

**Town of Epsom  
Zoning Board of Adjustment  
2/08/11**

**In Attendance:** Glenn Horner, Chairman; Rick Belanger, Vice Chairman; John Dodge, Planning Board Liaison; Alan Quimby; George Carlson; Darlene Phelps Recording Secretary

**Not in Attendance:** Mike Hoisington; Mark Riedel

**Also in Attendance:** Michael DeSimone; Ken Stiles; John Klose; Len Gilman; Larry Barton; Jay Hickey; Dave Fiorentino; Rachel Goldwasser; Scott Snedeker; Fred Potter; Simon Leeming

**7:00 PM** Glenn opened the meeting. The minutes of 1/19/11 were reviewed. Alan made a motion to approve the minutes as amended. George seconded the motion. All in favor. Tonight's meeting is just a meeting of the board members to make a decision on Cases 2010-03 & 2010-07,

**7:10 PM Case 2010-03 (Coldan Landholdings, LLC) - [Continuance Hearing] Dan Chasse of Coldan Landholdings, LLC has applied for a Special Exception in accordance with Article II, Section C. [Table of Uses] Part 19a [Multi-Family Residence (three units or more)] to permit the construction of nine (9) multifamily townhouses, each containing ten (10) single family units, as a clustered development on adjoining properties of over 170 acres. The properties are located on the Suncook Valley Highway (Rte. 28) in the Residential/Agricultural and Residential/Light Commercial Zones and are identified on Epsom Tax Map R7 as Lots 2, 5, 13, & 16 and on Tax Map U11 as Lot 22.**

Glenn stated that he spoke to Attorney Soltani regarding the private/public road issue. Attorney Soltani advised that it is his opinion to make this a public road, so as not to create ambiguity in the decision. Glenn noted that the Selectman liaison to the ZBA, Keith Cota, has also advised that the ZBA should grant the request for a public road. The public road will be approximately 600' long as shown on the plan.

Regarding the lot merger, Glenn received the revised plan & lot layout which shows all of the lots to be merged.

Glenn had hoped that the applicant would be in attendance tonight to discuss the development having a single address. Glenn indicated that this will allow for future tracking of school-age children, which will help with future development decisions. Alan advised that the Fire Department will issue a 911 address.

All of the board members have reviewed the draft decision that Glenn prepared. This draft decision is the same as what was presented last week with the exception of the lots being merged and the road being a public roadway.

The checklist was reviewed:

- Question 1: All members answered yes.
- Question 2: All members answered yes.
- Question 3: All members answered yes.
- Question 4: All members answered yes.
- Question 5: All members answered yes.
- Question 6: All members answered yes.
- Question 7: All members answered yes.
- Question 8: All members answered yes.
- Question 9: All members answered yes.

George made a motion to approve this Special Exception with the following conditions:

1. Approval of the multifamily townhouse complex (Complex) shall be obtained from the Epsom Planning Board through Non-Residential Site Plan Review application;
2. Existing Lot 2 referenced on Tax Map R7 and Lot 22 referenced on Tax Map U11 shall be merged and reconfigured as necessary to establish the lot configuration shown on the Multifamily layout plan titled "The Woodlands" dated July 19, 2010 and revised on January 3, 2011 or as modified and approved by the Epsom Planning Board. A notice of merger/reconfiguration document shall be recorded in the Merrimack County of Registry of Deeds. A copy of the document shall be provided with application for zoning compliance (building) permit;
3. The maximum number of dwelling units within the multi-family development shall be restricted to 40 units or less as determined by the Epsom Planning Board in accordance to the Epsom Town Zoning Ordinance (Article III, Section G Residential Single and Multi-Family Residence Requirements, Subsection 3 Multi-Family Residences with Three or More Units, Subsection "c" Minimum Lot Size and Overall Density);
4. A minimum of twenty percent (20%) of the dwelling units within each building shall contain 1 bedroom with the remaining units containing 2 bedrooms. All building requirements contained in Epsom Town Zoning Ordinance shall be met (i.e. Article III, Section G Residential Single and Multi-Family Residence Requirements, Subsection 3 Multi-Family Residences with Three or More Units, Subsection "e" Building Requirements);
5. A public road, as shown on the plan identified in Condition 2, or as alternately approved by the Planning Board, shall be constructed to provide access to the Complex from NH Route 28S meeting or exceeding all Town Road specifications. Construction shall receive engineering oversight to ensure the new public road meets or exceeds all Town Road specifications;
6. The residential dwelling access driveways off the private road and parking lots for multi-family residences shall be in accordance with the Epsom Town Zoning Ordinances for the multifamily residential lot (Article III, Section G Residential Single and Multi-Family Residence Requirements, Subsection 3 Multi-Family Residences with Three or More Units, Subsection "i");
7. A reserved subsurface disposal site or sites shall be located on the property. The Epsom Planning Board shall approve the location of the reserved field(s) based upon suitable engineering data provided by the applicant;
8. Water supply (capacity and quality) shall meet or exceed the requirements of NH Department of Environmental Services. The well shall have a wellhead protection radius of not less than one hundred and fifty (150) feet. A reserve well site shall also be designated on the property. State approval of water supply shall be provided to the Epsom Zoning Compliance Officer prior to the issuance of the Zoning Certificate of Occupancy. Water quality testing shall be completed at a minimum once each calendar year and results provided to the Epsom Health Officer;

9. An environmental assessment of the properties long term potential as a water supply for the Complex shall be provided to the Epsom Planning Board for their review and approval;
10. The existing sand and gravel excavation area shall be re-graded sufficiently to remove unstable slopes currently creating safety hazards on the property. The extent of re-grading on the property shall be reviewed and approved by the Epsom Planning Board;
11. The traffic study submitted by the applicant to the ZBA for this proposal shall be reviewed and evaluated by the Epsom Planning Board. If deemed necessary, a separate study as permitted under RSA 674:39-a shall be conducted. Should this subsequent study find improvements along NH Route 28S are warranted and the improvements receive NH Department of Transportation approval, the improvements shall be completed prior to or at the time of application for Zoning Certificate of Occupancy;
12. Emergency (i.e. fire, police, and ambulance) personnel access to each residential unit in the Complex shall be designed to minimize their response time and optimize their capabilities. The design shall include a fire lane and fire truck turn around at the northwest corner of the Complex driveway. Emergency personnel access improvements shall be reviewed and approved by the Epsom Planning Board;
13. A full storm water facility shall be designed and constructed to contain and control runoff such that no additional runoff from that currently discharging from the site is created following completion of Complex construction. The design shall be reviewed and approved by the Epsom Planning Board;
14. A financial capital reserve account shall be established by the Complex owners to cover the cost of annual maintenance and replacement of the fire protection, water and septic systems and other items that may be deemed necessary by the Epsom Planning Board. A copy of the legal documents establishing the means for financial security shall be approved by Town Counsel prior to issuance of Zoning Certificate of Occupancy;
15. Temporary water pollution controls during construction shall be utilized that meet or exceed the best management practices for site developments and shall be approved by Epsom Planning Board. Special attention shall be given to runoff impact and mitigation plans for Lot 28 referenced on Tax Map U11;
16. All service utilities shall be constructed underground. In addition, the exterior lighting within the site shall be designed for "downward" illumination and designed to have minimal intrusion into the neighboring parcels unless the property owner consents in writing;
17. The Open Space (Parcel B as shown on the plan identified in Condition 2 or as alternately approved by the Planning Board) shall be protected from further development with allowance for passive public recreational access such as hiking and other similar uses as approved by the Complex owners. Access through the restricted land for hunting will be permitted at the discretion of the Complex owner;
18. A firewall shall be provided between each unit and each unit shall have its own fire sprinkler system. The design of a sprinkler reserve holding tank for each

- building (or group of buildings) shall be approved by the Epsom Fire Department and shall be operational prior to the issuance of the Zoning Certificate of Occupancy. An annual inspection of the fire protection system shall be undertaken in conjunction with the Epsom Fire Department;
19. A fire protection cistern shall be constructed within the developed area of the Complex. The number of tanks, capacity and location shall be approved by the Epsom Fire Department and established on the site plan. Engineering hydraulic analysis shall be provided to the Epsom Planning Board and Epsom Fire Department to establish the method(s) for filling the cistern tanks. Annual inspection of the cistern(s) shall be made or as directed by the Epsom Fire Department;
  20. All necessary State and Federal permits shall be obtained prior to commencing project construction. Copies of these permits shall be provided to the Zoning Compliance Officer prior to or at the time of application for Zoning Compliance (building) Permit;
  21. The applicant shall proceed to "Non-Residential Site Plan Review" with the Epsom Planning Board within eighteen (18) months from the date of this "Record of Decision;" and all town fees, including but not limited to escrow for construction oversight shall be paid as deemed necessary by the Epsom Planning Board;
  22. This special exception shall expire three (3) years from the date of this "Record of Decision" should no substantial development occur. The extent of substantial development shall include as a minimum the completion of the binder coat on the new public road, approval of the septic design through New Hampshire Department of Environmental Services and the construction of the first building foundation;
  23. This "Record of Decision" shall be recorded at the Merrimack County Registry of Deeds, Concord, NH with reference to the property's deed(s) book and page number, and copy of the recorded document provided to the Epsom Zoning Compliance Officer prior to or at the time of application for Zoning Compliance (building) Permit.

Alan seconded the motion. All in favor.

**7:35 PM Case 2010-07 (Fiorentino) - David Fiorentino has applied for an Administrative Appeal of the Zoning Compliance Officer's (ZCO) findings with regard to conditions placed on a prior Variance approval (Case 2008-18). Specifically the appeal seeks to overturn the ZCO's interpretation of conditions to limit the type of commercial vehicles which can be stored on the property and parking restrictions on the truck containing bulk paving/seal coat material. The applicant also seeks clarification or modification as necessary of the conditions pertaining to commercial use placed on the approval of Case 2008-18. The property is located on White Birch Lane within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-2 as Lot 4.**

Rick Belanger recused himself.

Glenn advised Dave Fiorentino and his attorney that there are only 4 members in attendance tonight, and asked if they would like the board to continue with the deliberation tonight, or wait until there are 5 voting members in attendance. Attorney Goldwasser stated that they wish to continue with a 4 member board.

Glenn said he has been advised by Dave Fiorentino's attorney that one other condition is going to be appealed, and had suggested that the ZBA hold its decision for tonight until the other appeal is filed, so that all conditions can be discussed at one time. Attorney Leeming stated that since this other issue has not been properly published than he requests it not be addressed. Glenn stated that the public notice stated that this case would review of all conditions, so the board has the authority to discuss and deliberate on all conditions. He did state that no more testimony will be taken.

Glenn reviewed the case, the prior variance approval, the conditions, and previous violations.

1. The approved paving/sealing business shall receive Non-Residential site plan review through the Planning Board prior to establishment. **No additional issues.**
2. Commercial use shall be restricted to the storing of up to four (4) business vehicles. **It has come to light that there are several other vehicles being stored on the property for other businesses.**
3. The vehicle containing bulk paving/sealing material shall be parked on a paved location which is bermed to contain spillage of this material. **The condition does not state only when full, or any other disclaimer.**
4. All hazardous chemicals and materials shall be stored and disposed of using "Best Management Practices" and be in compliance with all State and Federal regulations. **No issues.**
5. The proposed 24 ft X 44 ft garage shall be used for storage of the owner's commercial and personal vehicles and items only. **The condition states that this is for storage only. The Planning Board advised the applicant that he would need to reapply to the ZBA if he wanted to do maintenance & repairs in this garage.**
6. Hours of operation, specifically with regard to the generation of noise sufficient to disturb local residents, shall be limited to 6 AM to 6 PM from Monday through Saturday. **This condition was intended to satisfy the needs of the closest neighbor who had been in favor of the original proposal but submitted complaints in this case. He contended it was still in a residential zone.**
7. The number of employees shall be limited to three (3). **No issues.**
8. Any change to the conditions as listed above shall require reapplication for variance to the applicable zoning ordinance(s) (i.e. Article III, Section G.1.b or I.1.a & .b). **The applicant did not reapply to the ZBA until he had been cited for violating the above conditions.**

Glenn stated that the board will need to decide first on the ZCO interpretation.

John made a motion to uphold the Zoning Compliance Officers decision with regard to condition #2. Alan seconded the motion. All in favor.

Alan made a motion to uphold the Zoning Compliance Officers decision with regard to condition #3.

George asked if the truck is empty, how it can leak. Alan replied that the vote is on whether the Zoning Compliance Officer interpreted the condition appropriately or not, not whether the condition makes sense. There was a brief discussion that the conditions can be changed – but right now this is to uphold the ZCO's decision.

John seconded the motion.

Alan & Glenn voted in favor. George & John abstained.

There was some question as to whether a tie means a pass or fail. Glenn will contact Attorney Soltani for input.

\*See addendum attached\*

Discussion on changing Condition #3:

The truck containing bulk paving material will be stored on a paved & bermed area from June 1- October 1. Attorney Goldwasser indicated that she & Jay Hickey had discussed that if the truck is to be filled on any dates outside of this, then he will notify the Zoning Compliance Officer in writing. Alan & George feel this is going to make for some confusion. After discussion it was decided to rewrite the condition to read:

3. The vehicle containing bulk paving/sealing material shall be parked on a paved location which is bermed to contain spillage of the materials from June 1 to October 1 or any time said vehicle contains bulk paving/sealing material outside of those dates.

Glenn reminded the board that this applicant has far exceeded the variances that were granted in 2008 and has continued to violate the conditions. He feels the board gave too many variances, and it got out of hand. This is still a residential area.

George said he does not feel the board made a wrong decision previously. Glenn said there are 4 variances and commercial use on a private road, and several violations of the conditions placed on the variances granted. Glenn said he thinks it might be different if a Road Association had been created instead of Condition violations.

Condition #2: Glenn suggested that this be rewritten so that it allows for 4 vehicles to be parked on the property only if they are part of the paving/seal coating business.

John said he doesn't want to see Dave lose business. Glenn agreed, but said Dave didn't follow the proper procedure, and reminded the board that this is not commercially zoned property. George stated that this is hardly a residential area. Glenn stated that the largest complaint is about noise, which comes from his closest neighbor. Glenn feels that expanding commercial use on this residential lot resulted in the added noise. There was discussion about how to determine what vehicles are commercial or "business" vehicles or personal.

Alan indicated that personally, he doesn't care if one of those 4 vehicles is the insulation truck. Alan then while thinking out loud did indicate that by allowing the insulation truck, the insulation will have to be delivered there and stored on site, and that is business expansion. Alan stated that there is commercial rental property right up the street that might be more appropriate than the residential area he is in now.

After discussion it was decided to rewrite Condition #2 as follows:

2. Commercial use shall be restricted to the storing of up to four (4) business vehicles used as a part of a paving/sealing business only.

Alan made a motion to approve the modifications of Conditions #2 and #3 as stated above. John seconded the motion. All in favor.

**8:42 PM Old/New Business:**

Ricky rejoined the board.

There was a discussion about meeting nights. It was decided to schedule meetings for Wednesday nights. Ricky is not available on the 1<sup>st</sup> Wednesday of the month from September – June. So Glenn will try to minimize the scheduling of meetings on the 1<sup>st</sup> Wednesday of the month.

**8:48 PM** John made a motion to adjourn. George seconded the motion. All in favor.

**ADDENDUM:**

Based on consultations with Town Counsel it was determined that RSA 674:33 applies in this case:

"The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative officer or to decide in favor of the applicant on any matter on which it is required to pass."

Since the Board split the vote on the motion to uphold the ZCO's decision, 2 in favor and 2 abstentions, the motion failed however the ZCO was not reversed as such a motion would require 3 votes as well. Town Council now advises the Board to reconvene when 5 of the members who sat in on this case in public hearing can be mustered for a meeting. The Chair will schedule this meeting at the Board's earliest convenience to decide this remaining Case 2010-07 question. The applicant and his attorney will be notified of the meeting when it is scheduled and the meeting will be posted in 2 public places a minimum of 24 hours in advance off the meeting.