

**TOWN OF EAST KINGSTON, NEW HAMPSHIRE**  
**ZONING BOARD OF ADJUSTMENT MEETING MINUTES**  
July 29, 2004

**AGENDA**

7:30 Peter E. Swinerton (2004-03)  
Frank R. Ouellette  
6 Cove Road  
MBL# 2-1-32

**Members attending:** Chairman John V. Daly, David A. Ciardelli, Norman J. Freeman

**Alternate members:** Nathaniel B. Rowell, Edward A. Cardone, Catherine Belcher, Peter A. Riley, Richard E. Cook

**Others attending:** Vernon Dingman representing Peter E. Swinerton and Frank R. Ouellette

Chairman Daly opened the meeting of the East Kingston Zoning Board of Adjustment at the East Kingston Town hall at 7:30PM to consider an application seeking a variance from the terms of Articles VI– Wetlands Conservation District – E3; VII– General Provisions D-6; IX – Lot Area and Yard Requirements A-1, A-2, C; requesting the said terms be waived to permit a two-bedroom home on a lot of record having 75’ frontage, 13,500 sq. ft. area, 10’ septic setback to front lot line, 23.5’ setback of house to sideline.

Mr. Vernon Dingman appeared representing the applicants, Peter E. Swinerton and Frank R. Ouellette. Mr. Peter E. Swinerton and Mr. Frank R. Ouellette were also in attendance.

Mr. Daly opened the hearing and noted the variances requested and suggested going through the various variances. He stated that the first variance is from Article VI, D6 which requires that septic system leach field boundaries 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. He noted that the applicant is seeking a variance from the 20 feet from any property boundary.

Mr. Daly went on to the next variance request which was Article IX, A-1, A-2, Every building lot shall have 200 feet of contiguous frontage on: a) A State highway; b) A Town accepted (and not discontinued) road; or c) A proposed road which has been approved pursuant to the Town’s land subdivision control regulations and complies with “Requirements for Construction of Roads and Streets in the Town of East Kingston. Every building lot shall contain a minimum area of 87,120 square feet.

Mr. Daly noted Article IX, C: Every building shall be set back from the front property line at least 30 feet of where existing buildings on adjacent lots are in reasonably close proximity to each other to the line of said existing buildings. Every residence shall be at least 25 feet from adjacent side and rear property lines. Mr. Dingman stated that the variance is for the sidelines.

Mr. Daly stated the next variance is Article VI, E-3: Septic system leach field boundaries shall be located no closer than 75 feet from very poorly drained soils, or 50 feet from poorly drained soils.

Mr. Daly explained the procedures of the hearing stating that all questions should be addressed to the Chair.

Mr. Dingman presented the Board with new copies of the plan. Mr. Dingman stated that the new plan has incorporated the issues brought up in the previous hearing. He stated that he added additional chambers to make a three-bedroom system even though the house will only contain two bedrooms. He added that he shrunk the footprint of the size of the house down. He noted that he gained the front setback that wasn't there before and now it is only 1.5 feet on each side as opposed to 8 feet on each side.

Mr. Dingman stated that he shifted the septic system so there is a setback to the front property line of 10 feet and that is to accommodate the maximum setback from the wetlands at the rear of the lot. He added that it now meets the sideline setback requirements.

Mr. Dingman stated that he added additional chambers to make the septic system a three-bedroom. He added that on this small a lot the State would only approve a two-bedroom and that is why he still has to classify it as a two-bedroom system for a two-bedroom home even though there is the area design for a three-bedroom system. He added that that is to accommodate East Kingston's three-bedroom rules.

Mr. Daly asked how does the Board know it is a three-bedroom system and Mr. Dingman stated that 9 chambers are minimally required for a two-bedroom. He stated that this new system has a total of 13 chambers. He added that this is 33% above and beyond a two-bedroom home. He stated that he cannot call it a three-bedroom system because the State won't give approval for a three-bedroom system. Mr. Daly asked Mr. Dingman to send a letter to the Chair at the Town Office with all the individual calculations showing a two and a three to show that it is adequate, which will be added to the file.

Mr. Dingman stated that working within the physical characteristics of the property, he has tried to design something that is the best that that lot will allow. Mr. Dingman explained how to find a flow rate.

Mrs. Belcher asked about the new house dimensions and Mr. Dingman stated that it is now 22X28. Discussion ensued regarding the hydric line.

Mr. Daly stated that the Supreme Court has changed the test for hardship. He stated that Mr. Dingman is asking for an area variance and to establish hardship in this type of case, it has to be shown that the proposed use of the property, area variance is needed in order to enable the owner to use the property given the special circumstances and the benefit sought cannot be achieved by some other means reasonably feasible. He stated that the Supreme Court decided this in May.

Mr. Daly went through the five criteria. Mr. Daly asked Mr. Dingman if the proposed use would diminish surrounding property values and Mr. Dingman stated that it would not.

Mr. Daly asked Mr. Dingman to explain why granting the variance would be a benefit to the public interest. Mr. Dingman stated that it would be an actual use of the property as opposed to a vacant lot.

Mr. Daly asked Mr. Dingman to explain why granting the variance would do substantial justice. Mr. Dingman stated that it would allow this particular property owner to use his property even though it was not previously used.

The next criteria Mr. Daly stated was that the use is not contrary to the spirit of the ordinance. Mr. Dingman stated that working with the Board he felt that a compromise could be reached that would be within a safe health range for the property and the surrounding properties.

Mr. Daly opened the floor to abutters.

Mrs. Shari Ridlon, 13 Cove Road. Mrs. Ridlon asked if the applicant needed to request a variance from Article IX, H because of the new building size. She stated that the ordinance states that the minimum ground floor is 800 sq. ft. Mr. Riley stated that that was written before the new Supreme Court decision. He added that if the application does not have a request for a variance to that, he suggested they do so.

Mrs. Ridlon stated that the applicant's leech field is only 71 feet from her well. Mr. Dingman stated that he was unaware of the location of her well location. He added that he could shift the system. Mrs. Ridlon stated another concern was that there are a multitude of legal non-conforming grandfathered lots in that area and any addition would tax the natural resources of the area.

Mr. Chip Dodge. Mr. Dodge stated that he felt the Board should either stick to the State regulations or the Town regulations.

Mr. Ciardelli stated that his understanding is that the way it works is you get a permit from the State based on the design of the system and once you get the permit it is given to the contractor for installation. Once it is done the State comes in and inspects it. He noted that if the system was built smaller than the design, it would be disapproved by the

State. He added that he did not know what the State would do if it was built 1 ½ times the size of the design.

Mr. Dingman stated that the State is looking for whatever is approved to be constructed. He added that if this is an oversized two-bedroom system, they will want to come out and see 12 standard Elgin chambers and two baby Elgin chambers and they will want to see it in that location wherever it is moved to. He added that nothing has been approved yet because all septic systems in East Kingston need Town endorsement.

Mrs. Ridlon noted to Article VI, E3. She asked what are they specifically requesting. Mr. Dingman stated that they are seeking a variance from the 15 feet from poorly drained soil. The applicant is 14 feet from poorly drained soil. Mr. Dingman stated that he could move it forward so there are no wetlands questions, but then the house is too close in the front.

Mr. Steve Ridlon, 13 Cove Road. Mr. Ridlon stated that he does not agree with the line of where the wetlands are. He stated that he has walked the property with a tape measure, he watched someone do the wetland boundaries last year. He pointed out on the plan where the markers were placed. He added that he felt that the first four or five feet of the house would actually be in existing wetlands. Mr. Dingman stated that his wetland scientist came up with that line for the wetlands. Mr. Ridlon asked what is considered poor drainage and very poor drainage. Mr. Dingman answered soil morphology. He added that just because there is standing water, does not mean it is automatically wetlands. He added that there are particular soil characteristics that a wetland scientist is looking for. Mr. Ridlon stated that three or four months out of the year the water is 18 inches deep right where the house will be.

Mr. Dodge noted that the lot is 13, 500 sq. ft. and wanted to know how much of it is actually useable. Mr. Dingman stated that it was probably 1/3. Mr. Dodge stated that he felt it was really taxing the land to put a house, a well and a septic on that size piece of property. He added that there is no hardship because there was nothing ever there.

Mrs. Belcher stated that this parcel was two separate lots that were merged together a few years ago and she stated that the Planning Board had inquired from Town Counsel about how do you merge two non-conforming lot together if they never come up to form a conforming lot. She added that when the Planning Board approved the merger of these two non-conforming lots that still did not equal a conforming lot, the Planning Board was not endorsing it as a buildable lot. She added that never in any way, shape or form were they allowing that. She stated that this was two pre-existing lots and neither could accommodate a house.

Mr. Daly asked the Board if they wanted to go ahead since they know another variance is still needed. Mrs. Belcher said she thought it was a good idea to give opinions on the five before them now and maybe the applicant will decide not to come back.

Mr. Ciardelli summarized as follows:

Article IX, A-1 states that you need 200 feet of frontage and we have 75 feet; Article IX, A-2 says the minimum lot area should be 87,120 sq. ft, they are proposed 13,500 sq. ft.; Article VII, D-6 says the septic setback should be 20 feet, they are proposing 10 feet; Article IX, C says the house setback should be 25 feet, they are proposed 23.5 feet; VI, E3 says you need 15 feet, and the applicant is saying just under 15 feet. He added then there is an issue over the design for the three-bedroom system.

Mrs. Ridlon asked what assurances does she have if this all passes that the 10' setback from septic from the road isn't going to adversely impact her across the street when and if the Town actually takes possession of the road and has to widen it to pave it. Mr. Ridlon stated that if the Town paves, they would have to cut into his front lawn to go around the applicant's septic. Mr. Dingman stated that the Town would not have to upgrade the width of the right-of-way to pave the street. Mr. Norman Freeman stated that this is a private road. Mr. Cook stated that in order to become a Town road, it has to be upgraded to a Class V, which is 24 feet, 16 feet of right-of-way.

Mr. Daly closed the hearing.

Mr. Daly stated that if the Board addresses the application as a whole and address each of the variance criteria that must be met, if the members conclude that that criteria is not satisfied with respect to any one of the five requested, then they must vote "no".

Mr. Ciardelli reiterated the criteria and what is being requested.

Mr. Daly stated that there are three permanent members and two alternates are needed. He appointed Mr. Rowell and Mrs. Belcher and voting alternates.

Mr. Daly stated that the first criteria for all five variances is that the proposed use would not diminish surrounding property values. He stated that the argument that was advanced on behalf of the applicant is that the surrounding properties are similar in size, scope and layout so that it will not really have any impact on the surrounding values.

Mrs. Belcher expressed her opinion that it would diminish the surrounding property values because the area is so congested and when you add more houses as close as these are.

Mr. Freeman stated that he agreed with that. He also stated that he did not realize that this lot had been created just a short time ago from two very small lots.

Mr. Daly went onto next criteria which states granting a variance would be a benefit to the public interest. Mrs. Belcher stated that in order to benefit the Town, it would have to bring something in.

Mr. Daly went onto the next criteria which states that denial of the variance would result in unnecessary hardship. Mr. Daly noted that the argument for several of these is that it meets State's standards.

The next criterion is granting the variance would do substantial justice. Mr. Daly stated that here is where the State standard would carry some weight.

Mr. Riley stated that the five criteria are area requirements and it is a pre-existing lot. He added that he did not think it was a grandfathered lot. He stated that the Planning Board appears to have consolidated two lots into one lot, which would indicate that the Planning Board felt that it should be buildable.

Mrs. Belcher stated that the Planning Board told the previous owner (Mr. Logan) that they were not approving a building lot.

Mr. Riley stated that if they are all area requirements, there is a different standard to go by since the most recent Supreme Court decision.

Mr. Daly stated the next criterion is that the use is not contrary to the spirit of the ordinance.

Mr. Freeman stated that he did not think the use is contrary being that it is residential, but as far as the size of the lot, that is contrary. He added that he thinks the Town has some obligation to notify the landowners that it is not buildable.

Mr. Ciardelli stated that he thinks the proposed use is not contrary to the spirit of the ordinance.

Mrs. Belcher stated that it is her opinion that the spirit of the ordinance is to accommodate setbacks and to protect the abutters from encroachment and privacy as well as the actual owner of the property. She added that she felt that this was being violated. She added that since it needs six variances, it is clearly contrary to the spirit of the ordinance. She stated that she is not convinced that these two lots, prior to becoming one lot, were ever intended to accommodate houses. She noted that when Rowell Cove Road was originally established, these tiny lots were created to accommodate seasonal cottages.

**MOTION:** Mr. Ciardelli **MOVED** that the application for the variances be **DENIED**. Mr. Freeman seconded and the motion carried unanimously.

**MOTION:** Mr. Rowell **MOVED** to accept the minutes from the June 22, 2004 meeting. Mr. Riley seconded and the motion carried unanimously.

The meeting adjourned at 8:50PM

Respectfully submitted,

Helen M. Lonek  
Recording Secretary