

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

November 7, 2013
7:00 pm

MINUTES

Public Hearing 13-04

Mark and Carrie Allin with respect to property located at 10 North Road, East Kingston, NH (Tax Map 14, Block 3, Lot 6) (Case 13-04).

The Applicant requests a variance from the provisions of Article XXI E. of the Zoning Ordinance which states a non-conforming use or structure shall not be enlarged or expanded either in use or structure.

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

Also present: Applicants Merrythought (Mark and Carrie Allin), and its representative, P.E Dennis Quintal, Civil Construction Management, Inc

Mr. Daly opened the public hearing for the East Kingston Zoning Board of Adjustment on November 7 at 7:00 pm. He reviewed with the Board the reason for this hearing is the Allin's are asking to enlarge a portion of their existing building and that Article XXI E. of the Zoning Ordinance states a non-conforming use or structure shall not be enlarged or expanded either in use or structure.

Mr. Daly invited Mr. Quintal to present to the Board specifics regarding the application. The Applicant provided a packet of photographs of various inside and outside views of their property with narrative for the Board to review, and were complimented on having the best presentation the Board had ever received. Mr. Quintal distributed an updated plan to the Board members and explained the history of the building at 10 North Road to the present time.

Mr. Quintal noted the building was built in 1946 and had operated as various commercial businesses over the years, mainly auto-related. The first business was Frost's Garage, which many Board members could remember. The Allins purchased the building in 2011 to relocate from Newburyport and operate their business. They have landscaped the front of the building and installed awnings over the doorways. They have also made substantial improvements to the second floor, which serves as their living quarters.

The site is clean with no junk cars around; only employee vehicles are parked outside. There is hardly any traffic movement in or out, with light deliveries and some relocating of cars being worked on. All vehicles being worked on are stored inside the building.

Mr. Quintal explained the proposed addition would move the front portion of the right side of the building out 25 ½' onto a paved area of the parking lot. It is within the existing building setback and because this areas is already black-topped, there would be no change in stormwater runoff. There is an underground septic tank in the front under the parking area, and the leach field is to the right of the building, negating any possibility of enlarging the building in either of those directions. The proposed addition would not interfere with either the septic system or the well.

The proposed addition would bring the front portion of the building and the existing garage doors would be installed on the new front wall. From an esthetic point of view, it would look the same as it does at the present time.

With respect to the statutory criteria: -

1. Granting the variance would not be contrary to the public interest because:
The addition would look the same as it does now; there is no visual impact to abutters.

2. The spirit of the ordinance would be observed because:
The first paragraph of the Zoning Ordinance states it was established "... in order to preserve and improve the attractiveness of the Town of East Kingston as a rural, residential and farming community and to continue its desirability as a place in which to lie and do business and to promote the health, welfare, morals, convenience and safety of its citizens." There have been some businesses at this site in the past that have not been run very well. This is an attractive site which has been recently improved. This spirit of the ordinance is preserved because we now have occupants of this Building who have made major improvements to the site and run a very successful business. They get along well with their neighbors and promote a good moral standing within the community. They do not do anything harmful, which makes it safe for the citizens. These are the type of people you want in your community.
3. Granting the variance would do substantial justice because:
The Allins have a very good rapport with their neighbors. If their needs cannot met, they might have to relocate. The Town will have lost a good resident and who knows what type of person could purchase the property and how they would operate their business.
4. For the following reasons, the values of the surrounding properties would not be diminished:
Property values will not be diminished because basically the building will look the same as it does now. It is a clean operation. If anything, over the years the property of the abutters has increased because the value of this property have increased since they have done such a good job of fixing it up.
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) there (is - is not) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:
 - (b) the proposed use (is - is not) a reasonable one because:

This is a unique lot, being created before zoning as a commercial lot. It has been run by several types of businesses over the years. In looking at the soil types of the immediate area, it is made up of 229B (Woodrich) moderately well-drained soil, and 656 (Ridgebury) very fine sandy loam - poorly drained. For farming purposes, these soil types would not be productive. There are also a lot of wetlands in the area which has soils not useful for farming, so realistically the area could not revert to farmland. It also would not be able to be developed upon with any new residential houses.

Mr. Quintal turned the floor over to the Allins. Mr. Allin explained they are a high-end restoration business, not a general repair shop. They do not take in day-to-day business; the cars that come into their shop stay for months and even years while being restored. General restoration can take from 12-24 months. The cars they work on cannot be outside in the weather; they cannot be wet or be in the snow; they need to stay inside. Because of this fact and the lack of space in the existing building, it has resulted in them having to rent storage space elsewhere at an additional cost for the vehicles they cannot fit in their building at the present time and transport them back and forth.

When they found the building, they loved it. They love the Town and the look of the building. It suited their needs perfectly. The addition would only move the existing garage doors out and the view of the front of the building would look as it does now. There is no other space where an addition would fit on the property.

Mrs. Allin explained that at the present time to use the paint booth, which is located on the right end of the building, they need to open the garage doors before they can open the doors to the paint booth. This means the car they are working on needs to be brought outside to be able to be positioned to go inside the paint booth.

She directed the Board's attention to the drawing she had included in their packet, and explained the present location is the only one where the paint booth would fit in the building. And the only reason it fit there was because at some point in the building's history, someone added 6' onto the rear of that portion of the building. The garage doors still needed to be opened before the doors to the paint booth could be opened. There is also a small wall in the area of the paint booth and because of the tight quarters, there is not enough airflow for the booth. The addition would allow for better air flow.

The addition as presented would be simple because the existing plumbing and heating for this section of the shop is already more than adequate enough to accommodate for the addition.

Mr. Falman asked if the expansion would be the same brick as the rest of the building. *Mr. Allin answered it would. There would new walls and a flat roof in keeping with the original look of the building.*

Mr. Allen asked if the intention was to take out the front wall. *Mr. Allin stated they would not. They would remove the doors and install them on the new front wall, preserving the original wall. The wall spaces in between where the old garage doors were located would offer good places to install cabinets or pieces of equipment.*

Mr. Daly asked about the water; had it been tested? *Mr. Allin stated they had had the water tested and there was a water treatment system inside.*

Mr. Daly asked how far into the future their proposed expansion would take them. *Mr. Allin stated that would be all they would need. They downsized from what they had in Newburyport to a smaller space to have better quality control over the work. They would like to meet their needs for more space, but they have no plans for any future expansion beyond what they are asking for tonight.*

Mr. Daly asked Mr. Quintal why he thought the property was unique. *Mr. Quintal stated it is limited in size, and was started years ago as a spot commercial lot. When zoning came, light industrial and commercial zones were created. At one time there was a warrant article proposing this area to be commercial, but it did not pass. It is a small lot which was commercial long before zoning. It is limited in size. When the Allins are finished with the building, the expansion would make it an attractive one for any future tenant. You would also be able to limit the number of employees and outside parking spaces. The addition is within the building setback, it would be on an already paved area which will not increase the stormwater run-off. Mrs. Allin also noted that even though the property is their primary residence, it is looked upon by mortgage companies as a commercial property and as such, they had to acquire a commercial mortgage as opposed to a residential mortgage.*

Mr. Ciardelli noted that the building was there before any zoning. There have been very bad situations over the years with this building, and this is the best it has ever looked. He opined that the proposed changes would only serve to improve the building.

Mr. Allen noted that other than improved storage and better efficiency, they would not be changing the functionality of anything they do inside. They would still be servicing the same number of cars.

Mrs. Belcher noted the Board needed to look at the fact of waiving that part of the ordinance which states you cannot expand or enlarge a non-conforming use, and whether or not in doing so you would be contrary to the intent of the ordinance when it was written. She opined that part of the ordinance was written at the time so commercial entities would not encroach and become obnoxious and a nuisance to the residential properties. This is one of the things she will use to measure whether or not this virtually unnoticeable addition is going to fly in the face of the intent of that part of the ordinance.

In her opinion, she does not think it frustrates that ordinance whatsoever. Because of that fact, she does not have a struggle with the hardship portion of the variance. And having to have a commercial mortgage for that property distinguishes it from other properties in the area. Based on soils types on the South side, that location is unbuildable which makes it unique. The building and use as commercial was in existence before the establishment of zoning, and for that reason Mrs. Belcher is comfortable stating that for her, the hardship part of the variance criteria has been satisfied.

Mr. Ciardelli noted that although increasing the footprint could be considered an physical encroachment, for him it does not change anything. It would be making the organizational structure work better, not bigger.

Mr. Daly asked if the Board could identify any public benefit. *Mr. Ciardelli opined it would be a plus to the Town. It is the best the property has ever looked. Mr. Falman noted it definitely will increase the value of the property, which will be increased revenue to the Town. Mr. Allen noted in addition to the increased taxes, the building is being taken care of and is not sitting vacant, or full of junk like it was before. The employment the Allins are providing, and the*

people they are bringing into the Town who are showing interest is a benefit to the Town. Mr. Falman agreed that due to the nature of the Allins business, they bring in people to the Town that are not familiar with or would otherwise not be exposed to it. These people may decide to want to live in East Kingston or have a business in the Town.

Mr. Daly went over the Variance criteria with the Board.

Board Discussion

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

Mrs. Belcher stated it would not be contrary to the public interest due to increased business, increased taxes, employment opportunities, and the building is being well-taken care of. The other Board members agreed.

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

Mr. Allen stated the spirit of the ordinance would be observed as the variance would not change anything; it will preserve everything the ordinance wanted; it simply would be allowing them better efficiency. Mr. Ciardelli stated it has been a commercial building forever, and it will promote a better user of the building. Mr. Falman noted the spirit of the ordinance would be observed since the Town has limited commercial. It should be recognized that commercial space in Town should be developed properly and the Town would get the full benefit; he opined it would increase the value for the Town. Mr. Ciardelli noted it is a great commercial business that does not make a lot of noise or have smells and makes the best of what could be a bad situation.

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

Mrs. Belcher noted Mr. Quintal had quoted from the Zoning Ordinance which states: "This Ordinance is established ... in order to preserve and improve the attractiveness of the Town..." and she believes this proposal is in line with that statement. The other Board members agreed. Mr. Falman noted they were dealing with a known business that is acceptable to the Town and conforms to all the requirements versus denying it to perhaps be left with an vacant building or a business that is not as desirable. Mr. Ciardelli noted that if you have a business, regardless of whether it is in a commercial zone or not, isn't it somewhat incumbent upon us (as a Board) to promote the success of that business? This variance could enable to be somewhat more successful than they are at the present time.

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

Board consensus was that the proposal would not diminish the value of the surrounding properties, but might even increase their value. Nothing the Allins was proposing would negatively impact property values.

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.
 - (a) there is/is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property because:

Their business use does not create undue traffic, noise, pollution, or smoke that would be offensive to the public, therefore the full application of restriction is not needed to keep the spirit of that part of the ordinance in place. Mr. Ciardelli noted that the added space would reduce the shuffling of vehicles around, thereby making it even less noticeable. Mr. Daly stated the proposed use is a reasonable one.

Mr. Daly stated he appreciated what the Allins were doing with the property and that the Building looked the best it had ever looked since he has been in Town.

He recapped the criteria for the vote. 1. Granting the variance would not be contrary to the public interest. 2. The spirit of the ordinance would be observed. 3. Granting the variance would do substantial justice. 4. The values of the surrounding properties would not be diminished. 5. There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property.

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.
Mr. Allen - 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. Mr. Allen - 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. Mr. Allen - 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.
Mr. Allen - Would not. The vote was unanimous.

5. There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property.

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

Mr. Daly asked for a motion.

MOTION: Mrs. Belcher **MOVED** the Zoning Board approve the variance request for 10 North Road for the 1,530 sf addition as presented as the Board believes, based on the evidence, it satisfactorily meets the criteria for variance from Article XXI.E. Mr. Ciardelli seconded. The vote was unanimous.

Mr. Daly informed The Allins they had been granted their variance and would be receiving a copy of the decision.

Mrs. Belcher commended Mr. Quintal on his fine presentation 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 8:00 pm

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

John Daly
Chairman