

June 10, 1993

East Kingston Board of Adjustment

Attending: John V. Daly, Chairman; David Ciardelli, Patricia Keans, Richard Smith and Joseph Conti

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

Public Hearing for Francis Colanton Mr. Daly read the public notice published for Mr. Colanton's application for a variance to Article III and V, Section A of the Zoning Ordinance. He seeks to build a golf course on Map 4, Block 1, Lot 16. (1993-01)

Mr. Colanton would be seeking a variance to allow a commercial use in a Residential/Agricultural Zone.

Attorney Robert Donovan was representing Mr. & Mrs. Colanton this evening.

Mr. Daly asked Attorney Donovan to address the reasons he would be seeking a variance.

Attorney Donovan stated although he wished he did not have to seek a variance, the Town of East Kingston does not permit golf courses in the Residential/Agricultural district. He described the small slice of land that is located within East Kingston and the large tract of property that is located within the Town of Kingston where the use for a golf course is permitted. The Town lines were shown clearly to the Board. It was noted that 32-33 feet of frontage exists on Route 107 (Depot Road) in the Town of East Kingston. It was stated that there would be no buildings constructed on this portion in East Kingston. The surveyor's figures stated that there are 35.37 ft. on Route 107. This property abuts the William DiProfio home, the Charles Monahan property to the rear and eventually goes down to 107A.

Mr. Conti asked where the green would be located; and then noted that there would not be a 100 ft. buffer between the green and the abutting property.

Mr. Daly said he understands the chicken and the egg problem here regarding the application to the ZBA and then to go to the Planning Board.

Mr. Smith, who is also Planning Board Chairman, stated that Mr. Colanton had appeared for a preliminary hearing at the Planning Board and they sent him to the ZBA; the same as the previous application for the East Kingston Golf Course.

Mr. Daly noted the buffer zone which only the Planning Board can waiver.

Mr. Donovan said the ZBA cannot go into the Planning Board affairs and at this time, they are only seeking a variance to get the use here. The Colanton's would then have to go to the Planning Board and address their requirements.

Mr. Daly stated his concern with getting the waiver. He stated the ZBA may grant conditional on the Planning Board's granting of a waiver.

Attorney Donovan stated he did not want a discussion about Site Plan Review items at this hearing.

Mr. Ciardelli said the Site Plan Review would be up to the Planning Board, we only need to see the siting of the Golf Course.

Attorney Donovan said they need a use variance. He noted that this use and this site would be the best possible scenario to meet the five criteria for granting of a variance. He noted the unique characteristics; the division by the Town line; the 35 ft. frontage; the fact that no other piece of ground in East Kingston has this detriment; that the hardship is inherent in the land only.

Attorney Donovan asked the Board to consider these points: The rest of the property is in a zone where the Golf Course is permitted, it will be going in; it is permitted by the Town of Kingston. Generally the property values increase with a golf course. It preserves open space, there will be not buildings in East Kingston, this is not a "bad" commercial use. Residential/Agricultural is premised on keeping open space. The hardship is clear. The combination of the Kingston ordinance dovetails in harmony with East Kingston's ordinance.

Attorney Donovan addressed each of the five criteria:

- There would be no hurt to surrounding properties; majority of land is within the Town of Kingston and the use proposed cannot diminish the property values.
- Although it is a commercial use, the furtherance of the spirit and intent of the East Kingston ordinance preserves open space in this instance.
- The Board agreed this is a different parcel and is unique. The parcel extends over to East Kingston by history. The size, shape and topography distinguishes this parcel from other properties and therefore, has the elements present to meet the hardship tests.
- All other uses would require a variance, not to permit open space use would be injustice.
- The Board determined that this criteria was met and sufficiently addressed under Criteria 2.

Ms. Keans asked how much area is within East Kingston.

It was answered 15.9 acres.

There were no further questions.

Mr. Daly stated that the Public Interest is served in that it preserves open space.

Abutters Joseph Murphy, 144 Depot Road, directly across the street from the proposed golf course, asked if Mr. Colanton owns the property now.

Attorney Donovan stated the property is under a purchase and sales agreement with a closing expected on July 1, 1993. He said there is no way to back out of this agreement and it will be transferred to the Colanton's.

Mr. Murphy said no one could convince him that there would be no impact. He cited many automobiles, members and guests. There would be no quiet. He noted he has a new home and the extra traffic and noise would be detrimental to his property. He also noted concerns with alcohol consumption. He stated this use would not be conducive to the neighborhood. He submitted several documents to Mr. Daly at this time.

Mr. Murphy stated the allowing of this commercial development would ruin the neighborhood.

Mr. Daly stated that the applicant has stated the values may increase or remain neutral.

Attorney Donovan said the Board should only address the five criteria.

Mr. Murphy stated the Planning Board of Kingston would be meeting again on July 6th. The hearings there are not finished.

Attorney Donovan said it is his understanding that the course is a permitted use and there would be no need to go before the Kingston ZBA. He said they would require a Site Plan Review in Kingston for the Planning Board process.

Mr. Murphy stated at the Planning Board in Kingston they said there would be no change in the building and the present driveway. The snack bar would be built in the present barn. He noted this is a residential driveway and he had concerns that it could handle the increased traffic loads.

Mr. Daly stated that this is not the issue before the Board this evening.

Mr. John Ryan, 144 Depot Road, said Attorney Donovan stated that Kingston allows the course; but he feels it is zoned Residential/Agricultural and he understood it is scheduled for the ZBA in Kingston. He said it is open space now, granted or not, it is still open space. He noted the values were not his biggest concern, he is concerned about his peace of mind and the traffic.

Mr. Conti stated that East Kingston was not concerned by the Kingston issues.

Mr. Ciardelli stated that he is concerned that if this is a "done deal" in Kingston, that it may have an effect on this decision. He asked if things were yet to happen in Kingston, would the applicants go forward to Kingston and say East Kingston has already approved.

Attorney Donovan stated that the course is not approved yet in Kingston. He relied on the information he received from William Bartlett, that the applicants would not have to go to the Kingston ZBA.

Mr. Daly asked if something (application) was filed with the ZBA (in Kingston).

Mr. Murphy said no, they went to the Planning Board hearing.

Mr. Daly stated there are no applications before the Kingston ZBA.

Mr. Murphy cited the covenants that were attached to his property in that for seven years it could only be used Agricultural/Residential and asked if the same covenants were attached to the Anderson Farm site.

Mr. Daly said this is also a Planning Board issue.

Mr. Ryan said this is a Residential/Agricultural zone and they are being allowed to put in a golf course which is neither one.

Mr. Daly then said the golf course is a permitted use in Kingston.

Mrs. Keans asked if it was possible that the siting of the green might change at the Planning Board stages.

Attorney Donovan said no, its is a cluster package and structured pretty much the same for golf courses, it takes much space to build the greens and changes were not possible.

Mr. Murphy stated they have attended many hearings and proponents will tell you anything and then do what they want.

Attorney Donovan stated that he had no further comments.

Mr. Conti said he had the impression that should a variance be granted there would never be any houses permitted to be built in East Kingston.

Attorney Donovan stated the variance was not for building, only for the purpose of constructing the golf course.

Mr. Ciardelli noted there will be a number of other considerations in Kingston and East Kingston and our variance would mean nothing as the construction may be overcome by other events.

Attorney Donovan agreed, many things could change.

Ms. Keans questioned if the Board could grant a variance to an option holder.

Attorney Donovan stated that Mr. Colanton has a firm binding contract and the sale from UNH has to go through.

Mr. Daly reread the variance request.

Mr. Smith motioned to grant this variance.

Mr. Conti second.

There was no discussion.

The variance was granted 5-0.

Questions were taken from abutters regarding the Rehearing process.

This Public Hearing was closed at 8:15pm.

Public Hearing for Timothy A. Bodwell Mr. Daly read the hearing notice from Mr. Bodwell who is seeking a Special Exception to allow two family dwellings on one parcel of land. This would conform to Article VI, Section G.

1993-02

Mr. Bodwell addressed the criteria noting that he can meet the criteria, except for the septic system at this time. He is awaiting the okay from the State to the submitted design to allow for multiple family use.

Mr. Bodwell noted that he has a two bedroom mobile home and a three bedroom house which are separated by a garage.

Mr. Bodwell submitted a plan that shows the proposed septic system.

Mr. Daly asked if the mobile home has two bedrooms.

Mr. Bodwell stated yes.

Mr. Conti asked the distance between the mobile home and the garage. It was determined that it is 38 ft.

Mr. Daly asked how there happened to be two dwellings on this property, did Mr. Bodwell just build his home.

Mr. Bodwell said yes.

Mr. Ciardelli asked if he lived in the mobile home prior to building his house. He said he drove by often and figured the mobile was just temporary.

Mr. Bodwell stated he hoped the mobile was temporary and he would be will to design something that would meet the requirements so he could eventually built a garage with the apartment overhead. He said his friend needed a place to live and therefore he is living in the mobile home.

Mr. Conti asked if this were an application for a temporary or permanent exception.

Mr. Bodwell answered, temporary, until they move out.

Mr. Ciardelli stated this is not a duplex. There is a mobile home and a house, and there is a sketch to show something else.

Mr. Daly said the Board has no choice on this basis, we are bound by these conditions in the ordinance.

Mr. Bodwell said he would satisfy the criteria by attaching the dwelling with one roofline.

Mr. Smith stated this would not be one dwelling with two living areas according to the terms of the ordinance.

Mr. Daly stated that two buildings with one lot is certainly different.

Mr. Conti stated in the past, it has been accepted when the trailer moves. It is temporary, but you can add two bedrooms on the mobile home and it becomes a house. In the temporary situation, the Board would allow the occupants to stay and when they move out, the mobile home goes.

Mr. Bodwell said that was his intent, then he would like to build over the garage according to the sketch he submitted.

Mr. Daly stated the Board has no authority to grant a temporary exception.

Mr. Conti cited several cases in the past that were granted exceptions until parties either deceased or moved.

Mr. Ciardelli asked if this was during the construction of a house.

Mr. Conti stated not in all cases, the house was already there on Depot Road.

Mr. Ciardelli said looking at a special exception based on what is in front of the Board now it is not possible to grant.

Mr. Bodwell asked what constitutes a residential building, putting a roof over?

Mr. Conti said the ordinance has a tendency to not state one dwelling.

Mr. Smith stated that in this instance one is a trailer and one is a house, and there is no other cases known that are the same as this.

Mr. Ciardelli stated if this was a duplex and all other criteria were met, it could be granted. However, even under the broadest sense, it doesn't meet the duplex definition.

Mr. Conti told Mr. Bodwell that he has asked him twice, and each time Mr. Bodwell said the trailer was going. Mr. Conti stated Mr. Bodwell could subdivide the land and have the trailer on one lot and the house and garage on another.

Mr. Daly stated without further information, the application is denied because the applicant cannot meet the criteria of the ordinance.

The application was denied.

The Public Hearing was closed at 8:35pm.

The meeting was adjourned at 8:45pm.

Respectfully submitted,

Nancy J. Marden, Administrative Assistant

Typed: June 14, 93