

**Town Of Epsom
Zoning Board of Adjustment
1/21/09**

In attendance: Glenn Horner, Chairman; George Carlson, Vice Chairman; Rick Belanger; Alan Quimby; Pam Hoyt-Denison (Alternate); Darlene Phelps, Recording Secretary;

Not In attendance: Mark Riedel; Keith Cota, Selectman's Representative

Also in attendance: David Fiorentino; Cathy Berry; Tessa Christiana; Todd Flanagan; John Hickey; Peter Arvanitis; Stephen DeStefano; Alice Thompson

7:00 PM Glenn opened the meeting.

Rick made a motion to approve the minutes of 1/6/09 as amended.

The minutes of 1/6/09 were reviewed. George seconded the motion. All in favor.

Glenn stated that he went to the BOS meeting last night to discuss the speed limit issue on Goboro Road, but it was not a Department Head meeting, so he was not able to discuss it. He intends to address this at the next Department Head meeting.

2008-19 James Butler of JB's Mini Trucks LLC has applied for a Variance to Article II, Section E (Motorized vehicle sale facilities) and a Special Exception to Article II, Section C [Table of Uses], Part 5 [Motor Vehicle Sales] to permit vehicle sales within 1000 feet of another motorized vehicle sales facility. The property is located on the south side of Route 4 (Dover Road) within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U-1 as Lot 78.

Rick stated that he spoke with James and was told that he'll be withdrawing his application. Since Glenn has not received anything in writing from James, it was decided that we would postpone his public hearing. Pam made a motion to postpone this public hearing to Wednesday, February 18, 2009. Alan seconded the motion. All in favor.

Case 2008-14 (Boddie) [Continuance Hearing] - Richard Boddie has applied for a variance to Article III, Section B [Pre-Existing, Non-Conforming Uses], and Section G [Residential Single and Multifamily Residence Requirements] to permit the construction of a single family residence on lot containing .52 Acres (2 Acres required) and 150 feet of public road frontage (200 feet required) The property is located on Black Hall Road within the Agricultural/Residential Zoning District and is identified on Epsom Tax Map U-10 as Lot 87.

Glenn stated that after our last meeting, he received a call from Rick Belanger, and Rick was concerned about the RSA 674:39 that Richard Boddie had quoted at the last meeting, and if we needed to consider a finding under this RSA. Glenn & Rick both met with Atty. Soltani who stated that since the applicant already applied for the variance, we do not have to rule under this. There was a much discussion about how this RSA can/should be applied in various cases, and whether it applies to the developer and/or the homeowner.

George said he reviewed the drainage report and there is no written report at all. There are several drawings and many calculations, but no conclusions. There is no stamp on the report – just the listing of Wood Engineering. Pam briefly reviewed the report and said the calculations are there, and he stated the summary in a public meeting.

8:30 PM Break**8:40 PM Review of Variance Criteria:**

Variance will not be contrary to public interest: Glenn stated that all abutters that appeared, along with letters received from abutters not in attendance, were all in opposition. Master Plan states maintaining rural atmosphere.

Pam stated that Public Interest does not fall solely on the people who attended the meeting in opposition. George feels that it is in the public interest to allow the owners to build on a building lot that they own in a subdivision.

Consistent with the spirit of the ordinance: Glenn feels that a lot of this size (1/2 acre) is not in the spirit of the ordinance to allow a variance. Pam referred to the Preamble of our Zoning Ordinances. Although the abutters feel that this 1/2 acre of open space is very important, she looks at the larger picture of the town in its entirety. This is an area of homes constructed on 1/2 acre lots and is not out of place. If the lot can sustain septic, water, etc – then perhaps it is the best use of the property. She also stated that considering there are already homes in this area, building here is not going to disrupt drainage, wildlife, etc...whereas building on a big lot in a wooded area would disrupt many aspects of that open space. Glenn feels that by allowing building on that lot – we are *creating* a non-conforming lot.

Substantial Justice: Glenn stated the history of the application of building permit applications, and tax abatements. They had the chance to build on the lot and the chance to apply for abatement and did neither (they applied for abatement as both lots combined – but did not apply for this lot separately). He feels that the property owners chose not to build because it would block their view. He feels that by allowing building on this lot substantial justice would not be done. He feels the best proposal would be for the abutters to purchase the property jointly, however that is beyond the control of this board. Pam stated that they applied for a tax abatement, and they were denied, so perhaps they decided to retain their right to keep this lot as a building lot. This is their substantial justice. Glenn stated the time is up for the Stammers – they waited too long. Pam replied that the abutters had an opportunity to purchase the land & they didn't. Everyone had a chance to change the outcome, and no one took advantage of that opportunity. George feels we still have property rights and thinks people have the right to change their minds. Pam said they may have decided to enjoy the view while they owned it, yet paid the taxes as a building lot thinking that they would sell it as a building lot when they decide to move – as it is their right as a homeowner to do that.

Proposed use will not cause a reduction of surrounding property values: Glenn stated that the board received contradictory reports from an abutter & the applicant about whether surrounding property values would be reduced with the construction of a home on this lot. Rick stated that the value of the view is attached to the land – not the building. In the meeting with Tony, he advised that it is up to each individual board member how much weight to give this consideration when making a decision. Even if you feel it may reduce the property values, you may choose to give it a small weight, because you may feel it is a small reduction. There was discussion that the applicant provided evidence that it would increase property values. Alan read from the ZBA regulations which states that it is up to the ZBA member to decide whether or not to give credibility/weight to any evidence presented in relation to property value, even from an expert.

Special conditions exist that literal enforcement of the ordinance would cause an unnecessary hardship: Glenn feels that there are no special conditions, and by not distinguishing a lot line, the lots have essentially been merged. The board feels the only special condition that applies to this lot is that it is undersized.

10:25 PM Break

10:35 PM

The checklist was reviewed.

Question 1 – George, Alan, Pam answered yes. Glenn, Rick, answered no.

Question 2 – George, Pam, Rick, Alan answered yes. Glenn answered no.

Question 3 – George, Pam, Rick, Alan answered yes. Glenn answered no.

Question 4 – George, Pam, Rick, Alan answered yes. Glenn answered no.

Question 5 – George, Pam, Rick, Alan answered yes. Glenn answered no.

Question 6 – All members answered yes.

Alan made a motion to approve the variance with the following 4 conditions:

1. The subsurface disposal system shall be:
 - a. Designed using the best engineering practices available.
 - b. Approved, without waivers, by the State of New Hampshire Department of Environmental Services.
 - c. Reviewed and approved by a Town engineer at the applicant/owner's expense and verification of this approval submitted with the application for Zoning Compliance (Building) Permit.
2. A Professionally engineered drainage system reducing the surface water volume and flow rate exiting the property shall be designed and constructed. The drainage system design shall be reviewed and approved by a Town engineer at the applicant/owner's expense and verification of approval submitted with the application for Zoning Compliance (Occupancy) Permit.
3. Construction on the property shall be done with minimal removal of natural growth and landscaped where natural growth removal is necessary so as to maintain or improve existing screening and views for adjacent lots.
4. The "Record of Hearing Decision" for Case 2008-14 shall be recorded at the Merrimack County Registry of Deeds in Concord, NH with reference to the property's deed. A copy of the recorded document shall be provided with application for Zoning Compliance (Occupancy) Permit.
- 5.

Pam seconded the motion. George, Alan, Pam voted yes. Rick and Glenn answered no. Motion carried.

Glenn noted that any abutter has the right to appeal the decision of the board at their own expense, within 30 days of this decision.

11:00 PM Rick made a motion to adjourn. Alan seconded the motion. All in favor.