

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

August 22, 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 VII D. 6 & 7 and/or Article VI E.3 of the Zoning Ordinance.

Members Attending: Chairman John Daly, Vice Chairman Catherine Belcher, Dave Ciardelli, Tim Allen and Paul Falman.

Mr. Daly opened the public hearing for the East Kingston Zoning Board of Adjustment on August 22, 2013 at 7:00 pm.

He brought the Board up to date on what was happening with this application. Mr. Jamieson and Mr. Quintal had met with the State (DES) on the issue of the septic setback. They were informed that the State does not give waivers and that the system would need to be moved to comply with the State setback of 75'.

Mr. Jamieson and Mr. Quintal had conferred on the needs for the mall and how to comply with the state setback. Mr. Jamieson is already at capacity for the existing system and would need to expand it to allow for any additional tenants. They came up with a new plan to move part of the system which was within the 75' setback to the side of the field and to add some additional capacity at the same time. In the process of doing that, they have taken away the eligibility for a waiver and for all intrinsic purposes are intentionally violating the Town setback of 100'.

Mr. Daly noted that although this hearing had been continued originally due to it being noticed to an incorrect article, it appears the applicant has reworked the original septic plan the Board was to act upon, thereby nullifying the request for Equitable Waiver of Dimensional Requirements.

The application now constitutes a request for a *waiver* under Article VII D. 6 & 7 and/or Article VI E.3 of the Zoning Ordinance. Mr. Jamieson has filled out the Variance application and submitted it to the Board, along with a new septic plan. Mr. Daly noted on page 2 of the application, the Article and Section numbers were not filled out. Mrs. White will fill in the correct numbers and have Mr. Jamieson initial the addition.

Mr. Falman asked if in moving the system as shown, would Mr. Jamieson meet the State setback? Mr. Daly answered he would.

Mr. Jamieson cannot add any tenants until he gets approved by the Planning Board he is in compliance, and the Planning Board will not sign off on the plan until he is approved by the ZBA. The ZBA cannot act on the old application because it no longer fits the facts and circumstances.

Mr. Falman asked if Mr. Jamieson has an approved plan from the State? Mr. Daly noted it was not yet approved, and the State had said they would not approve it until the ZBA gave approval. Mr. Daly noted they could make their decision conditional on the State giving approval for the septic system.

Mr. Daly reported that Mr. Dennis Quintal will be acting as Mr. Jamieson's representative to the Board for the variance hearing. Mr. Jamieson, or his representative, will need to explain how he meets the criteria for a variance, and explain especially what is unique/special about this piece of property that distinguishes it from other properties in the area to satisfy the hardship criteria.

After review of the updated information, the Board had discussion regarding several aspects of the application.

Mr. Ciardelli wanted to see where the line would be for the septic system to meet the 100' setback. Was a system meeting the Town's setback considered, or dismissed in lieu of only meeting the state setbacks? Was cost a consideration to not to design it at 100' ? He wondered if it was even possible for the applicant to meet the 100 ft setback on this piece of property. Mr. Falman agreed those were questions that needed to be answered.

Mr. Ciardelli was unsure if the State mandated Mr. Jamieson to expand the system since it would not accommodate additional tenants as it is presently. Was there any corroboration of that fact if it that was the case?

Mrs. Belcher noted the applicant should explain why the system requirements of 100' cannot be met. She opined access by emergency vehicles could be a reason, but the applicant would need to explain why if that was the case.

Mr. Allen noted in reference to the hardship issue, the applicant has already spent quite a bit of money to build the system in the first place, and now there will be additional expense to modify it to meet the state setbacks. Would it be a financial hardship to require him to tear out the entire system and rebuild it as opposed to modifying it?

Mr. Daly noted the pond is dry most of the time as per the property owner. When you consider if there is a hardship here, he opined they could take into account they were dealing with a problem that is more academic perhaps than real. Mrs. Belcher noted what is it about this piece of commercial property that's different from other pieces of commercial property; that he's limited to and if those limitations weren't there he wouldn't have that hardship.

Mrs. Belcher noted the Town's setback were more stringent than the State's. It was noted this was not the first time this question of a difference in setback distance has come before the Board, and suggested perhaps the Planning Board might want to revisit this part of the ordinance and contemplate changing it to match what the State requirements are. This could alleviate future confusion of which number to meet.

Mr. Daly inquired had not the ZBA in the past approached the Planning Board in regard to the difference in setbacks? Mrs. Belcher agreed they had, but it was only in reference to replacement of existing systems, not new construction.

At the last meeting, Mr. Allen noted he would reach out to the original designer and ask for some clarification for the cause of the difference in distance. He reported he had done so and the answer from Mr. Orvis was as follows:

"As I recall there was a poorly drained area off the property and across a tote road. My field notes indicate the nearest standing or surface water was at a culvert 119 feet northerly from the northerly corner of the EDA. Without visiting the site again, I can only speculate that the culvert does not drain properly when frozen in the winter or that it has become clogged, and with the rainfall this year the water level has risen. We were on site in October 2011. My firm, Blue Hills LLC prides itself in accurate plans and wetland delineations,. There was certainly no intent to deceive or misrepresent."

The Board has no alternative other than to dismiss the application for request for Equitable Waiver of Dimensional Requirements under Article VII D. 6 & 7 and/or Article VI E.3 of the Zoning Ordinance without a finding.

An application for variance under the same articles has been received. The Planning Board meets on September 19, and the applicant has requested if at all possible could the ZBA meet before that date so they could bring a decision back to the Planning Board?

Mr. Daly and the Board discussed various dates; September 12 was decided upon. The agenda and newspaper notices will be prepared for that date. Mrs. White will inform Mr. Jamieson he is responsible for noticing fees for this hearing.

Mr. Daly will contact Mr. Jamieson and Mr. Quintal and inform them to be prepared to answer questions the Board has discussed this evening.

Mr. Daly closed the meeting at 7:45 pm

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

John Daly
Chairman