

TOWN OF EAST KINGSTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES
September 22, 1998

FILE

AGENDA

7:30 Michael & Susan Robinson - 17 Powwow River Lane - Equitable Waiver from Dimensional Requirements (998-10)

Members attending: Chairman John V. Daly, David Ciardelli, Norman Freeman, David C. Boudreau, and Alternates Peter A. Riley and Charles F. Marden. Absent: Edward C. Cardone.

Others attending: Glenn Clark— Building Inspector, Michael and Susan Robinson.

Michael and Susan Robinson—17 Powwow River Road— Equitable Waiver from Dimensional Requirements: Chairman Daly opened the public hearing at 7:35 p.m. for Michael and Susan Robinson's request for an Equitable Waiver from Dimensional Requirements from Article VI.C of the East Kingston Zoning Ordinance for property located at 17 Powwow River Road, MBL# 02-06-08.

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, sheds, etc.) shall be at least 10 feet from adjacent side and rear property lines.

The applicants seek an Equitable Waiver of Dimensional Requirement in relation to the recent discovery of a side line set back violation for an addition that was approved and built in 1985.

Mr. Robinson, representing himself, stated that he didn't know he was in violation until he applied for refinancing through Family Bank. He stated that he referenced his property boundaries with a plot plan he obtained when he originally purchased the house. Family Bank generated a new plot plan of the parcel and came up with a different plan than his. He requested the bank redo their plot plan, which they did, but the end results were the same. The bank informed him that the addition built onto the house in 1985 was too close to the lot line.

He stated that although the bank informed him of the violation, they did not supply the measurements supporting their findings. He realizes now there is a violation, however, he is not sure exactly how many feet off he is. He stated that the bank advised him to seek a variance or equitable waiver and that is why he is here tonight.

He continued to explain that when he attempted to find the markers out in front by the road, he could not. He resolved that this was because the road is gravel and the traffic plows throughout the years may have dislodged it. He stated that the marker that is supposed to be at the edge of the water (Powwow Pond) is gone possibly due to erosion.

He stated that the Building Inspector came and inspected the bounds and addition location yesterday and concluded that since there are no exact bounds, it is difficult to know exactly how close the addition is to the boundary. He said that in using a neighbor's mortgage plot plan, he (Robinson) determined his boundary line to be roughly 21 feet from the addition. He stated that the bank measured from an existing pipe (very loose in the ground) and a pipe at the rear of the property. The bank claims the lot has less land than his older plot plan shows.

At the inquiry of board members, Mr. Robinson stated the porch is roughly 10 ½ feet from the boundary line and the addition is roughly 21 feet from the boundary line. He noted again that this is a rough estimate using his neighbor's plot plan. The board acknowledged that the plot plan was not a professional survey.

Chairman Daly stated that although this situation fits into the intent of the statute, he has concerns about not being certain of the exact measurements of the violation. This is why he requested the Building Inspector to confirm the measurements on the plot plan.

Mr. Robinson read his deed to the board and noted that corner measurements are given but it is still not clear. Since the deed references the shoreline and the shoreline has eroded away during the years, an exact measurement cannot be formulated using the deed. He again stated that he could not find a true pin out front. He said that a pin's location had been determined by using a metal meter by the bank. He stated that he is not convinced this finding is not an old swing set piece buried in the ground or an iron pin. Another pin found can be easily removed from the ground. He is not convinced this pin is true by reason of its mobility.

Mr. Robinson continued to say that back in 1987 his driveway was paved and the pin location was referenced with a round marker and painted circle. Since that time he has had the driveway ripped up and there is no evidence of that marker's existence. He did say that when the marker was in the driveway, he believed his porch was 10 feet away from it. If the 10 feet is a correct calculation, then the 21-foot calculation from the addition to the boundary line is accurate.

Chairman Daly noted the four requirements necessary to grant the waiver.

1. *The violation was not noticed or discovered... until after a structure in violation had been substantially completed, or until after a lot... had been subdivided by conveyance...*
2. *The violation was not an outcome of ignorance of the law, or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith... but was instead caused by either a good faith error in measurement or calculation... or by and error in ordinance interpretation or applicability made by a municipal official...*
3. *The physical or dimensional violation does not constitute a public or private nuisance, not diminish the value of other property in the area, not interfere with... any...future uses of the property; and*
4. *Due to the degree of past construction or investment...the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected*

He continued to say that if a dimensional error existed for 10 years or more with no enforcement action, including written notice, commenced by the town, than the board can move past requirements # 1 & 2 and onto requirements # 3 & 4. The board must be satisfied that #3 & 4 are met. He stated that these findings are evident to himself.

Building Inspector Glenn Clark stated that it is obvious the house is too close to the boundary, but he feels that the violation was made in error, as the building inspector at the time, Everett Stone, issued a building permit for the addition in 1985. He continued to say that he recommends the board grant the request as he believes the cost to correct this violation far outweighs any benefit.

MOTION: Mr. Ciardelli motioned to grant the request for Equitable Waiver from Dimensional Requirements based on the requirements having been satisfactorily met. Mr. Freeman second.

DISCUSSION:

Mr. Freeman stated that it is possible to figure out the bounds with only one or two markers.

Mr. Robinson stated that this is the first time he has ever been through something like this and that he even requested the plot plan be redone.

Members agreed that the bank was not being forthcoming by citing a violation and then not supplying any measurements to support their findings. In the absence of Mr. Cardone, Chairman Daly designated Alternate Charles Marden to vote in his absence.

Chairman Daly called the vote. **The motion passed 4-0.** Chairman Daly requested that when or if Mr. Robinson gets his land surveyed, he would like an accurate account of the measurements of the house to the boundary.

Mr. Robinson stated that his neighbor is considering having his lot surveyed and if he does, he (Robinson) will try to get his land surveyed and have the pins relocated.

August 31, 1998 Minutes: With out any objections, the board approved the August 31, 1998 Zoning Board of Adjustment minutes as presented.

Joint Board Meeting: Chairman Daly reminded the board of the joint meeting with the planning board and selectmen scheduled for October 29th. Members requested a copy of the agenda be forwarded to them prior to the meeting.

With no further discussion, Chairman Daly closed the public hearing and this September 22, 1998 Zoning Board of Adjustment meeting adjourned at 7:55 PM.

Catherine Belcher

Minutes completed and on file September 23, 1998.