

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT
Epsom Central School, 282 Black Hall Road, Epsom, New Hampshire
February 21, 2024, 6:30 PM**

PRESENT

Glenn Horner, Chair
Lisa Thorne, Member
Jason Johnson, Member
Alan Quimby, Member
Andrew Ramsdell, Alternate Member
Roger Rheume, Alternate Member

ALSO PRESENT

Virginia Drew, Board of Selectmen Representative
Justin Guth, Zoning Compliance Officer
James Bilodeau, applicant
Jennifer Smith, resident
Craig Adler, Esq., representative for applicant
Robert McKechnie, resident
Betty Audet, resident
Art Pearson, resident
Robert May, resident
Donna May, resident
Justin Jakes, resident
April Jakes, resident
Jay Pepper, applicant
Michael Cote, resident

CALL TO ORDER

Chair Horner called the meeting to order at 6:30 PM.

Introductions were made of the Board members. Chair Horner asked Mr. Ramsdell to sit on the Board as a voting member for the first case; and Mr. Rheume for the second case.

APPROVAL OF MINUTES

Meeting of January 31, 2024 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Mr. Quimby. Second by Mr. Rheume. Motion passed unanimously.**

Case 2024-02 (901 Suncook, LLC– Var.) - Jay Pepper, principal officer of 901 Suncook, LLC, has applied for a variance to Article III, Section I [Business], Paragraph 1.c [Setback from Property Line] to permit the subdivision of a property into two lots with the new lot line running through the connecting passage of two existing buildings. The creation of two attached buildings violates building setback requirements between the newly created lots. The property is located on the Suncook Valley Highway within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U-5 as Lot 27.

Chair Horner read the public notice into the record. It was confirmed the public notice was published in *The Concord Monitor*, posted at the Town Offices, the Town website, and the Post Office; certified letters were sent to abutters. Receipts were received from all abutters with the exception of Diane Audet, Kristen and Keith Piet, and SBA Towers Inc.,

Chair Horner opened the public hearing at 6:45 PM.

Craig Adler, Esq., representative for the applicant, stated the application is for setback requirements and the issue is that the buildings are connected with a passage way through the buildings. He presented a sketch drawing to show the layout of the buildings. He stated the intent is to submit a subdivision plan shortly. Mr. Adler stated there will be no new construction; it is an existing condition, and the two buildings are connected. He stated the reason for requesting the relief is because they need to subdivide the property into two separate lots for FHA and HUD financing. He explained the first building is a nursing home and, in that situation, the goal is to get HUD financing to facilitate appropriate care for the residents. Mr. Adler stated it has stringent requirements for keeping funds in escrow for repairs and maintenance. He stated in the nursing home industry, HUD financing is a common goal. He stated the second building is vacant and has been, for a long time; permitting the subdivision would permit flexibility to repurpose the property.

Jay Pepper, applicant, stated they are operating the nursing home in the front part of the property and the building on the back of the property is for assisted living but has been vacant for about 15 years; he stated they are heavily invested in the community and want to figure out how to repurpose the back building; one idea was work force housing. He stated to repurpose the back building, it cannot be associated with the HUD financing, which is needed for the healthcare facility. He stated the building would not be torn down, but it would be renovated.

Mr. Adler stated in the nursing home industry, the size is established by the number of licensed beds and its not practical to double the size of this facility. He outlined the Variance Checklist and responses to the criteria.

Mr. Adler stated it would not be contrary as there is no new construction; there won't be an increase in burden to the community. He stated the variance is consistent with the ordinance because the purpose of the setback is to not impact neighboring properties; there would be no change in impact to the neighbors. Mr. Adler stated granting the variance would do substantial justice. It will allow for flexibility to repurpose the lot. He stated the value of surrounding properties would not be diminished; if the variance is denied, it would create a hardship as it would not allow the property owner to seek the necessary financing for this property.

Mr. Johnson clarified that there is currently one lot, and it is conforming; he stated they need to confirm there are no preexisting issues with the lot; he suggested it would be more palatable if the two buildings were separated. He stated it could be a financial burden to a future owner to separate the buildings. Mr. Ramsdell agreed and asked if the buildings were separated, what would the distance be from the boundary wall to the lot line. Mr. Adler stated the connecting building is substantial and is more than just a hallway. He stated there is a meeting room and

other rooms and to tear it down, would not be an option. He stated it is a substantial two story building; he confirmed it would not affect the FHA or HUD financing. Mr. Adler stated any future buyer will have full knowledge of any easements or variances in place. He stated they plan to seek an easement in favor of the nursing home, and noted there is adequate land for additional parking areas. Chair Horner noted both lots will be conforming. Mr. Johnson stated he is concerned about future buyers and the massive burden to having the buildings connected and questioned if the lots could be sold separately. Mr. Adler stated a building that is legally separated creates an opportunity to repurpose the building. Mr. Ramsdell stated at this point, they don't know how the building is going to be repurposed or how a future buyer would repurpose.

Chair Horner opened the hearing to input from the public in favor of the application. None was indicated.

Chair Horner opened the hearing to input from the public in favor of the application, followed by those opposed. None was indicated.

Betty Audet, abutter, questioned the proposed lot line and asked for clarification. Mr. Adler stated it will be a continuation of the existing lot line. Chair Horner explained the variance is requested because the buildings are too close to each other and won't meet setback requirements if separated; he stated after review by the ZBA, the case will go to the Planning Board.

Mr. Johnson asked the Zoning Compliance Officer if he sees any potential issues in the future with enforcement. Mr. Guth stated there may be issues; the easement will run with the property. There was extensive discussion about how the separation would take place. Mr. Johnson noted that there is only one septic system and with the buildings being separated, one building won't have any. Mr. Adler stated details of an easement would be presented and reviewed by the Planning Board. Mr. Rheaume asked if all the utilities are in one building and how that will be impacted. He is concerned that the latest plans do not show where the actual boundary is going to be Mr. Johnson asked if the separation would cause one lot to be nonconforming. Chair Horner stated the only variance is for the setback requirement; there is no zoning criteria for an odd, shaped lot as there is for the Planning Board's Subdivision Regulations.

MOTION: To close the public hearing. Motion by Mr. Johnson. Second by Mr. Ramsdell. Motion passed unanimously.

The public hearing closed at 7:34 PM.

Mr. Johnson stated he believes that if the buildings are separated, there should be two separate septic and utility systems; he stated the property line closest to the building needs to be moved so there isn't shared pavement area. He stated it creates an extreme hardship for future owners and indications were made that the property could be sold in the future.

Ms. Thorne stated she is trying to weigh the fact that for 15 years, nothing has happened with the property and the owners are working with the Town in a good faith effort to restore the buildings.

Mr. Ramsdell stated if the money was invested and the buildings separated properly, setbacks would be met and each property would be self-sufficient. He stated there are a lot of “what ifs” with this case.

Chair Horner stated the situation now is a single owner and the impact is strictly on him and any hardships will be borne by the owner.

The Board went through the Variance Discussion worksheet.

A. The variance will not be contrary to the public interest. NO - 2; YES - 3

B. The variance is consistent with the spirit of the ordinance. NO -2; YES- 3

C. By granting the variance, substantial justice is done. NO - 2; YES - 3

D. The proposed use will not diminish the value of surrounding properties. NO - 1; YES - 4

E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For purposes of this criteria, “unnecessary hardship” means that, either: NO - 2; YES - 3

Either: F.(1) Owing to special conditions of the property that distinguish it from other properties in the area: • No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and • The proposed use is a reasonable one. NO - 2; YES - 3

Or: F.(2) Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. NO

Findings of Fact:

- 1 The property was uniquely designed to contain 2 connected buildings which can be divided by a property line at their hallway connection point.
- 2 Allowing for a building setback variance will only impact the current owner of the property to be subdivided.
- 3 The ordinance creates an unnecessary hardship to the owner who would experience a significant financial loss by denying this appeal.
- 4 Approval will allow for the renovation and improvements to be made to the existing vacant building previously used as an assisted living facility.

MOTION: To approve the request for a variance for Jay Pepper, principal officer of 901 Suncook, LLC, for a Variance to Article III, Section I [Business], Paragraph 1.c [Setback from Property Line] to permit the subdivision of a property into two lots with the new lot line running through the connecting passage of two existing buildings property is located on

the Suncook Valley Highway within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U-5 as Lot 27 with the following conditions:

- 1 Tax Map U5, Lot 27 is approved for subdivision into 2 otherwise conforming lots with the bisecting property line passing through the existing connection between the two buildings. The setback distance from the bisecting property line to each building is reduced to 0 feet allowing for the buildings to remain connected on separate lots.**
- 2 The applicant/owner shall contact the Planning Board for determination of the steps necessary for completion of the lot subdivision and those steps shall be completed, as necessary, prior to title transfer of either subdivided lot.**
- 3 Easements for coownership of all common utilities (e.g. water, septic, fire suppression etc.) currently being shared between the two buildings, or plans for separate facilities, shall be established and included with the subdivision application to the Planning Board.**

Motion by Mr. Quimby. Second by Ms. Thorne. Motion passed 3-2-0.

The Board took a five minute recess.

Case 2024-03 (Bilodeau – Var.) – James Bilodeau has applied for a variance to Article III, Section G [Residential Single and Multi-Family Residence Requirements], paragraph 1 [Single Family Requirements] b. [Building Lots] to build a single family residence on a pre-existing lot containing .5 acre (2 acres minimum required) and no public road frontage (200 feet required). The property is located on Old Mountain Road (Class VI) within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-18 as Lot 7.

Chair Horner read the public notice into the record. It was confirmed the public notice was published in *The Concord Monitor*, posted at the Town Offices, the Town website, and the Post Office; certified letters were sent to abutters. Receipts were received from all abutters with the exception of

Chair Horner opened the public hearing at 7:50 PM.

James Bilodeau, applicant, stated that have a lot that is undeveloped; they intend to build a single family home on the lot. He noted the septic system and the well will meet setback requirements and the house will be built so it doesn't disturb the Class VI road with minimal tree cutting on the lot; there is already power on the lot. Mr. Bilodeau stated the lot was recently surveyed and the proposal meets all setback requirements; he will have an engineered design for the driveway and a state approved septic system. Chair Horner stated the tax map shows a significant swamp behind the lot; he also looked at Google Maps and it looks like 1/3 of the lot is in the swamp. There was discussion about the maintenance of the Class VI road and access for emergency vehicles. Mr. Johnson noted building on Class VI roads is generally restricted without meeting certain criteria and road frontage needs to be on a Class V road or better. Mr. Bilodeau confirmed he does not own the property yet but wants to get the variance in place first. He stated all the wetland setbacks are met as required by the New Hampshire Department of

Environmental Services. Chair Horner stated he would like to see engineering drawings and a report from a certified wetlands scientist. Mr. Bilodeau stated there is already another house further down the Class VI Road. Chair Horner is concerned about burdening Town services with substandard lots and not having guaranteed access down a Class VI road. Mr. Johnson asked if Mr. Bilodeau would be willing to bear the cost of bringing the road up to Class V standards. Mr. Bilodeau stated the road is in great condition currently and reiterated there is another house on the road.

Chair Horner opened the hearing to input from the public in favor of the application. None was indicated.

Chair Horner opened the hearing to input from the public in opposition to the application.

Michael Cote, abutter, stated he is right across the street from this lot and he bought his lot because of the quiet area; he is concerned with developing the area and ruining the neighborhood.

Justin Jakes, resident, stated he has walked the property lines and noted the Town maps do not match up with the markings on the lot; he suggested the lot be surveyed.

MOTION: To close the public hearing. Motion by Mr. Quimby. Second by Mr. Rheume. Motion passed unanimously.

The public hearing closed at 8:50 PM.

The Board went through the Variance Discussion worksheet.

*A. The variance will not be contrary to the public interest. **NO***

*B. The variance is consistent with the spirit of the ordinance. **NO***

*C. By granting the variance, substantial justice is done. **NO - 2; YES - 3***

*D. The proposed use will not diminish the value of surrounding properties. **YES***

*E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For purposes of this criteria, "unnecessary hardship" means that, either: **NO***

*Either: F.(1) Owing to special conditions of the property that distinguish it from other properties in the area: • No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and • The proposed use is a reasonable one. **NO***

*Or: F.(2) Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. **NO***

Findings of Fact:

1. The property's frontage is on a Class VI public way and is not maintained by the Town. The Zoning Ordinance defines a public road, for the purposes of meeting zoning frontage requirements, as a Class V public road or better and maintained at the expense of the Town or State on a year round basis.
2. Other similar variance applications requesting residences without public road frontage have been denied by this Board more recently in Case 2021-05 (Sunset Drive), Case 2017-12 (Old Mtn Rd.) and Case 2024-01 (Chestnut Pond Rd (Private portion)).
3. Current road conditions, based on a February 17, 2024 site visit, finds it is a narrow unimproved and untreated woods road with marginal surface.
4. At ½ acre, the property area is only 25% of the required 2 acre minimum for a single family residence.
5. Based on Tax map distances to the lot and Google Earth depictions of that lot, a significant portion of the lot is covered by an open swamp.
6. Accounting for wetland setbacks for buildings, the building area for this lot is further reduced.
7. There is one single family residence beyond the subject property on Old Mountain Road which was built in 1977 a few years after zoning was adopted by the town.
8. NH RSA 674:41, which governs erection of buildings on streets and would supersede a conflicting local ordinance, is not applicable in this case.

MOTION: To deny the request for a variance submitted by James Bilodeau to Article III, Section G [Residential Single and Multi-Family Residence Requirements], paragraph 1 [Single Family Requirements] b. [Building Lots] to build a single family residence on a pre-existing lot containing .5 acre (2 acres minimum required) and no public road frontage (200 feet required). The property is located on Old Mountain Road (Class VI) within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map R-3 as Lot 18-7, for the following reasons:

1. The variance unduly and in a marked degree conflicts with the ordinance that requires 200' on a public road. Not only does this property have no public road frontage, it is almost 1500' from a public road. The access/egress to the property is a narrow, near single lane, ungraded woods road. Such a marked deviation from the expectations of the ordinance would burden Town emergency services as well as occupants with increased risk to safety and welfare and would be a significant liability to the town.
2. The variance is inconsistent with the spirit of the ordinance by creating premature and scattered development with inadequate access and would have a cumulative impact of encouraging similar development on the many other properties in town without public road frontage.
3. The lot, being 25% of the minimum lot size for a single family residence, appears to be covered to a significant extent by a swamp and, accounting for the wetland setback requirements for buildings, may not be capable of supporting home construction. Approval, therefore, would be contrary to the public interest and inconsistent with

the spirit of the ordinance that intends to allow for the creation of suitable buildable lots for new residences.

4. No special conditions of the property are found which would make the denial an unnecessary hardship to the owner. On the contrary, land accessed by unimproved non-public roads is quite common in the residential/agricultural district. For this reason, the expectation of the ordinance is that safe and adequately maintained access is provided prior to allowing residential habitation and is not considered an unnecessary hardship.

Motion by Ms. Thorne. Second by Mr. Johnson. Motion passed 5-0-0.

ADJOURN: To adjourn. Motion by Mr. Johnson. Second by Ms. Thorne. Motion passed unanimously.

The meeting was adjourned at 9:05 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary