

Town of Epsom

**Zoning Board of Adjustment
8/19/09**

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

Not In Attendance: John Dodge, Planning Board Liaison

Also In Attendance: Keith Cota, Selectman's Representative; Joe Wichert; Brenda Roukey; Cornelia Unger; Walter Unger; Chris Anderson; Jay Hickey; Joe & Lori Harnois; Jay Lafore; Albert J Yeaton, Jr., Keith Cota; Bob Charest

7:00 PM

Glenn called the meeting to order. The minutes of 8/5/09 were reviewed. George made a motion to approve the minutes. Rick seconded the motion. All in favor.

7:40 PM Case 2006-06 (Unger) Continued - Walter M. Unger has applied for a variance to Article III, Section G. [Residential Single and Multi-Family Residence Requirements], Subsection 1.b [Building Lots] to permit the conversion of a portion of an existing garage into a single-family residence on a lot containing .918 acres (2 acres required) with 50 feet of public road frontage (200 feet required). The property is located on Black Hall Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-4 as Lot 22.

Mark Riedel will be a voting member in tonight's hearing.

Glenn stated that at this time all return receipts have been received. Glenn briefly recapped the application, and asked if Mr. Unger has additional evidence to present. Mr. Unger presented copies of the plan which was signed by the Planning Board in 1974, and the deed which not recorded until 1978. There is nothing in the deed itself that puts a restriction about a residence on the property. Mr. Unger stated that he has been taxed on the land at \$75K, and if that lot is not able to be built upon, then he feels that he is being taxed improperly.

Jay Hickey stated that the assessment on the lot does not consider the zoning on the lot. Jay said he & Barbara spent about 18-20 hours on research on this property. Jay said he showed the permit to Tony, who advised that this should have required a variance back when the building permit was issued. This is not considered pre-existing non-conforming... it is just non-conforming. Tony reference Estoppel, which has a different time limit for the Town to reverse a decision – this time limit is different for different properties. Jay passed out copies of all the deeds on record from 1960 forward. There is verbiage about the 50' right-of-way. He also passed out copies of some Planning Board minutes. Many of these minutes state that Robert Cutter was only to use this land as pasture land. Jay showed copies of the plans from 1988 & 1990. On the plan from 1988, it states that the 5.945 acre lot adjacent to U4-22 was to be combined with U4-22. This was never done.

Jay said U4-22 states it is close to the 100 year flood plain, and has some wetlands. He said the wetlands will need to be delineated, and also feels that installing a septic will be an issue. Mr. Unger said he is aware of the wetlands, but has not wanted to spend the money on a test pit until he knew he would be able to build on it. Joe Wichert said he looked quickly at the property & the wetlands are poorly drained which require a 50'

setback. Joe said they would design a state-approved septic system, but they do not want to go to that expense until they know they will have the approval to convert the garage to a residence. Joe also said that since the building is existing, the existing setbacks would apply. There was quite a bit of discussion about whether the set-back requirements would change if the garage is converted to a residence.

Glenn asked if there are any abutters in favor of the application. Being none, Glenn asked if any abutters are in opposition. Brenda Roukey asked if the deed says that the building can only be used for storage. The deed does not state that – the building permit says that. Brenda then asked what Mr. Unger's impression of the property was when he purchased it. Mr. Unger said he visited town hall 3 times before he purchased it, and was not told that the land could not be used as a residence. He was only told that he would need to get a variance to increase the size by more than 25%.

Brenda then stated that she feels the Town would be doing a disservice to the prior owners who sold this property as a storage property only, by allowing a residence.

Albert Yeaton asked if any of our records show that Mr. Bill Jasak tried to convert this to a home. He said he spoke to Mr. Jasak and he said he was not able to get a permit to convert the garage to a home. Keith Cota (previous ZBA Chair) was asked if he has a recollection of an application by Mr. Jasak, and he does not. Brenda Roukey said she spoke to Mr. Jasak and he said he was denied in February 2000 to turn it into a residence. Glenn looked and he was unable to find any documents about this.

Rick asked if Mr. Unger ever asked for a tax abatement due to not being able to put a residence on it. Mr. Unger said no – because he believed it to be a buildable lot, and it is a fair assessment if it is buildable. Joe said in his review of the building permit – he sees that the intended use is for car storage – but it doesn't state that it's for car storage *only*.

Mr. Unger recognizes that there have been a lot of mistakes in the past with this lot, but he would like this board to consider what the best thing for the town would be. He said the home would be less than 1000 square feet, so it wouldn't be a big home, and thinks the town and the neighborhood would be better served with it being used as a home, than the alternative, which is to market it to a group that will use it for motorcycle storage in the winter, or snowmobile storage in the summer.

Mr. Unger cited a couple of other lots that were granted variances, and Glenn stated that all applications are considered on their own merit.

Keith said that up until 1989 the Planning Board was allowed to subdivide a lot without public road frontage. However, they were still not able to get a building permit unless they had public road frontage, unless they had a variance.

Mr. Jasak called during the meeting and talked to Ricky by phone. Mr. Jasak told Ricky he did not present a formal application, but he spoke to Peter Arvanitis and "someone else" in town, and was told he absolutely could not convert to a home. So, he sold the property.

George made a motion to close the public hearing. Ricky seconded the motion. All in favor. All in favor.

It was decided that the board exercise its right to come to a decision within the 30 day period.

Alan made a motion to continue to September 16 for deliberation and decision. George seconded the motion. All in favor.

8:40 PM - 8:45 PM Break

Case 2009-07 (Harnois) Joseph and Lori Harnois have applied for a variance to Article III, Section G. [Residential Single and Multi-Family Residence

Requirements], Subsection 1.b [Building Lots] to permit the construction of a single family residence on a proposed lot with no public road frontage (200 feet required). The property is located on the Suncook Valley Highway within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-11 as Lot 17.

Glenn stated that this hearing was properly posted in the Concord Monitor and in 2 public places, and all abutters were notified by certified mail. All green cards have been received with the exception of Donald Beardsley & others at PO Box 773, Epsom.

Joe Harnois stated they have 11 acres, and would like to subdivide so he can create a lot for his mother to build a home on. He is open to the option of creating a 6 acre parcel in the back, which will have no road frontage, and using the abutting Jay Lafore's driveway for access. Or, currently the existing lot has 378.55' of road frontage and he would be willing to subdivide and retain 200' of frontage for the existing lot and create a new lot with 178.55' of frontage.

Glenn stated that he is more in favor of not sharing a driveway, and allowing a 50' frontage to keep the existing historical property in tact. Ricky said the town ordinances allow for shared driveways, and he is wary of allowing a 50' frontage for a building lot. Mr. Harnois said he approached the Beardsley's and the Paris's and neither was willing to sell any frontage to him. He said he even offered to swap back land for frontage with the Paris's and they were still unwilling.

Glenn asked if the goal is to have his mother live on their property, then there is the option of a multi-family dwelling. Joe acknowledged this, but he wants her to have her own lot – and they don't want her living "in their backyard".

He would need to take his property out of current use in order to subdivide.

Jay Hickey stated that our subdivision regulations require 2 acres per lot to share a driveway. Jay showed a plan that was on file, which indicates it could be difficult to get one acre of contiguous buildable area on each lot. They would also likely need a wetlands waiver to build a driveway over the wetlands. Jay also feels the state permit may be difficult to achieve. Jay stated that the applicant has the right to build a duplex or an accessory dwelling without any variance. He also is cautious about having 2 houses on one lot. He also presented a case decision from 2004 that is similar in its merit, and it was denied.

Joe clarified that they would want 2 separate lots.

Lori Harnois stated that they have a historic barn, but they do not currently participate in the historic barn easement. She doesn't think they would be able to do that if the barn was converted to an apartment.

Glenn asked if any abutters are in favor. Abutter Jay Lafore said he is fully in favor of the application – and would prefer that the lot have its own driveway, as opposed to a shared driveway. He'd like to see the field in the front stay in tact, and would be willing to transfer some of his frontage for trade of back land, but that would make him short of required frontage.

Jay also that in the past, mobile homes have been placed on properties for an elderly parent, which would need to be removed when the parent is no longer able to live there. There was discussion about the mobile home being kept on the property after the parent leaves.

Keith strongly urged the board to be very careful in creating a new lot with no public road frontage. Keith stated there is an option of putting a mobile home on a slab, with the condition of the mobile home being removed when the parent moves.

Glenn asked what their long term plan is. Joe said they intend to keep both properties in their name and renting the property to his mother. When the time comes that his mother is gone, they would want to rent the property. He doesn't think they would want to invest

the money in a septic & well & slab and then when the mobile home is gone, they have no way to recoup their expenses. Joe also reminded the board that he has 11+ acres, so although they are shy by just over 21' of frontage, they have plenty of acreage. Rick stated his opinion that he is not in favor of creating substandard lot. Keith feels we should weigh the possibility of what development could take place on that lot, and the 20' of road frontage could be a much less impact.

George made a motion to continue to September 16. Ricky seconded the motion. All in favor.

10:45 PM George made a motion to adjourn. Ricky seconded the motion. All in favor.