

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT MEETING
Epsom Central School
March 2, 2022, 7:00PM**

PRESENT

Glenn Horner, Chair
Andrew Ramsdell, Vice Chair – excused absence
Betsy Bosiak, Planning Board Representative
Gary Kitson, Member
Alan Quimby, Member
Prescott Towle, Alternate Member
Ryan Kehoe, Alternate Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Cheryl Gilpatrick, resident
Benjamin Mercuri, applicant
Wendy Nelson
Krist Nelson
Jessica Nelson
Don Fuller, abutter
April Ross, abutter
Joyce Heck, resident
Virginia Drew, resident
Peter Arvanitis, resident

CALL TO ORDER

Chair Horner called the meeting to order at 7:00PM.

Introductions were made of the Board members present.

APPROVAL OF MINUTES

Meeting of February 2, 2022 – The minutes were reviewed, and no amendments were made. **Mr. Quimby made a motion to approve the minutes as presented. Mr. Towle seconded the motion. Motion passed, 5-0-1.** Mr. Kitson abstained.

PUBLIC HEARING: Case 2022-01 (Mercuri – SE & Var.)- Benjamin Mercuri has applied for a Variance to Article III.G.3 [Multi-Family Residences with three or more units], Paragraph c [Minimum lot size and overall density] and Paragraph d [Frontage] to permit the construction of two (2) town houses, each containing six (6) units, for a total of twelve (12) units [maximum of one unit allowed] on a 2.67 acre lot [6 acres minimum required] with 219 feet of road frontage [minimum 300 feet required]. The applicant has also applied for a Special Exception per Article II.C [Table of Uses] #19a [Multifamily Residence (3 units or more)] necessary to permit the construction of this multi-family residence. The property is located on Dover Road within the

Residential/Light Commercial Zoning District and is identified on Epsom Tax Map U-05 as Lot 83.

Chair Horner stated the public notice was advertised in the *Concord Monitor*; posted at the Town Offices and the Epsom Post Office. He confirmed certified mail notices were mailed to all abutters and receipts were received for all except for abutters Michael and Jennifer Tinsley; DRKEOX; and Honey Bee Happy Homestead.

Chair Horner read the public notice into the record.

Mr. Mercuri stated he is proposing construction of two separate buildings; each consisting of 6 units. It will be serviced by town water and on site septic; the construction would be two phases in 2022 and 2023. Each unit will be 16' by 30' with 960 square feet of living space. The town house style will provide subsidized and mixed income housing.

Mr. Mercuri stated granting the variance would not be contrary as there is a significant need for affordable housing; the proposed use will not be a threat to health or safety or injure public rights; the ordinance would be observed because the proposed developed will not alter the character of the neighborhood and in line with a residential use area; he stated a new affordable housing will be available in town. He stated the workforce housing would offer an affordable alternative to purchasing, with no age restrictions and an option for nearby employers who need suitable housing for employees. He stated the values of surrounding properties would not be diminished but increase the values by developing a rundown and undeveloped lot. Mr. Mercuri stated the use of the property will not adversely affect the public interest of the ordinance; he stated it meets the lot requirements and due to the shape of the lot, strict conformance is not reasonable.

Chair Horner stated the public interest of the ordinance specifies density and lot size; he stated this lot is currently able to accommodate a single family home, but the proposal would include 12 units. He stated he doesn't believe its in the spirit of the ordinance. Mr. Mercuri pointed out the square footage of each unit is a fraction of the average single family home.

Chair Horner stated it is a large project on a small lot; he stated he is concerned about the traffic entering and exiting onto Route 4 at that intersection and suggested a study may be needed in the future.

Chair Horner asked what the unnecessary hardship would be for the applicant if the ordinance presents him from doing what he wants to do on this particular lot in Epsom. Mr. Mercuri stated there is no other available lot in the Town of Epsom. He stated the Town doesn't seem conducive to this style housing. Chair Horner stated concentrated work force housing, as proposed, isn't currently in the zoning ordinances but if voters want to change, they could do so if they want it in the area. He went on to state that real estate is currently in a sellers' market but this has not, and all likelihood, will not always be the case. The ZBA must take the long view since a variance decision extends to eternity.

Mr. Kitson stated the Water District Commissioners discussed this case at their last meeting; he stated the way the lot is now, most of the drainage goes down to the swampy area on the rear of the lot which then flows under Route 4. There are also concerns about the number of vehicles parking on the lot and the subsequent contamination and runoff; as well as concerns about the impact on the private septic systems on the Town well. He stated it is the consensus of the commissioners that they don't agree with the proposal; if the drainage was different, they may not have the same concern about the number of vehicles parking on the lot and the effect runoff from the lot.

Mr. Kehoe asked of the current structure is inhabited. Mr. Mercuri stated it is currently vacant with a paved parking lot.

Chair Horner opened the public hearing to input from members of the public in favor of the application. None was indicated.

Joyce Heck, resident on Goboro Road, stated putting the units in this area would change the character of the area, noting most of the houses in the area were built in the early 1800s. She stated it would change the attractive residential area; she stated there is a duplex in the area, but it looks like a large single family home. Ms. Heck stated the traffic will be horrible coming out of the driveway; she stated she thinks it will drastically change the appearance of this area of Epsom and is very much opposed to the project.

April Ross, abutter, stated they are concerned about trying to buffer themselves if this project goes forward. She questioned how Section 8 housing would impact their property value. Chair Horner suggested a professional opinion would be needed to establish that concern as a fact. Ms. Ross stated it is going to have the appearance of an apartment building which is out of place in an historic, residential area.

Mr. Mercuri stated it's the catchphrase to define subsidized or lower income housing and housing for the workforce. He stated it isn't necessarily Section 8 but a portion could be subsidized and assisted. Mr. Mercuri explained traditional materials are used to standard building codes; there is no real rental housing available in Epsom at this time and the rates for these smaller units will be on par with the market rates. He stated he presented his plans to the Planning Board, and he stated it seems there was some support, so he proceeded to file for the variances with the Zoning Board of Adjustment.

Cheryl Gilpatrick, Board of Selectmen representative to the Planning Board, stated the meeting with Mr. Mercuri was to take a look at the proposal and was referred to the Zoning Board because variances would be needed for the lot. She stated the Master Plan does look to workforce housing; she stated nothing was recommended by the Planning Board and no one had any intention to say that zoning should be waived. Chair Horner stated the Planning Board also advised the applicant to add the second building. Ms. Gilpatrick stated they did advise that if it was his plan do add the second building, to do it all at the same time. Chair Horner stated putting 12 units where only 1 is allowed grossly violates zoning as established by the current town ordinances approved by the town voters.

Peter Arvanitis, resident on Goboro Road, stated he thinks workforce housing and affordable housing is needed in Town but this is a horrible lot. He stated about ten years ago, he proposed putting in seven lots on fourteen acres and was denied; he agrees with the project but not at this location. He noted the exit from the property is directly into the turn lane on Route 4.

Mr. Quimby stated he thinks workforce housing is needed and if the Town doesn't do something about the problem, the State may step in and take that ability away from the Town. He stated he agrees the lot is too small for what is being proposed; the only positive is that the lot is on Town water. Mr. Quimby stated it's in the historical Gosseville district and doesn't agree with approving this proposal.

Chair Horner asked if there was any more comment from the public. None was indicated.

Mr. Kitson made a motion to close the public hearing. Mr. Quimby seconded the motion. Motion passed, 6-0-0.

Chair Horner appointed Mr. Towle to sit on the Board as a full member for the deliberations.

The Board reviewed and discussed the variance criteria:

- A. *The variance will not be contrary to the public interest:*
The Board agreed by consensus, "NO".
- B. *The variance is consistent with the spirit of the ordinance:*
The Board agreed by consensus, "NO".
- C. *By granting the variance, substantial justice is done:*
The Board agreed by consensus, "NO".
- D. *The proposed use will not diminish the value of surrounding properties:*
The Board agreed by consensus, "YES".
- E. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:*
The Board agreed by consensus, "NO".
- F. *For purposes of this criteria, "unnecessary hardship" means that, either:*
 - 1) *Owing to special conditions of the property that distinguish it from other properties in the area:*
 - a. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and*
 - b. *The proposed use is a reasonable one.*

The Board agreed by consensus, "NO".

- 2) (2) *Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it*

The Board agreed by consensus, “NO”.

Mr. Kitson made a motion to deny the variance for the following reasons:

- 1. The number of units proposed is an order of magnitude greater than that allowed on a property of this size. Even if it were cut in half, it would still be many times that currently allowed by statute. As such, it is inconsistent with the spirit of the ordinance and contrary to the public interest as currently expressed in the ordinances.*
- 2. Approval of this significantly oversized project could set a precedent for similar projects on other undersized lots resulting in a substantial injustice to the town with regard to zoning ordinance compliance.*
- 3. Observed special conditions of this lot, including the creation of traffic concerns over access and egress due to the adjacent traffic light, septic impact on the adjacent town water supply wells and incompatibility with other adjacent historic structures do not qualify as conditions which would satisfy the unnecessary hardship criteria.*
- 4. As to the unnecessary hardship itself, multifamily housing is permitted by Special Exception on every conforming lot in this town. This should at least mitigate to some extent any hardship created in the process of finding an alternative location suitable for this type of project.*

Mr. Quimby seconded the motion. Motion passed, 5-0-0.

Note: A Special Exception was included in this appeal. However, having failed to meet the criteria necessary for Variance approval, the Special Exception portion of this case has become inexpedient to decide at this time.

ADJOURN

Chair Horner adjourned the meeting at 8:00PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary