

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

September 12, 2013  
7:00 pm

**MINUTES**

***Public Hearing 13-03***

***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 a variance from the provisions of Article VII D. 6 of the Zoning Ordinance regarding the location of the Applicant's septic system in relation to surface water.***

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

**Also present:** Applicant Bradley Jamieson and Mr. Jamieson's representative, P.E Dennis Quintal, Civil Construction Management, Inc

Mr. Daly opened the public hearing for the East Kingston Zoning Board of Adjustment on September 12, 2013 at 7:10 pm. He reviewed with the Board the reason for this hearing was that the distance of Mr. Jamieson's septic system from surface water at 14 Powwow River Road did not meet the Town ordinance setback distance of 100 feet.

Mr. Jamieson had originally submitted an application for a waiver, but since submitting that application had met with DES and upon their recommendation, proposed a redesigned septic system to meet their 75' state setback. For that reason he no longer qualified for the waiver for the existing septic system but now needed to request a variance as the distance for the proposed redesigned septic system would still did not comply with the Town's 100' setback.

Mr. Daly invited Mr. Quintal to bring the Board current with how the situation of non-compliance with the setback came about. Mr. Quintal distributed a packet to the Board members and explained the history of Mr. Jamieson's project from the start to the present time.

Mr. Quintal noted at the start of Mr. Jamieson's project at 14 Powwow River Road, there were 2 existing commercial buildings on the property. There was a well, but no septic system. When Mr. Jamieson purchased the property, he contacted an engineer to design a septic system.

Mr. Jamieson went to the Planning Board with a plan showing his well and septic system. This septic system was inspected and passed by the previous Building Inspector. This plan also showed a proposed greenhouse and a porch on the front of the large building which were not shown on the original plan. The Planning Board then asked for an existing conditions plan as there were changes not on the first plan they had approved.

When that plan was submitted it was found the greenhouse had not been built the proper distance from the property line, and Mr. Jamieson was directed to request a waiver from the ZBA as it did not meet Town requirements. He had come before the ZBA and they had granted the waiver for the greenhouse.

In the spring, Mr. Jamieson was asked to submit a more detailed plan showing stormwater management which he complied with. Further review found that the septic system did not meet the Town setback of 100'; also it did not meet the State setback of 75'. This was due to an error on the part of the septic designer, but the system had already been installed. Mr. Quintal had re-measured to make sure his first calculations were not in error and he found he was correct in his measurements.

Mr. Quintal and Mr. Jamieson met with the State to see what they could do to rectify the setback discrepancy. They were told the State does not issue waivers or variances and the system needed to comply with the 75' setback distance. Mr. Quintal supplied documentation to the Board from several sources of the definitions of wetlands and surface water and also described the various types of soils and drainage patterns of the site in its existing condition.

At one of the meetings the previous land owner, Mr. Larry Bean, had testified for a good part of the year the pond was dry. Is it a pond or just a catchment area that fills up with water and dries up in the summertime? Or does it have to be a pond that is in existence year-round? Mr. Quintal was not sure if it met the State's definition of surface water because of that fact. When the system designer was at the site in 2011, he stated he did not see a pond.

Mr. Quintal has visited the site on Sept. 12, 2013 and taken some photos included in the Board's handout, which shows at this time there is a pond. Google Earth shows it as a pond; Mr. Quintal is not sure how the original designer had not seen it.

An application was submitted to the ZBA for a waiver for the setback for the existing septic system. When they met on August 22, 2013, there had been an error in the notification information so the meeting could not happen. It was continued and re-noticed.

Mr. Jamieson and Mr. Quintal met with Dawn Buker and Allison Gorman from the State, who recommended Mr. Jamieson re-design his system to not only comply with the 75' State setback but to support the various types of tenants he was anticipating so he would always be in compliance. Mr. Quintal had redesigned the system for the 75' setback to satisfy the State.

This redesigned system made the application for waiver void as it was now not an existing system, but a proposed new configuration. This made it a new system as opposed to an existing one. Mr. Jamieson was informed he would need to change the application from a request for waiver to a request for a variance.

He also showed the Board where the system would need to be placed to meet the 100' setback. He described that to meet the 100' setback it would need to be situated in a place where it would impede with traffic flow around the building for traffic and emergency vehicles and would also change the drainage flow towards the pond instead of in the other direction. At the present time drainage flows away from the pond and is treated by percolating through the soils which dissipates any pollutants and does not contaminate the ground water. Mr. Quintal was not sure why the Town had adopted a more stringent setback than the State.

Mr. Quintal referred the Board to the soils part of the handout. The map shows in that area the soil is a well-drained type of loam. Mr. Quintal indicated the combination of well-drained soils, flow away from the pond, and the fact there was a roadway (driveway) in between the leach field and the pond made the possibility of runoff flowing into the pond remote. Mr. Quintal noted the proposed plan was fulfilling the intent of the regulations for the Town for protecting the surface water.

**Mr. Quintal addressed the criteria:**

1. The proposed use would not diminish surrounding property values because:

***Mr. Jamieson has done an exceptional job of improving the site by all the work he has done and continues to do. He is adding to the value of abutting properties. Abutters would not be impacted, there are no wells in the area. There is no noise or pollutants.***

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

***This proposal of 75' instead of 100' is not contrary to the public interest because we believe the design is environmentally safe according to State regulations and is located behind the buildings with vegetation all around so abutters cannot see it.***

3. Denial of the variance would result in unnecessary hardship to the owner because:

***This is a unique site as the buildings were existing; the owner has established new uses. There was an error in the original septic design by not showing the pond. If the system was rebuilt at 100', the entire system would need to be moved with considerable time and effort. The grading and drainage would be affected and vehicle traffic flow around the building would be impacted considerably.***

4. Granting the variance would do substantial justice because:

***It would aid in the traffic flow around the building and the impact on drainage would be lessened.***

5. The use is not contrary to the spirit of the ordinance because:

***The spirit of the ordinance is observed as far as surface water is concerned. This particular pond is dry for a good portion of the year. It does meet the setback requirements for the State and environmental safety.***

**Board questions:**

Mr. Falman asked if there had been any discussion by the Planning Board regarding access by fire equipment? Was it implied there would be access available behind the building for emergency equipment? ***Mr. Jamieson answered absolutely there was. He noted the Fire Chief had indicated for public safety the unimpeded flow around the build allowed for easy access by emergency equipment should it become necessary.***

Mr. Ciardelli noted that in looking at the proposed plan showing the 100' setback, he recognized it negated the ability for traffic flow around the building. The proposed design showed a square septic design; is there any reason it could not be reconfigured to a rectangle perhaps and allow for the 100' setback whereas the square design might not? ***Mr. Quintal noted a configuration such as Mr. Ciardelli was speaking to would impede drainage area at the rear of the building, and interfere with the swale which is needed for drainage and the required 50' setback from the wetlands at the other edge of the property.***

Mr. Falman asked what the original septic design was based on for the use of the property? ***Mr. Quintal noted it was based on the present winery building originally being used as mechanical shop - 4 factory workers 20 gallons a day and office space - 3 office workers, 15 gallons per day. The other building showed multiple uses - sandwich shop, pizza, dry good, storage, etc. Mr. Jamieson noted that DES recommended they configure the system to support the various types of tenants he was anticipating so he would always be in compliance with State requirements.***

Mr. Daly asked where they stood at the present time with the State. Were they waiting on a decision from the ZBA? ***Mr. Quintal answered they were. They need to submit a septic plan to the State through the Town and the Building Inspector will not approve the septic system if it doesn't meet the requirements of the ordinance.***

Mr. Ciardelli asked if the present design encompassed the full footprint of all the buildings on the site? ***Mr. Jamieson answered it does.*** Mr. Ciardelli noted Mr. Jamieson's original target was a smaller target as it did not address full potential usage of all the buildings. The present design is potential full usage of everything that is there. ***Mr. Jamieson agreed with that statement.***

Mr. Falman reported at the last meeting there was discussion on why there was a discrepancy between the setback requirements for the State and the Town. He had reviewed Town reports and found there did not seem to be any particular reason the Town decided to be more restrictive other than surmising the thought might have been if 75' is good, 100' must be better. It appeared the setback was in conjunction with the timeframe of when the wetlands conservation district requirements were added to the zoning. ***Mr. Quintal noted in the past Kingston had had a similar problem with the State and Town setbacks being different. They had to meet quite often to rectify the problems on a case-by-case basis and the process was exhausting for everyone. They ended up changing their ordinance to match the State setbacks.***

Mrs. Belcher commended the good faith effort on the part of Mr. Jamieson to modify the septic setback to meet the State's requirement; it shows he wanted to correct the discrepancy as best as he could. Mrs. Belcher asked Mr. Jamieson and Mr. Quintal what is unique about this particular commercial property that is different from other commercial properties that hinders your proposed use? ***Mr. Quintal noted the site has good soils and the proposed drainage system is not in the direction of the pond which is different than other properties which may need to have the full 100' setback for treatment purposes. The buildings were already there and the existence of the pond and the wetlands offered challenges of where to place the system; not like if it were a blank slate.***

***Moving the system would be extraordinarily expensive and greatly limit what Mr. Jamieson was trying to do in making the property a showpiece for the Town of East Kingston.***

Mr. Daly noted the standards have changed and the applicant no longer needed to show the property is unique, but it does need to be differentiated in a meaningful way.

Mrs. Belcher noted there are spotty commercial areas in Town. This area is only the four corners; other areas in Town have full-length commercial areas. The property has pre-existing commercial buildings upon it and considering the location of the wetlands and the surface water, it hinders the appropriate placement for the best use of the commercial project.

### **Board Discussion**

#### **1. Granting the variance would / would not be contrary to the public interest?**

Mr. Ciardelli stated it would not because it meets the State standards. He was also appreciative of the explanation of the soils type in the area. Mrs. Belcher stated it would not because the public's interest was to vote this property as a commercial property and as such, allowing this particular development fits into the design and culture of the Town. Mr. Falman and Mr. Daly agreed with both comments.

#### **2. The spirit of the ordinance would / would not be observed.**

Mr. Daly noted #1 and #2 usually go together. If you find one is satisfied, you usually find the other satisfied also. Mr. Daly has no issue as there seems to be no justification for a more restrictive requirement. Mr. Falman noted the explanation of the soils types and the grades of the site were helpful. Mr. Daly noted the body of water appeared for the most part to be seasonal. Mrs. Belcher agreed with the statements.

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

Mr. Daly is convinced it would do substantial justice by the fact of allowing that the traffic flow around the building is consistent with what the Planning Board clearly wanted to see for the site. It seems to be a logical, efficient flow. Mr. Ciardelli agreed it was the best option. Mr. Falman noted there was mixed use on the property; access on both sides of the property is an advantage. Mrs. Belcher noted the setbacks that are supported by science (the State standards) are met. Mr. Ciardelli noted it showed integrity on the part of the property owner by modifying the system to meet the State standards.

#### **4. The values of the surrounding properties would / would not be diminished.**

Mr. Daly noted the system was not visible and he did not see any effect on the values of the surrounding properties. Mr. Ciardelli and Mr. Falman agreed. Mrs. Belcher noted that having a certified system in place actually protected the abutting properties.

#### **5. Denying the variance would result in unnecessary hardship to the owner.**

Mr. Daly stated the property is special since it is a commercial property in an area where there are other types of properties and there were existing buildings on the site. Mr. Falman noted it was adequately presented that there were other requirements that had to be met on the site, such as drainage, which was specified by the Planning Board. Mr. Ciardelli and Belcher agreed with the statements.

### **Board Vote**

#### **1. Granting the variance would not be contrary to the public interest?**

Mr. Ciardelli - Would not; Mrs. Belcher - Would not; Mr. Daly - Would not; Mr. Falman - Would not.  
The vote was unanimous.

#### **2. The spirit of the ordinance would be observed.**

Mr. Ciardelli - Would; Mrs. Belcher - Would; Mr. Daly - Would; Mr. Falman - Would.  
The vote was unanimous.

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

Mr. Ciardelli - Would; Mrs. Belcher - Would; Mr. Daly - Would; Mr. Falman - Would.  
The vote was unanimous.

**4. The values of the surrounding properties would not be diminished.**

Mr. Ciardelli - Would not; Mrs. Belcher - Would not; Mr. Daly - Would not; Mr. Falman - Would not.  
The vote was unanimous.

**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 to the owner.**

Mr. Ciardelli - Would; Mrs. Belcher - Would; Mr. Daly - Would; Mr. Falman - Would.  
The vote was unanimous.

Mr. Daly asked for a motion.

**MOTION:** Mr. Ciardelli **MOVED** the Zoning Board grant the variance in accordance with the application.  
Mrs. Belcher seconded. The motion was unanimous.

Mr. Daly informed Mr. Jamieson had been granted his variance and would be receiving a copy of the decision.

Mrs. Belcher commended Mr. Quintal on his fine presentation of the history and the facts of the site for this application.

Mr. Quintal thanked the Board for their decision and for rescheduling this hearing before the Planning Board meeting so they could report the finding of the ZBA at that time.

Mr. Daly closed the meeting at 8:15 pm

Respectfully submitted,

*Barbara White*

Barbara White  
Recording Secretary

John Daly  
Chairman