

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

August 22, 2019
7:00 pm

MINUTES

Case #19-01. Public Hearing for Brian Graham, 128 Newton Rd, Plaistow, NH (MBL 02-01-33).

The applicant requests variances for property located at 4 Cove Road, EK, NH from the provisions of (a) Article VII.D.6 – septic leach field boundaries (setback from property line and private well) and (b) Article IX.C – building setbacks (front, side and rear) in order to convert an existing garage to a residential use.

Members Attending: John Daly, Dave Ciardelli, Paul Falman, and Ed Robbins.
Also Attending: Applicant Brian Graham and Septic Designer Robert Balquist / Meisner Brem, East Kingston Building Inspector John Moreau, abutters Shari and Steve Ridlon 13 Cove Rd and Greg Manthorn, 11 Cove Rd.

Mr. Daly called the public hearing of the East Kingston Zoning Board of Adjustment into session at 7:00 pm.

This hearing is to review the application for Brian Graham, 128 Newton Rd, Plaistow, NH. Mr. Graham desires to convert an existing garage at 4 Cove Road, East Kingston to a residence and is requesting variances for septic and building setbacks.

Mr. Daly reviewed history of the property. 4 Cove Road is a pre-existing lot of record and presently a Quonset hut style garage sits on the property. Mr. Graham is looking to convert the garage to a residence and is requesting septic and building setback variances as the present lot does not meet current lot standards.

Mr. Daly invited Mr. Balquist to present the application to the board and address the criteria.

Mr. Balquist explained that 4 Cove Road was a pre-existing lot of record with an existing Quonset-type garage which Mr. Graham would like to convert to a residence in which to live. It is currently used for storage. They are asking for building setbacks from the property lines and setbacks for wetlands, septic, and well.

In light of the small area of the lot, he had designed a type of septic system called a Clean Solution System. It is a state-of-the-art system which is virtually pollution-free. Mr. Balquist explained that all treatment would take place in the tank and not the leach field. The clean solution system has a leach field size of 75 SF as opposed to the conventional system size of 700-1,000 sf. An air compressor in the house would provide continuous oxygen to be fed into the tank and accelerate the breakdown of the waste materials.

The existing point well is not in use and would be replaced with a drilled artesian well. As normal setbacks for the well are unable to be met, Mr. Graham has filed paperwork with the state to give up all rights for his well protection (Well Release attached to the application).

Water quality for Pow Wow Pond will be protected and a NH Shoreland Impact Permit has been obtained from the state (attached to the application).

Mr. Balquist addressed the criteria.

1. ***Granting the variance would not be contrary to the public interest:***
The proposed use is an allowed use for the district as Mr. Graham would like to convert the garage to a residence. The Clean Solution Septic design would protect surface and groundwater resources. They were asking for a variance for 52 ft setback; the required setback is 75 ft.

Mr. Daly asked if anyone is living in the garage at the present time. *Mr. Graham stated there was no one living in the garage since he has owned it (almost 3 years); he uses it for storage. There are curtains in the loft window. He cannot speak to anything before that time.*

Mr. Daly also asked if he received the variances, would this be a seasonal residence? *Mr. Graham stated it would not; it would become his permanent full-time residence.*

2. *The spirit of the ordinance is observed because:*

The purpose of the dimensional requirements is to avoid overcrowding and provide adequate space for waste water disposal. The aforementioned Clean Solution would be installed after obtaining an approve NH Septic design from DES. Water quality of Pow Wow Pond will be protected by the NH Shoreland Impact permit.

Mr. Robbins noted the Clean Solution system was approved by Vermont; was it also approved by NH? *Mr. Balquist stated it has been approved in New Hampshire and he has installed many systems in the Salem area. The system is ideal for constricted properties.*

Mr. Moreau stated by ordinance a 3-bedroom septic design is required but the proposed system is a 2-bedroom system. How will Mr. Balquist satisfy this requirement? *Mr. Balquist noted it was designed for a 3-bedroom residence by the use of the 75' disposal field.*

3. *Granting the variance would do substantial justice:*

It would allow the owner to improve his property to the fullest extent and in conformance with the permitted use in this district. At the present time the building is unoccupied and used for storage.

Mr. Daly stated it was always used as a garage and there was nothing that predated that structure. Abutter Shari Ridlon, 13 Cove Road offered information to that question. She watched the previous owner who lived across the street build the garage himself; before that it was a wooded lot.

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

The upgrade of the building will greatly enhance the value of the property, thereby increasing the value of the neighborhood. The upgraded building will be of equal value to surrounding properties and the footprint is not proposed to be expanded.

Mr. Daly asked what he was basing his answer on for this criterion; *Mr. Balquist stated Mr. Graham will add insulation and heat to the building.*

Mr. Robbins asked if the exterior was going to stay the same; *Mr. Graham said he might add vinyl siding. He was also intending on upgrading the grounds.*

5. *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. 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:

The parcel is an existing lot of record created prior to the adoption of the current ordinance regulating setback and use. Dimensional restrictions on the lot were adopted after the lot was created (refer to the deed and tax card). Denial does not result in any gain for the town.

Mr. Daly was not sure Mr. Balquist was addressing the intent criterion correctly. There needs to be something unique about the property. *Mr. Balquist stated the lot was unique as it is pie shaped, and was created prior to the zoning ordinance regulating size, setback and lot shape. It is 7,100 sf in size. Mr. Daly noted the size of the lot was not unusual comparing it to others in the area.*

b. the proposed use is a reasonable one because:

The proposed use is common to the area; the lot will be used in the same manner as immediately adjacent lots. The property has similar dimensional characteristics as immediately adjacent lots and will have similar setback to property lines.

Mr. Daly asked if Mr. Balquist had verification of the statement on setbacks. *Mr. Balquist stated he had included a copy for the tax map in the package of information to show other lots of a similar size – 7,000 to 10,00 sf.*

Mr. Daly was looking for evidence that adjacent lots have similar setback shortages. *Mr. Balquist stated he had not included that in the package, but in his opinion any building on similar small lots would not meet current zoning setbacks requirements.*

Mr. Moreau asked if Mr. Balquist knew the percentage of wetlands on adjacent lots compared to this lot as it appears this lot has wetlands covering a third or better of the lot. *Mr. Balquist had only observed the lot across the street and said he estimated 20% was wetlands adjacent to the pond.* Mr. Moreau stated 4,000 sf of upland was needed for the leach field, not counting the required setbacks for well, etc. *Mr. Balquist stated there was 4,000 sf of upland on this lot and that was why he designed the Clean Solution system as has a small footprint and did not need that much area.*

Mr. Daly opened the hearing to Board discussion.

Mr. Falman referred the “the spirit of the ordinance”. It was an existing lot of record before zoning requirements and was still a lot of record after the zoning requirements were in place. Neighboring lots that had homes on them were then not in compliance. This was a wooded lot that in 2004 the owner decided to building a garage on the property; a garage is not a residence. He does not believe they have met that criterion. The spirit of the ordinance is to provide proper setbacks for residential lots; this was never a residential lot. The structure was not pre-existing as a camp or home.

Mr. Balquist stated it is in a residential zone and they were proposing to use it residentially. They could not meet current setback and that was why they were before the Board. They were proposing a state-of-the-art septic system that is pollution free.

Mr. Falman noted it was also the building setbacks, not just the septic setbacks. *Mr. Balquist noted the town issued a building permit in 2004 to construct a building on the lot with no plot plan or variances.* Mr. Daly stated at that time, there was a notation (on the building permit) there was no water or electric.

Mr. Moreau noted that the setbacks for a dwelling and a garage were different. A garage has 30 ft front and 10 ft side and rear setbacks and a dwelling has 30 ft front and 25 ft side and rear setbacks. As a garage, it is close to the setbacks, but does not meet the setbacks. It is assumed that the front setback may have been taken from the road and not the property boundary. Mr. Moreau was not the Building Inspector at the time the permit was issued.

Mr. Daly opened the floor to abutters.

Steve Ridlon, 13 Cove Rd asked if the compressor for the clean system helped evaporate the volume of fluids going through the system. *Mr. Balquist explained it does not evaporate the fluids; it accelerates the bacteria in the breakdown process. The system would be limited to a 2-bedroom system at 300 gallons per days.*

Mr. Ciardelli surmised if the effluent was clearer; the size of the leach field could be reduced. *He also asked what would happen to the system in the event of power outages. Mr. Graham stated he planned on getting a generator.*

Shari Ridlon asked is this application goes through and the state approves the system, would they be coming back to the board to address the setback from poorly drained soils? *Mr. Daly noted that may be the case.* She also asked about the fact the lot size was not even met by 10%. *Shouldn't this be another variance they need to ask for? Wouldn't it make it more non-conforming to change it from a garage to a residence. Mr. Daly noted it was an existing lot, therefore they would not need to ask for a variance for that. As far as if it makes it more non-conforming, that was one of the things the board would be considering in their decision.*

Mr. Ridlon stated they had observed the construction of the garage and it was built on a floating pad and not a normal house foundation. Mr. Moreau noted that would be an issue for the Building Department to make sure it met the ordinance.

Mr. Ciardelli noted it appeared the intent of the original owner was to have the house on the camp lot and the garage on the smaller lot.

Mr. Greg Manthorn stated he could corroborate the original owner was using the structure as a garage. He asked if there were going to be more changes to the existing garage; *Mr. Graham stated he would only be altering the inside to make it livable and maybe vinyl siding the outside. There would be no other changes. Mr. Graham stated it has electric.* Mr. Falman noted the original building permit issued in 2003 states no electric and no plumbing. Mr. Graham stated there was electric in the building when he bought it.

Mr. Ciardelli noted that many of the lots were small and had camps on them as summer residences. In the past they had been approved for year-round livability when the board found it conducive to do so, but in those cases it was residence to residence and not garage to a residence. He could not see the conversion of a garage to a residence as meeting the spirit of the ordinance.

Mr. Falman agreed. This was an existing lot but not intended to be a building lot, so it was utilized for storage. It is not a residence but a storage facility with different setbacks. He does not think this is an appropriate lot for a residence.

Mr. Balquist asked would Mr. Graham not be increasing the tax value by converting it to a residence? Mr. Falman noted that was not the spirit of the ordinance. It is to protect the requirements of standardized construction and properties in town. Mr. Daly noted it is not revenue-driven.

Mr. Moreau asked Mr. Balquist to elaborate on the Shoreland Protection which encompasses a 250 ft. zone from the water. *Zone 1 (50 ft) is closest to the shore where no impervious surfaces are allowed. Zone 2 (150 ft) is a natural woodland buffer. Zone 3 is the protected shoreland zone which is where Mr. Graham is located.* When asked what the restrictions of Zone 3 are, *Mr. Balquist noted they comply with the point score in that the only tree removal will need to take place where the septic system is placed and there might be a couple of large pines that need to be removed. They would not be increasing any impervious surface and any disturbed areas would be under the allowed square footage.*

Mrs. Ridlon asked what would happen if the town were to take over the road and it needs to be widened since they are proposing to install it 10 feet from the road? Mr. Daly noted it was beyond the purview of the board. Mr. Falman noted that was why lots such as this were not really suitable for a residence.

Mr. Daly closed the public hearing and opened for board discussion.

Mr. Moreau noted that there are criteria required by residential codes that cannot be met to turn this garage into a residence. It would need to be determined if there was a slab foundation under this structure as a residential home cannot be built on a slab foundation. Also, headroom is a consideration as 4' high is not considered living space.

Mr. Robbins agreed with all the items listed by the Building Inspector.

In Mr. Falman's opinion the application does not meet the spirit of the zoning ordinance, and also does not meet the standards of a residence.

Mr. Ciardelli agreed with Mr. Falman's assessment.

Mr. Daly reviewed the criteria.

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

Mr. Daly stated they would be improving the lot. The vote was 3 aye and 1 nay.

This criterion passed.

2. *The spirit of the ordinance would or would not be observed because:*

Mr. Daly stated there are so many things lacking for this lot; among those are setback and building issues. Mr. Ciardelli stated there are too many accommodations required, which would cause infringement on owners of other properties. It does not meet the spirit of the ordinance. Mr. Robbins agreed it is contrary to the spirit of the ordinance and would be an encroachment on the residents. Mr. Falman also does not think it meets the spirit of the ordinance.

This criterion failed

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

Mr. Ciardelli stated this would assume an injustice exists now. There is an existing garage on a piece of property that cannot be used for anything else. He does not believe there is an injustice now, so there is nothing that needs to be corrected. It was never intended to be a residence.

Mr. Daly stopped the voting as all the criteria needed to be met and has failed to meet all the criteria. He asked for a **MOTION** on the application.

Mr. Falman **MOVED** to **DENY** the application of Brian Graham, 128 Newton Rd, Plaistow, NH for variances for property located at 4 Cove Road, EK, NH from the provisions of (a) Article VII.D.6 – septic leach field boundaries and (b) Article IX.C – building setbacks based on the applicant not meeting all the variance criteria, second by Mr. Ciardelli with a unanimous vote.

Mr. Daly closed the public hearing.

The meeting was adjourned at 8:10 PM unanimously.

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

John Daly
Chairman