

**Town Of Epsom
Zoning Board of Adjustment
12/16/08**

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

Not In attendance: Keith Cota, Selectman's Representative

Also in attendance: David Fiorentino; Cindy Belanger; Steve Robinson; Joe Fiorentino; Bob Brown; Len Gilman Jr.; Jim Butler; Diane LaFrance; Kenneth Stiles; Andrew Walton; Jay Hickey; Rob Topik

7:00 PM Glenn opened the meeting and introduced the members of the board. Glenn explained the procedure of the meeting. The minutes of 12/2 were reviewed. Alan made a motion to approve the minutes as amended. George seconded the motion. All in favor. Pam did not vote as she was not in attendance at the 11/12/08 meeting.

2008-18 David Fiorentino has applied for a Variance to Article III, Section G [Residential Single and Multi-Family Residence Requirements], Subsection 1.b [Single Family Residence Building Lots] and Section Q [Manufactured Housing], Subsection 3.a [Prohibition of Individual Lot Manufactured Housing] to permit the continued use of a mobile home on a lot with no public road frontage (200 feet required) and a Variance to Article III, Section I [Business], Subsection 1.a [Location] and Subsection 1.b [Building lots] to allow for the establishment of a commercial business, including the construction of a garage and storage of 12 vehicles, in the Residential/Agricultural district with no public road frontage (200 feet required). 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.

Glenn noted that all abutters have been properly notified by certified mail. All return receipts have been received except for David Fiorentino, Calvin Yeaton, Gary Yeaton, and Eleanor Noyes. The Public Hearing was published in the Concord Monitor and was posted in two public places.

Ricky Belanger recused himself from this case as he is an abutter. Pam Hoyt-Denison will be sitting in on this case. Mark stated that he had spoken with Dave Fiorentino and advised him that it was inappropriate to have any discussions regarding the case until it was within a Public Hearing. Glenn stated that he also had a similar conversation with Dave. Dave responded that he needed some assistance in completing the application process.

The first part of the application is for the residential dwelling: He would like to continue his residence at 54 White Birch Lane, and erect a 24' x 42' garage for personal and /or commercial use. He'd like to operate Fiorentino Asphalt out of his home & park his commercial rigs there. In approximately 1985 he purchased the property and in August 1988 a mobile home was placed on the property. He received a septic design approval. In July 1990 Property card adjusted land is at buildable status. There is no impact to the community because this has already been there for 20 years. There are surrounding commercial properties. This would also allow him to register his 12 vehicles in town. This would allow him to maintain his residence where he has lived for 20 years.

Dave said he currently rents a garage in Concord. Glenn asked if he has any plans to replace his mobile home with a stick-built home, and Dave said he has no immediate plans for that. The septic was never inspected after it was installed, so he had it inspected. Dave had Bob Hutchins come out & inspect it, and it was found to be in good working condition. The well is within 75' of his septic. He provided a copy of the waiver he received from NHDES. He stated that there are several mobile homes in the area, so it is not out of character. This road is a private drive, owned by Cindy Belanger. Glenn asked if there is an association to keep the road maintained. Dave responded that he works together with the Belangers to maintain the road – doing roadside mowing, repair of potholes, etc. Dave said there is no road agreement for Ponderosa Enterprises, and Ricky has a similar impact on that private drive. Glenn responded that previous boards make decisions based on facts at the time, so we are unable to compare approvals from previous cases. Dave provided a copy of a waiver of liability he had his attorney prepared that he is willing to sign that releases the Town of Epsom of any liability when allowing the expansion of use on a private road. The board expressed surprise that we have never seen a similar waiver presented before. There thought of the board is that this would have to be reviewed by Tony if the board decides to accept it. Dave provided a site plan that shows where his home is located, where the garage will be. He has a 6 acre lot with approximately 1200' of frontage.

For the commercial application: He owns 3 commercial vehicles, and his pick up truck which is sometimes used for commercial purposes. He usually has 800 – 1000 gallons of Seal Coat on one truck that will be parked on his property. He provided a MSDS sheet for the material. Dave said the material is held behind two valves. This is a water based material. It is used to spray on driveways. He doesn't store any gasoline on site, except the gas tanks on the vehicles. The parking area for his trucks is approximately 150' from the brook, and there is an uphill slope before the hill. He has one employee. He will have no public coming on site. He works 6 months out of the year, and doesn't work on days that are wet, rainy or rain is expected. The impact on the roads is minimal because the roads take the most damage during wet weather.

Dave passed out copies of some pages from the Master Plan which he feels supports his applications. He also passed out copies of signed petitions from Epsom residents, neighbors on Old Turnpike Road, and abutters who are in favor of the variances being granted.

Dave explained that he owns several vehicles, motorcycles, trailer, motor home, boats, etc. and his garage is primarily to maintain those vehicles. He has 2 storage trailers (tractor trailers without the tractors) on site. The amount of traffic generated by the commercial approval is minimal.

Jay Hickey presented a copy of the 1990 property card, deed – which states he does have a ROW to his property along White Birch Lane. Jay said there are no permits for anything on his property, and there are several areas of non-compliance. He said Dave has been very cooperative in correcting things as Jay makes suggestions.

Jay said since 1990 he is only aware of one waiver of liability. Before 1990 they were used from time to time, so he suggests input from Tony if we decide to proceed with that.

The garage that is proposed is a dome top, with a 3' wall and a concrete pad. Jay showed the board a copy of the 1974 subdivision map.

Glenn asked the public if there is anyone in the public in favor of the application. Rick Belanger, abutter stated that this subdivision was created by his uncle in 1974. Dave's lot was created as a wood lot. The verbiage on the deed was written so that the abutters have a ROW across the

private road, and the ROW cannot be obstructed, and each abutter must maintain the road to their own need. Len Gilman spoke also that he has a similar ROW on a piece of property off Old Turnpike Road.

Rick is in support of Dave's applications; his only concern is the hours of operation. Rick suggested that he'd like to see a condition that he's able to upgrade without requiring a variance. Rick also suggested allowing Dave to participate in the conditions placed on any approvals. Rick also spoke to Dave's reputation as a steward of the environment, and is not concerned about his truck leaking. Len Gilman also spoke to the fact that this material is put on the ground anyway, so even if it leaked... it's something that goes on the ground!!

Cindy Belanger, abutter, has no objection to Dave's applications, however she is very concerned about maintaining "quiet time" as this is also a residential area. She'd like to see reasonable hours perhaps 6-6 Mon-Sat. His current activity is acceptable.

Glenn asked if there are any members of the audience that are opposed to the application. Being none, Glenn asked if there are any comments from the public. Rob Topik stated that since this is the first use variance that has come before this board, it will be precedent setting. Andrew Walton said he has known Dave for many years as a businessman. He runs a tight ship and is in support of increasing commercial business in town. Len Gilman is a neighbor and doesn't see that there will be any increase in traffic.

Glenn said he is concerned about commercial use in a residential area. He also wants to make sure that Dave follows the rules of the town from this point forward, as he has been in non-compliance all of these years. Mark voiced his concerns about the commercial use of the land. Pam suggested that this will be a very limited commercial use.

Len Gilman stated that 500' from Route 4 is zoned commercial, so it's a short distance from Dave's lot. Len also stated that when he built his business on Old Turnpike Road, there were more businesses than residences. Ken Stiles stated that in regard to Dave being out of compliance for 20 years, the town has been taxing him for 20 years on the mobile home, so the town has some responsibility of that as well. He said Dave does a lot for the town and is a valuable resident. Joe Fiorentino, Dave's brother, said if we provide a list of conditions, Dave will stay in compliance; he hasn't been in compliance because he wasn't aware he was out of compliance.

Glenn asked the board if their consensus is that we need to proceed with the waiver of liability. George feels the road is well maintained, Alan stated that being on the Fire Department, he can attest to the road condition being well maintained.

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

Variance to Article III Sec G, Subsection 1.b

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.

Variance Article III Sec Q, Subsection 3.a

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.

Variance Article III Sec I, Subsection 1.a
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.

Variance Article III Sec I, Subsection 1.b
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.

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

Article III, Section G [Residential Single and Multi-Family Residence Requirements], Subsection 1.b [Single Family Residence Building Lots]:

1. Residential dwelling shall be limited to a single family residence.

Article III, Section I [Business], Subsection 1.a [Location] and Subsection 1.b [Building lots]:

1. The approved paving/sealing business shall receive Non-Residential site plan review through the Planning Board prior to establishment.
2. Commercial use shall be restricted to the storing of up to four (4) business vehicles.
3. The vehicle containing bulk paving/sealing material shall be parked on a paved location which is bermed to contain spillage of this material.
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.
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.
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.

7. The number of employees shall be limited to three (3).
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).

There was discussion that there is to be no 25% increase limitation on the replacement home. He can replace his home with whatever he chooses as long as his septic system is adequate.

Mark seconded the motion. All in favor.

Ricky rejoined the board.

10:30 PM

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.

Glenn noted that all abutters have been properly notified by certified mail. All return receipts have been received except for Robert & Carole Goodrich, Michael Sainato, Andrea Androvandi. This public hearing was properly advertised in the Concord Monitor, and in two public places

James presented a letter from Robert & Carole Goodrich (Steve Robinson) at 1103 Dover Road giving permission for him to park five mini trucks there for sale. Ricky stated that anything within 250' of the lake must have Shoreline Protection Act permitting. Pam provided contact information for Darlene Force at Shoreline Protection to the applicant.

Jay stated that he has measured the distance from Route 4 motors, and has marked the 1000' feet restrictive area. Ricky feels that the storage area must be paved, but suggested that James should talk to Darlene at Shoreline Protection.

Glenn asked James when he became aware of being out compliance. He replied that when Jay told him he was out of compliance, he filled out the application that same day. Glenn stated that it appears he is still selling the mini trucks there. James replied he is not – all signage has been removed and the only vehicle for sale is his own personal vehicle which is allowed

James stated that he believed he could stay beyond the 1000' restricted distance from Route 4 Motors. Jay said he had measured the distance that this was possible on the lot. Glenn said that this would be preferable as James' request would no longer require a variance if established beyond 1000'. Glenn asked how many employees there would be. James said it was just he & his wife, part-time. This business is a secondary income for them.

Glenn opened the hearing to the public. There were no members of the Public for or against the proposed vehicle sales business. Steve Robinson, the owner of Rte 4 Motors then stated that he was not opposed to this motor vehicle business as he did not consider mini trucks to be a competitor but was concerned about encroachment on his sales territory.

Glenn then suggested that the case be continued to allow James to resolve the Shoreline Protection Act question.

Ricky made a motion to continue to January 21, 2009. Alan seconded the motion. All in favor.

10:55 PM Mark motioned to adjourn the meeting. George seconded the motion. All in favor.