

Town of East Kingston Board of Adjustment  
Minutes  
12/28/95

FILE

Attending: John Daly-Chairman, David Ciardelli, Norman Freeman-Alternate, and Ed Cardone-Alternate, Glenn Clark-Building Inspector.

Others Attending: Robert Jr. & Beverly Barney (Applicant), Richard Ladd (Licensed Land Surveyor - RSL Design), Robert Rossi, Catherine & George Gilman (Applicants), Keri Marshall (Attorney), see attached Abutters sheet, Jeremy Russman (Applicant), Mr. & Mrs. Dewey Bowley, Harvey Purrington, Joan Keezer (Realtor).

The public hearing for Robert Jr. and Beverly Barney opened at 7:35PM. (1995-07)

Chairman Daly opened the meeting for applicants **Robert Jr. and Beverly Barney** of 21 Rowell Cove Road, seeking a variance from Article IV, 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.

Mr. Richard Ladd (RSL Design) introduced himself as a Licensed Land Surveyor and a Licensed Septic Designer in the State of New Hampshire representing Mr. and Mrs. Barney. Mr. Ladd stated he was hired by the Barney's to design a septic system on their pre-existing non-conforming lot to replace the one that is currently in failure. The Barney home is a three bedroom house and they (the Barney's) were led to believe there was a three bedroom septic system on the site. Mr. Ladd then explained that he (RSL Design) dug up the property and found the septic system existing was far from a three bedroom system and that was why the current system had failed. They (RSL Design) are now attempting to design a three bedroom septic system on the site using the Eljen In-Drain Leaching System which is a very small system in regards to square footage however, the septic system cannot meet the setback requirements from existing wells, property side lines or the service floor.

Mr. Ladd went on to state that RSL Design has tried to keep all footage at a maximum, ( i.e. a neighboring well maintains seventy-five (75) feet meeting the state requirement but not meeting East Kingston's ordinance of one hundred (100) feet). They are only twenty-six (26) feet away from the Barney's artesian well, in which the State allows them to waive that distance from their own well to their leach bed. Powwow pond is less than one hundred (100) feet from the road, hence it is impossible to put a leach bed anywhere on that property and be one hundred (100) feet from the pond. The proposed bed is sixteen (16) feet from the side line where twenty (20) feet is required. The designers took precedence over the existing wells and tried to keep it as far away from Powwow pond, as possible.

Chairman Daly asked if Mr. Ladd had submitted any proposed plans.

Mr. Ladd stated that two copies of plans had been submitted (to the Selectmen's office).

The plans were reviewed by the board.

Mr. Ciardelli asked the location of the pre-existing septic field.

Mr. Ladd pointed out the location of the existing field and added that the system had consisted of three concrete chambers that came out of a three hundred fifty (350) gallon septic tank. Also a line came out of the house into a fifty-five (55) gallon drum, into a leach line, then into stone. Mr. Ladd noted the leach line was not even connected to the drum.

Mr. Ladd then presented the board with photos of the test holes from different angles in retrospect to the road, pond and boundaries.

Mr. Ciardelli asked if the proposed system was an elevated system.

Mr. Ladd responded that it was. He (Mr. Ladd) also added that the current system is now located in the water table.

Mr. Ciardelli asked if this proposed system was also a chamber system.

Mr. Ladd explained that there are three concrete chambers and at the existing ground and percolation rate it would need approximately eighteen (18) chambers to meet the requirements. Mr. Ladd added that that the lines had been filled two previous times (not knowing their dates). RSL is proposing to remove all existing fill and replacing it with clean material and elevating the system above the water table.

Chairman Daly asked Mr. Ladd to verify that the proposed plans are sixteen (16) feet where twenty (20) feet are required and fifty-two (52) feet where one hundred (100) feet are required.

Mr. Ladd verified those figures were correct.

Chairman Daly stated that there are five criteria which must be met in order for the board to grant a variance. He continued to explain that if the five criteria are not met then the variance will be denied. If they are met, then the board must grant the variance.

Mr. Ladd addressed the board as follows:

1. The proposed use would be in harmony with the residential uses of the surrounding properties. Although there will be an elevation, it will be blended in with the surrounding properties and landscape, similar to what is there now.
2. Granting the variance would promote the public's health and safety. At this time there is a failed system.
3. Unnecessary hardship would occur because there is not enough area on this pre-existing, non-conforming lot of record to install a leach field in compliance with today's ordinance.
4. In granting the variance all other provisions of the ordinance can be met. This would allow the Barney's to live in their home without pumping the system every two weeks.
5. The use is not contrary to the spirit of the ordinance because it would lessen the danger of water pollution to the community and surrounding properties.

Chairman Daly asked Mr. Ladd if other options were considered and if indeed there were other options. Is there a way to comply without this proposal.

Mr. Ladd stated that the only other option would be to install a holding tank with no bed at all and pump it weekly.

Mr. Ciardelli asked the board if they knew of any places in town which had a holding tank.

he board knew of none.

Chairman Daly asked if Glenn Clark (Building Inspector) had any comments on this matter.

Mr. Clark agreed with Mr. Ladd that it is a smaller lot and that the Barney's have no other choice.

Mr. Ladd added that the designed system has to be approved by the State and there is no guarantee it would be approved. The state may in fact make RSL Design reduce it to a two bedroom system, which would make the footage larger. The house is a three bedroom house and is listed as a three bedroom house. The goal is to get a three bedroom design approved.

Mr. Clark commented that after receiving such plans, he called the State to see if there were any other options. The State confirmed that they (the State) would have to come out and inspect it, again, not guaranteeing approval.

Chairman Daly reviewed the criteria and made it clear that they were dealing with a pre-existing non-conforming lot.

1. Agreed that the proposed plans would not diminish the surrounding property values. It would only be a benefit to the property.
2. Agreed that granting the variance would indeed promote the public's health and safety.
3. The hardship criteria has been satisfied because it is a pre-existing, non-conforming lot, in which the Barney's have no other options.
4. Granting the variance would do substantial justice because it is a reasonable option with this non-conforming lot.
5. It is not contrary to the spirit of the ordinance as it is consistent with the surrounding properties.

**MOTION:** Mr. Ciardelli made a motion to approve the variance as stated. Mr. Cardone second. The motion passed unanimously.

Chairman Daly commented that this motion is conditioned on State approval.

The public hearing for Robert Jr. and Beverly Barney adjourned at 7:53PM.

**The public hearing for Catherine A. and George V. Gilman convened at 8:00PM. (1995-08)**

**Abutters:** See attached attendance sheet. It is noted that additional residents in addition to abutters duly notified were also in attendance.

**Others Attending:** Catherine A. & George V. Gilman (Applicants), Keri Marshall (Attorney)

Chairman Daly opened the hearing for **Catherine A. and George V. Gilman** seeking a variance from **Article X** (Home Occupations), **Section 10.2.4** (Not more than two non-residents (of the premises) may be employed at the premises) and **Section 10.3.5** (Day care for up to twelve (12) preschool plus five (5) school-age; and day care use shall be in compliance with the State Department of Health and Welfare's "He-c4-002.N.H. child-care Facility (Day Care) Licensing and Operating Standards". Twelve (12) preschool plus five (5) school-age children shall be the maximum number allowed to be cared for in a Residential District.)

Atty. Marshall introduced herself to the board and stated that she was there on behalf of the petitioners. She, (Atty. Marshall), also stated that she had done research on this issue. Case of NARBONNE v. TOWN of RYE, (See attached). Atty. Marshall stated that in that particular case the Supreme court considered whether the petitioners should be granted a Home Occupancy permit. The Supreme Court focused on sign usage, advertising, the number of the general public going to and from the business and whether that particular business, that being a glass company, was ancillary or subordinate to the residential use. In that case the Supreme court determined that it was not an appropriate use and the Home Occupancy permit was not granted. Atty. Marshall continued to state that those findings were not in keeping with the Gilman case before the board.

The Gilman's are operating a day care that is clearly within the residential character of the neighborhood. She, (Atty. Marshall), also noted that the day care was in close proximity to the East Kingston Elementary School and that SAU #16 was indeed an abutter of the applicants. Atty. Marshall conveyed that if the Government can operate a school within the neighborhood so then should the Gilman's be allowed to operate a day care. Atty. Marshall also stated that each time the Gilman's filed for a Home Occupancy permit, they had been absolutely truthful with the board concerning the number of employees and have gone through the appropriate steps to satisfy the State requirements. The Gilman's even went before the Building Inspector and were issued a permit to expand the structure for the use of the day care. The Gilman's have committed a substantial amount of their resources toward the continued use of the business.

Atty. Marshall went on to state that she, (Atty. Marshall), considered the case of TREISMAN v. KAMEN (see attached). A heliport was in this case not granted a Home Occupancy permit as it was considered inappropriate in a residential area and that it created noise and fumes. Since the school is in close proximity then surely the Gilman's day care could not be considered noxious in those same criteria's.

Another case was of REGION 10 CLIENT MANAGEMENT INC. v. TOWN of HAMPSTEAD (see attached) where the Supreme court determined that the housing of developmentally impaired persons was an important function that should be allowed in a residential neighborhood. This case was most keeping with the Gilman's. Atty. Marshall added that if the Town of East Kingston didn't allow a day care in a residential area and within close proximity to the school, then where should there be one.

Again, Atty. Marshall spoke of how each time the Gilman's went to the Town they indicated the scope of their business, number of employees and the 45 children enrolled. The Gilman's have provided a very valuable service to the community, the Town of East Kingston, and the parents who would otherwise have latch-key children. Atty. Marshall noted that the Gilman's have been allowed by the town to provide an after-school program at the East Kingston Elementary School. What better space to have a day care. The town should permit the Gilman's to continue.

Chairman Daly explained that the issues raised by Atty. Marshall should be properly directed to the Board of Selectmen. Chairman Daly explained that this board is the Zoning Board of Adjustment and it's role is extremely limited. The applicants are before the board to apply for a variance from specific provisions of an ordinance. In order to grant that application, the board has to be satisfied that certain criteria have been met. Granting the truth and veracity of everything said by Atty. Marshall, it was not clear that it was relevant to the issue before the board, (which is whether or not to grant the variance).

Atty. Marshall responded that the board needs to consider the facts in the five (5) criteria.

1. There would be no diminishing of the value of the surrounding properties. That the day care has no structures that would not be in keeping with the residential character. The Gilman's have nothing at their property that the surrounding properties don't have. If the school has the play yard, the Gilman's have substantially less than that.
2. The Gilman's offer a service to the residents of East Kingston and the surrounding towns, that being a substantial benefit to the public interest.
- 3 & 4. The Gilman's have invested money, time and resources into the house by virtue of the grant from the Town of East Kingston. Denying this permit would in affect have the Gilman's unable to use the property in the way that they have fashioned it. They have built the property, improved the property, and have expanded the actual structure, believing that they would be able to continue to operate the business. The Gilman's have had their business inspected by the Fire Chief, the Board of Health and by the State. And now the Town says it may have made an error and should not have granted the Home Occupancy permit. This resulting in an unnecessary and substantial injustice.

Chairman Daly asked that Atty. Marshall clarify the statement that the Town of East Kingston made an error in issuing a Home Occupancy permit in the first place.

Atty. Marshall stated that on or around 1990, when the Gilman's first appeared before the Board of Selectmen, they requested the issuance of a Home Occupancy permit. At that time, the Board of Selectmen questioned whether the Gilman's needed some kind of Home Occupancy permit regarding the foster children in their care. Atty. Marshall shared that she too was present at that meeting to apply for her own Home Occupancy permit. Atty. Marshall continued that Mrs. Gilman had argued to the Board of Selectmen that having foster children in it's own did not constitute a Home Occupancy. The Board of Selectmen ultimately agreed with Mrs. Gilman. Thereafter, Mrs. Gilman indicated how many children she expected to be having in the day care. She was granted a Home Occupancy permit.

Each year after, Mrs. Gilman filed for renewal of the Home Occupancy permit stating each time the growth of the business and number of employees. Atty. Marshall explained that in reviewing the file of the Town of East Kingston / Gilman she noticed that in the past three (3) or four (4) years, the number of employees exceeded the two (2) permitted. The business was also inspected by the Town of East Kingston while it was in operation and the Board of Selectmen executed a permit that was required by the State that would allow Mrs. Gilman to care for up to forty-five (45) children. Atty. Marshall explained that Mrs. Gilman felt she was in complete compliance. Since the Board of Selectmen continued to grant the Home Occupancy permit year after year, it indicate to Mrs. Gilman that she was in complete compliance. When the Gilman's added on to the structure, they indicated on their application of the building permit that they hoped to expand the use. The building inspector went to the property, inspected and granted an occupancy permit. There was never an attempt to hide anything.

5. The use would not be contrary to the spirit of the ordinance, for it is clearly appropriate for a Home Occupancy issuance for someone who is watching children. ( Providing a service to the community. )

Mrs. Gilman stated that when she went to have a license issued, there were different steps she had to take for the State. In 1990 and 1992, Mrs. Gilman says she filled out the necessary paperwork and on the application, it asked about restrictions. The Selectmen then signed and stated that it was O.K. to have this business. "That there were no zoning restrictions or anything." Mrs. Gilman stated that she has a copy in her files.

Atty. Marshall added that the Town (East Kingston) signed off in 1992 and again in 1994.

Mrs. Gilman also stated that the Health Department and the Fire Department signed as well.

Atty. Marshall noted that the Town (East Kingston), Health and Fire Departments also signed off in 1995.

Mr. Cardone asked the Gilman's if the septic system had ever been updated to accommodate this growth.

Mr. Gilman replied that it hadn't.

Chairman Daly asked Atty. Marshall if she had with her the original application.

Atty. Marshall stated she had and that she had asked the Town for a complete copy of the Gilman file and that she had no objection to the board reviewing any of those documents. Atty. Marshall also noted that on one of the applications, Mrs. Gilman listed three employees and on the back of the application, she listed an additional eight (8) or nine (9). Again the Board of Selectmen signed it's approval.

Chairman Daly asked Atty. Marshall to verify the original application date of March 31, 1989.

Atty. Marshall did so.

Chairman Daly noted that on the original application it is stated "Not more than four (4) children simultaneously".

Atty. Marshall responded that subsequently that was increased and on the State application and the Town application, representatives of the Town of East Kingston signed off. Each year Mrs. Gilman correctly indicated the number of children she had as well as the number of employees. The first year the application was for four (4) children and the number continued to increase throughout the years receiving both State and Town approval. Mrs. Gilman had acquired the licenses needed each time the number of children increased.

Atty. Marshall then brought up Strafford County where it has been considered an issue as to whether a day care is in fact a business. Also noted there was a case before the court right now that may be under appeal where the court has indicated that a day care does not constitute a business. Atty. Marshall stated that the lease of State functions (i.e. day care) or lease of town functions, or other non-state functions are not considered businesses. Atty. Marshall continued that since the Gilman's are permitted by the Town to provide day care services at the East Kingston Elementary School just two hundred (200) to three hundred (300) feet from the Gilman home, and are also permitted to run a day care from their residence, that there shouldn't be a distinction between the two. Atty. Marshall also noted that the same employees work at both the school program and at the residence.

Chairman Daly asked if any of the abutters had any questions or comments.

Mr. Peter Syred, representing Mr & Mrs. James D. Grey of 59 South Road, voiced the Grey's concern about the leach field and noise (in the summer time).

Mr. Anthony Batal of 26 Andrews Lane, stated that he resides next door and although he has never had a problem with the Gilman's running a day care before, he claimed the business has become too large. Mr. Batal also claimed that the day care was too noisy in the summer time and it had too many employees. The Gilman's provide care for thirty (30) more children than the Town allows. Mr. Batal also noted that the day care does a good job, however, in the last two (2) or three (3) years, the road has become too busy with traffic. Mr. Batal continued that in a year he plans to sell his house and he feels that the day care as large as it is, will diminish the value of his property.

Chairman Daly asked Mrs. Gilman how many employees there were.

Mrs. Gilman stated she employed 11 and all their cars are parked in her driveway. "Her space." Mrs. Gilman stated that she asked Mr. Batal if he would like her to put up a stockade fence.

Mr. Batal replied that it wouldn't keep the noise out.

Atty. Marshall noted that Mr. Batal never complained about the noise before it was brought to the board. Atty. Marshall stated that if the noise is a problem than it can be addressed, if the septic is in failure or not in compliance, that too, can be addressed. Atty. Marshall then compared the noise of the day care next door to the noise of the school yard across the street.

Mr. Syred mentioned that the school yard noise in the winter time is for short periods of time, the day care is continuous.

Mrs. Gilman stated that the children do not go outside if the temperature drops below freezing and any noise would be generated during the summer months.

Mr. Syred agreed.

Mr. Ed Begiebing of 19 Andrews Lane, stated that he lives right across the street from the day care and most of the noise he hears comes from the school yard. Having the day care across the street was one of the reasons he and his wife bought their house two (2) years ago. Mr. Begiebing continued that the Gilman's provide a teaching environment for preschoolers where the Town of East Kingston did not.

Mr. Mark Patnaude of 28 Andrews Lane, explained that he lives next door to Mr. Batal and although he sympathizes with Mr. Batal, he feels the Gilman's provide a quality service, they work well with the school and the business is not that much of an impact.

Mrs. Pearl Warren of 34 Andrews Lane, expressed how she loved to hear the children playing. She noted that in the future, she plans to sell her house and felt the day care would be in fact, a selling point.

Mr. Ciardelli asked if the Building Inspector had inspected the additions and when. And if the additions were built to accommodate the forty-five (45) children.

Mrs. Gilman stated that Joe Conti had inspected three (3) years ago and the addition was built for the growth of the business.

Chairman Daly stated that the issue of whether or not the day care is a business, is not one the Board can consider. That indeed that is an issue, but it can not be brought to this board.

Atty. Marshall realized that it may not be an issue for this Board, but noted that it needed to be brought up should there be an appeal.

Mr. Freeman excused himself from the voting process as his daughter is employed by Atty. Marshall.

Chairman Daly explained that since Mr. Freeman was excusing himself from the vote, the Board would then have only three (3) voting members.

Mr. Cardone brought up that he too may have to be excused from the vote as he used the services of one of Atty. Marshall's associates two (2) years ago.

Chairman Daly felt that those reasons were not necessarily disqualifying. Chairman Daly asked Atty. Marshall if she would object to Mr. Cardone remaining to vote.

Atty. Marshall stated she did not object.

Chairman Daly again explained that there were only three voting members and in order to grant a variance, there must be three affirmative votes. He further explained that in this case these three members would have to vote unanimously. Chairman Daly then gave the Gilman's the opportunity to come before the board another time when more members would be present.

Atty. Marshall conferred with her client, then stated that Mrs. Gilman would stay for this vote.

Chairman Daly in reviewing his concerns, noted that some problems existed and that the Town is not without some responsibility. He then noted that it is not the Zoning Board of Adjustment place to remedy that. There are certain criteria that must be met and satisfied, before this board can grant a variance. Chairman Daly continued that should he grant the Gilman's the benefit of the doubt on all the criteria with the exception of hardship, there is still a problem. Criteria # 1 could be argued either way on diminishing property value. It could be a benefit to some and diminishing values to others. Criteria # 3 regarding hardship, Chairman Daly expressed that even Atty. Marshall could verify that the Supreme court states: *in order to find that hardship does exist, you virtually have to find that there is no other use of the property, but the use that is requested.*

Mrs. Gilman responded that if she is not granted this variance, she can not go down to twelve (12) children. She went on to explain that she has so much money tied up in the day care that if the day care goes, the house goes as well.

Atty. Marshall re-addressed the hardship issue stating that the Gilman's have relied on the Town of East Kingston and have been granted approval at each application. She continued that if the Gilman's can't rely on that, then she is not sure what they (the Gilman's) can rely on. Atty. Marshall noted that this was a hardship that the Board could consider.

Mr. Patnaude added that it was also a hardship to the children and that many families would be affected.

Chairman Daly again stated that it was not an issue that the Zoning Board could consider. *The hardship that the Zoning Board is charged by the State supreme court to consider, is whether there is a hardship that affects the property.* It is not a personal hardship, it's not a hardship to the children. Within the confines as the Supreme court has defined it, there is no hardship here.

Atty. Marshall reverberated the issue of the Town's approval of all previous applications, including the increase of children and employees and the addition to the structure knowing it was intended for the day care. Atty. Marshall noted that it was a hardship that was generally not addressed and is not before the Supreme court. She continued that to her knowledge, there was nothing before the case log that did not allow the Board to consider it.

Although this may be a hardship not addressed in the cases of PAPPAS v. CITY OF MANCHESTER ZONING BOARD and CARVONNEAU v. TOWN OF EXETER (see attached), Atty. Marshall noted it was a hardship this Board could address. Atty. Marshall reflecting on the past granting of Home Occupancy: If the Town of East Kingston decides that it is going to do an administrative job, they have an obligation to do it correctly. That would include making sure that all permits approved by the Board of Selectmen were appropriate and when inspections were conducted and the signing off of permits had taken place, that the actual use of the property was indeed proper.

Chairman Daly again asked if the abutters had any questions or comments.

Mr. Batal stated that Mr. Patnaude and other neighbors have children who go to the day care and that other neighbors work during the day, so they don't hear the noise and are not around.

**MOTION:** Mr. Cardone made a motion to deny the variance. Chairman Daly second. The motion carried 2-1.

Atty. Marshall asked when a written decision would be available and also requested a transcription of the meeting and when she could expect it.

Mr. Sandra Johnson explained that there was much year-end business going on in the Town Office, but would make the request a priority.

Chairman Daly asked Atty. Marshall if the Board could expect a petition for a rehearing within twenty (20) days.

Atty. Marshall responded affirmatively.

Chairman Daly requested that whenever Atty. Marshall represents an applicant, she could notify the board so that other members could be present as it poses a conflict with the disqualification of Mr. Freeman.

The public hearing for Catherine A. and George V. Gilman adjourned at 8:42PM.

The public hearing for Jeremy Russman convened at 8:45PM. (1995-09)

**Others Attending:** Mr. Jeremy Russman, Mr. Dewey Bowley, Mrs. Dewey Bowley, Harvey Purrington and Joan Keezer (Realtor) Kingston Real Estate.

Chairman Daly open the public hearing for **Jeremy D. Russman** seeking a variance from **Article VI, Lot Area and Yard Requirements, Section 1** : Every building shall have 200 feet on continuous frontage on a Town or State road, and **Section 2**: Every building shall have a minimum of 87,120 square feet.

Mr. Russman introduced himself as a resident of Kingston, NH and that he responded to an advertisement on a piece of property for sale by the estate of Stella Bisognani. He noted he did not know the attorney handling the sale nor the family of the estate. He then went on to state that through his own Realtor, he, and his engineer, took a look at the sale site and concluded that the lot was buildable with exception to the fact that it does not meet the required frontage and that the lot measured about half an acre. Realizing the frontage and square footage of the lot was undersize, Mr. Russman did note that he could meet the Town set back requirements for single family residence in an area that encourages rural residences. Mr. Russman also noted he could meet both the State and Town requirement for an approved septic system.

Mr. Russman also made known that he had made a deposit on the property and that he was familiar with the Town's file records stating that Mr. Conti (previous Building Inspector) had made a note on the Lot map stating the lot was buildable prior to the year

1968. This was a lot that was created with the break up of a lot. Broken up on a court order into a 1/4 and 3/4 division. The larger lot was approved as a lot and the smaller lot was considered under-sized by the Planning Board not per view of the Planning Board to approve. Mr. Russman stated that he had only seventy-nine (79) feet out of the two hundred (200) feet needed and he had only one-half (1/2) acre where two (2) acres are required and again noted he could meet all the other Town's requirements including; set backs, well, septic, and driveway. Mr. Russman shared he was looking to build a home for his son. Concerning the five (5) criteria:

1. Single family house, year-round in nature would be in keeping with the surrounding neighborhood. Would certainly meet all building code standards and State septic system would be provided as a condition of approval of the variance. The property would be in the 100 plus range in terms of initially, for tax assessment. Also, the lot is being assessed at \$25,000.00 which would indicate it may have been considered buildable in some fashion.
2. Granting the variance would be in the public interest because there is a lot that has no other use at this time. It is over-grown, has trash on it and it is the policy of Mr. Russman to clean up and make the property presentable. Mr. Russman noted at this time that he has done a similar job with some property in Hampstead for his other son. The only trees projected to remove would be those in the area of the house and septic. It would make the property useful and put it back on the tax roll.
3. In terms of the hardship, Mr. Russman stated the hardship would not be to himself, but to the land. It could not be used for any other purpose (not industrial or commercial). The lot was not created for a subdivision but in fact, by a court mandate and that a committee was put together to come up with the resolution of the estate (where this lot was created). There are similar sized lots in East Kingston which have been built on and have year-round residences.
4. Granting the variance would do substantial justice because it would clean up that end of the neighborhood; it would maintain if not increase property values in the area; and would add to the Town's tax base. The property would meet all other zoning and building code requirements. It would, once and for all, make the lot legitimate and useable in a realistic fashion.
5. The proposed use would not be contrary to the spirit of the ordinance as it would promote health, safety, and general welfare of the community. And that the Town of East Kingston shall be mainly a district of farms and residences. The State approved septic plan would be designed to protect the ground water supply. And granting the variance would not create a health or safety hazard. The variance would be conditional upon Mr. Russman's meeting the Town's set back requirements and supplying a State approved septic plan prior to receiving a building permit.

Chairman Daly asked Mr. Russman what size home he was proposing to build.

Mr. Russman responded that the Town's minimum was eight-hundred (800) square feet, and the proposed would be a maximum three-bedroom house with a standard septic system and a standard well. Keeping within all the proper distances with all of the Town's requirements being met. Mr. Russman will not be asking for any other variances along those lines.

Mr. Harvey Purrington of Haverhill Road, East Kingston, stated that he was on the Planning Board over twenty (20) years ago. He continued that the proposed lot was subdivided with the understanding that it could never be built on.

Mr. Glenn Clark (Building Inspector) explained to the Board how he reviewed the subdivision plans dating 1970. In 1971, they went to the Planning Board which stated there was a house on lot A (which is the house on the corner), Lot B (being lot before the Board) was denied by the Planning Board because of it's size. That was one of the reasons Mr. Clark rejected the lot. Also, most of the houses on the residential area face the street. Given the seventy-two (72) foot wide lot, putting on a house and a leach field and keeping all the boundaries would seem inconceivable. Mainly it was denied for lack of frontage on the street.

Chairman Daly noted that the plan from 1970-1971 was stamped, that approval under the subdivision control order is not required, and was signed by the Chairman of the Planning Board. Chairman Daly asked if this came before the Planning Board on a subdivision request.

Mr. Clark clarified that the property was subdivided through an estate. The estate gave three-quarters of the property to person A and person B received one-quarter. It was divided through the Probate Court that way.

Chairman Daly noted that the Probate Court does not have the power to over-ride the Town's ordinance.



Mr. Dewey Bowley of 80 N. Main Street, Newton, NH, introduced himself as an abutter to the property. He explained at the time the property was broken up through the court, Mr. Bowley received three-quarters and his sister received one-quarter. At that time Mr. Bowley's sister went to the Planning Board, the Board said lot B, (her Lot), was not buildable. Mr. Bowley's sister said that was fine and that she wanted to own it just as a remembrance of her parents. She knew this and understood it at the time.

Mr. Russman then asked if he could address the question regarding the size of the lot in retrospect to building a house on it. He explained that the lot is seventy-nine (79) feet wide, the Town's requirements for a residence at this time are twenty-five (25) set backs from either adjacent lot. The house would be twenty-four (24) feet wide (width) and thirty-six (36) feet deep for a small cape. (24x36 standard size cape). That would allow twenty-five (25) feet on either side of the lot line and the septic system would go in front of the house still being thirty (30) feet back from the road. The well would be behind the house, meeting all the measured requirements.

Mr. Clark stated that the house would not face the street.

Mr. Russman agreed. The door would face the street but the house would be a long facing style. Mr. Russman commented that he did not know the history of the property or that the owner was indeed the sister of Mr. Bowley.

Mr. Bowley pointed out that he was an excavating contractor and that he has a pretty good idea about the rules and regulations. He is a Licensed Well Installer as well as a Licensed Septic Installer. Mr. Bowley stated that approximately in the middle of his lot is the well that goes to his house. Meeting the requirements of one-hundred (100) Feet from a septic system, the proposed property would not be in compliance.

Mr. Ciardelli noted that sometimes an issue comes up with a pre-existing lot with a house on it, and it is already a residential area, there aren't many choices. The property now is a piece of land that doesn't have a house on it. If the Board grants this variance, there may be another hurdle ahead. Mr. Ciardelli asked Mr. Russman if there were any other variances needed.

Mr. Russman stated that the variance he is asking for is conditional upon the Town's receiving a State approved septic plan, acceptable to the Building Inspector and the Board of Selectmen for issuance of a building permit *without* the need of future variance.

Chairman Daly made the observation that several of the issues addressed by Mr. Russman regarding the criteria considered upon by the Board are indeed compelling. Chairman Daly was concerned with the fact that this may have been created inadvertently by some Probate Judge. With the sister knowing this was a non-buildable lot at the time, the Board would not be doing substantial justice by granting the variance, in a situation where it was never intended to be a buildable lot. There is also the presumption that one does not create unbuildable lots willingly.

Mr. Clark stated that the usual procedure with the application of a building permit is a set of septic plans. Mr. Clark continued to explain that while in the Town Office one morning, Mr. Donald Clark handed him a set of subdivision plans from 1970 and asked if he could give him (Mr. Donald Clark), a ruling. Upon seeing the seventy-nine (79) foot frontage he explained to Mr. Donald Clark that there is a two-hundred (200) foot set back. Mr. Clark further explained that was all the paper work that Mr. Clark had received as far as any paper work on this issue. There has been no application for a septic system, or a building permit. The application for variance did not go through its normal channels and procedures.

Mr. Russman wanted to make it clear that he did make an appointment to meet with the Selectmen, which he did a week or so ago. He continued to explain it was just before the deadline for this meeting, therefore there wasn't sufficient time to get the physical plans, that is why Mr. Russman has been stressing that the variance be granted *conditional of the approved septic plan*.

Mr. Clark explained to the Board that the plans down in the office are signed "Parcel A disapproved".

Chairman Daly reflected on the "stamped approval under subdivision control law not required". He questioned why the Planning Board was approving or disapproving if it wasn't required.

Mr. Clark explained his translation of the plans as follows: The Planning Board was going by the Probate Court stating that because this was divided this way and because it has a house on it than that lot was considered buildable, where Parcel B did not have a house.

Mr. Ciardelli asked if Mr. Bowley lived on Parcel A.

Mr. Bowley stated that he lived in Newton, N.H. and that his son lives on Parcel A.

Mrs. Bowley stated that in the spring time, the lower part of the lot is very wet.

Mr. Russman added that the back end of the lot fronts on Powwow River and the lot is three-hundred-five (305) feet deep. Down by the rivers edge there is a low area as it is in character with the Powwow River in terms of spring, however, it is not the intention of Mr. Russman to do anything with that part of the property. He continued to state that he would like to leave the waterfront undisturbed. Mr. Russman also noted that he is Regional Supervisor for the Department of Safety Marine Patrol for all of Southeastern N.H., recognizing the importance of the Powwow River.

**MOTION:** Mr. Ciardelli motion to grant the variances, conditional upon meeting all other set back and ordinance requirements. Mr. Cardone second. Motion passed 3-1.

Chairman Daly commented that although he held some reservation, he did in fact vote for the motion. He expressed to Mr. Russman that there are doubts as to whether all other requirements can be met.

Mr. Russman stated again that if that is the case, he will not try to go forward.

Mr. Bowley stated with regret that this was not what his sister wanted and should Mr. Russman go forth and build, then he, (Mr. Bowley) will be watching very closely to the requirements needed.

The public meeting for Jeremy Russman adjourned at 9:10PM.

Chairman Daly asked the members if they had read with no corrections or objections, the minutes from August 24, 1995, October 26, 1995 and November 30, 1995 meetings. Minutes were accepted for the record.

The Zoning Board of Adjustment adjourned at 9:06PM.

Respectfully Submitted,

Catherine Belcher  
Secretary in Training

Sandra Johnson  
Administrative Assistant