was unique in that it was two family prior to the Ordinance. As a pre-existing two family dwelling this has a minimal impact.

Mr. Daly requested the Board stick to the issue at hand and not get ahead of themselves.

Mr. Chagnon stated the plan shows the property located at North Road and owned by Tiffany Trust. Mr. & Mrs. Dennis Jacques currently live there. The parcel was subdivided in the mid 80's and is bordered on the West by land owned by the Jacques Family Trust, and bordered by James Nupp and Richard Maresca. The lot is 7.5 acres and the subdivision proposes a single family lot. The two lots comprise one of 3 acres and one of 4.6 acres. This meets the ordinance and the division is consistent with two family lots for more than the required acreage. The plan falls down for a special exception for frontage.

Mr. Conti asked if the 4.6 acres is for the duplex and the 3.0 for the remaining single family lot.

Attorney Marshall noted that there is no proposed road in this plan.

Mr. Chagnon stated the Jacques had appeared at the Planning Board with a different proposal and the Planning Board wanted this as a proposal. Denise and Denise Jacques are Trustees of the Tiffany Trust.

Mrs. Nupp stated that she was concerned about the access to the backland and was confused about the ROW and what the impact would be to her abutting property. She asked if the removal of the trees and the stone walls would be possible.

Mr. Chagnon stated the ROW gives the right to pass and the deeded ROW gives ownership also. The backland is given ownership to the road from the backland. This was used as a cow path; and the stonewall is also Nupp property boundary. No one has the right to remove a stonewall. The use would be as a driveway and the right to cut trees within the ROW is preserved.

40 acres of backland owned by the Jacques Family Trust does not abut a roadway at any other boundary.

The ROW would provide only a driveway because it is not 50 ft. wide as required. This could only service one house.

Attorney Marshall stated it could be possible to put a road down to the backland and deed the 30 ft. simple fee; but it is less likely to happen.

There was discussion about why and how the backland could be developed.

Mrs. Nupp asked what the intent was to utilize this backland.

Mr. Curtis Jacques stated this would remain in the family.

Mrs. Nichols-Kiley asked if there would be covenants to the newly created lot.

Attorney Marshall stated the potential builders on this lot are present. They stated they want a three-bedroom saltbox and garage.

Attorney Marshall stated there could be deed restrictions showing the placement of a potential house.

Mrs. Nichols-Kiley noted that people apply for 3, 5 or 10 ft. variances; but this is 40 ft. short.

Mr. Daly again asked that the issue of the request be addressed.

Attorney Marshall noted the two family pre-existed the ordinance of today, and the use proposed would have the least impact on the Town. It would be in conjunction with the flavor of the community and as such it would be difficult to change the backland. An easement could be difficult to obtain if Lot 2 were non-conforming. Protecting the rear by granting Lot 1 is in keeping with the community needs. The hardship is addressed through the pre-existing ordinance and having the least impact of the property.

Mrs. Nichols-Kiley inquired as to "hardship".

Attorney Marshall read the responses to the five criteria from her application.

Mr. Daly asked about how pre-existing.

Attorney Marshall stated the duplex is now pre-existing.

Mr. Conti noted that if subdivided, it will create a non-conforming lot.

Attorney Marshall noted the Jacques family controls the frontage and backland, and the bigger development would not be difficult.

Mr. Conti noted the pre-existence does not give a privilege to make a non-conforming lot.

Attorney Marshall stated it doesn't take much insight to see that there is less impact this way, (as proposed), deeding was offered and it would be more difficult to develop if allowed. She noted that the Jacques Family are aware of some anger over how the UNH property came to fruition. She stated this is clearly the least impact.

It was clarified that there is 43 acres in the backland and 7 acres in the frontage. There is no merger of title now.

Mr. Daly noted a hardship has an adverse effect and the family is not ready to concede there will not be more development.

Mr. Daly stated the Board cannot consider the rear property, the adverse effect has to be with the property noted on the application.

Attorney Marshall noted this property is pre-existing.

Mr. Chagnon stated this property is not shaped like the ordinance envisions. The requirement is two acres with 200 ft. The shape of the lot is area and less frontage. The Board has the flexibility with the intent of the ordinance.

Mr. Conti said the shape of the land doesn't forbid facing the house to a road going in to the rear.

Mr. Chagnon stated a cul-de-sac would give frontage. The Town would then have to go in to plow a big circle of pavement. The proposed would give the Town and neighborhood a better scenario.

Attorney Marshall stated that aesthetics can be considered versus a long road or cul-de-sac.

Mr. Chagnon noted the ordinance addresses frontage, it doesn't say how many roads would make up the frontage requirement.

Mr. Conti stated the roads would require 60 ft. of width.

Mr. Ciardelli asked if this is a meeting or discussion.

Mr. Conti stated this is a meeting, but it needs to be decided to continue or not.

Mrs. Nupp stated her concern is with the ROW and her property line.

Mr. Ciardelli noted this is a 20 ft. ROW and it cannot be a road, it can only serve as a driveway.

Mrs. Nichols-Kiley noted as the abutter on the other side, she is concerned with other issues. She is dealing with the unknown structure with no covenants. It would only be an understanding with no effect after the property is conveyed. If the variance does not pass and the desire is to develop she asked what the laws are to construct a road if it does not go in on the Nupp's side.

Mr. Conti stated a road has to be 50 ft. deep and has to have a 60 ft. ROW.

Mrs. Jacques stated they plan to keep it the way it appears today; they want to preserve the high standards of the neighborhood.

Mrs. Nichols-Kiley stated she doesn't understand the hardship.

Mr. Daly noted the hardship is the shape prior to the ordinance. There is no way that it would fit the ordinance as stated today.

It was noted the second driveway would also access the road through the existing driveway.

Mrs. Nupp stated she likes one house better than development of more to the rear, but further down, she sees the difficulty with putting in the road afterwards.

Mrs. Nupp noted that she has talked with Dick Maresca and he feels comfortable with Dennis Jacque's plan.

Mrs. Nichols-Kiley asked where the house would be placed on the lot if allowed.

It was stated it would be 130 ft. from the present house.

Mr. Kiley asked if perc tests were okay.

It was stated, yes, but it would require an above ground field which would blend with the sloping of the terrain.

The potential owner stated that he wants his privacy and he would strive to have his home blend with the neighborhood.

At 8:30pm there was a brief recess called to allow discussion among the applicants and attorney.

At 8:35 the meeting resumed.

Mr. Daly announced that the applicant is requesting to table this discussion for 30 days. This meeting will be tabled until June 23, 1994.

At 8:38pm there was a brief recess called to allow discussion among the applicants and attorney.

At 8:40pm the meeting resumed.

Mr. Daly announced that this Public Hearing for Dennis and Denise Jacques, Trustees of Tiffany Trust will continue to June 23, 1994 at 7:30pm.

The meeting was adjourned at 8:50pm.

Respectfully submitted,

Nancy J. Marden, Administrative Assistant