

**Town of Epsom  
Zoning Board of Adjustment  
12/1/09**

**In Attendance:** Glenn Horner, Chairman; Rick Belanger, Vice Chairman; George Carlson; John Dodge, Planning Board Liaison; Mark Riedel (Alternate); Darlene Phelps, Recording Secretary

**Not In Attendance:** Alan Quimby; Pam Hoyt-Denison (Alternate)

**Also In Attendance:** Jason Craven; Joe & Lori Harnois; Jay Hickey; Robert & Carole Paris; Keith Cota; Carol McGuire

**7:00 PM** Glenn opened the meeting. The minutes of 11/3/09 were reviewed. John Dodge made a motion to approve the minutes as amended. Rick seconded the motion. All in favor.

**Case 2009-7 Joseph and Lori Harnois have been granted a rehearing on the Board of Adjustment's September 16<sup>th</sup>, 2009 decision denying 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 179 feet of public road frontage (200 feet required). The rehearing was granted to allow the applicants and their representative to formally present legal evidence relative to the decision and to further review factual matters of the applicant's appeal. 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 Alan Quimby is absent tonight, so Mark Riedel will be participating in tonight's hearing. He explained the procedure for the meeting and stated that the public hearing was properly published in the Concord Monitor and was posted in two public places. He stated that all certified return receipts have been received with the exception of Jason Craven, Gordon Elkins and Dan & Carol McGuire.

Attorney Craven stated that Joe & Lori Harnois own a piece of property that is 11 acres in size with just shy of 21' in frontage in order to be able to subdivide their property to build a home. He cited criteria for Unnecessary Hardship and said this is a unique property because it is located on historic highway, the 11 acres far exceeds the minimum, and their planned development minimizes change to the road frontage due to the existing driveway, and would help to preserve the existing historical home. He stated that the Harnois plan would not change the view of the property from the road, or the character of the neighborhood. The requirement regarding Public Interest doesn't state that it is *IN* the public interest – but that it is not *CONTRARY* to the public interest. He stated that the Harnois are willing to have a condition placed that there will be no further subdivision of this property, if this variance is granted tonight.

The Harnois have approached their neighbors to ask about purchasing additional frontage and their neighbors do not wish to sell any frontage.

Glenn wanted to clarify where on the property the Harnois wish to have the lot subdivided. Attorney Craven said there hasn't been a plan prepared, but they intend to situate the new lot so that it uses 179' of frontage. Glenn stated they are welcome to draw where they intend to put the lot line on the existing plan – there is no need to have a professional plan drawn up at this time.. Glenn asked if any cost analysis has been done to evaluate the difference between two homes on one lot or subdividing and

building a second home. Attorney Craven replied that it could be extremely difficult to sell a piece of property with two single family homes on it.

Rick noted that Route 28 is not a scenic highway it is simply a state road. Atty. Craven agreed that it was his opinion, not an official designation.

This property was previously subdivided in 2005, and Glenn asked if the Joe has a copy of that subdivision plan, because Atty. Craven referenced the historic home. Joe replied that his home was built in 1814.

Glenn said he is struggling with the "special conditions" that have been called to attention for this property. Atty. Craven replied that there is case law relative to small pieces of property.

Rick said that the case law cited all pertains to lots that are already created – the Harnois wish to *CREATE* a substandard lot. Rick said the reference to Chester Rod & Gun Club is not appropriate because that was a use variance & this is an area variance.

Joe said the property pin from the subdivision in 2005 was placed where it was because of the town requirement that it be placed at a 90 degree angle.

Mark asked if there is a written agreement from Joe Lafore in regard to the shared driveway. Joe replied that there has been a verbal agreement – not a written one. Joe said he has spoken to DOT District V and he will be requesting an additional curb cut.

Rick asked Keith & Jay if the Harnois would need to go to the Planning Board if this variance is granted. Keith replied that yes they would need to go to the Planning Board for the subdivision showing that they have a minimum 1 acre contiguous buildable area on the property, and also show that the shared driveway is adequate for emergency response, and a shared driveway is allowed through our regulations.

Keith stated that building a duplex on this one piece of property as opposed to subdividing is going to impact the property the same exact way. Keith also indicated that he feels Substantial Justice will be met if the Harnois agree to no further subdivision.

Rick called attention to the Master Plan which calls for retaining the rural character of the town, and said he is not at all in favor of creating substandard lots. Keith responded that the ZBA is here to weigh the criteria to be sure the land is being used appropriately, and provide exceptions to the rules, when it is appropriate.

Glenn asked if there are any abutters in favor. Carol McGuire said she feels there is adequate frontage and is in support of the variance. Glenn asked if there are any abutters opposed and there are none. Carole Paris asked if the intended home is a single family home or a duplex and Glenn replied that the application is for a single family home. Carole also asked for clarification of where the property would be subdivided. Glen explained that the driveway would be shared with the Lafore property and the subdivision will be located on the north of the property. She is not opposed nor in favor of the application but is concerned that the change will affect the wildlife that she's used to seeing there.

Jay Hickey said that there is some give and take in their agreement to not further subdivide. He suggests that if the Board grants this variance, to be very thorough in its conditions; no subdivision, no road to be built, etc.

Glenn would like to do a site walk to ensure that the property is adequate for another home; he doesn't want to set up the Planning Board to be faced with a subdivision plan on property that is very wet & has a lot of ledge.

Rick stated that he appreciates the willingness of the Harnois to agree to no further subdivision, but doesn't think it's feasible for that 11 acre parcel to be developed into 4 lots anyway, as that would be an exorbitant cost. Rick stressed that he thinks there must be a way to obtain the missing 21' of frontage from a neighbor.

Several Board members are concerned that an approval of this variance will open up a considerable amount of applications for similar properties. This concern was addressed by Atty. Craven in that the Harnois have agreed to any conditions relative to no further subdivision, which makes this a very unique application.

It was decided that Board members will visit the property individually if they wish to.

John made a motion to continue the public hearing to Tuesday, January 5, 2010 at 7 PM. George seconded the motion. All in favor.

**9:05 PM** Rick made a motion to adjourn. George seconded the motion. All in favor.