

FILE

East Kingston Board of Adjustment  
Minutes  
August 24, 1995

Attending: Chairman John Daly, David Ciardelli, Stewart Aronson (7:35), David Boudreau-Alternate, Norman Freeman-Alternate, and Ed Cardone-Alternate.

Abutters: John Eaton, Curtis Jacques, and Mark LaPorte.

Others Attending: Selectman Andrew Berridge, Planning Board Member Amanda Rossi-Lashoones, Planning Board Alternate J. Roby Day.

The Chairman opened the meeting at 7:30PM.

Colanton-Application from Appeal from Article VI-C: (1995-04) The Chairman opened discussion by reading the pertaining ordinance. Mr. Daly advised Mr. & Mrs. Colanton that they needed to address five (5) criteria to convince the Board that it had the proper authority to grant the application for a variance.

Mr. Daly said according to the application submitted, the Colanton's were applying for a variance from Article VI-C to convert the Pro Shop now used for storage, to a small house for a groundskeeper.

Mr. Colanton said that he meant for a watchman. He explained that he had been vandalized a few times. His intention was not to use the building as a rental unit, that it would be a part of the golf course.

Mr. Daly directed the discussion to the first criteria, regarding proposed use, that it would not diminish the surrounding property values, and asked Mr. Colanton to address this issue.

Mr. Colanton felt that converting the building would generate increased revenues, as he would be willing to pay more taxes. He intended to fix the building, to make it more presentable, and add new shrubs.

Mr. Colanton mentioned that he was unable to keep a dog on the premises due to his wife's allergies. He felt the watchman would keep a dog. This measure would help to protect his equipment worth several thousand, in the form of golf carts and mowers.

Mr. Ciardelli asked Mr. Colanton to address the value of the surrounding properties.

Mr. Colanton felt it would enhance the surrounding properties. He said the gravel and sand dust will be removed, the dumpster will be relocated, and the area will be cleaned up.

Mr. Daly asked the Colanton's to address the second criteria, why granting the variance would benefit the public interest.

Mr. Colanton said first increased revenues to the town, second the appearance would be improved, and third a watchman on the premises at all times would deter unfriendly people. Mr. Colanton added that he is not interested in changing the land, nor is in favor of cluster development, and wants to keep the land like it is.

Mr. Daly asked the Colanton's to address why denial of the variance would result in unnecessary hardship, and the special circumstances that distinguish his property from other similarly zoned properties. Mr. Daly clarified that Mr. Colanton has to demonstrate that a hardship is involved *because of the property, and not because it is more convenient.*

Mr. Colanton said he had a work barn located in a wood area in Kensington, and the club house is set back 450-500' from the street. It is very easy to break into at present, and reported the theft that occurred here.

Mr. Daly asked what it was about the property that creates a hardship that is unique and different.

Mr. Colanton responded that a golf course is as important to a town as is a bank, pharmacy or hospital. This golf course is an opportunity to get exercise. He provided facts with senior citizens that use the course in a therapeutic sense, that this is their whole recreational life.

Mr. Daly reminded Mr. Colanton, that a hardship related to the other golf course was a good example of when a variance is granted, as the odd shape did not have adequate frontage.

Mr. Boudreau asked how the barn in the woods, located in Kensington would be a problem.

The Colantons responded that you can't see it from the road. With regard to the building in question, an alarm system would be installed to protect the property, that would be connected to the house, pro shop and cart shops.

With no further questions, Mr. Daly asked the Colantons to explain the fourth criteria; how granting the variance would do substantial justice. In other words, Mr. Daly explained, why is it in the best interest of justice.

Mr. Colanton answered because it would protect his property.

Mr. John Eaton, abutter to the golf course asked permission to speak. He explained that his in-laws resided next to him, and that they are elderly, and his father-in-law is in a wheel chair. Mr Eaton recalled an incident of an intruder just walking into his in-laws home last winter. A trail of footprints in the snow led to the back of the golf course, towards Stumpfield Road.

Mr. Eaton added in addition to the safety issue, the golf course increased his property values. Mr. Eaton was in support of the Colantons application, and felt a watchman would be a benefit to the neighborhood as a deterrence.

The fifth issue to be addressed, Mr. Daly said, is to explain how the use is not contrary to the spirit of the ordinance. When asked to clarify what was meant by the question, Mr. Daly referred to the application, stating that there was ample land and frontage to make a separate building lot.

Mr. Colanton said he wanted to keep the golf course as a whole parcel, and did not want to break it into house lots. He explained he had dozens of opportunities to sell and develop, and was not in favor of this. He added the improvements would be first class.

When asked by Mr. Ciardelli if only one person was intended to reside in the building, Mr. Colanton said he needed someone responsible, and probably a husband and wife in the 40-50 years age group would be more appropriate.

To the question posed by Mr. Boudreau, on did the building have a septic system on it's own, Mr. Colanton said yes it was there when the land was purchased. A new septic was put there, and a mobile home was located there, and Dave McLean lived there at that time, per Mr. Colanton.

Mr. Daly inquired if the septic system had been inspected, and if so was it functioning? Mr. Colanton said it is not functioning, but would have it inspected, and do what ever was required to make it right.

With no further questions, Mr. Daly reviewed and summarized the five issues presented by the Colantons. Mr. Daly said on the issue of property values, it was fairly clear, if the property were fixed up, it would have a positive effect. Pertaining to the second issue, the point of safety is fairly compelling, and would be of benefit to the public interest in that sense, but not sure that any enhanced tax revenue could be considered. On the third issue dealing with hardship, Mr. Daly felt a little troublesome, and welcomed comments from the Board on this issue.

Mr. Aronson asked for clarification from Mr. Colanton, as to whether it was an alternative to hire someone as a watchperson around the clock. Mr. Colanton felt that was not a practical solution. He said he felt damage to other golf courses was substantial due to snow mobile and three wheeler abuse.

Mr. Ciardelli asked Mr. Colanton if his home is located on the property, then this really was not an issue, that the protection was really for when the was absent from the property.

Mr. Colanton conceded, that he would like to be able to go out to dinner in the evening, once in a while.

Mr. Daly continued his summary by stating he was willing to accept in the fourth criteria, granting the variance would do substantial justice based on the safety and security issues. On the fifth criteria, Mr. Daly felt with all this property (on the golf course) it would present a good case of not being contrary to the spirit of the ordinance, that it would be in the best interest of the town not to break up the golf course.

Mr. Boudreau explained that he had a problem with granting a variance on land hardship, when the acreage and frontage requirements are there, and it is residential every where else. Mr. Boudreau said it is contrary to have two dwellings on the property. There is no substantial reason for a hardship on the land, when there is ample land.

Mr. Daly said it was fair to say, the Board as a whole was sympathetic to the Colantons, but the law says in order to grant the variance, you have to find certain conditions are met.

Motion: Mr. Boudreau motioned to deny the application for variance of Section VI-C on land hardship. The motion was seconded by Mr. Ciardelli. The motion passed with a vote of 3-1. Mr. Stewart Aronson cast the dissenting vote.

Mr. Daly advised the Colanton's their application was denied on the basis there was no demonstration of hardship. The court says the hardship has to do with the property, and the Zoning Board does not have the authority to grant this variance. He also advised the Colanton's they had the right to appeal, and have the right to petition to a re-hearing.

This hearing closed at 8:18 PM.

(1995-05)

Merrill - Application for Variance from Article VI-Paragraph A1: Mr. Daly opened the meeting at 8:20 PM on this hearing. Mr. Daly invited the Merrills to explain the application in their terms, and explained the Board would examine their application based on the five criteria required.

Marshall Merrill's father, Mr. Merrill Jr. explained that his property had only 135' frontage. Mr. Merrill had 13.3 acres of land, and basically had no way to use it, and intended to give a parcel to his son Mr. Merrill III.

Mr. Daly wanted to know how the property came to be the way it is.

Mr. Merrill Jr. purchased it this way, and his first deed looked like he owned a large part of the town. His present home was built in the early 1960's.

Mr. Freeman recalled the home that used to be on the property, was closer to the road, and was in bad repair.

Mr. Daly asked the Merrills to address the five criteria, beginning with whether the proposed use would diminish surrounding property values.

Mr. Merrill III said they would turn unused backland into useable land. They intend to make another residential piece of property.

Pertaining to the second criteria, granting the variance would be of benefit to the public interest, Mr. Marshall III said it would generate more taxes to the town, and was willing to pay his share of taxes, and will have children in the school system.

Mr. Daly asked for an explanation with regard to the third criteria, the hardship issue. Mr. Merrill Jr. replied that there was no frontage. He added that he had no access in or out to the back property except for the main driveway. Mr. Merrill III approached an abutter (LaPorte) to sell a portion of land, and they declined the offer.

Granting the variance would do substantial justice would allow Mr. Merrill III to acquire property. Financially he is unable to buy property elsewhere. His parents are gifting the parcel to him.

Pertaining to the fifth criteria, use is not contrary to the spirit of the ordinance, Mr. Merrill said he had no frontage, yet had thirteen (13) acres. Mr. Merrill offered a comment, that there would be no increased traffic with the granting of variance.

Mr. Mark LaPorte, abutter to the east of the Merrills, spoke up and voiced his concern regarding the low elevation of the parcel.

Mr. Merrill III pointed to the map designating a high piece on the property intended for the new residence. He added that appearing before the Zoning Board was the first step, that he understood the Planning Board would be the next process. He noted a perc test would be needed, and Mr. Dennis Quintal would be his engineer.

Mr. Curtis Jacques (abutter) inquired as to the location on the map where the proposed lot change would occur. He was satisfied with the answer.

Mr. Ciardelli had a question as to clarification for a variance to create two lots, or a variance to create a right of way to provide access to the back piece of property.

Mr. Merrill Jr. answered that the target was to use the backland. Mr. Merrill III said there wasn't frontage to use two lots, and would have to use one driveway for access to the two dwellings. He said before they were thinking of making a nonconforming lot conforming, and be accepted as a conforming lot, but without the driveway can not do that, the driveway would have to be a common driveway.

Due to lack of frontage, the Merrills chose to appear before the Zoning Board first, to avoid spending unnecessary dollars in the event they were denied at this level.

Mr. Daly asked if the lot is currently nonconforming, yet predates zoning ordinances that were placed in effect. The Merrills said yes.

At this time Mr. Daly addressed the Board, by speaking to each issue on this application. Mr. Daly acknowledged that the proposed use did nothing to diminish surrounding property values. No negative effect was apparent. With respect to the benefit to the public interest, Mr. Daly thought it would likely improve property values, and increase property tax rolls.

Mr. Daly's concern, is that the lot was created this way in the first place. Mr. Freeman spoke up to say this property had to be in existence since the early 1930's. There were no requirements back then.

Mr. Aronson added that with a child in the school system, the taxes on that property would generate taxes where 85% of those tax dollars would go to the school.

Mr. Daly then addressed the hardship issue, and felt the configuration, and together with so many acres, had him partly persuaded that a hardship existed based on the shape of the land.

Mr. Aronson referred to an earlier comment that the house was located in the wrong place, and the fact that the land was this shape for such a long time was cause for a hardship in his opinion.

Mr. Ciadelli voiced his concern that with the Merrill's argument, there was no reason with one driveway, there couldn't be five houses back there.

Mr. Merrill Jr. responded with the elevation of the property, there was only room for one house, that's it.

Mr. Daly addressed the last issue, that the use is not contrary to the spirit of the ordinance, and he is convinced it is not the size of the parcel, and the unusual shape, but it was troubling that there was so little frontage.

Motion: Mr. Stewart Aronson motioned to grant the variance for the stated reasons, to approve the application as requested. Mr. Ciardelli second. The motion passed 3-1. Mr. Boudreau cast the dissenting vote.

The Chairman advised the Merrills their application for variance is granted. They would need to make application to the Planning Board. This public meeting at 8:48 PM.

The Chairman proceeded with other business, and asked the members if they have read the minutes of the meeting on June 22, 1995, and if so, did they approve of them.

Motion: Mr. Norman Freeman motioned to approve without objection the minutes of June 22, 1995. Mr. Aronson second. The motion passed unanimously.

For the record, Mr. Ciardelli would like the term date printed on the roster be corrected to reflect his proper term as ZBA member.

Bodwell update: Copies of excerpts of minutes to the public hearing for Bodwell before the Planning Board on August 17th were distributed to the members.

Abutters fees currently charged to applicants (ZBA) are currently below the normal postal costs associated with notices required by statute. These fees, together with the increased costs of publication of legal notices will be evaluated, in order to increase the amount collected at the time of application to cover necessary expenses. An application form with a mark up of costs will be forwarded to the Chairman for review.

The Board was advised that when Joseph Conti resigned from his position of Building Inspector on August 15, 1995, he also resigned from the Zoning Board at that time.

This meeting was adjourned at 9:07 PM.

Respectfully submitted,

Sandra Johnson  
Administrative Assistant.