

Town of East Kingston Board of Adjustment
Minutes
11/30/95

FILE

Attending: John Daly-Chairman, David C. Boudreau, David Ciardelli, Norman Freeman-Alternate, and Ed Cardone-Alternate.

Others Attending: Attorney Craig Salomon, James Bolduc (Applicant), James Long-NH Soils Consultant, Ted Shepherd-NH Soils Consultants, Steve Gove-Norwood Realty.

This meeting opened at 7:34 PM.

The Chairman explained this public hearing is a continuance of the public hearing held October 26, 1995 for applicant James Bolduc for Stonemark Management (for Heirs of E. Currier, C/O Jean Bacas), regarding properties on 34 Rowell Road (MBL 2-1-34) and 8 Rowell Cove Road (MBL 2-1-37). (1995-06)

The chairman stated there was a great deal of testimony and discussion at the October 26th hearing on the first issue of **Appeal from an Administrative Decision made by the Building Inspector regarding Article IV (General Provisions), Section D.6 (Septic System leach field boundaries)**. At this hearing it was concluded that the members of the board together with the applicant would arrange to meet at the site location, to view the conditions, to arrive at a decision at this hearing.

Attorney Salomon representing James Bolduc of Stonemark Management, made reference to the "site walk". At that time Mr. Long, and Mr. Larry Morse (also of NH Soils Consultants) were present at the site, and they ran a tape at the location. It was evident the distance of the stream, and channel of the stream were greater than 100 feet from the corner of the leach field.

Mr. Salomon said there were puddles evident within the 100 feet radius, and questioned whether a puddle is considered "standing water" according to the town's ordinance. He added that the term is not defined in the ordinance. The state's regulations talks about surface water as opposed to standing water. Under the state's definitions, puddles would not be considered surface water.

Mr. Salomon remarked that if the board adopts the state definition, the state would be trying to protect the same values as the town. He added the town is without a definition, and by adopting the state's definition, the board would find there is no standing water, or surface water (within that radius).

Mr. Daly asked if that would not ignore the plain language of the ordinance.

Mr. Salomon thought the distinction is probably semantic, given the fact that both the town and the state are trying to protect the same values.

Mr. Salomon introduced Mr. Jed Shepherd to support the state definition of standing water, and noted that Mr. Shepherd of NH Soils, wrote the "blue book" on Septic System design when he was with the state.

Mr. Shepherd stated that he became involved in the septic business back in 1970 which at the time was the Water Supply and Pollution Control Commission. Mr. Shepherd spent fifteen (15) years there in the septic division.

Mr. Shepherd said the definition of standing water would be difficult because duration is a consideration. He felt there is an important distinction between surface water and standing water. Considering the time of year, and weather patterns, standing water can result anywhere. Mr. Shephard wanted to know if the town is trying to protect all standing water, or trying to protect surface water: lakes; streams; and ponds.

An identified abutter stated that the property has water there, and felt sure the state's definition was in reference to wetlands, and that the state is supposed to protect the wetlands for the animal life. She added the property has existing problems, and wanted to know if by suggesting the water as being only a drainage problem, would they intend to take the wetland away by putting a home in that location.

Mr. Long answered that the state has setbacks for on site septic and is well aware of protecting wetlands. He said the setbacks are fifty (50) feet from hydric B soil, and seventy-five (75) feet from hydric A soil.

The chairman reviewed the powers of the zoning board under RSA 674:33 with the board members. He added the board may reverse or affirm, wholly or in part, the building inspector's denial of the building permit.

Mr. Boudreau questioned how the state reacts to flood plain regulations with septic systems.

Mr. Shepherd said there really has never been septic system design rules, or any specific state rules with regard to flood plains. He added in subdivision rules there have always been records to your leaching area to be above the fifty (50) year flood plain. Regarding the leach field sighting, as long as the leach field is seventy-five (75) feet from the normal high water mark of the surface water, the state is satisfied.

Motion: Mr. Boudreau motioned to over rule or reverse the Building Inspector's decision to deny a building permit. The motion failed due to lack of a second to the motion.

Mr. Boudreau felt there was no standing water, that it does run off, but elevations have to be considered by the Building Inspector with respect to living space above the flood plain.

Mr. Ciardelli felt there was standing water, and that it was a matter of interpretation.

Mr. Knowles wanted to know if this was standing water, could it drain, and is it going to stay in one spot, or is it (the water) going to move.

Mr. Daly said if the board found that there is standing water, then they affirm the decision by the Building Inspector to deny the permit.

Appeal from Administrative Decision regarding Article IV (General Provisions) Section D.6 (Septic System leach field boundaries) of the zoning ordinance.

Motion: Mr. Ciardelli motioned to sustain or affirm the decision of the Building Inspector to deny the issuance of the building permit. Mr. Cardone second. The motion ruled three in favor. (3-2).

The chairman explained the motion was to affirm the decision by the Building Inspector was approved by the board, therefore the Building Inspector's decision stands. Mr. Daly suggested if new information can be provided, the board might look favorable on a request for a re-hearing.

Attorney Salomon then advised the board that his client is seeking relief on three variances, and he chose to present his case on the variances all together, due to the septic system design connection.

Mr. Salomon said the proposal is to combine two lots on an old subdivision, to make build a single family residence on the one lot, and suggest two stipulations: the house be limited to three bedrooms; and the septic system to be installed is to be a chamber system.

Mr. Salomon said firstly, the septic system is closer than one hundred (100) feet to standing water.

He said secondly, the septic system is fifty (50) feet from hydric B soils, and the town ordinance requires seventy-five (75) feet).

Thirdly, the soil is not 32,670 square feet as required.

Mr. Salomon said the three requests are designed to do a couple things: make sure the septic system works; and make sure the septic system as it works is not polluting any valuable water supply.

Mr. Salomon said the septic system design does meet the state standards, that East Kingston has stricter standards. He added the location of the proposed house is the best location as it meets both requirements of the ordinance and minimizes the impact on the neighborhood.

Regarding the practical merits of the proposal, Mr. Salomon said the first stipulation is that a chambered system will be used. The advantages are: it eliminates the need for replacement space; and lasts longer. Secondly, with reference to the square foot requirements, the chambered system can be replaced in the same space, as a failure in a traditional system would require replacement in an alternative location.

Mr. Salomon noted that an adhoc committee significantly concluded that hydric B soils were previously thought to interfere with nitrates diluted. He gave a technical explanation of the dilution of nitrates, and said in layman terms the setback requirements are designed to make sure the nitrates are handled the way they are supposed to be, to promote dilution rather than hinder.

Mr. Salomon referred to the legal requirements in granting the variances. With reference to the **hardship** criteria, he felt the definition of hardship would suggest something unique and noted the following items that would make this application unique:

1. Historically, this was a lot, and is not a new lot.
2. This is not a new subdivision, only a combination of two lots.
3. The applicant does meet the state standards.
4. There is no other reasonable use of the lot: there is not enough timber on the land; and farming would be difficult.

Mr. Salomon said they are doing every thing they can to meet the **spirit of intent** which meets the **public interest** issue as well. First of all, Mr. Salomon said the lots are proposed to be combined to meet the square footage requirements.

With respect to how the proposed use would not **diminish surrounding property values**, Mr. Salomon did not think that it would, and referenced Mr. Scott Gove who was present. He noted that Mr. Gove is not only involved in the sale, that with his testimony in general, a new house with similar square footage, in the existing neighborhood, will increase the value, and the impact would certainly not be negative.

Regarding how granting the variances would do **substantial justice**, these properties have been taxed as building lots, and considered building lots since 1972. He added that all the houses on that street came from the Currier Estate, which is the same source of title as the proposed application.

Mr. Salomon presented a letter received by fax from the daughter of the late Jean Bacas, addressed to the Zoning Board of Adjustment with her intent to sell the properties to Mr. Bolduc. (Attached).

Mr. Daly stated that although Mr. Salomon chose to present his case on the three issues together, the board would vote on the three variance requests independently.

Mr. Ciardelli noted there are three issues. He said one issue is asking for a variance on the 100 feet, and the other issue is 50 feet as opposed to 75 feet from hydric B soils (indicating a 25' delta). The last issue, a requirement for the 32,670 square feet of upland soils, and it was determined the applicant had approximately 17,000 (+,-) (indicating an approx. delta of 15,670). Mr. Ciardelli felt even with the chambered system, and the three bedroom limit, it is still a substantial difference between what is required, and what is presented.

Attorney Salomon concurred that Mr. Ciardelli fairly framed the issues.

The abutters were given the opportunity to pose questions.

Mr. Daly stated that Mr. Salomon addressed the issues in it's entirety, but the board will address them separately. Mr. Daly reviewed the criteria of requirements needed to support granting the variance(s): use would not diminish surrounding property values; use would be of benefit to the public interest; denial would result in unnecessary hardship; use would do substantial justice; and use is not contrary to the spirit of the ordinance .

Application for Variance of Article IV (General Provisions) Section D.6 (Septic System leach field boundaries shall be located more than 20 feet from any property boundary and 100 feet from any standing or running water, and 100 feet from any well).

Motion: Mr. Ciardelli motioned to grant the variance for the 100 foot setback. Mr. Boudreau second. The motion carries with three in favor (3-2). Mr. Freeman and Mr. Cardone were opposed.

Application for Variance of Article IV (General Provisions) Section D.7.B.2 (Receiving Soil. Every lot shall contain at least 32,670 square feet of contiguous natural in-place soil having the characteristic: no poorly drained or very poorly drained soils).

Motion: Mr. Boudreau motioned to grant the variance for 50' versus the required 75' requirement. Mr. Ciardelli second. The motion was defeated with two in favor. (2-3) Mr. Daly, Mr. Cardone, and Mr. Freeman were opposed.

The variance is denied, due to inability to meet all five criteria.

Application for Variance of Article IV (General Provisions) Section D.7.A.2 (Receiving Layer. Every receiving soil area, defined as aforesaid shall contain within it an area of at least 4,000 contiguous square feet having the following characteristic: Poorly and very poorly drained soils and existing or proposed private wells shall be a minimum of 75 feet distant from said 4,000 contiguous square foot area; common wells shall be a minimum of 125 feet distant from the 4,000 square foot area.

Motion: Mr. Freeman motioned to reject the request for variance. Mr. Cardone second. The motion carried three in favor (3-2). Mr. Boudreau and Mr. Ciardelli were opposed.

The variance is denied, due inability to meet all five criteria.

This meeting was adjourned at 9:06 PM.

Respectfully submitted:

Sandra Johnson
Administrative Assistant

Town of East Kingston
Board of Adjustment

**** Addendum to Minutes of 11/30/95 Reflecting Corrections ****

Note to record:

I, Sandra Johnson inadvertently reversed the definitions for variances D.7.A.2. and D.7.B.2. It should be reflected the order of business was accurate, and the votes were accurate. The following is a correction to the two variances as recorded in the minutes.

Application for Variance of Article IV (General Provisions) Section D.7.B.2 (Receiving Layer. Every receiving soil area, defined as aforesaid shall contain within it an area of at least 4,000 contiguous square feet having the following characteristic: Poorly and very poorly drained soils and existing or proposed private wells shall be a minimum of 75 feet distant from said 4,000 contiguous square foot area; common wells shall be a minimum of 125 feet distant from the 4,000 square foot area.

Motion: Mr. Boudreau motioned to grant the variance for 50' versus the required 75' requirement. Mr. Ciardelli second. The motion was defeated with two in favor. (2-3) Mr. Daly, Mr. Cardone, and Mr. Freeman were opposed.

The variance is denied, due to inability to meet all five criteria.

Application for Variance of Article IV (General Provisions) Section D.7.A.2 (Receiving Soil. Every lot shall contain at least 32,670 square feet of contiguous natural in-place soil having the characteristic: no poorly drained or very poorly drained soils).

Motion: Mr. Freeman motioned to reject the request for variance. Mr. Cardone second. The motion carried three in favor (3-2). Mr. Boudreau and Mr. Ciardelli were opposed.

The variance is denied, due to inability to meet all five criteria.

Respectfully Submitted this 7th day of December, 1995,

Sandra Johnson
Administrative Assistant

Attachment: Notice of Decision reflecting correction.