

TOWN OF EAST KINGSTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES

July 23, 1998

AGENDA

FILE

- 7:30 James & Karen Bioteau – 32 Giles Road – Variance from Article VIII.E.3 (1998-06)
8:00 Norman & Ethel Adams – 9 Rowell Cove Road – Variance from Article IV.D.6 (1998-07)

Members attending: Chairman John V. Daly, David Ciardelli, Norman Freeman and Alternates Charles F. Marden and Peter A. Riley.

Absent: David C. Boudreau and Edward Cardone.

Others attending: Glenn Clark – Building Inspector, Lawrence Smith – Conservation Commission Chairman, John L. Fillio – Selectmen, James & Karen Bioteau, Atty. Steve Herman, Peter Landry – Septic Designer, Richard R. Simpson, Joseph Conti, Becky Hanna – Seacoast Newspaper Correspondent, Shari Bostick, Janine Counselman, and Norman & Ethel Adams.

James & Karen Bioteau – 32 Giles Road – Request for Variance from Article VIII.E.3: Chairman Daly opened the public hearing at 7:37 p.m. for James and Karen Bioteau's request for variance from Article VIII.E.3.

Permanent facilities (septic systems, buildings, roads, driveways, etc.) shall be located no closer than one hundred feet from Hydric A soils, or seventy-five feet from Hydric B soils, with the exception of driveway or road crossing necessary to access the buildable land.

The applicants propose to construct a house 74 feet from Hydric A soils, where 100 feet is required. Chairman Daly stated that in the absence of two regular ZBA members, two alternates will be voting on the issues that come before the board. He further noted that Alternate Charles Marden has a past affiliation as broker with the applicants. He also noted that member Norman Freeman has a work relationship with the applicants. It is in the Chairman's opinion that neither Mr. Marden nor Mr. Freeman has a personal interest in the outcome of this case. With no objections from the applicants and their representation, both Mr. Marden and Mr. Freeman will participate in this case.

Atty. Steve Herman, representing the applicants, distributed a copy of a report written by Septic Designer Peter D. Landry, which gave Mr. Landry's professional opinion about the proposed location of the house in relation to the soils data for the parcel. Atty. Herman stated that there are three possible locations for the proposed house.

He stated that the first location for consideration is the 1997 approved location. He noted the following problems with this proposal:

1. Too close to the power lines;
2. The nature of the soils require a high foundation with slopes to be backfilled;
3. Trees between house and SW abutter must be cut;
4. The house will not be screened from the road; and
5. Not acceptable to the Bioteau's.

He then noted that the second possible location for the proposed house is across the brook. He then stated the following problems with this proposal:

1. The house would be located a long way from the road;
2. Dredge and fill permit would be required;
3. Wetlands will be largely impacted; and
4. The natural slope of the land makes it difficult for house construction.

Atty. Herman stated that the third possible location for the proposed house is the location proposed by the Bioteau's in this request. He then addressed the five criteria.

1. *The proposed use would not diminish surrounding property values because this proposal would keep a reasonable distance from the nearest abutter and eliminate effects of cons to this abutter. Without the variance, the effects to the abutters would be greater.*

He then submitted a letter from abutter Jeffrey Marston citing no objections to Mr. Bioteau's proposal.

2. *Granting the variance would be of benefit to the public interest because this house would be well screened from the road and abutters. The applicant further proposes a condition which requires that a vegetation swale be constructed between the house and the Hydric A soils to prevent any polluting run-off into the brook, thus protecting public interests.*
3. *Denial of the variance would result in unnecessary hardship to the owner because of the following circumstances of the property that distinguish it from other properties similarly zoned because the property has the burden of being located under the power lines, having limited useable soils and having a brook running right through it.*
4. *Granting the variance would do substantial justice because this would allow the landowner whom would build a swale, to use his property. The owner would also keep the house screened from the road and abutters.*
5. *The use is not contrary to the spirit of the ordinance because the ordinance is used to protect the wetlands. Building a vegetation swale will keep within the ordinance's purpose. He further stated that he is not sure why land around the wetlands is restricted. Other towns and even the state only set restrictions in the wetlands. He said that it is possible the restriction is written to restrict the building of homes around wetlands. In this case only one house is being proposed. The land is deemed a buildable lot.*

At the inquiry of board members, Atty. Herman stated that there is scientific debate over power lines and their health effects on people. He submitted an aerial photo of the property showing the location of the power lines and the location of the proposed house. It was determined the distance from the house and lines was about 60 feet.

Mr. Riley questioned the fact that Mr. Bioteau placed the restrictive covenant on the property himself, and was aware of the power lines and brook locations, all prior to him purchasing this parcel.

Mr. Bioteau responded with the parcel's history of being subdivided from John & Jessie York in 1989, Bioteau placing the restrictive covenant, which prohibits the development of the land across the brook, and selling the property to the Wojtkowski's. He further stated that the land back in 1989 had an approved house location much closer to the brook than what he is proposing. The Wojtkowski's never built, the approved plan expired, and the wetland setbacks became more restrictive. He stated that he believes his proposed location is the best possible location for the house.

Mr. Riley asked if this property is an investment property and if the Bioteau's were planning to sell the house. At Mr. Bioteau's response that he is planning to rent out the house, Mr. Riley stated that there is no hardship to the Bioteau's themselves.

At further inquiry, Mr. Landry stated that the septic system that was proposed back in 1989 is in the same location as proposed.

Mr. Riley stated that one of the criteria is hardship and he is not convinced any hardship exists.

Mr. Bioteau stated that the land located across the brook has such a slope that it too has limited building possibilities. He stated that he contacted Conservation Commission Chairman Larry Smith regarding the wetland crossing. And he stated the impact is too much.

Abutter Officer Reed Simpson stated that he would like the trees at the front of the property to remain. These trees shield the Bioteau property from his view. He further stated that the trees act as a protective barrier to the land. He informed the board that vehicles travel down Giles Road at an excessive rate of speed, and as the markings on the trees located on the Bioteau property show, there have been occasions when vehicles do not clear the corner and crash into the trees. Should these trees be removed, then the possibility of the vehicles not clearing the corner and hitting a house located in the 1997 approved location, are greater.

He went on to say that should Giles Road be widened, the 1997 approved location leaves limited space between the house and the road. Combined with the lot being located on a bad corner, this could be a public safety issue.

Building Inspector Glenn Clark stated that he has inspected the property and believes that Mr. Bioteau's proposal is the best location for a house.

Mr. Smith stated that he went out to look at the property at Mr. Bioteau's request. He said that the first problem he (Smith) had with the site was that Mr. Bioteau has already gone ahead and dug the hole for the house, prior to any approval. He stated that the foundation should be put in deeper to reduce the amount of slope to the back of the house.

He went on to say that the crossing of the brook at this lot's location would require extensive fill and a larger culvert than what is located upstream at the Bioteau's home. He questioned the layout of the proposed vegetation swale.

Mr. Landry explained the swale's purpose noting the diversion of run-off and filtering it into the woods. He stated that the brush is so thick, the swale would not be seen.

As to why the Planning Board placed a 100-ft. setback from Hydric A, Mr. Smith stated they wanted to be more strict than the State.

Mr. Landry stated that the State has no setbacks from wetland to houses. Their jurisdiction is only in the wetlands, not the area surrounding it.

Mr. Smith also noted that the restrictive covenant in the deed is not a formal conservation easement. Such easements require that the land be held by the town or a qualified conservation organization.

It was noted that since Mr. Bioteau placed the restrictive covenant on the property, he can have it removed.

Mr. Smith stated that it is very questionable as to whether the area across the brook can be built on.

Atty. Herman added that a variance may be need to build across the brook and such a variance may be denied because there is buildable land located on the Giles Road side of the property.

Mr. Riley stated that he does not see how the variance condition proposed by Mr. Bioteau will be enforced.

Discussion transpired on how the town would be informed if this swale failed. Atty. Herman stated that building the swale would accomplish the spirit and intent of the ordinance.

Glenn Clark stated that he would inspect the swale and it's operation prior to the issuance of a permit.

Mr. Landry added that the swale is a common treatment used by the Wetland's Board.

MOTION: Mr. Ciardelli motioned to grant the application for a variance from Article VIII.E.3 to allow construction at 32 Giles Road in the proposed location with the condition that a swale be constructed to mitigate any potential pollution to the brook, in accordance with the conditions submitted by the applicant. Mr. Freeman second.

DISCUSSION:

It was noted that the swale would be constructed prior to the construction of the house and inspected by the Building Inspector.

Mr. Bioteau stated that he wanted to put the foundation in first, keep up the silt fence, backfill, make the swale, seed it, and set with bales of hay.

Chairman Daly asked Mr. Bioteau if he dug the hole prior to variance approval as an act of faith.

Mr. Bioteau responded that the cost of renting the machinery is very expensive and he had to clear out the corner of the lot to see what he had to work with.

The Board reviewed the criteria:

1. The desired location does not diminish surrounding property values.
2. Having fewer trees cut and the construction of a swale is in the public's best interest.
3. There is evidence the property is unique.
4. Substantial justice would be met.
5. Because of the swale condition, the spirit of the ordinance is met.

Further discussion noted that the creation of the restriction to the property was a voluntary act, however, crossing the brook places the issue in the same place.

Chairman Daly called the vote.

The motion carried 4-0, Mr. Riley abstaining.

Norman & Ethel Adams – 9 Rowell Cove Road MBL# 02-01-07 – Request for Variance: Chairman Daly opened the public hearing at 8:27 p.m. for Norman & Ethel Adams' request for variance from Article IV.D.6 of the East Kingston Zoning Ordinance. The applicants propose the replacement of a failed septic system 58 feet from an abutting well.

Septic system leach field boundaries shall be located more than 20 feet from any property boundary, 100 feet from any surface water, 75 feet from existing or proposed private wells, and 125 feet from existing or proposed community wells.

Mr. Adams will be representing himself.

Mr. Adams informed the board that when he found out his septic system was in failure, he went to have a new system installed. Due to the fact that the lot is quite small, the engineer could meet all the requirements except one, the setback from a private well. He went on to say that the well in question, is not used and has not been used for 14 years. This well does not work. He has supplied water to the camp via a garden hose, during the very seldom times the camp has been used.

Mrs. Shari Bostick of 13 Rowell Cove Road stated that someone was staying in the camp last fall, and that she provided water to the camp via a hose to help them out.

Ms. Janine Councilman, the listing agent for the property, stated that during the home inspection it was discovered that the system was leaching into the Powwow. The Adams' immediately contacted the Health Inspector, Andrew Berridge. The septic tank has been since pumped out.

She went on to say that the Adams' employed Septic Designer Paul Nichols to design a new system. She stated that most towns have a mechanism that allows the homeowner to by-pass the town and go straight to the state level during an emergency situation, like this one. East Kingston has no such provision and the Adams' have had to wait for town approval, or in this case denial, then they had to wait to go before the ZBA. She stated that precious time has elapsed, and the septic system is now leaching into the Powwow again.

Mr. Councilman added that because of this wait, the Adams' lost the pending contract on the house.

The board reviewed the plot plan and the proposed septic location.

Mr. Clark stated that this piece of property is very unique and the proposal will need a variance. He too, has talked with Paul Nichols, who states that there is no other possible location for a new system on the property.

At the inquiry of the board, Mr. Adams stated that his own dug well is only 30 feet from the failed system. The other abutter's well is an artesian well located 225 feet away.

The board reviewed the five criteria:

1. *The proposed use would not diminish surrounding property values because this proposal would keep pollution from ground water and the lake, which will not decrease property value.*
2. *Granting the variance would be of benefit to the public interest because it would promote the health, safety, and welfare of the public.*
3. *Denial of the variance would result in unnecessary hardship to the owner because of the following circumstances of the property that distinguish it from other properties similarly zoned because the property is a pre-existing, non-conforming lot. There is no other location for a new system on the lot.*
4. *Granting the variance would do substantial justice because the property owner would be able to continue the use of his property and surrounding properties would not be threatened with pollution.*
5. *The use is not contrary to the spirit of the ordinance because the ordinance was written to protect surrounding residences with water pollution. Replacing this system does just that.*

At Mr. Riley's inquiry about the type of septic design proposed, Mr. Clark stated that Mr. Nichols has designed the smallest system possible to accommodate the residence.

Mrs. Bostick stated that she thinks the variance should be granted for the sake of the lake. There are not, and haven't been, active tenants at the abutting camp. This failed system is only 20 feet from the lake.

Mr. Smith stated that he is in favor of any system that prevents pollution to the lake.

It was noted that the property owners to the well in question were not present and that they also owned property across the street from the camp.

The board reviewed the criteria.

MOTION: Mr. Ciardelli motioned to grant the application for variance from Article IV.D.6 for property located at 9 Rowell Cove Road, with the condition that the most compact system be used to maximize the distance to the adjacent well. Mr. Freeman second.

DISCUSSION:

Mrs. Adams asked if the proposed plans could still be used.

Mr. Clark responded that he is sure the proposed plans reflect the most compact design for this property.

Chairman Daly called the vote.

The motion carried 5-0.

April 30, 1998 Minutes: With out objections, the board approved the April 30, 1998 Zoning Board of Adjustment minutes.

Chairman Daly advised the board that a joint meeting with the planning board and selectmen will be scheduled this fall to discuss points of view and enhance board communication.

With no further discussion, Chairman Daly closed the public hearing and this July 23, 1998 Zoning Board of Adjustment meeting adjourned at 9:00 PM.

Respectfully submitted.

Belcher

Minutes completed and on file July 27, 1998.