

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

July 15, 2013
7:00 pm

MINUTES

Public Hearing 13-02

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; Mr. Jamieson's representative, P.E Dennis Quintal, Civil Construction Management, Inc.; East Kingston (EK) Building Inspector John Moreau; Brett Smith, Septic System Installer; Abutter Larry Bean, 4 Powwow River Rd.; Abutter Kevin Bean, 114 Haverhill Road.

Mr. Daly opened the public hearing for the East Kingston Zoning Board of Adjustment on July 15, 2013 at 7:00 pm. Mr. Daly acknowledged that applicant Bradley Jamieson, his representative Mr. Dennis Quintal, and Septic Installer Brett Smith were in attendance.

Mr. Daly noted that the newspaper notice and abutters noticing had indicated the request for waiver from an incorrect Article in the Zoning Ordinance. Therefore discussion could take place this evening in reference to the actual reason Mr. Jamieson was requesting the Equitable Waiver of Dimensional Requirements, but no official action could be taken until it was noticed correctly. This would be done at no cost to the applicant, and the Public Hearing would be continued until Thursday, August 22nd at 7:00 pm with re-noticing to the newspaper and the abutters. After the hearing was noticed correctly, the Board would reconvene and come to a decision. Mrs. Belcher informed Mr. Jamieson the re-noticing was, in fact, for his own protection so there would not be a challenge to the decision because of reference to an incorrect statute.

Mr. Daly noted the correct ordinance Mr. Jamieson was requesting the equitable wavier of dimensional requirements from was Article VII, D 6. He noted this was for 100 feet from standing water, which is the pond. Mr. Quintal opined it might need to include D.7 also as that referred very poorly drained soils, from which the setback is 75'. The Board's chore will be to understand what happened, how it happened, and if it is appropriate to waive the requirement or not.

Mr. Jamieson reviewed in his process he had hired a professional costing thousands of dollars, waited months for approval for construction of the septic system, and had several inspections by both the Town Building Inspector and the State Inspector (DES) Jay Bose. This was financially difficult and time-consuming, and he did everything that was asked of him. Mr. Bose had complimented Mr. Smith on the quality of his work. He loved the site and thought it was a beautiful system and he received his certificate of operation. When the meat shop went in, Mr. Jamieson noted he was held to a higher standard and instead of installing a grease trap at the sink, a 1,000 gallon grease trap was installed which constituted a new drawing to submit to the state. For the second time he received a certificate of operation from the State of New Hampshire that he was in total compliance. He is unsure why this is an issue since the State signed off on all the plans.

He feels he's fighting a battle that does not need to be fought. In his mind there is justice and injustice. The injustice he sees is that it is not to the public at large, it's not to the neighbors or the property values, or the environment. It's only to him and his family and it's becoming a problem. He feels to have someone say after the fact that the system is not in compliance because a setback was not met is an injustice to him after it has been approved.

The injustice to him does not supersede the injustice to the public, but in his view there is no injustice to the public, or the property values or to the environment. On that basis alone he is requesting his waiver.

Mr. Daly noted the Board needed to determine how all the different numbers came about. He opined there was a measurement done, a plan was prepared based on that measurement and approved, the system was installed. He gathers there is no marker at the location, since when Mr. Quintal came to do the amended plan, he looked at the original plan and said if it (the system) is here, this is the measurement.

Mr. Quintal reviewed the process. The original plan was prepared by Subsurface Disposal System Designer Randy Orvis. This was done by him as a septic system designer and septic designers are supposed to do test pits, measure the site, and identify any features such as wells and wetlands to include on the plan. Also any features that would need to be noticed that could be an encumbrance to State rules and regulations. Mr. Orvis' plan clearly states that are no wells, surface waters, or very poorly drained soils within 75' of the system noted on the plan right where a pond is. Obviously he made a mistake because he did not check to see if there was a pond there. It wasn't in the middle of the winter when it would be covered by snow; he did not look. Septic system designers are obligated to look at least 75' and show all features within 75' of the system. Obviously on this plan he did not.

The Building Inspector receives this plan and looks at it as a plan, witnesses the test pits, and reviews the plan based on Town and the State requirements. He does not believe it is the Building Inspector's obligation to go out and certify that everything has been located and certified on the site. Based on the plan, he approved it and signed it. It was sent to the State and the State approved it. After the installation is done, before it is backfilled, the State Agent comes down and looks to evaluate the stone, the pipe, and the sand. He also looks to see if it is in the same location it should be according to the plan. There are trees at the edge of the property, and obviously the State Inspector did not look either. The system was designed correctly, but the plan did not show the pond or the wetlands.

The amended plan for the grease trap shows the pond, and was produced by Mr. Quintal for the Planning Board and sent to the state as an amendment. The measurement of 65' is on Mr. Quintal's plan and the State did not catch the discrepancy at that time either. Mr. Quintal went back to the site last week and dug to find the edge of the septic system to re-measure to make sure he did not make an error. The measurement of 65' is correct; there was no error.

In comparing the two plans, the Planning Board had noted the discrepancy in the measurements and the ordinance and suggested Mr. Jamieson approach the ZBA for the waiver. Mr. Daly noted it is within the ZBA's authority to waive the setback. Mr. Daly also asked what needed to be done as far as informing the state as he was not sure. Mr. Quintal thought it would be the property owner's responsibility to inform the State. Mrs. Belcher noted it could be a potential problem for the land owner sometime in the future if the Town and the State measurements don't agree. Mr. Quintal opined that when a professional makes a mistake, he is obligated to fix it. In this case the designer should be obligated to fix the plan he submitted to the State.

Mr. Smith stated the error was made by the designer and the State approved it. He himself had installed the system where the plan noted it should be. He feels the designer should admit a mistake was made and submit a corrected plan to the State. He asked why the designer shouldn't be at this meeting also? Mr. Jamieson noted the State was not going to attend.

Abutter Mr. Larry Bean, 4 Powwow River Road. Mr. Larry Bean noted the pond is only 2 feet deep and was dry for a good part of the year; also last summer and several summers before that. He opined that is why it was not seen.

Mr. Jamieson remembers the septic designer spent an incredible amount of time at the site and after the test pits were completed, he asked him why it was necessary to locate the field so close to the back edge of the garage. Mr. Jamieson wanted it away from the garage as the tenants might want to use the rear garage doors. The designer explicitly stated it was imperative the system be located where he indicated for the reason it had to be at least 75' because of conditions in the field.

Mr. Ciardelli reviewed the designer produced a plan, submitted it to the State, it was evaluated and approved, the installer installed the system according to the plan, the State inspector inspected it and approved it. He opined the measurements at this point were water over the dam and their determination should be "*is the difference in distance significant enough to move the system*".

Mr. Quintal noted he had designed systems for small lots which required waivers from the State and the town to enable a system to be built. Mrs. Belcher noted an applicant could ask for a waiver and a variance at the same hearing.

Mr. Daly ensured that the Board was not trying to assess any blame, they wanted to make sure it was an honest mistake so they would be able to grant a waiver.

Mr. Smith noted that the state inspector was quite thorough and had even required Mr. Jamieson to replace a cracked well cap before he would approve the septic system.

Mrs. Belcher noted they were just trying to find out how and where the error had been made. Mr. Smith stated that nobody could see the standing water. Mr. Quintal noted that even if the pond was dry at certain times of the year, when test pits were dug they would still show where the poorly drained and very poorly drained soils were.

Mr. Moreau asked who had the responsibility to make sure the State and local requirements were adhered to if town standards were more strict than the State? Mr. Daly and Mrs. Belcher opined it would be the responsibility of the Building Inspector to ensure the local requirements were met. Mr. Quintal noted that the Building Inspector is not a wetlands scientist, and would be reviewing the plan and not the site issues. Mr. Quintal disagreed it was the responsibility of the Building Inspector and stated ultimately it was the designer's responsibility to make the measurement and attest to that when he stamps the plan. If the designer is not a licensed soil scientist, a soil scientist would need to be the person who flagged the wetlands and stamp the plan.

Mr. Allen noted that all the State does when they inspect is to ensure the system was installed according to the plan. Mr. Daly noted it appeared a lot of people were signing off at different stages without double checking.

Mr. Moreau opined different entities making measurements could be off a small amount from each other, a "*wingspan*" so to speak. That could explain the 10' of difference in measurement from the State's measurement of 75' and Mr. Quintal's measurement of 65'.

Mr. Jamieson stated there was an existing roadway between the pond and the septic system which is highly compacted. It seems to him the way the leaching field is in relation to the wet area with the compacted areas in between causes no hardship or injustice to the public at large, land values or the environment. Mr. Quintal noted the rules were to protect the environment, and in this case it probably did not need to be 75'.

The Board discussed that in the past, it might have been thought by the Town that if the State standards were one thing, it would be much better for the Town to be more strict. Perhaps it would be easier to change the ordinance to the same as the State regulations, thereby eliminating the confusion. They asked Mrs. White to bring this subject up at the next Planning Board meeting as a topic of discussion.

Mr. Jamieson saw the compacted roadway as a sort of "retention barrier" which completely seals off anything that could happen between the leaching field and the wet area. Mr. Quintal noted because of the topography and the grades, all drainage flows away from the pond area to the south and it is generally the case that ground water follows surface water.

Mr. Smith noted that since it was not Mr. Jamieson's fault the measurements did not agree, couldn't the Board grant the waiver tonight? As Mr. Smith had come in late to the meeting, Mr. Daly reviewed that they could not make a decision that evening as the hearing was noticed to an incorrect ordinance and would need to be re-noticed for next month. Mrs. Belcher asked if the Board would agree to waive any fees associated with the re-noticing of this hearing; they agreed.

Mr. Daly asked if anyone else wanted to speak. Abutter Mr. Larry Bean stated that Mr. Jamieson had done a wonderful job with the site and he and his family support him 100% in his endeavor. He felt Mr. Jamieson did nothing wrong in this case.

Mr. Ciardelli noted several years ago he had participated in a field trip with a soils scientist who had reviewed the evils of infiltration of septic system drainage into poorly drained soils. They had also pointed out that certain ferns grew in certain soils. At that time, they were saying that being close to water poorly drained soils was not necessarily bad; that Mother Nature did a good job of taking care of it herself.

In the past, being more restrictive always appeared to be erring in the right direction, and some of that might be unnecessary. In this particular case tonight, he does not see any malice or intentional wrong doing. He can see no necessity of digging the system up.

Mr. Falman asked if Mr. Jamieson needed to contact the designer and have him contact the State. Mr. Daly noted that would be up to Mr. Jamieson; it was not up to the Board to decide if he should do that. Mr. Daly would recommend that, but ultimately it was up to the property owner.

Mr. Falman opined if the Board granted the waiver, in the future the State could says they would not grant the waiver from their side. Mr. Jamieson opined the State had already granted it since they gave him a Certificate of Operation. Mr. Falman noted that although that may be the case, the State had granted approval based on an incorrect plan. Mr. Allen noted that if the site could accommodate the required setbacks, he does not think the State would have given a waiver.

Mr. Daly noted the Board could make their decision based on the ordinance and their ability to grant a waiver, and the State could do what they wanted. What the State would or should decide will have no bearing on what the Board decides.

Mr. Quintal noted as the pond dries up in the summer, perhaps it would not actually be considered surface water. Also, surface water is not specifically defined in the ordinances.

Mr. Larry Bean opined since the Board has nothing to do with the State decision, couldn't they just address the waiver based on the Town ordinances? Mr. Daly relied that was what they will do, but first the hearing needs to be noticed correctly for them to proceed.

Mr. Falman asked if the previous Building Inspector had reviewed the plan? Mr. Daly pointed out he had signed the plan. Mr. Smith indicated the Building Inspector had observed at least twice during the installation of the system.

Mrs. Belcher asked what the appropriate waiver would be for the new notice? Mr. Daly noted it would be Article VII D. 6 & 7. Mr. Quintal noted they might also want to include Article VI E. 3; Mr. Daly agreed.

Mr. Allen asked if the designer could provide a letter to the Board and offered to contact him to ask. Mrs. Belcher noted from her perspective, she did not think it was necessary as what they needed to review was that it was a mistake with no malice and that nothing was done on purpose.

Mr. Daly reviewed the hearing would be re-noticed for August 22nd at 7:00 pm at no cost to the applicant, and at that time the Board would re-convene and make a decision.

Mr. Jamieson thanked the Board for taking the time to fit in this hasty meeting on his behalf.

Mr. Daly closed the meeting at 8:25 pm

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

John Daly
Chairman