

Town of East Kingston, New Hampshire Zoning Board of Adjustment Official Meeting Minutes - July 22, 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 7:00PM and introduced himself. He explained that Mrs. White, the ZBA Secretary, has officially resigned due to family issues.

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

Chairman Allen appointed Nate Mayer to a full voting member to fill the role of Ed Robbins in his absence.

Chairman Allen explained they would deal with administrative items (minutes and technical assistance contract) at the end of the meeting.

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. There was the final part of a continued hearing and then an additional hearing to work through. The flow would be similar for both.

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 02-01-33) 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.

Chairman Allen stated that during the June ZBA Meeting the board had made a decision on Article VII.D.6 General provisions -septic leach field boundaries setback from property line and private wells, which was approved, Article IX.A.1 Lot area and yard requirements - for contiguous frontage requirement, which was denied, and Article IX.A.2 Lot area and yard requirements for minimum area requirements, which was also denied.

Regarding the variance request to Article VI.E.3 septic leach field setbacks from poorly/very poorly drained soils. The board requested additional information to determine if either lot had very poorly drained soils in addition to poorly drained soils, as is required by the town ordinance. Each has different required setbacks, with VPD requiring 75' from a septic and PD requiring 50' from a septic.

Chairman Allen turned the floor over to the applicant.

Attorney Campbell introduced himself to the board. He stated the issue that had been continued was the question whether the lot contained very poorly drained soils. He distributed a letter from Thomas Sokoloski (Wetland Soil Scientist), dated July 21, 2021 stating that the property did not contain any very poorly drained soils. So the original request for a variance of 46' to the town requirement of 50' was indeed the appropriate request and we should be able to move forward.

Attorney Campbell asked which board member was not present last month.

Dave Ciardelli announced he was not present last month.

Chairman Allen asked Dave Ciardelli if he felt informed, up to speed, and comfortable with the case at hand.

Dave Ciardelli responded that he had read all materials and was well prepared.

Chairman Allen asked that the applicant to present the remainder of the case.

Attorney Campbell stated with regards to this variance request, the board is aware there is five 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; it's the applicants position that due to the design, placement of the system, and the fact that this is state of the art system, they believe the 46' setback would not be contrary to public interest.

The spirit of the ordinance is observed because:

The proposal merges two (2) existing small lots into a lot which is larger than surrounding lots. They believe that placement of the setback and system has minimized the impact to surrounding wetlands and thus has met the spirit of the ordinance.

Granting the variance would do substantial justice:

The courts have measured the impact on the applicant verses the gain to the community. They believe the applicant needs a septic to proceed with the building of a structure. They see no benefit to the community by denying the request.

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

They do not believe that the below ground structure will have any effect on surrounding property values.

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:

For this particular criteria, he would like to point out to the board that this is a unique lot, different from the neighborhood. They prepared an exhibit (exhibit A). They've examined the neighborhood, he explained the color coding of the chart developed details the surrounding lots of the neighborhood. It compared the lot in question to the surrounding lots. They believe that this diagram shows that the lot is indeed unique and that it's the only vacant lot in the area.

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:

Zoning should reflect the neighborhood. This neighborhood is very small in size. This lot is, in their opinion, larger than most surrounding lots. They are maximizing the setback. They have met the general purpose of the zoning ordinance it's served by the development of this new high tech septic system.

b. the proposed use is a reasonable one because:

What you see for a proposal eliminates two smaller lots and combines to a larger lot. It involves a merger to eliminate two (2) substantially undersized lots, with a single lot of similar size to abutting properties.

Attorney Campbell: The request meets all 5 criteria of the variance criteria.

The exhibit of the color coded plot plan of the neighborhood was passed around to all board members

Chairman Allen reiterated for the board that they left off last meeting with a question of VPD vs. PD soils. We now have an answer to that question. We are back to evaluating the variance request for a 46' setback to the town requirement of 50'.

Mr. Falman stated the letter is fine but he wants a plan that shows it.

The applicant and board discussed that without VPD soils on the site, there is no delineation of VPD soils to add to the existing plan.

Mr Falman was ok with that clarification.

Mr Collamore asked for clarification as to why the letter only references a survey on lot 32 and makes no mention of lot 33. Did the soil scientist survey both lots?

Mr Balquist (Septic Designer) stated, yes he did, he did Lot 33 previously three years ago with a previous request.

Chairman Allen asked for clarification of exactly what the letter and survey applied to. This plan is for two combined lots, yet the letter stated that only one lot was surveyed in association with the letter.

There was board discussion that the letter made reference specifically to the lot that has the variance dimension in question and that based on the plan it does not look like there are any other areas of concern regarding this variance on the other lot. The board decided the letter was sufficient to satisfy the question of very poorly drained vs. poorly drained.

Mr. Maher stated that the septic system has been described as “state of the art” but in fact, it this system has been in the field for the better part of 25 years. From a selling point to the town for a variance, at what point should this not be referred to as state of the art?

Mr. Balquist reiterated that although Advanced Enviroseptic has been around for a long time, it still is an advanced system.

Chairman Allen reminded the board that whether the system was state of the art or an old stone and pipe design, at the end of the day, it’s no relevant to the decision surrounding the approval of a variance. We must make our decision on the five criteria.

Mr. Falman asked about the life expectancy and stated for the record that this system required the homeowner to utilize low flow water fixtures. He is concerned. Who will police that requirement to ensure it’s met and that the system isn’t driven to early failure.

Chairman Allen stated that Enviro-septic was very adaptive and flexible. The system allows bends, the ability to go around corners, and adapt to most challenging environments. Is there an alternative shape or setup that could be utilized here so as to not need a variance or is this the only design that works?

Mr Balquist stated he hadn't looked at that but he believes the answer is No. But, in looking at my plan, if we were to do a different design you would probably be encroaching on the setback to property line. So you would probably encroach on another setback.

Chairman Allen asked about a few alternative setups and Mr. Balquist felt that they would all cause conflict with other setbacks.

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

Shari Ridlon, 13 Cove Road, submitted pictures of the property showing significant widespread standing water.

There was board discussion about where on the property the picture was taken in comparison to the plot plan.

Chairman Allen stated he had driven by the property multiple times over the past few weeks and had observed similar standing water.

Mr Ciardelli stated he had been there this morning and observed the same.

Steve Ridlon, 13 Cove Road, he has questions about the elevations of his system compared to the system in question. Why is his vented with two pipes and this system only has one vent. Why is this system lower to the water table than his is? It concerns him. What is different in this situation?

Mr. Balquist answered the questions, clarifying that the system in question is gravity fed and does not require two vents. This system is also Advance Enviroseptic which allows the separation to water table to be lower. The system in question had test pits witnessed by the town.

Shari Ridlon, 13 Cove Road, this is a health and safety issue. There are only so many natural resources to share. There is only so much fresh water and soil for septic to share. They are going to take down all the trees and change the look and feel of the neighborhood.

Sara Glidden, 9 Cove Road, was in her yard today and witnessed that the applicants lot was like a lake of standing water behind the existing garage and already has a septic smell, probably due to the rain. She is concerned about the road. The neighborhood is already over crowded.

Chairman Allen closed the public comment session.

Mr. Ciardelli opined that this location has standing water everywhere. He believes that the standing water is indeed the water table. This is a tough location.

Chairman Allen asked for any final comments from the applicant

Attorney Campbell stated he understands the issues with the surface water. We have reports from professionals as to the water table and soil types. The applicant owns these two lots and they are vacant. These are the last two vacant lots and the applicant has gone as far as he can to ensure this property isn't rendered useless with little value. With regard to this variance, the question is, will this septic system operate properly with the 46' setback. Does this meet the reason for the ordinance. They believe there is very little risk to this and that they have met the statutory requirements. This proposal eliminates the two small lots and combines to one larger one.

Chairman Allen Closed the public hearing and the board began 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 stated the applicant has requested a variance to allow a setback to poorly drained soils of 46', where the town requires 50'

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

Paul Falman is bothered by the requirement to have low flow fixtures for this system to operate. Who will enforce or police this? If not done, the system would be overloaded. Seems like an unrealistic requirement to get this approved.

Mr Allen stated that the system was designed for 3BR but the house will only be a 2BR house. In that case the system would be oversized by 150 gallons per day. However, I do believe that with this location the system will be heavily taxed.

Mr. Maher says that he is also concerned. There is certainly residual risk to the town with this request. We've also heard there is significant concern from the neighbors.

Mr Ciardelli stated that we must apply a certain trust that the new system will do what it's designed to do and that 4' is not a big deal.

Mr Maher stated that requirements exists for a reason, the criteria are established for a reason. Lines are drawn for a reason. Perhaps for seasonal variability of water or large seasonal storms. This is below the minimum and we should be cautious about that. The town established criteria and ordinances for a reason. He believes the town decided with zoning ordinances that they did not want lots like this developed and it's our job to determine if there is compelling reasons to justify relief. If this was an existing structure or residence then perhaps this would be different.

Chairman Allen is concerned with health and safety. As a septic designer himself, he understands the septic designers responsibility to meet requirements, but, in addition to the requirements there is a certain amount of familiarity and practical knowledge that must be applied. I've driven this road hundreds of times, the whole neighborhood is wet, the whole neighborhood is tight, the area is already overtaxed by pre-existing houses. To add more septage to an area that is already going to have a hard time absorbing it all is in my opinion a health and safety concern.

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

Mr. Falman: if this was another lot that didn't have all the challenges this one does, perhaps 4' wouldn't be such a big deal, but in this case he believes the spirit of the ordinance was created to avoid situations like this.

Mr. Collamore does not believe this is with the spirit of the ordinance.

Mr. Maher: specifically addressing the variance in front of us, he struggles with how this conflicts with what he believes is the sprit of the ordinance surrounding the setback requirements.

Mr. Ciardelli, opined that combining the lots is a move in the right direction but even combined this lot struggles to overcome all the deficiencies. He believes the ordinances were put in place to not only help owners but also protect neighbors. In this case he doesn't believe this case meets the intent of the ordinance and why the rules were put in place, and to protect neighbors.

Chairman Allen closed with his comments. The town utilizes ordinances to apply many things but in this case, safety margins. The applicant has made great effort to get as close to the requirements as is possible. If this was a 4' variance to a road or property line I would feel differently. In this case, it's to a wetland, which opens up a whole new group of concerns regarding health and safety. If this was a pre-existing system with no alternative it might be different as a pre-existing system already contributing to the over crowded area, but, in this case, it's an entirely new system that adds burden to the area, extra burden that currently doesn't exist.

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 isn't outweighed by benefit to the town is an injustice.

Mr Maher thinks it would be completely different if this was pre-existing. Just because the lot is zoned residential doesn't mean all lots are developable.

Mr. Falman feels this would be an injustice to the town and the benefit to the town outweighs the negative to the applicant.

Mr. Collamore agrees

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

Chairman Allen stated the neighborhood is very wet, very crowded, and they all have raised septic systems with very little space. He doesn't feel an additional septic system would diminish values.

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. What unique characteristics overly burden the property and thus warrant relief.

Mr. Maher: last month I was one of the members that was leaning a bit more toward the property having unique characteristics, however, the exhibit A presented by the applicant showing this property shape, size, and relationship to others has had an opposite effect on my opinion. That exhibit solidified in my mind that this property is indeed similar to others and not unique.

Mr. Ciardelli, this lot is very similar to all the others. It has a number of deficiencies but they are not unique from other lots in the area.

Mr. Falman believes it is unique due to the existing garage when it comes to this variance request. That provides a unique challenge for the property.

Chairman Allen is having a hard time seeing that the existing garage creates a unique characteristic, although perhaps it does if there are no other alternatives. He's also having a hard time believing that there aren't alternative layouts for the property that could be utilized. If there are alternatives that could be applied, the existing garage would not be the unique characteristic that creates a situation where the ordinance needs to be given relief.

We've also heard a number of times that without this variance that there is no use for the property. I don't see that. This property has had a reasonable use for many years now. It has a storage garage, it's been there for 30+ years. It was there as a use when

the applicant bought the property. There must be a reasonable use of the property or in essence the town is taking the property. My opinion remains that the existing garage that was there when the applicant purchased the property is a reasonable use of this small lot. It's the same use that's been in existence on this property for decades. We touched on this last meeting but let's dig in a bit more tonight, what does everyone else think?

Mr. Ciardelli: Just because it's a lot of record doesn't mean it's a lot for a residence. One of the historical records he's reviewed actually showed this lot and the lot across the street related to one another. The lot across the street was the house lot and this was the storage garage lot. At some point the two lots were split up and the storage structure has remained since. There is guidance in this ZBA manual regarding the "taking" of a property. There is a misconception that if the town doesn't approve something and applicant requests they are taking the lot. He went on to read an excerpt, stating that it's a misconception that every lot no matter how small or inadequate is entitled to a residence. There is no guarantee that every lot is a building lot. It's not our responsibility to come up with a reasonable use for the applicant.

Mr Falman: There already is a reasonable use. It has a pre-existing garage. That is a reasonable use.

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'.

1. Granting the variance (would/**would not**) be contrary to the public interest because:
 - Tim Allen - Would
 - Dave Ciardelli - Would
 - Nate Maher - Would
 - Paul Falman - Would
 - Frank Callamore- Would

Condition failed

2. The spirit of the ordinance (**would**/would not) be observed because:
 - Tim Allen - would not
 - Dave Ciardelli - would not
 - Nate Maher - would not
 - Paul Falman - would not
 - Frank Callamore - would not

Condition failed

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

- Tim Allen - would
- Dave Ciardelli - would not
- Nate Maher - would not
- Paul Falman - would not
- Frank Callamore - would not

Condition failed

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

- Tim Allen - would not
- Dave Ciardelli - 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:

(i) 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
- Dave Ciardelli - is
- Nate Maher - is
- Paul Falman - is not
- Frank Callamore - is

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

- (i) Tim Allen - is not
- Dave Ciardelli - is not
- Nate Maher - is not
- Paul Falman - is
- Frank Callamore - is not

Chairman Allen commented during the vote that the existing use (storage garage) of the property is indeed a reasonable use.

Condition failed

Mr. Ciardelli made a motion to **deny** the variance request to VI.E.3 Wetlands Conservation District septic leach field setbacks from poorly/very poorly drained soils, of the proposed 46' setback, for all the reasons stated during deliberations.

Mr. Falman seconded

The motion passed unanimously

Chairman Allen opened the public hearing of **Case #21-03** – Brian Graham, 128 Newton Rd, Plaistow, NH who requests variances for the property located at 4-6 Cove Road, EK, NH (MBL 02-01-32 and MBL 02-01-33) from the provisions of (a) Article VI.D.1 – Wetlands Conservation District, Special Provisions for minimum non-wetland area.

Chairman Allen stated the town has a requirement for a minimum amount of non-wetland area or “upland” area. Mr Graham is requesting a variance to that ordinance. This is new hearing, we are starting fresh as if this was a new applicant. Information and discussion from the last hearing should not be considered here.

Attorney Bernard Campbell introduced himself to the board. He stated that to save time for the applicant, board members, and public he was prepared to incorporate his comments from the previous hearing into this hearing and save everyone the time. If we would like to hear all the five criteria again he is willing to do so but the two hearings are related and the same comments and information apply.

Chairman Allen stated he was fine with that approach is the applicant agreed or they could keep things clean and straightforward and review everything again.

Attorney Campbell decided to present all five criteria again and the hearing moved forward.

Attorney Campbell stated that the town has an ordinance that requires 32,670 sq ft of upland soil and this lot has 11,599 sq ft.

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; new house meets setbacks, will have state-of-the-art septic system. The combined lot size would not be out of character for this area; upland soils area is comparable to upland of other lots in vicinity. We believe the construction of the house on this lot would not change the character of the neighborhood.

The spirit of the ordinance is observed because:

The lot size dimensions and wetland protections 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; proposal poses no threat to public health, safety or welfare. The proposal does observe the spirit of the ordinance when one considers the character of this neighborhood. Zoning requires the it reflect the particular area. The ZBA has the ability to grant a variance and show that the zoning is inappropriate for this area

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.

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 properties.

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:

Notwithstanding Mr. Mahers contention that this lot is similar to others, we believe that because this lot is the only vacant lot in the area clearly makes it unique. It would be the only lot to be denied development. The lot size and upland requirements were adopted long after this lot was created. We believe there is no fair and substantial relationship.

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:

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. Will allow existing garage to become an accessory structure resolving an outstanding zoning issue..

Attorney Campbell: The applicant believes this request meets all NH Law and should be granted.

Chairman Allen reiterated the town requirement for upland area and the lot in question upland area.

Chairman Allen: Are there any board questions for the applicant? There were none.

Chairman Allen: We have a request for a variance to the required upland of 32,670. The applicant proposes 11,599, which is roughly 30% of the requirement. The plot plan and documentation clearly show the lot characteristics and the upland. We are all familiar with this lot. I also do not have any additional questions.

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

Shari Ridlon, 13 Cove Road, still has concerns about natural resources, overcrowding, negative impact to the neighborhood, and health and safety concerns of another house in the crowded area.

Steve Ridlon, 13 Cove Road, would like to remind the board that this lot has already been granted a variance years ago to the previous owner to build the existing storage garage. The lot was small and inadequate so the ZBA gave a variance to utilize the lot for the storage garage.

Chairman Allen closed the public comment session.

Chairman Allen asked if the applicant had any closing comments.

Attorney Campbell understands the neighbors concerns. There is nothing that prevents the applicant from cutting down all the trees. Is this a case it seems the neighborhood trying to roll up the sidewalks and keep out new houses. This lot is appropriately sized for this area of East Kingston and Mr. Granham is entitled to a reasonable use of the property. Not withstanding the fact that the lot already has a variance, we are trying to merge two lots to make a larger one.

Chairman Allen closed the public hearing of **Case #21-03** – Brian Graham, 128 Newton Rd, Plaistow, NH who requests variances for the property located at 4-6 Cove Road,

EK, NH (MBL 02-01-32 and MBL 02-01-33) from the provisions of (a) Article VI.D.1 – Wetlands Conservation District, Special Provisions for minimum non-wetland area.

Chairman Allen read the ordinance language of Article VI.D.1 directly from the town ordinance book.

Deliberations:

Article VI.D.1 – Wetlands Conservation District, Special Provisions for minimum non-wetland area.

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

Dave Ciardelli stated that the ordinances were enacted after this lot was created. But, with that comes the clarity that as time evolved the town got smarter about what it wanted in development and what was acceptable from a safety perspective. We can't be dumping sewage in the river anymore, we need modern septic systems. We can't have tiny lots with no room for adequate septic and well systems, we need larger lots. The ordinances were created to fix the ill's of the past. The delta between the 32,670 required and the 11,599 proposed is gigantic.

Nate Maher stated in this particular situation with this particular ordinance I do not see a danger to public health.

Mr Falman read the opening and purpose of the East Kingston Ordinance. "To preserve and improve the attractiveness of the Town of East Kingston as a rural, residential, and farming community..... to promote the health, welfare, and safety of its citizens". The town wants to maintain its rural look. To assume that every single parcel that had a deed at that time the ordinance was created was somehow grandfathered and guaranteed a building lot is not how he reads or interprets the intent of the ordinance.

Mr Collamore stated there are already too many houses in the area. The upland requirement is just as important as any other requirement.

Mr Maher: one more comment, he wants to clarify that his interpretation is not that there are too many houses in the area, the town decided at the time of enacting ordinances that there was the right amount of houses and if any new ones were to be built there was a set of requirement to be met. We've heard from community about their concerns regarding overcrowding, the over-crowding is a pre-existing condition. Our charter is to ensure we don't make things worse.

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

Chairman Allen described his interpretation of why we have this ordinance requirement. The town came up with this requirement as a means of providing safety margins to public health and safety for activities on a lot that shouldn't be close to a wetland. It

provides adequate dry land to accept sewage, provide a buffer to wetland for things like yards, fertilizer, pesticides, and all the other activities that happen in a residential environment. Otherwise the town would simply state if you can meet wetland setbacks for septic systems we don't care how much dry land you have. That is not what the town wants. They specifically created an article addressing a certain amount of upland dry soil. This requirement is a buffer or safety margin for public health and safety.

3. Granting the variance would do substantial justice.

Chairman Allen thinks that although there is a negative to the town he doesn't believe it outweighs the negative to Mr. Graham.

Mr. Falman thinks this is a substantial injustice to the surrounding neighbors.

Mr. Collamore agrees

Mr. Ciardelli thinks the applicant has done a great job with this proposal but he does feel there is and injustice to the public. The applicant was dealt a bad hand but he is uncomfortable with the proposal and the negatives to the public and neighbors.

Mr. Maher stated that the applicant wasn't dealt a negative hand, he bought it deliberately. It's hard to tell what the applicant was thinking when he bought the original lot and maybe if things were really close and he was just going to miss requirements by a fraction it would have been different, but the onus is always on the purchaser to determine the future viability of what they are buying. If you buy a vacant lot, the only guarantee is that it is a vacant lot. If you buy a lot with a garage, the only thing that is guaranteed is that you have a lot with a storage garage unless you show that you meet the standards to do something else with it. Mr. Maher has a hard time seeing the injustice of this situation and feels that there may be a larger injustice done to the public with this proposal.

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

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.

Chairman Allen asked the board to discuss special conditions that would justify a variance. What unique characteristics overly burden the property and thus warrant relief.

Mr. Maher stated with regard to this variance request, none, there is nothing unique about this property.

All other board members agreed

Chairman Allen agrees, there is nothing compellingly different from other properties.

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

Chairman Allen stated he believes this property has a reasonable use. It has an existing garage, it's what was purchased, it's been there a long time. I don't think by denying this variance we are creating a situation where the lot can't be used. It can be used, it's being used, it has a garage structure.

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

Article VI.D.1 – Wetlands Conservation District, Special Provisions for minimum non-wetland area where the applicant proposes 11,599 sq ft to the required 32,670.

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

Tim Allen - Would
Dave Ciardelli - Would
Nate Maher - Would
Paul Falman - Would
Frank Callamore- Would

Condition failed

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

Tim Allen - would not
Dave Ciardelli - would not
Nate Maher - would not
Paul Falman - would not
Frank Callamore - would not

Condition failed

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

Tim Allen - would
Dave Ciardelli - would not
Nate Maher - would not
Paul Falman - would not
Frank Callamore - would not

Condition failed

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

Tim Allen - would not
Dave Ciardelli - 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:

(ii) 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
Dave Ciardelli - is
Nate Maher - is
Paul Falman - is
Frank Callamore - is

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

(i) Tim Allen - is not
Dave Ciardelli - is not
Nate Maher - is not
Paul Falman - is not
Frank Callamore - is not

Condition failed

Mr. Falman made a motion to **deny** the variance request to Article VI.D.1 – Wetlands Conservation District, Special Provisions for minimum non-wetland area, for all the reasons stated during deliberations.

Mr. Ciardelli seconded

The motion passed unanimously

Chairman Allen thanked the applicant for their time.

Attorney Campbell stated they were aware of their rights to request a re-hearing and would be in touch.

BOARD BUSINESS

Meeting Minutes:

Chairman Allen asked if there were any edits necessary to the June 2021 meeting minutes.

There were none.

Mr. Falman made a motion to accept the June 2021 minutes as published in draft format.

Mr. Collamore seconded.

The motion passed unanimously.

Circuit Rider Technical Assistance Contract:

The board had a discussion about recommending to the Selectmen that they approve a contract for technical assistance with subcontractor Julie Lebranche. The contract would provide as needed assistance to the board on technical zoning issues.

A discussion ensued regarding the background and qualification of Ms. Lebranche and what the board would like from her assistance.

Mr. Falman made a motion to allow Chairman Allen to work contract details with Ms. Lebranche and then provide a letter to the Selectmen to approve the contract for the amount already allocated in the town budget.

Mr. Collamore seconded.

The motion passed unanimously.

Mr. Ciardelli made a motion to close the meeting

Mr Maher seconded the motion

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

19