

Town of East Kingston, New Hampshire Zoning Board of Adjustment Official Meeting Minutes - June 24, 2021

The Town of East Kingston Zoning Board of Adjustment met at the Pound School in East Kingston, July 22, 2021 at 7:00 PM. The meeting was also available via Zoom.

Chairman Allen opened the East Kingston ZBA Meeting at 7:01 and introduced himself. He explained that Mrs. White, the ZBA Secretary, had experienced a family issue that prevented her from attending and that he would be absorbing her administrative duties this evening.

Chairman Allen conducted role call: Tim Allen Chairman, Ed Robbins Vice Chair, Paul Falman, Frank Collamore, and Nate Maher were all present. Dave Ciardelli was not present.

Chairman Allen appointed Nate Maher to a full member to fill the role of Dave Ciardelli in his absence.

Chairman Allen asked for a motion to approve the May minutes as published in draft form. A motion was made by Ed Robbins, seconded by Frank Collamore. The motion passed by unanimous vote.

Chairman Allen explained the flow of the meeting to both the applicant and the public online. He explained that the board would open the meeting, the applicant Mr. Graham or his Attorney, Mr. Campbell would present their case, the board would then ask questions, there would be a public comment session, then any final board questions, the hearing would be closed, deliberation would take place, and the board would work toward a decision and vote.

Chairman Allen opened the continued public hearing of *Case #21-02* – Brian Graham, 128 Newton Road, Plaistow, NH who requests variances for property located at 4 & 6 Cove Rd. East Kingston NH (MBL 02-01-32 and MBL 02-01-32) from the provisions of Article VI.E.3 septic leach field setbacks from poorly/very poorly drained soils; Article VII.D.6 General provisions -septic leach field boundaries setback from property line and private wells; Article IX.A.1 Lot area and yard requirements - for contiguous frontage requirement; and Article IX.A.2 Lot area and yard requirements for minimum area requirements.

Attorney Bernard Campbell introduced himself to the board. He explained that Mr. Graham is the principle owner of one of the lots and is the owner through a business entity of the other lot. He explained the proposal before the board is the merger of two lots on the tax Map. He explained that the East Kingston ZBA had previously denied variance requests for both lots at different times in the past. One denied in more recent history and one denied a number of years ago. Mr. Graham was recently denied a

variance to one of the lots and was able to secure the adjoining lot of record, which also has a denied variance request in past history. This proposal is to merge the two lots into one which would create a single lot and in the process solve a problem for the Town of East Kingston. He went on to say, this process would create a lot that is larger in size than the two independent lots and larger than some of the surrounding lots. It would also solve the problem of the ancillary structure on one of the lots with no primary use. By allowing a variance, the structure would become an accessory structure to an approved use, which solves the zoning issue for the town. This proposal eliminates the two smaller lots by combining both into one larger lot. Both lots have denied variances so Mr. Graham is trying to get a reasonable use. Mr Graham went on to describe the overall size of the combined lot. He acknowledged there were significant wetland areas to the rear but that the front portion yielded a large dry area. The proposed structure would meet all setback requirements and would fall within all setback requirements.

Mr Ballquist (septic system designer) was introduced and subsequently passed out copies of the septic /plot plan.

Attorney Campbell went on to describe the lack of required frontage of the combined lots, 152' vs. the town required 200'; the combined area of 21,580 sq ft vs. the town required 87,120 sq ft; the 10' setback of the septic leach field to a property line compared to the town required 20'; and lastly, the 46' septic leach field setback to poorly drained soils compared to the town requirement for 50'.

Attorney Campbell presented the application and how the applicant met the required five variance criteria;

Granting the variance would not be contrary to the public interest:

This criteria is judged by whether the proposal results in a risk to public health, safety or welfare, and/or would impact character of neighborhood; the new house meets setbacks, and will have state-of-the-art septic system. The combined lot size would not be out of character for this area. They do not believe any health or safety risk exists. Nor do they feel this project would result in an out of character situation for the neighborhood.

The spirit of the ordinance is observed because:

The lot size dimensions were enacted prior to the development of this area; the proposal merges two (2) existing small lots into a lot which is consistent with the area size; the septic system setback relief is minimal, and is believed to adequately protect to the adjoining wetland; the front line setback is to the street and not an adjoining property.

He asked the board to consider why the town has the ordinance. Will the variance do damage to the ordinance? They believe the ordinance is to protect surrounding properties and wetlands and that the proposal will do just that. They are merging two

undersized lots into one lot, that although is still undersized, is larger than most in the neighborhood.

Granting the variance would do substantial justice:

The lots in question were created for possible use of residential activities. The proposal combines two (2) lots and allows the owner to utilize the combined parcel; there is no apparent gain to the community to deny the request.

The owner has two parcels, one vacant and one with a structure; neither have a reasonable use. They would like to combine them in to one lot that is closer to conforming. They believe the community loses by denying the variance in that the community is left with two vacant lots.

For the following reasons, the values of the surrounding properties will not be diminished:

The construction of a single family home will be consistent with the residential zoning and surrounding area. It could increase the value of surrounding properties.

They believe that allowing the construction of a house to support the accessory structure would actually enhance the property. Because they believe the existing stand alone structure could actually damage the values of surrounding properties. They are asking for a permitted use; the construction of a residential house.

Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The lot size and frontage requirements were adopted before this area was fully developed. The septic system setback is minimal, and mitigated by enhanced wastewater treatment technologies.

b. the proposed use is a reasonable one because:

It involves a merger to eliminate two (2) substantially undersized lots, with a single lot of similar size to abutting properties.

It will allow existing garage to become an accessory structure, resolving an outstanding zoning issue.

Attorney Campbell: We have two small vacant lots. Most other lots in the neighborhood have been developed. The town has denied variances on both lots in the past because

in the towns wisdom it felt the lots did not meet variance criteria. Now we are combining them and the town has an opportunity to fix this zoning issue.

Attorney Campbell: Both the lot size and frontage requirements of the ordinance was created for an area that is not this area. The general purpose of the ordinance was not created for this area due to its close proximity of all the other lots. Therefore we believe there is no substantial relationship between the ordinance purpose and these particular lots.

Attorney Campbell: We propose a state-of-the-art septic system.

Attorney Campbell: We do believe the proposed use is a reasonable one because it eliminates two undersized lots combined into a larger one. This proposal would allow the ancillary structure to become an accessory structure. So, we believe this proves we meet the hardship criteria.

Attorney Campbell: They believe these lots were created to allow a house to be constructed.

Chairman Allen: asked for clarification if the lots had already been merged.

Attorney Campbell: stated that the lots had not yet been merged and their intent was to do so with the planning board after variance approvals are conditional on obtaining merger approval from the Planning Board. He stated the applicant wishes to pursue this path so that if for some reason the variances were not approved the owner would still have two independent lots.

Chairman Allen went on to read for the board RSA 674:39-A

Voluntary Merger:

I. Any owner of 2 or more contiguous preexisting approved or subdivided lots or parcels, who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the Planning Board or its designee. Except as set forth in paragraphs II and III, all such requests shall be approved, and no public hearing or notice shall be required. No new survey plat needs to be recorded, but notice of the merger, sufficient to identify the relevant parcels and endorsed in writing by Planning Board or its designee, shall be filed for recording at the Registry of Deeds, and a copy provided to the Assessing Office. No such merged parcel shall thereafter be separately transferred without subdivision approval. No city, town, county, or village district may merge preexisting subdivided lots or parcels except upon the consent of the owner.

II. If there is any mortgage on any of the lots, the applicant shall give written notice to each mortgage holder at the time of submission of the application. The written consent of each mortgage holder shall be required as a condition of approval of the merger, and shall be recorded with the notice of the merger pursuant to paragraph I. Upon recordation of the notice and each consent, the mortgage or mortgages shall be deemed by operation of law to apply to all lots involved in the merger. The municipality shall not be liable for any deficiency in the notice to mortgage holders.

III. No merger shall be approved that would create a violation of then-current ordinances or regulations.

Chairman Allen opined that per the state statute, these lots are not mergeable because they create a violation of current ordinances. That is why the applicant is here today. By providing variances we are removing the ordinance conflicts that would currently prohibit merging of these two lots.

Mr. Falman stated that this requirement per the statute, is if you don't meet the requirements, you can't merge the lots.

Chairman Allen stated, yes, the state does not want towns to be creating more non-conforming lots. The long-term is goal to to evolve toward conformance. The statue is an attempt to ensure newly created lots by merging meet current ordinances. The way around that requirement is for the ZBA to grant variances, removing that conflict.

Attorney Campbell stated that he was a town attorney for many years. He went on to give a number of examples of merger examples of various scenarios.

Mr. Maher recommended that perhaps the board consider hearing and discussing the two variance requests that are directly tied to the lot merger. If the board can come to conclusion on the two variances that stand in the way of the merger, then continuing makes sense because the lot will actually be able to be merged. Then we could proceed with the remaining variances that would allow the structure to be built on the new non-conforming lot.

Mr. Allen clarified that in theory there are only two of these variance requests that stand in the way of merging the lots but the applicant has applied for four of them and we shall evaluate and hear all four. Hearing two of them tonight, the applicant going to the Planning Board to merge the lots and then having to come back to the ZBA for the additional two variances does not make much sense. For the record, the state law states that two non-conforming lots shall not be merged if they result in a non-conforming lot. The applicant has asked that we hear this case conditionally based on subsequent Planning Board approval of lot merger. Our town counsel has informed me that this is a normal course of action and there isn't anything inappropriate about the request.

Mr Allen asked about the poorly drained verses very poorly drained. The application stated the applicant is asking for a variance for 46' to poorly drained soils. However, our town ordinance requires that if wetlands are on the parcel and the septic system is within 75' of the wetland boundary, then the type of wetland needs to be further defined as poorly drained vs. very poorly drained soils so that the appropriate setbacks are maintained. Chairman Allen noted that the application does not seem to have this distinction.

EK Zoning Ordinance, Article VII General Provisions 7.a.2: If the proposed effluent disposal area is to be within 75 feet of a wetland boundary, then areas delineated as wetlands shall be further classified as having poorly drained or very poorly drained soils, in accordance with Env-Ws 1002.49, 1002.76, 1014.02, 1014.03;

Mr Balquist explained that the current plan only shows the poorly drained delineation but stated they had a letter from the certified soil scientist stating that the very poorly drained soil was 25' away from the poorly drained soils. There was further discussion adding the 25' to the existing wetland boundaries. He stated that NHDES will require the same info and he intends to add it to the septic plan.

There was further discussion to ensure everyone understood the math surrounding the setback numbers of the wetland verses the septic system.

Mr. Maher asked if it was normal for the very poorly drained soils to be a perfect 25' offset from the poorly drained soils as is being presented to the board. He asked for clarification that in this case the delineation between poorly drained and very poorly drained was a perfect uniform 25' around the entire perimeter of the lot. Is it truly a uniform 25' around the lot because that can cause certain areas to be tighter to setbacks than others.

Mr. Balquist referred to the soil scientist letter stating that the very poorly drained soils were 25' away from the poorly drained soils.

Chairman Allen stated that although the application only asked for a 46' variance to the 50' requirement, dependent on where the very poorly drained delineation actually is, the variance may actually be a 71' variance to the 75' required setback to very poorly drained soils.

Attorney Campbell agreed with the interpretation.

Mr Falman is uncomfortable with having a mixed type of poorly drained soil when we don't know the basis behind it. Is there any difference in requirements if you have good dry soil right up to the very poorly drained verses having poorly drained that slowly evolves into very poorly drained?

There was a short board discussion about some practical examples of soil types and the normal progression toward a wetland area.

Mr Maher stated there was an assertion made that the newly created lot would be larger than most other lots in the neighborhood. There's a broad variety of lots in the area. We are asked to consider the entire area around the lot in question. In one direction there are a variety of lots that are of similar size but in the other direction there are lots of much larger size. It's a bit of an over assertion to say this newly created lot would be larger than most in the area.

Attorney Campbell stated the larger lots were fronting on a different street but acknowledged that in the other direction the lots did get larger.

Mr Maher asked if they had done any investigation about other lots in the area that contained ancillary structures on a vacant lot. Attorney Campbell stated that they had not.

Chairman Allen asked for an overview of the septic system.

Mr Balquist described the system as a Presby Advanced Enviro-septic System. It's NHDES approved, about half the size of a standard size, requires 2' separation above the water table where others require 4'. He went on to describe the material makeup of the system piping components, described the sand, and system build specifications. Lifespan is 20 years and has been used in the state for many years.

Mr. Maher asked how common it was to design a system that as a condition of system design that the household must utilize low-flow plumbing fixtures. He asked how common it was to have a homeowner restrained by this sort of a restriction.

Mr Balquist stated that requirement was common and part of the NHDES approval criteria.

Chairman Allen stated he was a septic system designer and was familiar with the system type. He reiterated the major system components to ensure all board members were clear about the system architecture. He opined that 2' separation to seasonal water table was pretty small and enviro-septic does not have a great track record when that separation is so close.

Mr. Balquist stated that this system was actually the advanced version of enviro-septic.

Mr Falman asked the life expectancy. Mr. Balquist responded it was twenty years.

Mr. Robbins asked if this system has a continuously running pump like previous system designs. The applicant stated that was an old design and not part of this design or variance request.

Chairman Allen stated that all these septic system questions were all part of the board information gathering process but at the end of the day the variance evaluation will be based on the 5 variance approval criteria.

Chairman Allen asked for further clarification as to how this lot was unique or different from other lots in the area so that it was overly burdened by the ordinance and justified relief.

Attorney Campbell stated that there are at least two special conditions that make this property unique. The first is the merger concept. We are taking two undersized lots and

merging them into a larger one, still undersized but considerably larger. Second, the fact that this neighborhood is built out, we have vacant lots that are unable to be utilized for building.

Chairman Allen stated that while the presentation was being presented and we were discussing the earlier setbacks he noticed the town ordinance requirement for 3/4 acre of upland. In adding up the square footage of this lot it is apparent there isn't anything near 3/4 of an acre of upland. This isn't something we are going to deal with tonight but it is something to be investigated and that the town will need to deal with.

There was discussion of the ordinance section and all parties discussed the ordinance language.

East Kingston Zoning Ordinance Article VI Wetlands Conservation District

D. Special Provisions:

1. *Poorly drained soils may be used to fulfill all but 3/4 of an acre (32,670 sq. ft.) of any building lot required by the zoning ordinance provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all required utilities.*
2. *No very poorly drained soils or bodies of water may be used to satisfy minimum lot sizes.*

Attorney Campbell stated that he did not believe this lot was part of the wetland conservation district.

Chairman Allen read the wetland conservation district ordinance language as all parties discussed the application of language in defining which lots were to meet the requirements of the Wetland Conservation District requirements.

Article VI. B. Definition and Delineation: (Amended 3/97)

1. *The Wetlands Conservation District of East Kingston is hereby defined to be those areas of the Town that meet the following conditions:*
 - a) *Wetlands - Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.*
 - b) *Wetland soil - A soil that has characteristics developed in a reducing atmosphere, which exists when periods of prolonged soil*

saturation result in anaerobic conditions. Hydric soils that are sufficiently wet to support hydrophytic vegetation are wetland soils.

Chairman Allen stated he was bringing this up so it can be addressed because the Planning Board will most likely be looking for this to be addressed.

Attorney Campbell asked if Chairman Allen was suggesting the application be amended and the hearing continued.

Chairman Allen stated that he did not feel that was necessary.

Attorney Campbell stated that if the chair/board was interpreting the ordinance to suggest that the additional variance was required for the merger to move forward, then it seems the hearing should be continued, everyone go home and get rest, amend the application and then come back with a full application. If the boards interpretation of the ordinance is that we would need that ordinance, then perhaps we should just come back another time and do it all at once.

Chairman Allen stated that he/we are not the Planning Board, you (applicant) did not ask for that variance. We are discussing wetland setback and the wetland conservation district ordinance. I'm simply making you aware that there is an additional ordinance on the books that you have not asked for a variance to. I personally don't think that affects the business before the board. We have an application and four variance requests before the board. I don't see any reason we need to stop unless desired.

Attorney Campbell asked for a 5 minute recess to confer with his client.

The board agreed and waited while Attorney Campbell met with Mr. Graham outside the hearing room.

Attorney Campbell returned and was amenable to continue with the hearing at hand.

Mr. Maher asked if the creation of a new lot created a situation where the existing non-conforming garage structure would then need variances for it's non-conforming setbacks. Currently, it's non-conforming, which is fine in the lot's current state, but, would that building require variances for it's non-conforming setbacks because of the creation of a new lot, must ordinance conflicts be resolved in order to be merged? Just trying to flush out any additional conditions that may be necessary to have addressed

There was discussion about the town's setback requirements.

Attorney Campbell stated he did not believe that merging the lots would trigger additional non-conformances or the need for additional variance relief.

Mr Falman questioned the requirement.

Mr. Maher stated he was just trying to interpret the requirements of the state statute for mergers and what the words mean. If the merger must be performed with ordinance conflicts, do these non-conforming setbacks for the existing garage need to be addressed?

Chairman Allen asked what the applicants plan was for the garage. Mr. Graham stated he intended to keep it as is for storage.

Mr Maher stated he doesn't see his question as an impediment to moving forward.

Chairman Allen opened the the public comment session to abutters and the public.

There was no public comment.

Chairman Allen closed the public comment session.

Chairman Allen Closed the public hearing and the board began the deliberations.

Deliberations:

VI.E.3 Wetlands Conservation District septic leach field setbacks from poorly/very poorly drained soils, the applicants propose the town accept 46'.

Chairman Allen asked the board how they felt about voting on the variance request for setback to wetland soils. It was his opinion that a variance should specifically state what relief was being asked for but in this case we don't yet have that information on the plan and the distances are estimates.

Mr Robbins stated he believes we really need to know what exactly we are voting on. He's uncomfortable voting without the information.

Mr. Collamore agrees

Mr Maher stated relative to the proximity to wetlands he doesn't see this as a risk to voting provided there is a back check at a later date to substantiate the distances. The board needs to be very clear in the approval that any change to the numbers anticipated would invalidate the approval.

Mr Falman agrees with Mr Maher and is ok with voting

Chairman Allen is of the opinion that we don't vote on a variance for which we are missing data. He thinks it's messier to have to go back and validate the numbers post approval. He believes the variance should contain the exact setback relief requested and not an estimate. His opinion is that we should either wait for the complete data or vote on what we have before us, but not on what we think it might be. His opinion is that we wait.

Mr. Falman agrees that given those two options, he now agrees the board should wait for all data to vote.

Mr Robbins agrees and thinks that could work out better for the applicant if the setbacks are more favorable.

With four of the five members not ready to deliberate or vote, the variance was tabled and will be continued while the applicant secures the required wetland delineation and setback data.

Article VII.D.6 General provisions -septic leach field boundaries setback from property line. Applicant proposes the town accept 10'.

1. Granting the variance would not be contrary to the public interest.

Chairman Allen doesn't believe there are any health and safety issues or that this variance would be contrary to public interest.

Mr Maher asked if we should be considering if there are wetlands outside of the property boundary.

Mr. Falman stated he feels the same as he did with the earlier variance. He feels he doesn't have all the data.

Mr Robbins wants to know what wetlands are on neighboring properties.

Chairman Allen stated that if the setback was 20' from a property line we wouldn't even be having this discussion so we should try to avoid going down a worm hole but that he understands this is important information. As such, he suggested re-opening the hearing so the applicant can provide the missing data if they have it available.

Chairman Allen re-opened the hearing and asked the applicant to provide any data available regarding surrounding property wetlands.

Mr Balquist and Attorney Campbell provided additional setback information from their shoreline impact permit data that assured the board there were no additional wetland areas in front of the subject property to be concerned with.

Chairman Allen again closed the public hearing and the board resumed deliberations.

2. The spirit of the ordinance **would be observed.**

Chairman Allen feels the spirit of the ordinance for the setback was to ensure as much separation and safety margin as possible between the septic system and surrounding

properties. In this case, the neighborhood is tightly packed but the setback meets state requirements and I feel the spirit is met.

Mr Falman is also comfortable. There is nothing neighboring around it that would cause this to conflict.

Mr Robbins, the 10' vs. 20' appears to both be in-line with the spirit of the ordinance intent. He is fine with it.

3. Granting the variance would do substantial justice.

Chairman Allen reminded the board the primary requirement here is that any injustice to the applicant that is far outweighed by benefit to the town is an injustice. He doesn't see 10' vs. 20', creating any benefit to the town. As such, believes this criteria is met.

All other board members agree

4. The values of the surrounding properties would not be diminished.

Mr Maher asked if we had any data or public comment about valuation.

None of the board members felt the variance would have any negative affect on property values.

5. Unnecessary Hardship

Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- a) There **is not** a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property.
- b.) The proposed use **is** a reasonable use.

Chairman Allen asked the board to discuss special conditions that would justify a variance for septic system setbacks.

Mr Falman stated in this particular case you have the existing structure that is minimizing the available area the septic field could go.

Mr Maher is having more difficulty determining the lot itself is considered unique. Are there any other lots that are encumbered by an existing structure? Does that make this lot unique? This is a neighborhood of small constrained lots, he doesn't necessarily see anything unique or doesn't believe that all lots should be developed, that is why zoning ordinances exist. Without something that sets the lot apart from others and establishes a special condition he doesn't believe that every lot is buildable simply because its a lot.

Mr Allen stated with regard to uniqueness or the necessity to provide relief because the ordinance is overly burdensome to one lot over other lots. This is always the most difficult prong. He tends to agree with Mr. Maher. All the others lots are small, a good number of the other lots have wetland issues, he doesn't simply merging two lots creates a unique characteristic. An existing garage structure doesn't in his mind necessarily create a unique situation. He is struggling to see the uniqueness.

Mr Robbins doesn't see there is a unique characteristic in relationship to the other properties. The only that could be considered unique is the fact that it is pie shaped. Does that make it unique?

Mr Maher stated an interesting solution to the septic system issues would be to simply demolish the existing structure and start over.

Mr Falman feels that because we are evaluating with this particular variance with the existing structure in place I feel that the structure makes this scenario unique.

Mr. Callamore agrees with Mr Fallman that the existing structure is a unique characteristic of the property.

Chairman Allen can see their point and agrees that the existing structure does create a unique situation for this particular variance.

Mr. Maher believes this variance is a reasonable use. All other board members agree.

Chair Allen as the board to evaluate the next variance against the same five criteria:
Article IX.A.1 Lot area and yard requirements - for contiguous frontage requirement - town requires 200' and the applicant proposes 152'

1. Granting the variance **would not** be contrary to the public interest.

Mr. Maher stated that there wasn't a single conforming lot in the area and feels it would not be contrary to public interest.

Mr. Robbins agrees

Mr. Callamore agrees

2. The spirit of the ordinance **would** be observed.

Chairman Allen: Think through why the ordinance was created

Mr. Maher thinks the applicant has done as much as possible to make the project as conforming as possible. It would exceed the frontage and size of many of the surrounding properties. It fits in the neighborhood

Mr Robbins thinks the road needs to provide access for emergency vehicles and feels that 152' is more than acceptable.

Chairman Allen stated that road frontage is usually a means for the town to avoid overcrowding and provide enough space between lots.

3. Granting the variance **would** do substantial justice.
4. The values of the surrounding properties **would not** be diminished.

Mr. Robbins feels that the value of surrounding properties would not be diminished and may actually go up

Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because

5. a) There **is not** a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property.

b.) The proposed use **is** a reasonable use.

Mr Robbins feels that the existing garage is a unique characteristic in that we need to have frontage for access and cars coming and going. The existing garage is a special condition.

Chairman Allen stated he was in agreement with Mr. Robbins that the existing garage was a special condition for the septic setback but not for road frontage.

Mr Fallman also stated that the garage is not a special condition with regard to road frontage.

Chairman Allen discussed a few examples of special conditions for frontage purposes but does not believe that the town requirement for frontage should be given relief simply because there is an existing structure on the property. The existing structure has no bearing on the frontage. What makes this any different from the two lots across the street that can't meet the required frontage if they decided to merge those properties?

Mr. Robbins reconsidered his opinion and agrees. He noted that this would be improving the frontage.

Mr Maher: what would be unique about this existing structure with regards to this variance is that we would be asking the applicant to demolish an existing assets that has value in order to conform to a greater extent.

Mr Falman stated we are talking about 152' of frontage and not an existing structure. This is when we get into the existing ordinance and why we have the values we have.

The frontage is a means of maintaining the rural characteristics of the town and to avoid overdevelopment.

Chairman Allen: Yes, the town has stated through the ordinance that it wants properties to have 200'. So we are here to determine if there is something that prohibits that and we say that's ok because there is some special condition where they can't have the 200' required. In this case, I do not believe an existing structure is a special condition that justifies relief from frontage; a septic system - yes, a setback - yes, but a numerical number of frontage because there is a structure on the property - no.

Article IX.A.2 Lot area and yard requirements - for min area requirements. Town requires 87,120 square ft and the applicant proposes 21,580'

1. Granting the variance **would not** be contrary to the public interest because

Mr Maher does not find this contrary to public interest

Mr Fallman combines this with spirit of the ordinance and substantial justice. The town has ordinances for a reason; to maintain rural atmosphere. He is always amazed at other towns and how they cram houses in on top of each other. This town decided a long time ago to limit that it wanted reasonable development. Obviously there is grandfathering of pre-existing conditions. The merging of two non-conforming in this case still results in a non-conformance. With regard to the 2 acre requirement, the difference here is considerable, it's not like it just missed the requirement, it's considerable lacking.

Mr Robbins agrees. He has been thinking about this all along. The town is rural with 2 acre mins and in this case the merger of these lots would only result in roughly more than a quarter acre.

Mr Maher corrected Mr Robbins that it is actually more like a 1/2 area.

Mr Robbins acknowledged the correction but opined that a lot of this size does not align with the spirit of the ordinance.

Mr Callamore says it just doesn't come close. Although the traffic wouldn't be an issue its still a very very small lot that isn't close.

2. The spirit of the ordinance **would** be observed because:

Chairman Allen stated his concern is not necessarily the spirit of the ordinance creation but more along the lines of public interest. In this case we are talking about combining two lots that won't be something along the lines of half the requirement but more like 25% of the requirement, and of that, nearly half of that is wet. So I have safety concerns, there are wetlands all around, it's already very crowded and we're talking

about adding more. From a health and safety perspective we're talking about crushing another house in an area that is already too wet and too crowded and that concerns me, thus I don't believe this (variance request) aligns with the spirit of why we have the ordinance.

3. Granting the variance **would** do substantial justice because:

Mr Maher thinks this is when where we are asked if the harm to the town is greater than the harm to the applicant. It's hard to speak to the applicants intent when they bought the original lot with the structure. This is a big benefit to the applicant to allow to allow the development of these two under-utilized lots that would otherwise continue to sit as is.

Chairman Allen agrees, tempered with the fact that I think there is indeed a risk to the town to put all this on such a small lot.

Mr Fallman: as far as risk to town is, how much are we going to allow the encroachment on the ordinance requirements. We don't want to set a precedent.

Chairman Allen understand but clarified for the board that a variance never really sets precedent. Each variance is evaluated individually, specifically for a particular situation on a property. But he understands what Mr Falman is saying, when is it too far from the requirements.

Mr Robbins stated the only benefit to the town is that now we would have a living structure along with the garage that could raise the tax value.

Mr Maher does have some concern on behalf of the town regarding a septic system design that requires the owner to use low-flow plumbing. The town is taking on liability to monitor that over the coming years. As an engineer, when you see that design note, it sends up red flags that the system is designed on the very edge of the expected performance, and that is a safety concern.

4. For the following reasons, the values of the surrounding properties **would not** be diminished:

Mr Fallman - no concern

All board member agreed.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the

area, denial of the variance would result in unnecessary hardship because:

- (i) There **is not** a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:
- (ii) (ii) The proposed use **is** a reasonable one because:

Mr Maher struggled with this one the most. Considering even with the combination of these lots it's still very similar to all surrounding properties.

Mr Fallman stated what would be unique is if they were reversed. If it was the same size lot but all good soil in that neighborhood, that would be unique. A full lot of good soil in that neighborhood would be very unique.

Mr Robbins stated that back half of the lot is all wet. Compare that to all the surrounding properties and nothing is unique.

Mr. Callamore agrees

Chairman Allen stated that during these hearings and projects he reminds himself that whether we think the project is a good one, we like it, we think it would be an improvement are all nice things but not the charter of the ZBA. We are required to evaluate each variance fairly by the five criteria and when I look around the neighborhood I do not see anything unique about this property.

Chairman Allen asked if any members had any remaining comments. He asked if everyone was ready to vote. All members indicated they were ready.

Board Vote

VI.E.3 Wetlands Conservation District septic leach field setbacks from poorly/very poorly drained soils, the applicants propose the town accept 46'.

Chairman Allen: we discussed that we want additional information prior to voting on this so I make a motion to continue the variance request for VI.E.3 Wetlands Conservation District septic leach field setbacks from poorly/very poorly drained soils to the July 22, 2021 meeting.

Seconded by Mr Callamore

Vote: All board members were in favor and the motion passed unanimously 5/0

Article VII.D.6 General provisions -septic leach field boundaries setback from property line. Applicant proposes the town accept 10'.

1. Granting the variance (would/**would not**) be contrary to the public interest because:

Tim Allen - Would not
Ed Robbins - would not
Nate Maher - would not
Paul Falman - would not
Frank Callamore- would not

Condition passed unanimously

2. The spirit of the ordinance (**would**/would not) be observed because:

Tim Allen - would
Ed Robbins - would
Nate Maher - would
Paul Falman - would
Frank Callamore - would

Condition passed unanimously

3. Granting the variance (**would**/would not) do substantial justice because:

Tim Allen - would
Ed Robbins - would
Nate Maher - would
Paul Falman - would
Frank Callamore - would

Condition passed unanimously

4. For the following reasons, the values of the surrounding properties (would/**would not**) be diminished:

Tim Allen - would not
Ed Robbins- would not
Nate Maher- would not
Paul Falman -would not
Frank Callamore -would not

Condition passed unanimously

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

(iii) There (**is/is not**) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

Tim Allen - is not
Ed Robbins - is not
Nate Maher - is not
Paul Falman - is not
Frank Callamore - is not

(iv) (ii) The proposed use (**is/is not**) a reasonable one because:

- (i) Tim Allen - is
- Ed Robbins - is
- Nate Maher - is
- Paul Falman - is
- Frank Callamore - is

Condition passed unanimously

Mr Robbins made a motion to **approve** the variance request to Article VII.D.6 General provisions - septic leach field boundaries setback from property line and accept conditional on subsequent lot merger the proposed 10' setback.

Nate Maher seconded

The motion passed unanimously

Article IX.A.1 Lot area and yard requirements - for contiguous frontage requirement - town requires 200' and the applicant proposes 152'

1. Granting the variance (would/**would not**) be contrary to the public interest because:

- Tim Allen - would
- Ed Robbins - would not
- Nate Maher - would not
- Paul Falman - would not
- Frank Callamore - would

Condition passed 3/2

2. The spirit of the ordinance (**would/would not**) be observed because:

- Tim Allen - would
- Ed Robbins - would
- Nate Maher - would
- Paul Falman - would not
- Frank Callamore - would not

Condition passed 3/2

3. Granting the variance (**would/would not**) do substantial justice because:

- Tim Allen - would
- Ed Robbins - would
- Nate Maher - would
- Paul Falman - would not
- Frank Callamore - would

Condition passed 4/1

4. For the following reasons, the values of the surrounding properties (would/**would not**) be diminished:

- Tim Allen - would not
- Ed Robbins - would not
- Nate Maher - would not
- Paul Falman - would not
- Frank Callamore - would not

Condition passed unanimously

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

(v) There (**is/is not**) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because: Tim Allen - is

- Ed Robbins - is
- Nate Maher - is
- Paul Falman - is
- Frank Callamore - is

(vi) (ii) The proposed use (**is/is not**) a reasonable one because:

- Tim Allen - is not
- Ed Robbins - is
- Nate Maher - is
- Paul Falman - is
- Frank Callamore - is

Condition did not pass

Mr Falman made a motion to **deny** the variance request to Article IX.A.1 Lot area and yard requirements - for contiguous frontage requirement of 152' as proposed by the applicant for all the reasons stated during deliberations.

Mr Callamore seconded the motion

The motion passed with a unanimous vote 5/0

Article IX.A.2 Lot area and yard requirements - for min area requirements. Town requires 87,120 square ft and the applicant proposes 21,580'

1. Granting the variance (would/**would not**) be contrary to the public interest because:

Tim Allen - would
Ed Robbins - would
Nate Maher - would
Paul Falman - would
Frank Callamore - would

Condition did not pass

2. The spirit of the ordinance (**would**/would not) be observed because:

Tim Allen - would not
Ed Robbins - would not
Nate Maher - would not
Paul Falman - would not
Frank Callamore - would not

Condition did not pass

3. Granting the variance (**would**/would not) do substantial justice because:

Tim Allen - would
Ed Robbins - would
Nate Maher - would
Paul Falman - would not
Frank Callamore - would

Condition passed 4/1

4. For the following reasons, the values of the surrounding properties (**would/would not**) be diminished:

Tim Allen - would not
Ed Robbins - would not
Nate Maher - would not
Paul Falman - would not
Frank Callamore - would not

Condition passed unanimously

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

(vii) There (**is/is not**) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because: Tim Allen - is

Ed Robbins - is
Nate Maher - is
Paul Falman - is
Frank Callamore - is

Condition did not pass

(viii)(ii) The proposed use (**is/is not**) a reasonable one because:

- (i) Tim Allen - is not
- Ed Robbins - is not
- Nate Maher - is
- Paul Falman - is not
- Frank Callamore - is not

Condition did not pass

Mr Robbins made a motion to **deny** the variance request to Article IX.A.2 Lot area and yard requirements - for min area requirements of 21,580' as proposed by the applicant for all the reasons stated during deliberations.

Mr Maher seconded the motion.

The motion passed unanimously 5/0

Chairman Allen asked the applicant if they still intended to proceed next month.

Attorney Campbell stated that they intended to return next month and requested the audio recording of the meeting be preserved and that they be provided a copy.

Chairman Allen agreed and stated they would figure out how to get them a copy. He then went on to ask for a motion to continue.

Mr Robbins made a motion to continue the hearing of *Case #21-02* – Brian Graham, 128 Newton Road, Plaistow, NH to 7/22/2021 to further evaluate the requested information for variance request to the provisions of Article VI.E.3 septic leach field setbacks from poorly/very poorly drained soils

Mr Callamore seconded the motion.

The motion passed unanimously.

Discussion ensued regarding the location of the next meeting at the Pound School in East Kingston.

Chairman Allen stated they would be posting the agenda and would send a copy to the applicant.

Chairman Allen thanks the applicant for their time

Additional board business:

The board discussed board elections.

Mr Falman informed the board that when his term expires he would like to become an alternate member.

Mr Maher made a motion to re-elect Mr. Allen as Chair and Mr. Robbins as Vice Chair

Mr. Callamore seconded the motion

The motion passed unanimously

Mr. Callamore made a motion to close the meeting

Mr Robbins seconded the motion

The motion passed unanimously and the June 2021 meeting of the East Kingston ZBA was closed.