

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

December 10, 2020

The Town of East Kingston Zoning Board of Adjustment met remotely through a Zoom web conference, Thursday, December 10, 2020 at 7:00 PM. Due to COVID-19, and pursuant with NH Emergency Orders, no public meeting location was utilized.

Chairman Allen made a statement regarding video bombing:

If tonight's meeting is interrupted by outside sources, this meeting will be immediately terminated and the public hearing will be continued and rescheduled to another date and time to be announced and published. If anyone has a problem during the meeting connecting, Mr. Allen provided his phone number so he would be informed that someone could not connect with the meeting and either provide guidance to connecting or terminate the meeting as it a requirement the meeting be available to the public.

Members Attending: Chairman Tim Allen, Vice Chairman Ed Robbins, David Ciardelli, Frank Collamore and Nate Maher.

Others Attending: Applicants representative Micah Denner

Chairman Allen opened the meeting at 7:00 pm and Mrs. White called the roll.
Mr. Allen appointed Mr. Maher as a voting member.

Mr. Allen asked for a **MOTION** to approve the July 23rd minutes, noting a minor correction.

Mr. Robbins **MOVED** to approve the July 23rd minutes as amended; seconded by Mr. Ciardelli. **Roll Call vote:** Mr. Allen – aye; Mr. Robbins – aye; Mr. Ciardelli – aye; Mr. Collamore – aye; Mr. Maher - aye.
Vote was unanimous.

Mr. Allen opened the public hearing for Case #20-04.

Case #20-04 – Kathy and David Conti request variances for property located at 121 Depot Road, East Kingston, NH MBL 04-01-12 from the provisions of Article VII.D.2. – minimum requirement for septic size and Article VII.D.6 – septic leach field boundaries (setback from property lines), and location within the 75' protected well radius.

Mr. Allen explained the meeting procedure. Mr. Conti is unable to attend so Mr. Denner, the Conti's representative, will give a brief description of why they are before the board and explain how they meet the five criteria for the variances. The board will then ask questions.

Mr. Allen turned the floor over to Mr. Denner.

Mr. Denner explained the Conti's have a failed septic and the lot is an older lot that doesn't meet present day codes. It is under an acre and there are hydric soils on the property. Given where the house is located on the lot and because of the hydric soils, there is only one location available to install a new septic system. That is the same location where the present system is located in the front of the house.

Their design meets the state setback from the leach field, but the town setback is 25'. The entire leach field is within the well radius, as well as the septic tank. The variances they will need are the distance from the leach field to the well and septic tank to the property line.

The design of the tank is a monolithic sealed septic tank with no seam below the outlet elevation and the tank will also have a sealed foundation. The placement of the system as depicted is the only location where it will not be in hydric soils.

Mr. Robbins asked if they would be removing the old system. Mr. Denner stated that was correct. The existing system is pre-regulations and does not meet any of the present-day codes. The new system conforms to all present state codes; they are just asking for the variances to fit it on the property. As far as impacts on the surround area, this replacement system will be much better than the existing one and meets far stricter criteria than the present system.

Mr. Allen read the applicant's statements for the five criteria:

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

It's improving an existing undesirable condition. It will have a direct positive impact on the environment

2. The spirit of the ordinance is observed because:

This is replacing a failed septic and will positively impact the property and surrounding properties.

3. Granting the variance would do substantial justice:

Replace an outdated failed septic system with a state approved present code system.

4. For the following reasons, the values of the surrounding properties will not be diminished:

Temporary excavation impact while replacement system is being installed, to improve existing condition.

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. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The area to work with is extremely small for meeting all setbacks, with town setback from property line it is impossible to fit anything on-site with all the setbacks required.

b. the proposed use is a reasonable one because:

There is no other location on the property to design and install a septic system. The proposed location meets a majority of setbacks including neighboring wells and wetlands setbacks.

Mr. Allen opened the meeting to Board questions.

Mr. Ciardelli asked a question relative to the failed system. He asked if the new system will be in the exact location as the existing system? *Mr. Denner answered that was correct. The new system is a little larger in size due to the code requirements. The existing septic tank is partially where the proposed leach field is going and the actual leach field area is closer to the property line. The new system will be a little further from the property line.* Mr. Ciardelli asked if the old system was stone and pipe system? *Mr. Denner answered it was a stone and pipe trench that might have gone into a dry well. They tried to use a camera to see but the area was saturated and it was not possible.*

Mr. Ciardelli asked when the system failed. *Mr. Denner noted they had the system pumped in the spring. They received a call in the middle of the summer that something was wrong so they went out and further evaluated it on October 5.* Mr. Ciardelli noted the old system had been operating for all those years before it failed. *Mr. Denner noted the existing piping was 1960's piping.*

Mr. Ciardelli asked for clarification of the description of the new tank and wanted to know if it was a reinforced concrete tank. *Mr. Denner noted it was reinforced concrete tank. It was a sealed tank and the only seam was on*

the top and the pipes are below that. There are no seams below the pipes and the bottom of the tank is sealed with tar, much like they seal house foundations.

Mr. Robbins verified the top will be sealed to the base of the unit once it is installed; *Mr. Denner answered it would be.* He also asked if he will be able to get this installation completed before the ground freezes? *Mr. Denner stated they work year-round and the homeowners want to get the system install as soon as they can. They will try to finish before the ground freezes, but if not, the homeowner's still want the job to get done. They would need to replace frozen ground with new soil that is not frozen.* Mr. Allen opined if the state approval is received, the work could then begin.

Mr. Allen noted in looking at the plan, the septic system is going into the only piece of dry property outside of the 75' wetland setback. It is roughly in the approximate location of the original system, give or take a few feet. It is still within the original well radius as was the original system. It appears that along the EDA you are maintaining the 10' setback. On the righthand side of the plan along the side property line the number 8.76'. He asked if that is that the setback to property line they need a state waiver to? *Mr. Denner answered yes; it was the farthest he could get it from the property line. It is the very edge of the tank. One corner of the house and the new tank is inside the 10' line.* Mr. Allen noted the property looked quite difficult to deal with.

Mr. Ciardelli referred to the numbers on the elevation top of the finished grade is showing at 141.7 and the pad elevation for the foam is 140.0, so it is 1 ¾' above the top of the pad elevation. Mr. Maher noted on the home structure on the plan it states the pad elevation is 141.35', which makes it within 6". *Mr. Denner noted there was a 2-3' sill before the actual foundation starts on the house; it is just above grade.*

Mr. Allen noted there were no abutters on line, so he opened and closed the floor to public comment.

BOARD DELIBERATION

1. Granting the variance would not be contrary to the public interest. The board is tasked with showing there will be no harm done by approving the variance.

Mr. Robbins agreed it would not harm but it would improve, considering the system right now in place is failing. Unanimous agreement of the board.

Mr. Maher noted they are also requesting a variance from the minimum septic system size. While it conforms with the number of bedrooms, the required number is 3-bedroom size. He does not see them increasing the number of bedrooms in the home, and therefore has no problem with a 2-bedroom system.

Mr. Allen asked Mr. Denner if he was proposing a 2-bedroom system because a 3-bedroom system would not fit. *Mr. Denner answered that was correct. A 3-bedroom system would require the raised mound to be closer to the house and the sill is very low as it is. The end of the leach field for a 3-bedroom system go into the exiting driveway and the 75' wetland setback on that side of the house.*

Mr. Maher asked if it is normal for the board to approve the variance prior to the state design approval? Why grant the variance if there is a chance it won't be brought forward? Mr. Allen noted the state will not approve the design until the board signs off on it. Our variances will be contingent upon state approval of this plan.

2. The spirit of the ordinance is observed because:

Mr. Allen opined most houses have 3 bedrooms. They wanted the size of the system to be large enough to accommodate any extra effluent flow in the case of any extra bedrooms. With regards to the well radius, naturally you would like to keep the EDA out of the well radius if at all possible, and also keep it as far from property lines as is possible, the spirit surrounding general public safety. Although this is not ideal by any means, Mr. Allen's opinion is a cesspool pit with a couple of drain lines in it is far less safe than this new system. Mr. Ciardelli noted it would be a great improvement over what is there now. Unanimous agreement of the board.

3. Granting the variance would do substantial justice:

The state's guidance is that any loss to the individual that is not outweighed by benefit to the public and is an injustice to the individual.

Mr. Allen opined there is no public injustice with replacing a failed system with an upgraded, much more efficient system than what is there now. In fact, although it requires a few variances, it is probably safer to the general public than the current system. Unanimous agreement of the board.

4. For the following reasons, the values of the surrounding properties will not be diminished:

Mr. Maher noted there was a strong argument they would be improved. Mr. Robbins pointed out the notations stated there would be temporary excavation, but that would be temporary and will result in an improvement. Mr. Ciardelli noted there were no arguments from any of the neighbors that what is being proposed is better than what was there. Unanimous agreement of the board.

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 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. Is there something unique about the piece of property that applying the ordinance to it directly would cause an unfair burden?

Mr. Robbins noted if the board were to deny on this point it would be a substantial burden because the property could no longer be used as a home as it doesn't have a working septic system. It would devalue that property as well as the surrounding properties. Mr. Ciardelli opined this property falls into the category of preexisting non-conforming for the acreage. To him, this solution as proposed is pretty much the only solution to keeping it operational. Mr. Allen opined property is unique in the fact that today this property would not be developed. It is a large piece of property with a tiny piece of dry land outside of setbacks. The uniqueness here being there is very little space to work with in relation to most building lots around this particular lot. That in and of itself makes it unique from others and would make it overly burdened to maintain all of the setbacks. Unanimous agreement of the board.

- b. the proposed use is a reasonable one because:

Mr. Allen agreed a septic system for a residential lot is a reasonable use. Mr. Robbins agrees there is no other place on the property where a septic system could be installed. Unanimous agreement of the board.

Mr. Allen closed the deliberation section of the meeting and opened for board voting.

Variance from the provision of Article VII.D.2. – minimum requirement for septic size. Ordinance requires a 3-bedroom system, the applicant is proposing a 2-bedroom system.

Criteria #1 – Granting the variance would not be contrary to public interest.

Roll Call vote: Mr. Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Maher – would not. Vote was unanimous.

Criteria #2 – the spirit of the ordinance would be observed.

Roll Call vote: Mr. Allen – would be; Mr. Robbins – would be; Mr. Ciardelli – would be; Mr. Collamore – would be; Mr. Maher – would be. Vote was unanimous.

Criteria #3 – granting the variance would do substantial justice.

Roll Call vote: Mr. Allen – it would; Mr. Robbins – it would; Mr. Ciardelli – it would; Mr. Collamore – it would; Mr. Maher – it would. Vote was unanimous.

Criteria #4 – the values of surrounding properties would not be diminished.

Roll Call vote: Mr. Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Maher – would not. Vote was unanimous.

Criteria #5a – 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 there 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.

Roll Call vote: Mr. Allen – is not; Mr. Robbins – is not; Mr. Ciardelli – is not; Mr. Collamore – is not; Mr. Maher – is not. Vote was unanimous.

Criteria #5b – the use is a reasonable one.

Roll Call vote: Mr. Allen – is; Mr. Robbins – is; Mr. Ciardelli – is; Mr. Collamore – is; Mr. Maher – is. Vote was unanimous.

This variance passed on all five criteria.

Mr. Allen asked for a **MOTION** to approve the variance from Article VI.D.2. minimum requirement for a 3-bedroom septic system.

Mr. Robbins **MOVED** to approve the variance for a 2-bedroom septic system; second by Mr. Maher.

Roll Call vote: Mr. Allen – aye; Mr. Robbins – aye; Mr. Ciardelli – aye; Mr. Collamore – aye; Mr. Maher – aye. Vote was unanimous.

Variance from the provision of Article VII.D.6 – septic leach field boundaries (setback from property lines).

Criteria #1 – Granting the variance would not be contrary to public interest.

Roll Call vote: Mr. Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Maher – would not. Vote was unanimous.

Criteria #2 – the spirit of the ordinance would be observed.

Roll Call vote: Mr. Allen – would be; Mr. Robbins – would be; Mr. Ciardelli – would be; Mr. Collamore – would be; Mr. Maher – would be. Vote was unanimous.

Criteria #3 – granting the variance would do substantial justice.

Roll Call vote: Mr. Allen – it would; Mr. Robbins – it would; Mr. Ciardelli – it would; Mr. Collamore – it would; Mr. Maher – it would. Vote was unanimous.

Criteria #4 – the values of surrounding properties would not be diminished.

Roll Call vote: Mr. Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Maher – would not. Vote was unanimous.

Criteria #5a – 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 there 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.

Roll Call vote: Mr. Allen – is not; Mr. Robbins – is not; Mr. Ciardelli – is not; Mr. Collamore – is not; Mr. Maher – is not. Vote was unanimous.

Criteria #5b – the use is a reasonable one.

Roll Call vote: Mr. Allen – is; Mr. Robbins – is; Mr. Ciardelli – is; Mr. Collamore – is; Mr. Maher – is. Vote was unanimous.

This variance passed on all five criteria.

Mr. Allen asked for a **MOTION** to approve the variance from Article VII.D.6 – septic leach field boundaries (setback from property lines).

Mr. Robbins **MOVED** to approve the variance from Article VII.D.6 – septic leach field; second by Mr. Allen.

Roll Call vote: Mr. Allen – aye; Mr. Robbins – aye; Mr. Ciardelli – aye; Mr. Collamore – aye; Mr. Maher – aye. Vote was unanimous.

Variance from the provision of Article VII.D.6. location within the 75’ protected well radius.

Criteria #1 – Granting the variance would not be contrary to public interest.

Roll Call vote: Mr. Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Maher – would not. Vote was unanimous.

Criteria #2 – the spirit of the ordinance would be observed.

Roll Call vote: Mr. Allen – would be; Mr. Robbins – would be; Mr. Ciardelli – would be; Mr. Collamore – would be; Mr. Maher – would be. Vote was unanimous.

Criteria #3 – granting the variance would do substantial justice.

Roll Call vote: Mr. Allen – it would; Mr. Robbins – it would; Mr. Ciardelli – it would; Mr. Collamore – it would; Mr. Maher – it would. Vote was unanimous.

Criteria #4 – the values of surrounding properties would not be diminished.

Roll Call vote: Mr. Allen – would not; Mr. Robbins – would not; Mr. Ciardelli – would not; Mr. Collamore – would not; Mr. Maher – would not. Vote was unanimous.

Criteria #5a – 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 there 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.

Roll Call vote: Mr. Allen – is not; Mr. Robbins – is not; Mr. Ciardelli – is not; Mr. Collamore – is not; Mr. Maher – is not. Vote was unanimous.

Criteria #5b – the use is a reasonable one.

Roll Call vote: Mr. Allen – is; Mr. Robbins – is; Mr. Ciardelli – is; Mr. Collamore – is; Mr. Maher – is. Vote was unanimous.

This variance passed on all five criteria.

Mr. Allen asked for a **MOTION** to approve the variance from Article VII.D.6 –location within the 75’ protected well radius.

Mr. Ciardelli **MOVED** to approve the variance from the 75' protected well radius; second by Mr. Collamore. **Roll Call vote:** Mr. Allen – aye; Mr. Robbins – aye; Mr. Ciardelli – aye; Mr. Collamore – aye; Mr. Maher - aye. Vote was unanimous.

Mr. Allen explained to Mr. Denner that Mrs. White will be putting together the minutes and the decision to be sent to Mr. and Mr. Conti. Mr. Denner may let the Conti's know all three variances were approved with the contingency that the septic system is approved by the state. If they have additional questions they can reach out to Mrs. White.

Mr. Denner asked what the next step was. Mrs. White opined he should contact the Building Inspector on how to proceed.

Mr. Denner thanked the board for their time.

Mr. Allen closed the public hearing for Case #20-04 - Kathy and David Conti, 121 Depot Road, East Kingston, NH MBL 04-01-12 for variances from Article VII.D.2. – minimum requirement for septic size and Article VII.D.6 – septic leach field boundaries (setback from property lines), and location within the 75' protected well radius.

Mr. Maher **MOVED** to adjourn the meeting; second by Mr. Robbins with a unanimous vote.

The meeting was adjourned at 7:52 PM.

Happy Holidays to all!

Respectfully submitted,

Minutes Approved _____

Barbara White

Tim Allen, Chairman