

**EPSOM BOARD OF ADJUSTMENT**  
**PO BOX 10, EPSOM, NEW HAMPSHIRE 03234**

**RECORD OF DECISION**

**Zoning Appeal:** Case 2020-07 (M. Brown-Var.)

**Applicant:** Mathew Brown

**Owner:** Hunter Brown

**Tax Map:** U-4 **Lot:** 50

**Zoning District:** Residential/Light Commercial

Notice is hereby given that the appeals submitted by Mathew Brown for a Variance to Article III. G. 1. a (Single Family residential setbacks) to allow for a portion of an existing vehicle repair garage and a portion of a new addition to that garage into a side setback and a Variance to Article II, Section C-10 (Automotive and Heavy Equipment Repair) to expand the size of a previously approved vehicle repair facility and business in the Light Commercial Zone were decided by unanimous vote of the Zoning Board of Adjustment at the Public Hearing held on Wednesday, February 3, 2021. The property is located on Dover Road within the Residential/Light Commercial Zone and is identified by Epsom Tax Map U-5 as Lot 52.

Decisions were made on 3 distinct variance appeals as follows:

1. The Variance to Article III. G. 1. a to allow for a portion of an existing garage to extend into a side setback was approved with the following justification and conditions:
  - a. Due to the extra-judicial action of the Zoning Compliance Officer in 2000 and the long standing use of this building as both a residential garage and auto repair business, it would be an unnecessary hardship to the applicant to deny the setback variance for the garage. This is the case, even without definitive evidence as to the extent of the setback violation due to the applicant's refusal to have the property line surveyed as requested by the Board.
  - b. The approval is given based on the subjective evidence that the tree line on the east side of the garage approximates the boundary and is approximately 8 feet from the east side of the garage. Additionally, the septic design plan submitted in evidence locates the garage about 9' from the sideline based on the drawings scale of 1"=20'.
  - c. If, at some future time, it is determined that the garage is over the property line, it will be incumbent upon the owner to purchase sufficient adjacent land to put the garage on his property or the building shall be removed/reconstructed to ensure that no portion of the building is located on the adjacent property.

Zoning Appeal Case 2020-07 (M. Brown-Var.)  
RECORD OF DECISION (Cont.)

2. The Variance to Article II, Section C-10 to allow expansion of the existing business was denied for the following reasons:
  - a. Assurances by the applicant were given during the original Case 2012-12 variance appeal, which established the auto repair business, that the properties physical appearance would not change, no additional buildings or any structures would be used for the business other than the home garage and that the business would not be expanded at a later date. The Zoning Board in 2012 took the owner at his word and approved the variance with conditions to ensure the variance approval criteria would be satisfied. Evidence that these conditions could be changed to expand the business and still meet variance criteria in this case have not been found.
  - b. The Residential/Light Commercial Zone is restricted to businesses such as retail shops, antique shops, gift shops, flower shops, and other businesses selling merchandise directly to the consumers and professional offices including medical, dental, chiropractic, physical therapy, real estate, insurance, legal services and counseling. A small auto repair shop, although clearly not of the type of business contemplated for this zone, could and was established which was compatible with the residential use on the lot. Expansion of this non-compliant business, as proposed, would be contrary to the public interest and inconsistent with the spirit of the residential/light commercial ordinance.
  - c. Granting the variance to expand the business would not provide substantial justice. The additional business generated for the applicant would not offset the conversion of the prior discreet residential business into an outsized non-compliant auto repair business directly on the roadside and wholly inconsistent with the expectations of a business in the Residential/Light Commercial zone.
  - d. The denial of the variance does not result in an unnecessary hardship. This is based on the fact that the business, as it had existed for the past 7 years, has been viable as well as successful. Further, the most significant special condition of this property is the fact that the garage used for this business was established without regard for its property line setback violation or its expansion well beyond that allowed for a pre-existing, non-conforming structure without a variance. Had this been known at the time the business was established, together with the fact that there is ample space on the property for a garage location which does not violate property line setbacks, it may have never been

Zoning Appeal Case 2020-07 (M. Brown-Var.)  
RECORD OF DECISION (Cont.)

approved. Consequently, it is now recognized that the property's most significant "special condition" worked in opposition of the hardship criteria for the original approval further degrading the case for business expansion at this time.

Whereas the expansion of the existing business by modification of the prior conditions in Case 2012-12 is denied, all conditions from that case shall remain in effect. In addition, the site plan sketch which identifies vehicle parking locations provided with the Case 2012-12 application for the auto repair business and approved by the Planning Board shall be observed and adhered to. Deviations from both the original variance approval conditions and site plan shall be consider zoning violations.

3. The Lean to now reconstructed into an enclosed 1 ½ story structure and attached to the existing garage combines the need for two variances as it is proposed for use as a part of the business expansion and is located within the property line setback.
  - a. The Variance to Article II, Section C-10 allowing for use of the reconstructed Lean to as a part of the business expansion is denied for the following reasons:
    - i. For those reasons given for the overall business expansion as stated in paragraphs 2.a and 2.d above.
    - ii. For the same reason as given for the overall business expansion as stated in paragraph 2.c recognizing that adding this structure for business use would nearly double the size of repair capabilities inevitably leading to an outsized non-compliant auto repair business directly on the roadside.
    - iii. Both the construction of the original lean to and its conversion into a 1 ½ story structure were done without a building permit. Consequently, denial of this variance is not considered an "unnecessary hardship" to owner.
  - b. The Variance to Art. III. G. 1. a allowing for the location of a portion of the reconstructed Lean to within the property line setback is denied for the following reasons:
    - i. Lack of evidence ensuring the newly constructed structure is not over the property line. This could only be definitively established and quantified if a property line survey had been performed by a registered land surveyor as had been requested by the Board but refused by the applicant.

Zoning Appeal Case 2020-07 (M. Brown-Var.)  
RECORD OF DECISION (Cont.)

- ii. The property is over 2 acres in size providing ample land area for the applicant to construct an additional building if needed meeting all setbacks. The over 2 acre size lot is typical of other properties in this area. Consequently, no special conditions necessary to establish the hardship criteria can be found that would warrant the approval of a setback variance.
- iii. Both the construction of the original lean to and its conversion into a 1 ½ story structure were done without a building permit. Consequently, denial of this variance is not considered an “unnecessary hardship” to owner.



---

Glenn A. Horner, Chairman  
Zoning Board of Adjustment  
Date: February 4, 2021

*Note: Any person affected has the right to appeal this decision and/or conditions of the approval. If you wish to appeal the decision, or any conditions contained herein, you must act within a thirty (30) day period beginning with the next working day after the Zoning Board of Adjustment meeting when the decision was made. The first step in the appeal process is to apply to the board of adjustment for a rehearing. The motion for a rehearing must set forth all the grounds on which you will base your appeal.*

cc: Matthew & Hunter Brown, 1628 Dover Road, Epsom, NH 03234  
Epsom Board of Selectmen  
Epsom Planning Board Chair  
Epsom Zoning Compliance Officer  
Epsom Town Clerk  
File Case 2020-07 (M. Brown-Var.)