

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT
Epsom Public Library, 1606 Dover Road, Epsom, New Hampshire
March 6, 2024, 6:30 PM**

PRESENT

Glenn Horner, Chair
Jason Johnson, Member
Alan Quimby, Member
Gary Mattesen, Alternate Member
Lyla Boyajian, Alternate Member
Roger Rheume, Alternate Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Virginia Drew, Board of Selectmen Representative
Justin Guth, Zoning Compliance Officer
Robert McKechnie, resident
Chris Knight, applicant
Jeff Knight, applicant
Tim Bernier, Surveyor
Deb Sargent, resident
Paul Moran, resident
Doug Lomine, resident
John Dye, resident

CALL TO ORDER

Chair Horner called the meeting to order at 6:33 PM.

Introductions were made of the Board members. Chair Horner asked Mr. Matteson and Ms. Boyajian to sit on the Board as voting members for the case.

APPROVAL OF MINUTES

Meeting of February 21, 2024 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Mr. Quimby. Second by Mr. Rheume. Motion passed unanimously.**

Case 2024-04 (Knight – Var.) - *Chris Knight, principal officer of Knight Brothers Development, LLC, 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 permit the subdivision of an existing 2.7 acre lot into 2 lots, each containing less than 2 acres (2 acres minimum required). The property is located on Goboro Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-7 as Lot 61.*

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 Miriam and Norm Yeaton, William Duquette, and Joseph Recupero.

Chair Horner opened the public hearing at 6:47 PM.

Tim Bernier, land surveyor for applicants, stated there is an existing house on the lot that is within the road setbacks; it has a dug well. The proposal is to raze the existing house, subdivided the property and build to a house on each lot. He confirmed a NH DES septic system design has been submitted and approved for both lots. Mr. Bernier stated the soils of the lots have good drainage; each lot will have over 200 feet of road frontage. One acre will be 1.4 and the other will be 1.3; the development of the lots will meet all other zoning requirements including setbacks. Mr. Bernier stated the existing use is single-family and the lots will remain single-family homes. He stated in 1993 the property was two separate lots and divided by stonewalls; at some point these lots were merged and it's unclear if it was a voluntary or involuntary lot merger. Mr. Bernier stated this is a densely developed area; there are six abutters and of those, only one is in compliance with lot size and frontage. He presented maps indicating this would not be a negative impact to the neighborhood within this zoning district, noting the large number of lots that are less than 2 acres in size. Mr. Johnson asked the grade of the property. Mr. Bernier stated the front of the lots have flat areas but then the lots get really steep toward the back of the lots. The existing house has a garage built into the hill. He stated the lots would meet the 1 acre minimum requirement for a buildable area. Mr. Bernier stated granting the variance would not be contrary because it won't alter the essence character of the neighborhood; the lots will have 200 feet of frontage so the houses will be spaced the same as if the lots met the 2 acres minimum. He stated they contacted the property owner of the land at the rear of the lots to possibly purchase but no response was received. Mr. Bernier stated it will be an improvement to remove the existing non-conforming house. He stated the proposed houses will be 3 bedroom colonials and will be affordable homes for the area and will fit the neighborhood. He stated the spirit of the ordinance would be observed as the intent is to minimum overcrowding; the proposed development will meet all setbacks, state approval has been received for the septic systems and the wells will meet the required radii. It would do substantial justice as nothing is gained by denial of the variance; the new lots would meet the frontage and setback requirements; values will not be diminished as it is a mixed neighborhood of single and multi-family homes.

Mr. Johnson asked if these lots are within the Economic Revitalization Zone. Mr. Bernier does not know.

Mr. Bernier presented maps from the 1980s which depicts the lot as two separate lots; he also presented boundary line documentation.

Mr. Johnson asked about the current condition of the existing house. Mr. Bernier stated it is not livable and needs to be razed.

Ms. Boyajian asked if there is any deed documentation to show when the merger occurred. Mr. Bernier confirmed there is a deed to show the merger; he stated in 1993 property owners could do a voluntary merger for tax purposes. The process wasn't as formal as it is today.

Mr. Matteson asked if there is a registered plan showing the merged lots. Mr. Bernier confirmed the only registered plan shows two lots. He stated the proposed use is reasonable; if they were able to purchase additional land at the back of the lots, it would not change the density or look of these lots from Goboro Road. He stated it will provide affordable housing which is needed in Town.

Chris Knight, applicant, stated their goal is to provide affordable housing and smaller homes are proposed for these sites. Mr. Johnson asked what approximate taxes would be for these properties. Mr. Knight stated he expects one to sell for about \$425,000 and the other \$525,000.

Mr. Matteson asked if the house on the existing lot would meet setbacks. Mr. Bernier confirmed it would; he explained it makes the most sense to divide the lots in this way than to unmerge the lots. He stated the proposal will make the lots more conforming.

Chair Horner asked if Mr. Bernier did the elevation reports. Mr. Bernier confirmed he did. Chair Horner noted there appears to be greater than 20% slopes and questioned if the 1 acre minimum is met, and cannot include the setbacks. Mr. Bernier stated they may need to request waivers from the Planning Board. Chair Horner stated this makes the subdivision undesirable; many of the lots in the area are flat while this has significant slopes, particularly with 50% slopes behind the houses. He stated the special conditions of this lots would seem to create a necessary hardship. Mr. Bernier stated he works with builders every day and they are building on much smaller and steeper lots; he stated it is difficult finding affordable lots in order to provide affordable housing.

Ms. Boyajian asked about the costs for razing the existing house. Mr. Knight stated they obtained a demolition permit and the estimated cost is \$8,000 to \$10,000.

Mr. Johnson asked if the variance is not approved and the lot remains a single lot, would they still be able to build. Mr. Knight stated they will still raze the existing house. Chair Horner noted the lot would be grandfathered for building a single home. Mr. Knight stated they have already received a building permit for a single family colonial style house, which would be located on what is being proposed as the second lot. He stated they can't answer whether they would be able to move forward with building just one house.

Mr. Matteson asked if Mr. Bernier could show the areas with more than 20% slopes. Mr. Bernier stated they did a full analysis of the lot and could provide that information but does not have it with him tonight.

Mr. Johnson questioned if the Subdivision Regulations are to be considered by this Board rather than the Planning Board. Chair Horner explained the Board needs to consider the criteria and the special conditions of the property including its physical suitability for subdivision.

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

Chair Horner stated a letter was received from abutters, Miriam and Norm Yeaton and this was read into the record. The Yeatons indicate they are not opposed to development of the lots and would like to see it remain a single lot.

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

Paul Moran, resident, asked who is going to live in the houses. Mr. Knight stated the houses will be sold. Mr. Moran stated the lots that are substandard were built before the ordinances and were grandfathered a long time ago; he stated substandard lots haven't been approved in many years. He also asked if the septic systems would be conjoined. Chair Horner stated NH DES approval was already received for the septic systems for each lot. Mr. Moran stated he is opposed to dividing a nonconforming lot and doesn't want to see a precedent set. Chair Horner confirmed each of the proposed lots would meet the road frontage, just missing the acreage. Mr. Bernier stated the Zoning decision is not precedent setting, as each case is considered on its own merits. He stated 50% of the lots in this neighborhood do not meet the zoning requirements. Mr. Johnson noted the lot is not currently conforming. Mr. Bernier stated ½ acres at the back of the lots is not going to materially change the situation. There was discussion about grandfathering of the lot and the preexisting nonconforming status of the lot. Ms. Boyajian stated they also need to consider if a variance is in the spirit of the ordinance for this lot. She stated she looked at the multi-family ordinance and more acreage would be needed.

John Dye, resident, stated he isn't opposed to one house being on the lot but he is concerned about the trees and fencing that have come down on the property line. He stated every year a lot of water goes through the lot near the existing house.

Deb Sargent, resident, asked for explanation of the current zoning ordinances and how that affects places that have been grandfathered and how the ordinances are blended. Chair Horner stated grandfathered lots were created prior to zoning; once the ordinance came into effect, it applies to the property so in order to become a buildable lot, two acres are needed; this proposal requires a variance from the acreage requirements although the frontage requirement is met.

Mr. Guth stated ordinances aren't blended; if the applicants were proposing plans that following the ordinance, he would review and approve. However because one of the ordinance requirements is not met, the variance is required.

Doug Lomine, abutter, stated his property is similar to this lot and he is concerned about the drainage to handle the water that comes down off the hill. Mr. Bernier stated there is spring runoff along the boundary line and noted the soils are well drained; he stated they have looked at the slopes, soils and have taken into account stormwater runoff for the septic designs. Mr. Bernier stated he doesn't expect there to be an increase in runoff with a single family home. He explained that to have a walk-out basement, a minimum of 15% slope is needed so the slopes on this lot are not significant; he stated the slopes are within the minimum requirements for natural stabilization but there is space to flatten a larger area if need be. Mr. Bernier reiterated there is a lot of building in communities with worse lots; he stated there is a huge shortage of homes and many communities are now developing previously undeveloped, nonconforming lots due to the great demand. He stated they see a lot of building on nonconforming lots with steep slopes and wetlands in order to provide affordable housing. Chair Horner stated single-family homes bring families and kids which bring increased costs to communities and referenced a study about the higher tax burden by single family homes. Ms. Boyajian questioned the methodology and source

of the data and how old it is. Mr. Johnson stated that should not be submitted as evidence to this case and they need to stick to the ordinances and information presented.

Mr. Lomine asked how they will prevent stormwater from going on to a neighbors property. Mr. Knight stated they don't have a plan to change anything and doesn't see how that will make it worse. He stated all the drainage will be contained on the lot and dealt with. Mr. Bernier stated he disagrees with the assessment that this is going to be bad for the town by providing affordable housing.

Mr. Knight asked if the school population is growing or declining and whether it has capacity. Mr. Johnson stated it is below capacity. Chair Horner stated he does not know. Mr. Knight stated the addition of two to four kids won't necessarily increase the expenses but the taxes will certainly contribute to the tax base.

Ms. Drew asked if the proposal is for "affordable housing". It was clarified the plans do indicate the homes will be affordable but it is not based on the federal standards.

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

The public hearing closed at 8:10 PM.

Mr. Johnson stated if they approve the variance, he suggested they approve the 3 to 1 grade to reduce the steep slopes. He stated there was testimony that there is room to do some excavating and this would be of particular important to address the water on the lot.

Ms. Boyajian stated she believes the lot merger in the past designated this from other lots. Mr. Matteson stated he agrees that if the Town merged the lots for tax purposes, and if this was to grandfathered lots, then this variance would improve things. He stated this case rests on whether it was two lots. Ms. Boyajian stated this lot is unique in that there is an existing structure that is a safety hazard to the town, and this is an opportunity to do something about it; the existing lot is nonconforming already. Depending on the merger situation, there could have been two lots that were nonconforming and that makes the lot unique.

Mr. Rheame stated the Town voted for these ordinances and doesn't believe the intent was to take lots and create nonconforming lots. Chair Horner agreed; he stated he doesn't see a special condition for this lot and believes this will set a precedent for nonconforming lots. Mr. Johnson stated the role of the Zoning Board does not set precedent. Ms. Boyajian stated each case will be considered on its own merits and they will review the checklist. Chair Horner stated he doesn't want to set up the Planning Board with lots that don't meet the subdivision requirements. Ms. Boyajian stated based on what she has been presented and the training she has received, the role of the Board is to look at the ordinance and consider the criteria of the variance. Mr. Johnson agreed that the Board is to look at the ordinance and not the subdivision regulations; he stated this Board should not take away the right of the Planning Board to make a decision. Mr. Matteson stated the point of this case is not the slopes; the point is that a registered plan was presented showing this was two lots; lacking any evidence that the lots were merged through some process

which would include a registered plan on file with the registry of deeds, so it is two preexisting nonconforming lots. What is being proposed will make one of the lots less nonconforming.

Findings of Fact:

1. The property is on a slope, which is frequently the site of runoff.
2. The existing lot contains a structure which is in violation of setbacks, uninhabited, derelict, and is a current public safety hazard.
3. The existing lot was previously two, with one being pre-existing nonconforming.
4. The most recent recorded plan shows two lots.
5. There is no evidence of when, how, or if a legal merger took place. A merger would require a new recorded plan, of which there is no record.
6. Permitting the variance will bring the nonconforming lot toward conformity by allowing both former lots to be in compliance in all matters besides the two-acre lot requirement, with plans for subdivision and two septic systems approved at the state level.
7. The proposed change will be consistent with the character of the neighborhood, which contains nonconforming lots.
8. Three special conditions of the property were found as follows:
 - a. The prior existence of two lots, with no evidence of a legal merger.
 - b. The existence of a structure which is currently a threat to public safety.
 - c. The existence of a structure which does not meet current setback requirements.

The Board went through the Variance Discussion worksheet.

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

The variance will not be contrary to public interest because:

- It is consistent with the character and development in the neighborhood.
- Improves public health and safety by removing the derelict house and replacing it with two new homes.

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

Is consistent with the ordinance because:

- It removes a nonconformity on the lot by eliminating a non-conforming building setback.
- Allows for septic approved by DES, which the pre-existing small lot could not safely support.

C. By granting the variance, substantial justice is done. NO-1; YES-4

Substantial justice is demonstrated by:

- Evidence presented that there were once two lots, and no recorded plan negates that.
- The proposed use is consistent with the current use of residential homes in the neighborhood.

D. The proposed use will not diminish the value of surrounding properties. YES-5

Evidence was presented that approval will allow for construction of two new homes which will increase property values in the neighborhood.

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

Literal enforcement of the provisions create an unnecessary hardship due to the following special conditions of the property:

- Evidence was presented showing two pre-existing lots had been merged to create this lot. One of those lots was non-conforming.
- The existing structure is not conforming with current setback requirements and will be removed.
- The current structure does not have adequate land to support a septic system on the previously recorded lot, creating a public safety concern.

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-3; YES-2

The proposed use is reasonable because:

- It is reasonable to have housing in a residential/agricultural zone.
- It will not injure the public or private rights of others.
- It aligns with the nature and character of the neighborhood, much of which contains lots that do not conform to current zoning dimensional requirements.

MOTION: To approve the request for a variance request submitted by Chris Knight, principal officer of Knight Brothers Development, LLC, to Article III, Section G [Residential Single and Multi-Family Residence Requirements], paragraph 1 [Single Family Requirements] b. [Building Lots] to permit the subdivision of an existing 2.7 acre lot into 2 lots, each containing less than 2 acres (2 acres minimum required). The property is located on Goboro Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-7 as Lot 61., with the following conditions:

- *All slopes will be lessened to the degree practicable.*
- *The applicant shall contact the Planning Board to determine additional actions necessary for subdivision of the lot.*

Motion by Mr. Johnson. Second by Mr. Matteson. Motion passed 3-2-0.

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

The meeting was adjourned at 9:25 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary

APPROVED