

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

August 28, 1997

AGENDA

FILE

7:30 **Raymond J. Quinn – Variance from Articles VIII.E(3), IV.D.6 & VI.C (1997-04)**

Members attending: Chairman John V. Daly, David Ciardelli, David Boudreau, Norman J. Freeman, and Alternate Peter A. Riley.

Absent: Edward Cardone and Alternate Charles F. Marden.

Others attending: Building Inspector Glenn P. Clark, Selectman J. Roby Day, Jr., Mr. & Mrs. Raymond Quinn, and Attorney Mike Gorham.

Chairman Daly designated Alternate Peter Riley to vote in the absence of Edward Cardone.

Raymond J. Quinn – Case # 97-04: Chairman Daly opened the public hearing for Raymond J. Quinn of 21 Clement Lane, MBL# 11-2-2 at 7:45 p.m. Mr. Quinn is requesting a variance from Articles VIII.E.(3), IV. D.6, and VI.C of the East Kingston Zoning Ordinance.

VIII.E(3): Permanent facilities (septic systems, building, roads, driveways, etc.) shall be located no closer than one hundred (100) feet from Hydric "A" soils, or seventy-five (75) feet from Hydric "B" soils, with the exception of driveway or road crossings necessary to access the buildable land.

IV.D.6: Septic system leach fields boundaries shall be located more than 20 feet from any property boundary and 100 feet from any surface water and 100 feet from any well.

VI.C: Every building shall be set back from the front property line at least 30 feet or where existing buildings on adjacent lots are in reasonable 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. All other buildings (garages, shed, etc.) shall be at least 10 feet from adjacent side and rear property lines.

The applicant proposes the replacement of an existing septic system and the replacement of a mobile home with a 24' x 40' 2-story cape.

Atty. Mike Gorham representing Mr. Quinn stated that Mr. Quinn applied to the building inspector to replace the existing home with a stick-built cape. The building inspector informed Mr. Quinn that because of the wetlands located on his property, a variance was needed to proceed.

Atty. Gorham then addressed the five criteria as follows:

1. The proposed use would not diminish surrounding property values because the proposed replacements will receive local and state approval and will enhance the value of the area.
2. Granting the variance would be of benefit to the public interest because any replacement of a septic system by upgrading the same to state standards as well as the construction of a stick-built home enhances the value of the community.

At this time an abutter's letter of approval was submitted. It states that Mr. & Mrs. Floyd Sanders of 25 Clement Lane have no objections to the Quinn's proposal to replace the existing septic system and replace the existing mobile home with a stick-built cape.

3. Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property which distinguish it from other properties similarly zoned because the lot, due to its topography, shape and location to seasonal water/stream, prohibits the construction of either a septic system or the new dwelling outside of the setback area prescribed by the ordinance.
4. Granting the variance would do substantial justice because it would in fact be an injustice to the owner should the request be denied.

5. The use is not contrary to the spirit of the ordinance because the intent is to limit construction within a proscribed distance from Hydric "A" soils. The proposed construction will be within state parameters and it will not pose any danger to the community or the water supply.

The board reviewed plans submitted by Mr. Quinn and drawn by V.W. Dingman & Sons. Wetland areas were noted. A septic plan was also reviewed. The septic plan was approved by the town and state.

At the inquiry of the board, Mr. Quinn stated that the footprint of the mobile home would be doubled. He also stated that length of the home would be decreased by 10 ft. The septic system was approved by former Building Inspector Joe Conti.

Mr. Quinn continued to say that his lot is plus or minus 9/10 of an acre. He is trying to use as much of the footprint as possible and move the septic away from the seasonal water. The leach field was designed to fit in between the boundary and the house.

Chairman Daly noted that the application was previously presented with a variance request from Article VIII.E(3), however, Article IV.D.6 and VI.C were added.

Mr. Quinn responded that further research into the zoning ordinance resulted in the addition of the two variance requests.

Chairman Daly stated that the proposed septic system does not meet the well setback distance.

IV.D.6: Septic system leach fields boundaries shall be located more than 20 feet from any property boundary and 100 feet from any surface water and 100 feet from any well.

Mr. Boudreau stated that the proposed septic system is a two-bedroom system. Article IV.D.2 states that the minimum septic system must accommodate a three-bedroom home.

Building Inspector Glenn Clark informed the board that at the time this septic system plan was approved, he was Interim Building Inspector. Joe Conti gave Mr. Quinn a building permit for a two-bedroom septic plan, as that was all that was needed at the time. In July of '95, Joe Conti stated that any new home placed on the property could only be a two bedroom.

At Mr. Riley's inquiry, surface water/stream (Hydric "A" soil) was pointed out on the map. Mr. Quinn added that the stream is 2 1/2 feet wide and roughly 1 foot deep at this time. He also stated that when he cleaned out his yard, the skidder created a few small water areas.

Mr. Quinn continued to explain that the overflows from the street at one time got as close as 10 to 15 feet to his trailer. That was at its highest point back with the flooding of October 1996.

He stated that the proposed house would have a full foundation. The original foundation will be removed. The back part of the trailer foundation will act as the marker for the back part of the house foundation. A soils test will determine how deep the foundation will go.

Atty. Gorham asked if the board would consider conditional approval to redesign the two-bedroom septic into a three-bedroom septic.

Mr. Ciardelli stated that a three-bedroom design might be larger than the current proposed two-bedroom system, thus making the dimensions in question smaller.

Mr. Clark responded that it is possible to have a full size septic in a small area. The current chamber system design may need to be changed to another type.

Chairman Daly stated that if the three-bedroom system is not larger than the currently proposed two-bedroom system, the board could consider conditional approval.

Mr. Boudreau stated that the former building inspector originally approved a two-bedroom system, as the home was only a two-bedroom.

Atty. Gorham replied that the ZBA has the power to grant the request and the applicant could execute a covenant to only have a two-bedroom home that would protect the town.

Mr. Riley responded that how many bedrooms to this home is only one of four issues. Granting a variance from IV.D.6 depends on the size of the septic as well as the well being no closer than 100 feet from surface water. It also appears that the proposed well is less than 85 feet from the proposed leach field.

The board reviewed the map for distance from proposed septic to Hydric "A" soils. It was noted the proposed well is at the Hydric "B" soils line.

Mr. Riley stated that by Mr. Quinn's own admission, the proposed well might be under water as it would have been in the rains of October 1996.

Mr. Quinn replied that the waters have never been that high before. He is trying to keep things at their furthest distances.

Chairman Daly stated that Article IV.D.6 relates to distances from leach fields to Hydric "B" and distances to well of which are 77 and 75 feet respectively.

Mr. Clark stated that Mr. Quinn is between a rock and a hard place. He has no other choice but to seek these variances.

Chairman Daly responded that conditions could be set in granting the variances:

1. The size of the leach field should be upgraded to accommodate a three-bedroom home (as minimum requirement); and
2. The house continue to be only a two-bedroom.

At the board's inquiry as to why a new well was being proposed, Mr. Quinn stated that the existing well water was bad tasting and some times the well runs dry. He would like a new drilled well with his new house.

Mr. Boudreau noted that drilling the new well close to Hydric "A" soils could disturb the water sources. The well must be kept out of the Hydric "A" soils range.

Atty. Gorham stated that the septic design was drawn by a different company. Mr. Dingman, LLS took the septic plan data to generate this new plan.

It was noted that Denny Quintal recommended the location of the proposed well and septic.

Chairman Daly stated that the proposed house is less than 100 feet (75) and the well is less than 100 feet (77) from Hydric "A" soils.

Mr. Quinn stated that Mr. Quintal moved the septic to get as much distance as possible between the leach field and the brook.

Mr. Clark noted that sometimes this brook is dry. It is basically a run-off brook.

Mr. Riley stated that he did not feel comfortable granting this variance without knowing what Mr. Quintal's intentions were in the placement of the well and septic.

MOTION: Mr. Boudreau motion to grant the request for variance from Article IV.D.6 for 21 Clement Lane, MBL# 11-2-2 with the following conditions:

1. The size of the leach field should be upgraded to accommodate a three-bedroom home (as minimum requirement); and
2. The house continue to be only a two-bedroom.

Mr. Ciardelli second. The motion passed 3-0. (Mr. Boudreau, Mr. Ciardelli and Mr. Freeman in favor, Mr. Riley opposed.)

Chairman Daly then directed the board to consider the variance from Article VIII.E(3):

Permanent facilities (septic systems, building, roads, driveways, etc.) shall be located no closer than one hundred (100) feet from Hydric "A" soils, or seventy-five (75) feet from Hydric "B" soils, with the exception of driveway or road crossings necessary to access the buildable land.

The issue here is the distance from the building to Hydric "A" soils.

MOTION: Mr. Ciardelli motioned to grant the request for variance from Article VIII.E(3) for 21 Clement Lane, MBL# 11-2-2 with the following conditions:

1. The size of the leach field should be upgraded to accommodate a three-bedroom home (as minimum requirement); and
2. The house continue to be only a two-bedroom.

Mr. Freeman second.

Discussion:

Mr. Boudreau questioned why the board is granting a variance for a leach system for double the size structure and calling it a two-bedroom, when the existing home is already a two-bedroom. He stated that he is not convinced the hardship criteria has been met when increasing the building size.

Atty. Gorham stated that it is obvious the community's point of view is that the stick-built house is better than the mobile home. Mobile homes are not meant to last as long. The physical limitations of the lot is where the hardship comes into play. The applicants want a more modern home. They are willing to keep it a two-bedroom.

Mr. Boudreau stated that he agrees a stick-built home is better. He's not sure that approving an addition has the same hardship. The board recently denied a variance similar to this. He just wants the board to be consistent.

Chairman Daly responded that each case is different and the board acts on each case's findings.

Mr. Clark stated that he has been trying to assist Mr. Quinn. Mr. Quinn has tried everything to make this home better. He couldn't even sell it so; he wants to upgrade it instead. The other homes on Clement Lane are much nicer.

Mr. Boudreau responded that he just wants everyone to be comfortable with this new proposed home encroaching on the boundary. Restricting the house to stay mobile home guarantees no other bedrooms can be added.

The board discussed the current mobile home measurements and the parcel.

Mr. Freeman stated that sealing the well would prevent contamination.

Mr. Quinn stated that he and his wife will reside at another location during the construction of the new home.

Chairman Daly called the vote. The motion passed 4-0.

Chairman Daly then directed the board to consider the variance from Article VI.C:

Every building shall be set back from the front property line at least 30 feet or where existing buildings on adjacent lots are in reasonable 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. All other buildings (garages, shed, etc.) shall be at least 10 feet from adjacent side and rear property lines.

Mr. Quinn reiterated that the back line of the existing foundation will mark the back of the new foundation, thus making the front property setback just about 2 inches from the 30 foot setback requirement.

The board suggested that Mr. Quinn move the new foundation back six inches to accommodate the 30 foot setback.

Atty. Gorham then withdrew the request for variance from Article VI.C.

The board was convinced, based on the representation presented that the criteria for both requests was satisfied, thus granting variances with conditions from Articles IV.D.6 and VIII.E (3).

July 10, 1997 Minutes:

MOTION: Mr. Freeman motioned to approve the July 10, 1997 Zoning Board of Adjustment minutes as presented. Mr. Ciardelli second. The motion passed 4-0.

MOTION: Mr. Boudreau motioned to adjourn. Mr. Freeman second. The motion passed unanimously and this August 28, 1997 public Zoning Board of Adjustment meeting ended at 9:49 p.m.

Resn

Secretary

Minutes completed and on file September 2, 1997.