

**Town of Epsom  
Zoning Board of Adjustment  
11/09/10**

**In Attendance:** Glenn Horner, Chairman; Mark Riedel (Alternate); John Dodge, Planning Board Liaison; Alan Quimby; George Carlson; Mike Hoisington (Alternate) Darlene Phelps Recording Secretary

**Not In Attendance:** Rick Belanger, Vice Chairman

**Also in Attendance:** Jay Hickey; Brandon Giuda; John Klose; L. Leppard; Terry Theriault; Bruce Theriault; Scott Erno; Robert McKechnie; Rob Topik

**7:10 PM**

Glenn opened the meeting and introduced the members of the board. The minutes of 10/20 were reviewed. John made a motion to approve the minutes as amended. Alan seconded the motion. All in favor.

John Dodge indicated that he is recusing himself from this hearing. Glenn advised the procedure of the meeting. Glenn stated that the meeting was properly advertised in the newspaper & two public places & all certified return receipts were received back except Scott Erno's. Scott is in attendance tonight.

**Case 2010-05 (Klose)** - John Klose has applied for a variance to Article III, Section G [Residential Single and Multi-Family Residences Requirements], Subsection 1.e [Single Family Accessory Dwelling Unit] to permit an accessory dwelling in the rear portion of a detached garage. The property is located on Meadow Lark Lane within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-01 as Lot 112-6.

Attorney Brandon Giuda stated that John Klose is requesting a variance for an accessory dwelling, for two elderly relatives. Attorney Giuda stated that Epsom's zoning regulations allow for accessory dwellings in this zone, however the regulations state that the accessory dwelling must be attached to or located within the primary residence. John has already constructed the accessory dwelling behind the garage, but does not want to build the connector, because he feels this would be a hardship. The only way that John could meet the guidelines is to build a long "connector" from the garage to the home. The building of this connector will look unsightly and could in itself lower the property values. Also the area where the connector would be built would be in the area that is currently being used for parking. John lives on this property alone, and the property abuts a conservation easement. The property card shows this is a 4 bedroom home, but one room is used as an office. There is only one abutter who is within sight of the property & that abutter is in favor of the variance.

Attorney Giuda stated that the kitchen facilities will be located in the main house only – not in the garage. The septic system is built for 3 bedrooms.

Glenn stated he has visited the property and there is currently a kitchen facility. Attorney Giuda & John both stated that there is no stove – nor place for a stove, however there are cabinets and a sink. Glenn asked for clarification from Jay and he stated that a stove & refrigerator makes it a kitchen.

Glenn asked when the current apartment was constructed. John replied that he started building it about 3 years ago & has just finished the construction within the past couple of weeks. Glenn asked why the accessory dwelling wasn't just constructed according to the zoning regulations, by being attached to the main house – in other words, knowingly violating zoning regulations.

Attorney Giuda said he's not sure that John knew about the regulations. Glenn is supportive of accessory dwellings for family members, however wishes to see them constructed according to the zoning regulations.

Jay said that all permits were received by John from the town to construct the garage and the accessory dwelling.

Glenn asked why this house was built on a lot with less than 200' of frontage. John said he doesn't know. Attorney Giuda pointed out that the property is a 3 acre lot. It was also noted that the driveway is located in a Right-of-Way.

Mike asked the distance from the garage to the house – and John replied about 30'.

Mike asked how the food will be served in the apartment and John said it will be carried out from the main house.

Glenn asked if there is any input from the public in favor of the variance. L. Leppard abuts John's property in the rear and has no objections to the variance. Bruce Theriault, an abutter stated that he has no objections; however the property is currently for sale & wondered if the variance goes with the property. Glenn said yes, it goes with the property. Terry Theriault stated she is in favor of the variance and doesn't want to see an "ugly" connector. Scott Erno said he's not opposed to the variance, and just wants to make a point that if this variance is granted – then it would only be fair if anyone in the development gets a variance. Mark reminded Scott that each case stands on its own merits. Attorney Giuda also indicated that this accessory dwelling is for family members only and there will be no cooking facilities in it.

Glenn asked if there are any members of the public who are not in favor of the variance. Bob McKechnie asked if there was a flood zone study or plot plan done before the construction was done. Glenn said according to the drawing, it appears to be about 150' from the river. Bob also stated that this property is for sale and the property listing states that there is an in-law apartment in the process of being built. Bob said he believes that the sink falls into the kitchen guidelines. There was a brief discussion about a bar sink being allowed. Bob also said the listing sheet says the home is handicapped modified – so why does there need to be an accessory dwelling if there are already 4 bedrooms & the property is handicapped modified. John said he hasn't seen the listing sheet & doesn't know what they mean by handicapped modified. Attorney Giuda said he thinks the handicapped modified applies to the accessory dwelling.

There was a brief discussion about real estate listings being accurate – and whether that is the responsibility of the property owner.

Attorney Giuda also said he doesn't believe the sink makes it a kitchen.

Rob Topik wonders what precedence might be set by allowing this variance. He asked what kind of sink is in there – and Glenn replied a kitchen sink. Rob also asked what the permit was issued for. Jay said a permit was issued for a garage & an accessory dwelling, but it was to be attached to the house. John doesn't want to connect the garage to the house. Rob also called attention to this property having less than 200' of frontage; is this a non-conforming property? Glenn reminded Rob that John is prepared to build the connector if the variance is not granted, however the abutters that are here tonight are clearly not in favor of the connector being built. Rob understands the benefit of renting an apartment on John's property.

Jay read the portion of the ordinance which states that no income can be gained from accessory dwellings. Jay also said it would be helpful if this is approved for the decision to be registered with MCRD.

Rob asked if the construction has been taking place for the past 2 or 3 years, then what have the relatives been doing during this time. Some board members feel this is irrelevant to the case at hand.

Mike asked what the square footage of the accessory dwelling is – Atty. Giuda stated it is 630 square feet. Glenn asked if there has been any flooding on John’s property. John replied no. Jay said this property meets the Shoreline Protection Act set back requirements, which is 50’ for a primary structure.

Alan asked Jay if a fire inspection was completed. Jay said they did complete a fire inspection.

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

Glenn said he has seen the property and doesn’t feel that building a connector is feasible, nor aesthetically pleasing. He is hopeful that detached accessory dwellings requiring long connectors be evaluated carefully in the future.

Mark said he feels that regardless of whether it looks ugly – the permit was given for the structure to be built a certain way and that is the way it should be built. This type of variance only creates additional work for zoning compliance. He feels that the applicant’s poor planning is not this board’s problem and we should not allow this type of variance. He was on the board when this zoning change was made and it was to stop this type of accessory dwelling. Mark doesn’t feel it’s in the public interest to allow this. Mark also asked what is going to happen in snowy/icy weather when the ill person goes into the house to get something to eat & slips and falls. Alan agrees and said he was on the board when this zoning regulation was made and the intent was to have the accessory dwelling attached.

There was a brief discussion about what constitutes “attached” – does it mean a sidewalk? A roof? A handrail?

Several members of the board agree that the applicant agreed to build the connector when the permit was acquired 3 years ago. And by allowing this variance would be to undo the work that the previous boards have done when they created this zoning regulation. Mike also noted that this creates a hardship to the town in regard to zoning compliance.

The checklist was reviewed.

Question A. Mark, Glenn, Mike & Alan answered no. George answered yes.

Question B. All members answered no.

Question C. Mark answered no. Glenn, George, Alan & Mike answered yes.

Question D. All members answered yes.

Question E. All members answered no.

Question F. (1) All members answered no.

Question F. (2) All members answered no.

Alan made a motion to deny the request due to the following:

1. The proposed use is not consistent with the spirit of the ordinance with regard to the very specific clauses requiring the accessory dwelling to be constructed within or attached to the single family unit and for the inclusion of at least one interior-connecting door for persons to pass through between the primary residence and the accessory dwelling unit. In this case the accessory dwelling unit is already approximately thirty feet from the primary residence and an attachment is necessary to satisfy the ordinance’s spirit.

2. Denial of the variance does not result in an unnecessary hardship as the permit authorizing the construction of the accessory dwelling included an attachment between the accessory dwelling and the primary residence. No special conditions of the property can now be found which would justify changing this requirement.

Mike seconded the motion. All in favor.

**9:15 PM – 9:25 PM Break**

**Old/New Business:**

John rejoined the board.

Glenn said he has spoken to Jay & Barb and would like to begin recording all decisions with MCRD. The fee is \$16.40. Glenn is thinking that the applicant will be charged \$25 for the recording and administrative fees. The applicant is supposed to be recording these decisions, but often times this is not done.

John made a motion to increase the ZBA application fee by \$25 for the recording of all decisions at the MCRD (approvals & denials). Mark seconded the motion.

George asked what the application fee is currently. Glenn said the fee is \$260, plus \$12.50 per abutter.

All in favor of increasing the application fee.

Jay said that tomorrow night the Planning Board will be discussing zoning changes and asked if the ZBA has suggestions of how to improve the wording for the ordinance relative to accessory dwellings. The discussion was to change the wording to require the accessory dwelling to be located within or share a wall with the primary residence – not a detached dwelling. Jay asked if a sink, or what kind of sink should be allowed. The board feels there should be no refrigerator, stove or sink. The accessory dwelling has a very specific use.

Mark asked if there is ever a time that it's appropriate for a board member to discuss a case – even after a decision has been made. He'd like an opinion from Tony. Glenn said he will send an email to Tony to ask him.

9:55 PM Alan made a motion to adjourn. John seconded the motion. All in favor.