

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

June 13, 2013
7:00 pm

MINUTES

Continued 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: Applicant Bradley Jamieson, former East Kingston (EK) Building Inspector Ray Donald and former East Kingston (EK) Planning Board Chairman Ed Warren.

Mr. Daly opened the continued hearing for the East Kingston Zoning Board of Adjustment (ZBA) at 41 Depot Road (Pound School) on June 13, 2013 at 7:00 pm. Mr. Daly acknowledged that applicant Bradley Jamieson was in attendance, as well as Mr. Ray Donald and Mr. Ed Warren.

Mr. Daly stated that at last month's meeting, the Board had decided they needed more information to make an knowledgeable decision. They requested Mrs. White to assemble information from the start of Mr. Jamieson's application to the Planning Board to the present time so they could track the process and ascertain how the situation got to the point Mr. Jamieson was required to seek an equitable waiver of dimensional requirements for the location of his greenhouse at the 14 Powwow River Road location.

Mr. Daly reminded the Board this was a waiver and not a variance, so there was a different set of questions the Board would need answers to for them to make a decision.

The questions are as follows:

1. Was the nonconformity discovered after the structure was substantially completed?
2. Did the violation result from a good faith error in measurement or calculation and not as a result of ignorance of the law or bad faith?
3. Is it true that the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area?
4. Is it true that the cost of correction far outweighs any public benefit to be gained?

Mr. Jamieson brought a drawing of what the greenhouse was to look like, which was the plan he had shown the Building Inspector.

Mr. Daly noted some of the first questions the Board had asked were: had a measurement been done at the time, was there a plan that showed where the location the greenhouse was supposed to be, and how did the building permit get issued? He asked Mr. Donald to address these questions.

Mr. Donald noted that there was no requirement for surveys or dimensions to be reviewed by Building Inspectors. He had issued the building permit for the greenhouse based on good faith, and watched it being built. According to Mr. Donald, the only person who had had an issue with the location was the Circuit Rider. Ms. LaBranche had called the State, who had come to look at it on two occasions, and they apparently had not had any problems. After that, no one seemed to have a problems with it until it was 95% complete.

Mr. Daly asked when he issued the permit, what was Mr. Donald working from? It appeared he had to have some idea of where it was to be located.

Mr. Donald stated he looked at the street, he looked at the edge of the property, and looked at the building permit application. He was familiar with the work that was done by the Planning Board, and saw nothing wrong with the application.

Mr. Daly asked if the application stated where it was to be located.

Mr. Jamieson stated he noted on the application 31' from edge of pavement on one end and 32' from edge of pavement on the other. Mr. Daly noted there were no measurements on the application. Mr. Jamieson stated then it must have been in conversation with Mr. Donald. The ordinance had stated 25' and he had pointed out it was more than that - with the 31' and the 32' measurements.

Mrs. Belcher reiterated that Mr. Donald had reviewed the location of the greenhouse in comparison to the distance from the road, and in his opinion (without measurement) it was going to be located in the appropriate place.

Mr. Donald answered yes.

Ms. Belcher stated that was the good faith of the applicant believing he was putting it in the right place.

Mr. Donald said both of them believed it was in the correct place. He stated that when Mr. Jamieson first came to the Board, he had shown pictures of the greenhouse he had built at his own residence and indicated it was the type of greenhouse he wanted to build in the Powwow River Road location. There should have been no reason to believe what he wanted to build was to be temporary.

Mr. Allen noted that the measurement was taken from the edge of the pavement, and asked if that measurement was taken before the deceleration lane was required to be installed. *Mr. Jamieson stated that was true.* The plan Ms. LaBranche was referencing appeared to have the measurement taken from the edge of the deceleration lane.

Mr. Falman stated the June 21, 2012 minutes referenced the deceleration lane required by the state, but there was no request by the Planning Board for an updated drawing.

Mr. Warren noted there was confusion on both sides. Originally the Planning Board thought the greenhouse was not going to be a permanent structure, although Mr. Jamieson had never stated that. As things got built, there were questions raised about the materials used on the parking lot, water run-off, etc. Changes were being made that were different than the originally-presented plans. Mr. Jamieson provided information to the Board, and unfortunately when the greenhouse was built, it ended up not being the measurements that were required. There was no problem with it other than it did not meet the measurements; there was no intent of doing it wrong. By the time the Board saw the final plans, they thought the cost of rectifying it would far outweigh what they would get out of it. He admitted there was some miscommunication both from his side of the Board and from Brad's side. Everything they asked Mr. Jamieson to do, either from the Planning Board side or the Fire Department side, he had bent over backwards to accommodate. When the Board realized the measurements were incorrect, they directed Mr. Jamieson to the Zoning Board for the waiver. Mr. Donald agreed that both the Planning Board and Mr. Jamieson had acted in good faith.

Mr. Daly asked if it was fair to say a permit was applied for, a measurement was done, and subsequent to that the state imposed a requirement for a deceleration lane, which affected the measurements. No one picked up on that until the final plan was submitted. *Mr. Warren agreed that was what had happened.*

Mr. Falman noted his comment could be more of a learning curve for the Planning Board in the future. That when something of that magnitude is made, like a deceleration lane being added, a new plan should be submitted. Mr. Warren noted that at the time this plan came in, the Board had consisted of all new people and they should have done that, but did not.

Mr. Falman asked for corroboration that on July 3, 2012 when Brad submitted the permit for the greenhouse, there was no plan submitted with it.

Mr. Donald answered there was not a plan with the permit, but Mr. Jamieson had shown him the drawing of the greenhouse the Board had seen tonight, and he had seen the original photographs, so he knew what he wanted to build.

Mrs. Belcher noted that the bottom line for her was that the error was made in good faith. All she needed was the testimony of the Building Inspector who gave Mr. Jamieson permission to pour the concrete and put the greenhouse there. Regardless of whose fault it was, the bottom line is it would not be unreasonable for Mr. Jamieson to believe he was putting a structure up in a position where he was getting approval by an official of the Town.

If measurements weren't done, it would not be the responsibility so much of the property owner if he misunderstood that; in her opinion it would be the Building Inspector. She realizes Mr. Donald had noted that it was not his responsibility for those measurements, but she also believes if there was any culpability about where it should have been or not been, she feels it lies with the Building Inspector.

Mr. Donald did not object to Mrs. Belcher's opinion, but noted that when you look at the codes, no matter what the Building Inspector does, the builder or property owner has the ultimate responsibility for compliance. In his opinion, Mr. Jamieson did everything he could to comply with everything that everyone asked of him.

Mr. Ciardelli compared it to an analogy of the process for a septic system - you submit a design to the state, benchmark, elevation, and the state sends it back approved and you build it. When the State Inspector comes, he does not come with surveying equipment; he looks to see if you built it according to the approved plans.

Mr. Allen noted that when you compared the two drawings, the one without the deceleration lane and the one with it, you could easily see where the discrepancy arose. He wondered if there was a way to better educate people when they got a building permit to ensure they measured from the correct spot.

Mr. Donald noted that other towns have code or ordinance requirements that a surveyor's plot plan is necessary before you do anything that's approved on a building permit.

Mr. Daly reviewed the questions and the Board's answers.

1. Was the nonconformity discovered after the structure was substantially completed? YES
2. Did the violation result from a good faith error in measurement or calculation and not as a result of ignorance of the law or bad faith? YES
3. Is it true that the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area? YES
4. Is it true that the cost of correction far outweighs any public benefit to be gained? YES

Mr. Daly asked for a Motion.

MOTION: Mrs. Belcher **MOVED** that the board grant the Equitable Waiver of Dimensional Requirements under Article IX, Section C of the Zoning Ordinance for Bradley Jamieson with respect to property located at 14 Powwow River Road, East Kingston, NH (Tax Map 10, Block 3, Lot 9) as it related to the location of the greenhouse; Mr. Falman seconded. The vote was five “ayes” and the motion carried.

Mr. Daly closed the meeting at 7:30 pm

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

John Daly
Chairman