

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

July 25, 1996

FILE

AGENDA

7:30 MDR Corporation (Edna Walsh) - Variance from Article XI.H.2 (VI.C) (1996-04)

Attending: John V. Daly - Chairman, David Ciardelli, Edward Cardone, and Norman J. Freeman.

Others Attending: J. Roby Day - Selectman, Mark Post (MDR Corp.), Edna Walsh - Applicants, Lori Ann Morneau, Joseph Gibbs, and Catherine Tebo - Abutters.

MDR Corporation-Public Hearing: Chairman Daly opened the public hearing for MDR Corporation [on behalf of Edna Walsh] on the application for a variance from Article XI.H.2 (VI.C): Every residence shall be at least 25 feet from adjacent side and rear property lines at 7:35 p.m.

Chairman Daly noted for the record that although the application for MDR Corporation (Edna Walsh) has completed both Section 2 (application for a special exception) and Section 3 (application for variance), the correct application is for a variance. It was also noted that the East Kingston Zoning Ordinance Handbook erroneously refers Article XI.H.2 back to Article VI.B. Article XI.H.2 should correctly be referred back to Article VI.C.

Mr. Mark Post stated that he would be speaking for the petitioner. He then explained that the prior to the construction of Mrs. Walsh's home, the lot was occupied by a trailer (mobile home) owned by Mr. Stanley. He further explained that the Brandywine cluster development was originally designed as a trailer (mobile home) park and that when MDR Corporation purchased the property, it was changed to a subdivision of new homes. All the trailers (mobile homes) were removed from the property and houses were constructed in their place, (including Mr. Stanley's).

Mr. Post then explained that his (MDR's) construction people constructed the new homes in the same place the trailers (mobile homes) were once situated. It wasn't until the bank's closing of Mrs. Walsh's home that the error in the town setback requirement was discovered. Mrs. Walsh's home was 20 feet from the adjacent side lines and not the required 25 feet.

Mr. Post continued to say that the bank approved the closing subject to the property being granted a variance by the Town of East Kingston. Mr. Post stated that this conditional approval was issued back in November of 1995 and because of scheduling difficulty, he is now before the board seeking that variance.

At the inquiry of Chairman Daly, Mr. Post stated the Building Inspector, Mr. Conti had inspected the foundation and building at different stages. Mr. Post then reiterated that the new home was built in the exact location of the previous trailer's (mobile home's) foundation (cement slab). It was erroneously assumed that the cement slab was in compliance of the town setback requirements.

Mr. Post then stated that Mr. Gibbs resides two houses down from Mrs. Walsh. The home in between them is owned by Lori Ann Morneau. It was brought to his (Post's) attention that evening that Ms. Morneau's home may also be 20 feet from Mr. Gibbs' property line, [not the 25 feet as required].

Chairman Daly then requested Mr. Post to address the five criteria that must be met in order for the board to grant a variance [as outlined by the supreme court].

Mr. Post addressed the five criteria as follows:

1. The proposed use would not diminish surrounding property values because the dwelling is in a subdivision of homes of equal value.

Chairman Daly explained that the issue that needs to be addressed in criteria # 1 is that placing the dwelling 20 feet back from the setback line would not diminish the surrounding property values.

Mr. Post responded that because the property is located in a cluster development, the normal setbacks are less.

Chairman Daly stated that Article VI.C is a requirement to all residences in East Kingston, not just to cluster developments.

Mr. Post stated that each town has different setback requirements, and gave Danville's 15 foot setback as an example. He then stated that he couldn't see how 5 feet would diminish the neighboring property, as it wouldn't be taking away any of the abutting property. The house would be just 5 feet closer.

2. Granting the variance would be of benefit to the public interest because if the variance wasn't granted and Mrs. Walsh was forced to move her house, the excavation and digging to comply with the ordinance would result in the chance of erosion.

At the inquiry of Chairman Daly, Mr. Post described the site. He explained that Mrs. Walsh's home is setback 30 feet from the road, 20 feet from one side to the boundary and 40 feet on the other side to the boundary.

He further stated that behind her home is a septic system shared by Mrs. Walsh, Mr. Gibbs and Ms. Morneau. Beyond the septic system lies the 150 foot common land which is required in a cluster development. This common land abuts the property owned by David and Laurie Roucco of 124 Depot Road.

Mr. Post then described Mrs. Walsh's home as 24 x 40 with a full basement and a two-car [under the home] garage.

3. Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property that distinguishes it from other properties similarly zoned because Mrs. Walsh would have no place to live.

Chairman Daly stated that the hardship must be something that affects the property, not personal to Mrs. Walsh.

Mr. Post stated that this was the first time he has ever applied for a variance and that the hardship was difficult to explain. He then stated that the application states hardship to the owner.

Mr. Ciardelli explained to Mr. Post that the board is looking for special circumstances or something unique about the property [before the fact], that forces him (Post) to construct this home outside the requirements of the ordinance.

Mr. Post stated that Mr. Conti inspected the foundation at the time of it's construction and further allowed its completion. He then stated that if this error had been discovered at the time of construction, correcting it would have been no problem.

Mrs. Walsh stated that an Occupancy Permit was issued and it was her understanding that it's (occupancy permit's) issuance meant the home meets all state and town requirements.

At the inquiry of Chairman Daly, Mr. Post stated that the Town of East Kingston does not require certification from builders or engineers that all setbacks are met. The Building Inspector inspects and measures each home. It is possible that because Mr. Conti measured most of the preceding homes constructed by MDR Corp. that he (Conti) assumed Mrs. Walsh's home also met the setbacks.

Mr. Post reiterated that he purchased the trailer (mobile home) park by reason of foreclosure and that the only change he (Post) imposed was that the property would no longer be rented to the trailer (mobile home) owners, it would be sold to them. He continued to say that out of nine original residents of the trailer park, all but two (Mr. Stanley and Mr. Williams) opted to purchase their lots. Mr. Stanley and Mr. Williams were given eighteen months to move their trailers (mobile homes) out of the subdivision.

He further explained that Mr. Stanley moved his trailer out of the subdivision and Mr. Williams sold his (foreclosure) to Coastal Mobile Homes, who removed the trailer and constructed a split level home.

Mr. Freeman stated that the mobile homes may have been non-conforming at the time of their installation.

Mr. Post again stated that he did not change the lot sizes or anything else on the property. He did receive approval from the Atty. General to change the property from rental (as Marshall Decker had originated) to being sold as lots. Mr. Post added that he (MDR) purchased the property in 1993.

Mr. Freeman stated that the original property was two parcels, one owned by the Chamberlain's and the other by the Belcher's.

Chairman Daly directed the issue back to the hardship criteria and stated that it needs to be established that a hardship exists in order to grant the variance.

Mrs. Walsh asked if the board would consider the fact that the septic tank and system would have to be move to comply with this ordinance.

Mr. Gibbs stated that Mrs. Walsh can not sell her house unless a variance is granted.

Mr. Post reiterated that both adjacent lots are tied into the septic system located behind Mrs. Walsh's home. The cluster development has a community water and septic plan. He further stated that 90% of the lots in the cluster development are 100 x 100 ft, with a few exceptions of larger lots.

He stated that the community water supply starts at the back of Brandywine. All the lines run along the road and go into each individual home and that the water supply will not be affected.

Mr. Post then explained that the septic lines to these homes are connected to one line and that the septic piping that goes into each home is pumped into tanks and then pumped into the main leaching field. He added that what is unique about the land here is that the lots are limited in space, by reason of being a cluster development.

Mr. Post again stated that Ms. Morneau's home may also be 20 feet from Mr. Gibb's side boundary line. He added that Ms. Morneau currently has her home on the market and that should the bank discover this 5 foot discrepancy, he would also help Ms. Morneau with applying for a variance.

At Mr. Ciardelli's inquiry, Mr. Post explained that prior to Mrs. Walsh's home being built, a double wide mobile home measuring 24 x 44 feet occupied the site. The double wide mobile home was set on a cement slab with cement block foundation.

Mr. Ciardelli stated that it was safe to say that the cement slab was only 20 feet from the side boundary line.

Mr. Post described the building permit procedure as contacting Mr. Conti who would inspect and measure the site. Had the discrepancy in the side line setback been discovered at the foundation process, the foundation wall would have been moved to comply with the town ordinance.

Mr. Freeman stated that existing structures can be 10 or 15 feet from the boundary lines.

Mr. Post stated that most cluster developments in other towns have the requirement of a certain distance between buildings, East Kingston requires building distance between the *boundary* and building.

Mr. Post went on to say that he can't build behind Mrs. Walsh's home as there is the septic system and to the left is the common land.

4. Granting the variance would do substantial justice because it would prevent disturbing the land and it's vegetation. The excavation necessary to comply with the ordinance would also open the possibility of erosion.

Chairman Daly noted a relevant factor to this matter being that a building permit and occupancy permit were issued.

Mrs. Walsh produced the occupancy permit that was issued to her for the board's inspection. It was noted the permit# 102795 was signed on June 19, 1995 by Glenn Clark. Also noted was the building permit reference# of 961995H.

Mr. Post stated that Mr. Conti was in Florida at the time the occupancy permit was issued and it is conceivable to believe that Mr. Clark assumed that Mr. Conti had inspected the foundation at an earlier date.

5. The use is not contrary to the spirit of the ordinance because this 5 foot discrepancy does not give the appearance of crowding homes. It is also consistent with the spacing intention of the ordinance.

Ms. Katherine Tebo stated it is not unusual for lots in the cluster development to be very small. She gave an example of her neighbors lot. She then stated that building permits were issued to all of the homes on Brandywine.

Mr. Ciardelli stated that it was up to the individual constructing the home to see that it meets all the town setbacks.

Mr. Post responded that surrounding towns require the builder to get all the setbacks certified by an engineer, thus preventing this type of error.

Ms. Tebo stated that many of the mobile home lots have more land in back of them. She stated that she (owning a house) has very little back land. These lots make up in the back what they don't have on the sides.

Chairman Daly inquired about the Brandywine Homeowner's Association and to it's views on this issue.

Mr. Gibbs stated that he was the secretary to the association and that Mr. Deacon, the president was on vacation. He further stated that the association was in favor of the granting of this variance.

MOTION: Mr. Ciardelli made a motion to approve the application for variance from Article XI.H.2 (VI.C): Every residence shall be at least 25 feet from adjacent side and rear property lines. Mr. Freeman second.

Mr. Freeman inquired if a stipulation of certification of future foundations being installed on Brandywine could be incorporated into the motion. Further discussion of unavailable land for new homes resulted in no change of the motion.

Chairman Daly called the vote. **The motion passed unanimously. (4-0)**

Chairman Daly stated at the inquiry of Mrs. Walsh, that any person affected by this decision has the right to appeal and that they must act within twenty days from the date of the Notice of Decision.

June 19, 1996 Minutes:

MOTION: Mr. Freeman motioned to accept the June 19, 1996 Zoning Board of Adjustment minutes as prepared. Mr. Cardone second. The motion passed unanimously. (4-0)

This July 25th, 1996 Zoning Board of Adjustment public meeting adjourned at 8:24 p.m.

Respectfully submitted

Catherine Belcher
Secretary