

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

November 14, 1996

FILE

AGENDA

7:30 Veda Paoletta - Appeal from Administrative Decision - Articles IV:I and VI:G&D (1996-05)

Members Present: John V. Daly - Chairman, David Ciardelli, Norman J. Freeman, and Edward Cardone (7:45).

Members Absent: David C. Boudreau and Stewart L. Aronson.

Others Attending: Glenn P. Clark - Building Inspector, Andrew L.T. Berridge - Selectman, J. Roby Day - Selectmen, Veda Paoletta - Applicant, Atty. Keri Marshall, Carol Linehan - Century 21 Realtor, and the following abutters: Steve Wilson (103 Powwow River Rd.), Emery & Llyn Dube (77 Powwow River Rd.), and Kenneth Custer (106 Powwow River Rd.).

Veda Paoletta - Public Hearing: Chairman Daly opened the public hearing for Veda Paoletta on the application for Administrative Appeal of the Building Inspector denying a building permit under Article IV section I and Article VI sections D&G of the East Kingston Zoning Ordinance. The applicant proposes to install temporary manufactured housing at the 78 Powwow River Road location in which Rocco Paoletta is the owner of record.

Chairman Daly informed that the Zoning Board in hearing an appeal from administrative decision has the same power and authority as the officer in which the decision is appealed from. The ZBA may grant the application, deny the application, or grant the application with conditions.

Atty. Marshall stated that it is Ms. Paoletta's intention to rent a trailer from Reynold's Trailer Sales. Ms. Paoletta is willing to post a bond to the satisfaction of the board. It is her intent that the trailer would be on the property until approximately December with the understanding that it would take 60 to 90 days for the construction of the permanent dwelling. As soon as the permanent structure is complete, Ms. Paoletta is willing to insure that the temporary trailer be removed.

Atty. Marshall further expounded that it is not the intention of Ms. Paoletta to occupy both the permanent dwelling and the temporary trailer and that she is willing to postpone the installation of the kitchen (in the permanent dwelling) until the temporary trailer is removed.

Atty. Marshall then explained that Ms. Paoletta's property of 30 Sanborn Road has recently been sold and that she needs to vacate those premises by November 22nd.

For the record, Chairman Daly read Article IV:I of the East Kingston Zoning Ordinance:

Temporary Manufactured Housing: In the event of an emergency (fire, flood, earthquake, etc.) when a dwelling cannot be safely occupied, the Board of Selectmen or Building Inspector are authorized to grant a temporary permit for a manufactured housing unit to be placed on the lot for a twelve (12) month period. The Board of Selectmen may authorize the renewal of the temporary occupancy permit for one additional twelve (12) month period. Once an occupancy permit has been issued for the permanent rebuilt dwelling, the temporary manufactured housing unit shall be removed within thirty (30) days.

Atty. Marshall stated that it was her contention that the emergency (fire, flood, earthquake, etc.) was applicable to the nature of Ms. Paoletta's emergency to vacate her existing home of 30 Sanborn Road by November 22nd.

She continued to say that Ms. Paoletta has the ability to apply for a two-family dwelling and septic system at the Powwow River Road location but would prefer to keep the lot as a single family parcel.

Chairman Daly stated that the language of the ordinance, (fire, flood, earthquake, etc.) indicates that the board has discretion in only those types of emergencies, (emergencies which present life and safety issues). Not issues of convenience.

Atty. Marshall argued that this was not an issue of convenience as Ms. Paoletta could dig a cellar hole, outfit it and reside there. She further stated that the ordinance does not address leasing a travel trailer and hooking it up to the septic and well. This would cause more of a safety issue to the Town of East Kingston than what Ms. Paoletta is currently proposing.

Glenn Clark - Building Inspector stated that he can only issue one permit per property. Ms. Paoletta is requesting a permit to install a temporary manufactured house and a permit to construct a house for the same parcel. Only one permit is allowed.

At the inquiry of Mr. Ciardelli, Ms. Paoletta stated that the septic system hole is dug but not installed and the well has not yet been drilled.

Mr. Kenneth Custer shared his concerns regarding the history of this proposal. He noted that Ms. Paoletta has not been cooperative to her abutters thus far. The construction vehicles currently at the site are driving all over his property, thus making it difficult for him to believe Ms. Paoletta's future cooperation in this matter.

Mr. Custer then inquired as to what mechanisms of assurance could be used to guarantee that this manufactured housing would be removed should Ms. Paoletta never build her permanent dwelling. He stated that the manufactured housing would diminish his property value.

Mr. Custer went on to say that Ms. Paoletta has been working with this parcel for a year now and had she planned this project accordingly, she would not be before the board imposing on the town's ordinances now.

Mr. Steven Wilson stated that there have been several problems with the workmen at this site with regards to the insensitivity to the abutting neighbors. It is possible this problem would cease at the completion of all construction, however, no good faith effort has been seen thus far.

He shared that when he was constructing his own house, he resided in Newburyport. This matter is not an emergency that is defined in the ordinance.

Mr. Emery Dube stated that his only concern to this proposal was an assurance of the trailers removal. He suggested the town require a performance bond to insure that the trailer be removed at the completion of the new dwelling.

Mr. Ciardelli inquired as to what provisions were made to accommodate this gap of residency between the sale of the home on Sanborn Road and the construction of the home on Powwow River Road. This proposal is coming at the eleventh hour. Renting is an option that has not yet been discussed.

Carol Linehan - Century 21 Realtor stated that normally the sellers have a period of 90 to 120 days to vacate the premises. This particular agreement would only allow the seller to be out by the 22nd of November. She continued to say that most individuals do not have the finances to build a new home until they have sold their old home.

Atty. Marshall added that Ms. Paoletta was told to go to the Planning Board in which she lost about a months time. She (Paoletta) also lost a couple of months time investigating the possibility of moving her house on Sanborn Road to Powwow River Road. This concluded in not being a financially possible venture.

Mr. Clark stated for the record, that he directed Ms. Paoletta, through her builder John Moreau, to go to the ZBA.

Chairman Daly stated that the board is constrained by the language of the ordinance, particularly the term *emergency*.

Atty. Marshall argued that the ordinance does not specify only "acts of God" or only those limited issues as outlined in the ordinance. Ms. Paoletta has the ability to go around the ordinance: two family dwelling permit, travel trailer parked on property or even calling the new dwelling a storage building and not a house. She (Paoletta) is trying to work within the confines of the ordinance.

Atty. Marshall further stated that the quick sale of the property, winter coming, time frame of November 22nd and finances does constitute an emergency.

Mr. Wilson responded that it appears Atty. Marshall is trying to read this ordinance in a correct spin that would fit into this proposal. He stated that this ordinance does not address this type of situation, ie: fire, flood, earthquake, etc.

Atty. Marshall further questioned the interpretation of "*when a dwelling cannot be safely occupied...*" She also stated that the ordinance provides that a temporary mobile home may be placed on the site for a period of twelve months with an extension of another twelve months. Ms. Paoletta is willing to waive her right to apply for an extension to that twelve month period (outlined in the ordinance). Ms. Paoletta will agree to a four to six month period and posting a bond of surety.

At the inquiry of Mr. Freeman, Chairman Daly described the options available to board in granting or denying this application.

Mr. Ciardelli quoted that *"When an appeal is made to the board of adjustment under this provision, the board must apply the strict letter of the law in exactly the same way that a building inspector must. It cannot alter the ordinance and map or waive any restrictions under the guise of interpreting the law..."*

Mr. J. Roby Day stated that in speaking for the Board of Selectmen, his concern is that justice be done and that the need for recourse must be addressed to correct any failure of the applicant to meet the ZBA's conditions.

MOTION: Mr. Cardone made a motion to grant the application to install temporary manufactured housing for a period of five (5) months and that the applicant post bond to guarantee the removal of the manufactured housing. Mr. Freeman second.

Discussion of this motion resulted in Atty. Marshall reiteration that Ms. Paoletta would waive her right to appeal to the Board of Selectmen for an extension of this five (5) month period.

The motion passed 3 to 1, (Chairman Daly opposed).

Atty. Marshall stated that Ms. Paoletta would be willing to post \$5,000 cash in an interest bearing account, in the names of Atty. Marshall and a ZBA member, and donate all interest accrued to the Town of East Kingston.

Mr. Custer stated that the property value he stands to loose should the trailer not be removed is more than \$5,000. This seems a low risk bond to the applicant.

Atty. Marshall added that Ms. Paoletta would not begin construction until the \$5,000 is deposited. A statement will be submitted to the board reflecting it's deposit.

It was clarified that the five (5) month period would begin at the day of the issuance of the permit and that the bond would remain open until the trailer is removed.

Atty. Marshall agreed to draft an agreement of all conditions noted above to be submitted to Chairman Daly.

July 25th, 1996 Minutes: It was noted that the July 25th, 1996 Zoning Board of Adjustment minutes were approved as prepared.

ZBA Video: It was noted that Conservation Commission Chairman Larry Smith purchased a Video outlining the duties, authority and powers of the ZBA. It was Mr. Smith's wish to share the video with members of the board. This video would be returned to him upon the completion of the board's viewing.

This public Zoning Board of Adjustment meeting ended at 8:32 p.m.

Catherine Belcher
Secretary
Minutes completed on file November 18, 1996