

June 23, 1994

East Kingston Board of Adjustment

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

The Meeting was called to order at 7:31pm by Chairman Daly.

(1994-03)

Chairman Daly stated this is a continuation of the Public Meeting 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.

Mr. John Chagnon of Ambit Survey; Keri Marshall, Attorney; Dennis Jacques, Denise Jacques, Carol Nupp, Curtis Jacques, Virginia Nichols-Kiley and James Keegan; and several other persons unknown to the Secretary were present.

Mr. Daly prefaced the opening with a statement that the Board would hear the application from the beginning as there is one Board member sitting this evening who was not present at the hearing in May.

Mr. Chagnon, Ambit Survey, gave an overview of the site. It is 7.5 acres located on Route 108, North Road. Mr. Chagnon described the surrounding properties. It was stated that the Jacques had approached the Planning Board for a subdivision under preliminary discussion and determined that the best approach was as submitted to the Board this evening. There is a deficiency in the frontage for Lot 2. There is a requirement that duplexes must have 300 ft. of frontage, and the plan shows 256.53 as the total proposed frontage for Lot 2. The frontage for Lots 1 and 2 show only two driveway cuts. The state would not allow a third cut. Access to Lot 1 would be obtained through an easement from the existing driveway. This easement would be from the second driveway already in place. This arrangement is acceptable to the state.

Mr. Chagnon stated he has included a second sheet this evening which give more detail on topo for Lot 1.

Mr. Daly asked about the distance of frontage for Lot 2.

Mr. Chagnon stated the frontage is proposed at 256.53 feet.

Mr. Daly noted the request is for variance from Article VI, Paragraph A only. This speaks to the frontage only.

Attorney Marshall stated that Article VI, G. 4 is not required by this Board.

Mr. Daly asked about Article VI, paragraph G. (addressing the permitting of two family dwellings).

Attorney Marshall said this was not necessary as this was a compliance prior to the zoning. Either lot could require a variance for frontage at this time.

At this time Attorney Marshall defended the present existing two family dwelling and its status as existing. She noted the subdivision of the property would not be adverse to the neighborhood and the proposed development of the land would be in keeping with the surrounding properties.

Mr. Boudreau questioned if the variance to have a duplex on less that 300 ft. of frontage would open the door for anyone who might come and they could expect to be treated similarly.

Attorney Marshall stated this would have to be resolved by each individual situation.

Mr. Ciardelli noted that the ordinance provides for a special exception for duplexes and they are allowed.

Attorney Marshall stated this is a unique situation in that there is not another lot with 500 ft. for a duplex. She stated this is unique as it has a potential to develop the back land without a variance.

Mr. Boudreau noted that a road could be still put in after a variance was granted.

Attorney Marshall noted the property would have to be non-conforming until the road was constructed.

Mr. Chagnon noted the ordinance represents the ability to do something with the property.

There was some discussion about a possibility of putting a road to the rear acreage.

Mr. Curtis Jacques (owner of the rear acreage) stated if the variance does not go through, he would be forced to put a development in the rear. He noted this would not be the first time a variance has been granted.

Mr. Conti stated he does not feel there is a hardship in the land. There is 500 +/- feet of frontage available. There would be no hardship as there could be constructed a cul-de-sac placed to create the required frontage. He said he would rather see the house (Lot 1) on a cul-de-sac to eliminate the entrance onto Route 108 from a driveway.

Mr. Curtis Jacques stated the common driveway would be used to access the newly created lot.

Mr. Boudreau asked why Curtis Jacques would be forced to develop the rear land if the variance was not granted.

Mr. Curtis Jacques stated that he would be forced to cluster develop to get his money back from it.

Mr. Conti noted that, forced or not, Mr. Jacques was able to do just this, develop if he so chose.

Mr. Dennis Jacques stated that the construction of a 100 ft. cul-de-sac would be just too costly.

Attorney Marshall again related the frontage of +500 ft. and total of 7.5 acres, duplex is built. The duplex would have 250 ft. +/- which is more than the requirement for a single family of 200 ft.

Mr. Daly stated that by creating the subdivision, they are creating a new lot. This then makes the duplex come under the Article VI, G. He noted he is not sure that the Board could grant a variance from the Special Exception ordinance. He stated this would require a Special Exception and obviously the site would not qualify.

Mr. Chagnon noted the ordinance calls for 300 ft. frontage and 3 acres for a duplex and to get a Special Exception they must meet all seven conditions.

Mr. Daly again stated he did not think the Board could grant Special Exception status with a variance.

Attorney Marshall stated she felt they could grant a variance from the Special Exception.

Attorney Marshall noted that Lot 2 has 4.59417 acres, more than the requirement for a duplex and more than the requirement for a single family home. She stated there can be a variance from anything (written in the ordinance).

Mr. Daly stated he differs with Attorney Marshall's statement. He said a Special Exception merited a variance from the strict application of the ordinance.

Attorney Marshall stated she still feels a variance can be granted from the Special Exception (compliance).

Mr. Daly invited abutters' comments at this time.

Mr. Conti stated the Board cannot give variance to Special Exceptions according to the Ordinance. He noted the voting body of the Town has adopted the ordinance as it is written.

Attorney Marshall also noted that the voting body votes in the Zoning.

Mrs. Nichols-Kiley addressed the Board as an abutter. She said she finds a stretch of the imagination on the grounds of hardship. She noted the cost of purchase and the taxes were known at the time of purchase; they were aware they were buying a house with 7.5 acres. She feels that this combination denotes someone was doing very well and it would be hard to grant a variance on hardship. She noted the rear property is entirely separate. She feels it would be a big leap to believe there is a hardship in this instance.

Mr. Dennis Jacques stated that he never inferred a financial hardship.

Mr. Daly explained the concept of hardship as it relates specifically to the land.

Mr. Boudreau stated he feels Mrs. Nichols-Kiley got the financial inference from the statements made by Mr. Curtis Jacques.

Mr. Daly noted the financial aspects would not be the point of the Board's interpretation if they granted the request.

Mrs. Nichols-Kiley noted the property was owned by UNH and if the property had been owned by others, the two family issue may have been handled differently.

Mr. Dennis Jacques noted the duplex was not built by UNH, but by Mr. Hinman and then donated to UNH. He gave a brief history of the benefactor reasoning.

Mrs. Nichols-Kiley asked if the Board grants because of the lack of frontage, could it be anticipated that others might expect to have the same privilege. She felt zoning was in place to meet the requirements.

Mrs. Nupp asked why the lot was put up for sale prior to the appeals. What benefit was derived from putting it for sale prior to coming to the Boards.

Mr. Dennis Jacques stated it was mainly time, he wanted a buyer ready and if granted, the buyer could proceed with development before winter.

Attorney Marshall noted at that time, Mr. Jacques was not sure what he would be seeking, a variance for Lot 1 or Lot 2. Having a buyer clarified the issue.

Mr. Ciardelli noted this hearing is taking a different tact from the first meeting. When Lot 1 is created, Lot 2 is deficient. The requirement for a duplex is a Special Exception and he stated he is at a loss if they require a variance or Special Exception.

Mr. Conti stated he sees no justice for the Town. This creates a substandard lot for the duplex. There is no hardship in the land. They are able to make 300 and 200 ft. of frontage.

Mrs. Nupp asked if Mr. Conti is indicating they put in a road for frontage.

Mr. Conti restated the cul-de-sac arrangement.

Attorney Marshall noted there would be more road for the Town to maintain and to plow if this was done.

Mr. Boudreau said he doesn't see the land hardship. He noted there would be potential for three lots with a road.

Attorney Marshall noted the Board could take in totality, she noted the configuration and size of the lot.

Mr. Dennis Jacques stated they could have three lots with the road.

Mr. Boudreau noted the rear property can be accessed even if a variance is granted. This is manipulating a hardship.

There was again discussion about existing and grandfathering of the duplex.

Mr. Daly stated he was not sure if grandfathering was retained once it was subdivided.

Mr. Conti stated the Town agreed to the duplex; but they didn't agree that a subdivision would continue the grandfathering.

Attorney Marshall stated it doesn't say 'grandfathering with providers'.

Mr. Daly discussed the legislative powers and the strict limitations the Board has to follow.

Attorney Marshall stated that this plan was expected to give the Board the greatest comfort level. She stated the applicant is willing to deed with indication that there will be no further subdivision and Lot #2 will stay as it is.

Mr. Daly again questioned why there would be provision for Special Exception if you were able to grant a variance.

There was some discussion about the merits of variances if there were no provisions for Special Exceptions.

At this time there was no further discussion from either the Board or abutters.

Mr. Ciardelli motioned to approve the application for variance as requested.

Mr. Boudreau second.

The motion passed 3 to 1. Mr. Conti dissenting.

Mr. Daly noted that he has serious doubts with the variance granted if it proves not to be legal to grant a variance when Special Exceptions are in the ordinance.

Mr. Daly stated he is not sure what was gained by the variance just granted.

The meeting was adjourned at 8:50pm.

Respectfully submitted,

Nancy J. Marden, Administrative Assistant