

**Town of Epsom**

**Zoning Board of Adjustment  
9/16/09**

**In Attendance:** Glenn Horner, Chairman; Rick Belanger, Vice Chairman; George Carlson; Alan Quimby; Pam Hoyt-Denison (Alternate); John Dodge, Planning Board Liaison; Darlene Phelps, Recording Secretary

**Not In Attendance:** Mark Riedel (Alternate)

**Also in Attendance:** James Lafore; Joe Harnois; Jodi & Tom Molinaro; Bob Charest; Al Yeaton, Jr.; Walter & Connie Unger

**7:00 PM**

Glenn called the meeting to order. Since Mark Riedel is not in attendance, Pam will be sitting in for him to hear the continued Harnois case and the Unger deliberation. The minutes of 8/19/09 were reviewed. Alan made a motion to accept the minutes as amended. George seconded the motion. All in favor.

Glenn explained the procedure for the meeting and introduced the members of the board.

**7:05 PM Case 2009-07 (Harnois) [Continuance] 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 the final certified receipt from Donald Beardsley has been received since the original Public Hearing.

Joe briefly reminded the ZBA that he wants to subdivide 6 acres of his land, which does not the required 200' of frontage. The purpose is to create a lot and build a home for his aging mother. In the future, Joe & his wife may occupy the new home and rent out the home they currently live in. He'll have to pay a penalty to remove the land from Current Use, which will be approximately \$15,000.00. Their driveway is very close to their house (within 25'), so would prefer to have the new lot share a driveway with the abutter Jay Lafore, or create a new driveway on the north side of the property.

Joe stated that in the spirit of the ordinance, he is only short 21' in order to do this subdivision, yet the lot size is nearly 3x the minimum acreage, and said that the potential for development on this lot is great; by granting the variance, this would prevent development.

Joe stated that he previously spoke to the Paris' to try to acquire additional frontage, but they were not willing to sell any frontage, and the Beardsley's don't have any extra frontage.

Glenn asked if any members of the public have comment. There are no comments. Jay Hickey stated that there is no guarantee that Joe's mother will reside on the new lot, and the variance is supposed to be a last resort. There are other options (accessory dwelling, apartment) that can be used as opposed to a subdivision. Jay also referenced the McArthur case which was similar in size / frontage which was denied in 2004.

Jay Lafore stated that even if a "property shuffle" were done to move 21' to Joe's frontage, it still will not change the look of the land at all. This is a minimal exception, at only being shy by 21'.

George made a motion to close the Public Hearing. Pam seconded the motion. All in favor.

Rick stated he thought our Zoning Regulations restricted creating sub-standard lots. Our Zoning Regulations are written in order to keep all lots conforming. George feels that the 200' requirement is an arbitrary number that was chosen and the shortage is very minimal. Pam also stated that she feels the spirit of the ordinance could support the granting of this variance, especially since he is minimally short on frontage, yet has excess acreage. Pam stated that one purpose of this frontage requirement is to prevent excessive driveways; this lot would not require any additional curb cuts. The applicant has other options with this property that could create a less desirable use for this property. Glenn said that in the future, an applicant could wish to subdivide this property again and come back to the ZBA for a variance. Since the ZBA cannot place a permanent restriction on a property; Pam asked if it would be possible to place a deed restriction on the property to prevent further subdivision.

The checklist was reviewed:

Question 1: Rick, Alan, Pam George voted yes. Glenn voted no.

Question 2: Pam & George voted yes. Rick, Alan & Glenn voted no.

Question 3: Pam & George voted yes. Rick, Alan & Glenn voted no.

Question 4: All members voted yes.

Question 5: All members voted yes.

Question 6: George voted yes. Pam, Rick, Alan, Glenn voted no.

Alan made a motion to deny the variance based on the following:

- 1. Creating a lot by subdivision with less than the minimum road frontage when no special conditions can be found, other than insufficient road frontage, would not be in the spirit of the ordinance or the public interest.**
- 2. Exempting this proposed subdivision from the minimum road frontage requirements would not provide substantial justice to the town and its intended goal of land use planning compliance.**
- 3. The benefit sought by the applicants can be achieved by another method reasonably feasible for the applicants to pursue, other than an area variance. Specifically, the property meets all zoning requirements for a multi-family and could provide a home for a family member to live close by.**

Rick seconded the motion. Rick, Alan, Glenn In favor. Pam & George opposed.  
Motion carried.

**8:30 PM – 8:35 Break**

**Thomas and Jodi Molinaro have applied for a variance to Article III, Section G. [Residential Single and Multi-Family Residence Requirements], Subsection 1.e**

**[Single Family Accessory Dwelling Unit] to permit the continued use of an accessory dwelling with kitchen within a single family residence on a lot containing 2 acres and having 200 feet of public road frontage. The use of a separate kitchen in the accessory dwelling is not allowed by the ordinance. The property is located on the Martin Hill Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-18 as Lot 28.**

John Dodge will be listening to this case. Glenn stated that this Public Hearing was properly posted in the Concord Monitor and in two public places. All abutters were notified by certified mail, and all return receipts have been received with the exception of Brenda Bishop.

Jodi Molinaro said that in June she purchased this 3 bedroom home in Epsom that has an accessory dwelling with a kitchen and when the home was appraised, it was discovered that the kitchen is not allowed. She purchased the home anyway and is hoping to be allowed to continue using the accessory dwelling for her mom. She said she found stickers inside the cabinets dated 1976, so that kitchen has been there for a long time. Glenn asked her why it's important for her mom to have her kitchen... She replied that her mom is very independent, and it is important for her to have this separate space.

Jodi said when this space for her mom is no longer needed she doesn't know if one of her daughters would occupy it, or she would sell the house...she is willing to listen to ZBA suggestions.

Jay said this property is listed as a SF dwelling, and the assessors have not checked that house since 2006.

Tom Molinaro said the septic system was checked when they bought the house, and they were told it's the old style stone & pipe system in excellent shape, but to have it pumped annually. There are 7 people living in the home currently.

Jay stated that his suggestion would be that if we approve this, to place a condition in regard to a replacement septic system in the event of failure.

Frank Quimby asked what constitutes a kitchen; Glenn & John stated a stove, a refrigerator, and plumbing.

John made a motion to close the public hearing. Alan seconded the motion. All in favor. The checklist was reviewed.

Question 1: All members voted yes.

Question 2: All members voted yes.

Question 3: All members voted yes.

Question 4: All members voted yes.

Question 5: All members voted yes.

Question 6: All members voted yes.

Alan made a motion to approve with the following conditions:

- 1. A subsurface disposal (septic) system for a 4 ½ bedroom dwelling shall be designed and approved by NHDES for use in the event the existing system fails. A copy of the State approved replacement system shall be submitted prior to the issuance of a Zoning Compliance (Occupancy) Permit.**

2. **The “Record of Decision” for Case 2008-08 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 for the accessory dwelling.**
3. **The conditions of this variance, as stated above, shall be completed within 1 year of the date the decision was made: September 16, 2009**

John seconded the motion. All in favor.

**9:15 PM Deliberation of 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.**

Pam will be participating in the deliberations of this case.

Glenn provided the board with some background on this property, and there was a brief discussion about how this property evolved over the years since it was first purchased in 1960. Also, the existing garage was built illegally in 1987.

Glenn stated that it’s possible that the existing building could be within the wetlands setback. He also said that there is no evidence that the property can withstand adequate septic.

The checklist was reviewed:

Question 1: All members voted no.

Question 2: All members voted no.

Question 3: All members voted no.

Question 4: All members voted yes.

Question 5: All members voted yes.

Question 6: George, Pam, Rick & Alan voted yes. Glenn voted no.

Glenn has prepared a draft decision, and distributed it for the board members’ review and revision.

Rick made a motion to deny based on the following reasons:

1. **Evidence presented at the public hearing finds that the existing structure to be converted into a residential dwelling may encroach into surrounding wetlands in violation of town zoning ordinance Art II. A.2. In addition, insufficient evidence has been submitted to demonstrate the ability of this undersized lot to obtain subsurface disposal system approval in close proximity to a wetlands and flood plane. These circumstances preclude the board from finding that the applicant’s proposal is in the spirit of the ordinance or the public interest.**

- 2. The use of this property as a storage garage for several decades has provided the desired use and value to the current and former owners. Special conditions of the property cannot now be found which constitute an unnecessary hardship to the applicant in his quest to build a residential dwelling.**
  
- 3. Upon receipt of all evidence and in full consideration of zoning compliance, the proposed use of this property also requires a variance to Article III, Section B. [Pre-existing, Non-conforming Uses]. The spirit and intent of Article III, Section B is to restrict non-conforming lots to their preexisting use or to bring them into compliance. In this case, the use of this property originally created as a non-buildable lot, has already been expanded by construction of a storage garage on the property. Significant expansion from a storage garage to a residential dwelling is not in the public interest with respect to the originally intended use of the property. Further, evidence has shown that the former owner entered into a verbal agreement with the Planning board to create the subject lot as a non-buildable lot in order to obtain approval of a larger subdivision. To disregard this agreement, and others like it made between the town and property owners as a whole, would not serve the public interest.**

Alan seconded the motion. All in favor.

**10:10 PM** Rick made a motion to adjourn. John seconded the motion. All in favor.