

**TOWN OF EPSOM  
ZONING BOARD OF ADJUSTMENT MEETING**

**Old Meetinghouse, 1596 Dover Road, Epsom**

***Meeting was moved to Epsom Central School as capacity was exceeded in meeting room.***

**May 3, 2023, 7:00PM**

**PRESENT**

Glenn Horner, Chair  
Ryan Kehoe, Vice Chair  
Gary Kitson, Member  
Alan Quimby, Member  
Lisa Thorne, Alternate Member  
Jason Johnson, Alternate Member  
Prescott Towle, Alternate Member

**ALSO PRESENT**

Jennifer Riel, Recording Secretary  
Virginia Drew, Board of Selectman Representative  
Justin Guth, Assistant Zoning Compliance Officer  
Ricky Patel, applicant  
Bharn Patel  
Vimal Patel  
Phil Tomarchio  
Kristen Tomarchio  
Joyce Heck  
Don Fuller  
Glen Schadlick, NEOPCO Signs  
Betty Anne Audet, resident  
Anthony Fusco, applicant  
Ricky Harrison  
Gerry Paquette, resident  
Bob McKechnie, resident  
John Keegan, employee  
Tucker Berube

**CALL TO ORDER**

Chair Horner called the meeting to order at 7:08PM.

Introductions were made of the Board members present.

**APPROVAL OF MINUTES**

Meeting of April 19, 2023 – Edits were made. **Mr. Kitson motioned to approve. Mr. Towle seconded. Motion passed, 7-0-0.**

**Case 2023-02 (Patel – Var) – [Continuance]** Vipulkumar (Ricky) Patel, has applied for a Variance to Article III, Section M (Signs), paragraphs 1 (Size) and 1b (lighting) to permit a 15.5 sq. ft. sign, a portion of which is digital (digital signs are not permitted). The property is located on Dover Road (Rte 4) within the Residential/Commercial Zone and is identified by Epsom Tax Map U-5 as Lot 29.

Chair Horner stated this case is a continuance from the April 5, 2023 meeting. He confirmed abutters were notified and the public notice for the meeting on April 5 was posted at the Town Offices, Post Office and in *The Concord Monitor*.

Chair Horner asked Ms. Thorne to sit on the Board as a full member for this case.

The public notice was read into the record.

Chair Horner opened the public hearing at 7:15PM.

Chair Horner stated at the April 5, 2023 meeting, the Board determined that the sign was too bright and was directed towards an abutting property. He stated it was agreed by the Board, the applicant and the abutter to discuss modifications outside of the meeting to try to resolve the issues.

Glen Schadlick, East Coast Signs, stated he has been in the business for forty ears and his family business for seventy years. He presented photos of other signs within the town that are the same brightness as what is being discussed and he is surprised to see a digital sign, of the same brightness at the school as he was coming to this meeting. Mr. Schadlick stated Mr. Patel is not asking for anything out of the ordinary and presented a summary of other signs in town. He stated this sign is vital for Mr. Patel's business for safety and economic reasons. He stated the abutter does live in an area which abuts a commercial zone so some of these things are inherent. Mr. Schadlick stated the sign was up for eight months before there was any concerns raised. He also presented copies of letters from abutters in support of the sign. Mr. Schadlick stated he finds it odd that digital signs are not permitted however McBrides Water was granted a full color, 4x8' sign, which is going to have more affect on the area and traffic. Mr. Schadlick stated the abutter has no complaints about signs at Wendy's or Dunkins, which have signs of the same brightness and he believes they are discriminating against the applicant if they don't grant the permit for the sign.

Mr. Patel stated since the last meeting, he has been turning the sign off at night; he stated he is just a small business, and it would be good for his business if he can have this approved. Mr. Schadlick stated there are signs all around town that have been approved. Chair Horner stated they are here now because there was a complaint. He noted many of the signs for comparison aren't comparable, noting they aren't digital. Mr. Schadlick stated the signs are LED and have the same brightness. Chair Horner stated none of the digital signs that came before the Board previously, had complaints from abutters.

Mr. Schadlick stated typically when he contracts with his customers, the contract indicates permits are not the responsibility of the contractor unless otherwise indicated and it was an

oversight by the applicant. Chair Horner stated no consideration was given prior to the sign going up. Mr. Schadlick stated they are here now asking for the permit, and they didn't do it underhandedly to get away with it as it was a simple mistake. He stated he has done signs for decades and is well aware of the permitting process and hopes that is not used against the judgment in this case; he stated the facts are that there are other signs in the area of the same brightness, and it would be discrimination to deny. He stated he understands there was a complaint by an abutter, but the sign is in a commercial area and the applicant has been turning the sign off at night as requested. Mr. Schadlick stated they are here to make it right and doesn't want to see there any bias against this particular business because of the mistake. He stated there are numerous signs throughout the area. He stated the structure for the sign was existing and it would be very costly to move, being \$30-\$50,000 project instead of replacing a sign on an existing structure.

Mr. Kehoe stated he has noticed the turning off of the sign at night and agrees its an improvement; he asked what the options are for diming. Mr. Schadlick stated there is a control panel that can be installed and the dimming ability added. He stated it could be about a 30-40% dimness; he explained LEDs also dim over time with an about 20% decrease over five years.

Chair Horner opened the hearing to input from public in support of the application.

John Keegan, stated he has been employed at Smoke and Barley for a few months; he stated in all the years he has work, these have been some of the nicest people he has worked for. Mr. Keegan stated he has a disability with reaching over his shoulders and changing the signs during high traffic times of day and during dark raises safety concerns. He stated he knows gas prices are important to many people and prices are constantly changing and he would prefer to see an LED digital sign as its easier to read going by. Mr. Keegan reiterated it is a commercial area and there are many signs in the area, and he asked why suddenly the abutter has a problem with people trying to do business. He stated technology is part of life now and something like this is needed for business and safety.

Don Fuller, resident, stated these folks just made a huge investment in the property and they need to be able to do business; he stated there are many digital signs in town and its prejudice to deny them the ability to do the business they need to keep a cash flow. Mr. Fuller stated technology has changed since some of the ordinances and regulations went into effect and they need to make changes. Mr. Fuller stated the sign has been in place for a long time. Chair Horner stated the board hasn't denied the sign, but the location of the sign is a problem because there has been a complaint by an abutter. He stated the traffic circle is fully commercialized and the rural character is not applicable and stated he believes they need to support the small business to stay in town.

Tucker Berube, Manager, Smoke and Barley, stated they are sorry for the delay in the permit, disturbing the peace and they want to come to a solution; he stated there are many signs in town and if the Board could approve this permit, customers would appreciate it so they can know the prices.

Chair Horner opened the hearing to input from public in opposition to the application.

Betty Ann Audet, abutter, presented pictures from her living room for review by the Board. She stated she has lived in her house for 56 years and always had a view of the circle which she loves; she stated dimming and shutting the lights off at night has been good. Ms. Audet stated she never said anything about the sign until she received an abutter notice for the permit and she assumed the town had already approved it. She stated as long as the light continues to be turned off at night, she would be satisfied and if it could be dimmed, she would be happy. Mr. Patel stated they will be sure the sign is off each night. He stated if they can dim it, they will pursue that option as well.

Bob McKechnie, resident, stated he is not for or against the application but he is appalled to hear that they suggested there is discrimination involved in the decision; he stated there is absolutely none and noted many municipalities would make them take the sign down.

Chair Horner closed the public hearing at 7:50PM.

***Discussion - Variance to Article III, Section M***

*A: The variance will not be contrary to the public interest. YES*

*B. The variance is consistent with the spirit of the ordinance. YES*

*C. By granting the variance, substantial justice is done. YES*

*D. The proposed use will not diminish the value of surrounding properties. YES*

*E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For purposes of this criteria, "unnecessary hardship" means that, either: YES*

*Either: F.(1) Owing to special conditions of the property that distinguish it from other properties in the area: • 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 • The proposed use is a reasonable one. YES*

*Or: F.(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. YES*

**Mr. Kitson motioned to grant the request for a variance for Vipulkumar (Ricky) Patel, a Variance to Article III, Section M (Signs), paragraphs 1 (Size) and 1b (lighting) to permit a 15.5 sq. ft. sign, a portion of which is digital (digital signs are not permitted). The property is located on Dover Road (Rte 4) within the Residential/Commercial Zone and is identified by Epsom Tax Map U-5 as Lot 29, based on verification that the appeal met the variance criteria and with conditions ensuring acceptable use of the digital sign by an adjacent abutter.**

**The variance was approved with the following conditions:**

- 1. The digital gas sign shall be put on a timer such that it is only illuminated, for a maximum period of time, from 7 am to 11 pm daily.**
- 2. The sign illumination shall be reduced to the maximum extent possible.**
- 3. The new digital sign is approved as shown in the “After” picture provided with the application. No other digital signage shall be allowed on the property.**

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

The Board took a five minute recess.

**Case 2023-04 (Fusci - SE)** - *Anthony Fusco, of Fox Construction, LLC, has applied for a Special Exception, as required by Article III, Section G, Paragraph 1.e.vii, to construct a new single family residence with an attached accessory dwelling unit (ADU). The property is located on Dover Road within the Residential/Light Commercial Zoning District and is identified on Epsom Tax Map U5 as Lot 83.*

Chair Horner confirmed abutters were notified and the public notice posted at the Town Offices, Post Office and in *The Concord Monitor*. He stated receipts were not received from Joyce Bickford and DRKEOX.

The public notice was read into the record.

Chair Horner asked Ms. Thorne to sit on the Board as a full member for this case.

Chair Horner opened the public hearing at 8:08PM.

Anthony Fusco, Fox Construction, representative for the applicant, stated they are looking to build a new house with an accessory dwelling unit for the applicant's parents to move into. He stated the house will look like a single family home; a State approved septic has been received and they are proposing to install a new well. Mr. Fusco stated the only issue is parking but there is already an existing parking lot on the property, and he believes all the items of the checklist will be met. Mr. Fusco confirmed the home will be occupied by the applicant and his family members.

The Board reviewed the application and site plans presented.

Mr. Kitson stated there is the option for tying into the town water system and explained there is a \$2500 impact fee if they choose to go that route.

Chair Horner opened the hearing to input from the public in support of the application.

Don Fuller, abutter, stated he is in favor of this application and is happy with proposal. He stated the Harrisons have been friendly and good property owners.

Chair Horner opened the hearing to input from the public in opposition to the application.

Phil Tomarchio, abutter, 1782 Dover Road, stated they strongly opposed the application; he stated they have been rude, harassed himself and his wife; they do whatever they want on the lot. He stated there is a vagrant living in a camper on the property. He stated an illegal business is being run out of the property; paving trucks and equipment are leaching toxic chemicals into the ground over an aquifer. He stated there is a business in operation without a permit. Mr. Tomarchio stated he doesn't believe anything they say and doesn't believe they are going to live in the proposed house. He stated he has a list of over 13 items which are in violation of Town's ordinances. There is heavy traffic in and out of the lot, loud trucks, yelling and general disturbance to the peace.

Kristen Tomarchio, Honey Bee Happy Homestead, stated they went before the Planning Board before they purchased the property and were welcomed with their business proposal. She stated they went through the ordinances and went through everything that was approved and permitted, without variances or special exceptions but when she went before the Town again, she was denied for all her proposals for a dog kennel, ice cream store and childcare, all of which have since opened in the area for other businesses. Chair Horner asked for clarification who she discussed these proposals with. Ms. Tomarchio stated she went to the Planning Board and was denied because of the traffic in the area. She stated she has gone through the entire ordinance, noting the lot is zoning exactly the same as their property and outlined the numerous violations. Mr. Tomarchio stated he also have photos and security cameras showing the chaos and vagrants living on the property. He stated they have discussed their concerns with the Zoning Compliance Officer numerous times. He stated his property line has been crossed and littered with their items.

Ricky Harrison, applicant, stated the first day they met the abutters, there was some misunderstanding; he stated in regard to shrubs being trimmed, the abutters came over and yelling at his employees. Chair Horner said the interpersonal issues aren't for the Board and that would be a civil matter.

Mr. Harrison stated before they purchased the property, he talked about his plans with Scott at the Town, about building a house. He stated he isn't running a business but only park his equipment on the lot. Mr. Harrison stated he doesn't have employees on the property, but they are friends helping him. He stated he didn't know a permit was needed for someone to stay on his property; he stated as soon as he was informed by Mr. Guth, he completed the application. He stated he is only trying to build a house for his family and isn't looking to disturb the neighbors. Mr. Harrison stated he also discussed parking his trucks at the lot and was given the okay with Mr. Lacroix. Chair Horner stated that was a mistake and should not have been indicated to him; he stated a variance is needed for the business and no trailer is permitted on a trailer until construction is started. He stated the paving business is not permitted to be there. Mr. Harrison stated he purchased a light commercial property and as soon as Mr. Guth stated permits were needed, he began the process.

Joyce Heck, abutter, stated she isn't in favor or opposition because she has heard both sides and wants to wait to form her opinion.

Mr. McKechnie asked if there is an updated driveway permit for this property; he stated if not, there needs to be one obtained from the State of New Hampshire. Ms. Tomarchio stated they have torn up that driveway as well as the bushes in the area.

Justin Guth, Zoning Compliance Officer; stated the original complaint came in and he immediately followed up with a visit to the property. He stated he had a good conversation with Mr. Harrison and since then, the Harrisons understood they were in complete violation of several items, and he advised them what needed to be done. Mr. Guth stated he confirmed Mr. Lacroix spoke with Mr. Harrison but didn't recall the details of the conversation. He stated his office has been working on the complaints but hasn't come to any conclusion yet; he stated many of the complaints and testimony heard tonight need to go through his office. He stated attempts were made to move the construction vehicles off the property and was informed by the Harrisons this past weekend, that at this point they weren't able to obtain safe and reasonable parking for all the equipment. Mr. Guth stated he believes the Harrisons got bad information from a prior Town employee and reiterated that he can't resolve the issues overnight. He stated it's his opinion that the Harrisons are attempting correct their mistakes.

Virginia Drew, Board of Selectmen, stated she is sorry for the misunderstandings with a previous Town employee and sometimes it's a matter of asking the right questions; she stated if the Tomarchios have had problems, this is the first she has heard of it.

Mr. Tomarchio stated he did speak with Mr. Harrison's father, and it was not a good conversation; he stated there was a lot of swearing and name calling and reiterated he is afraid there are just going to be more lies.

Mr. Kehoe stated he understands there are many zoning compliance issues, which Mr. Guth is actively working on, but the case before the Board is for a Special Exception for an ADU. Chair Horner stated he agrees but is also concerned about gross violation of numerous violations and whether conditions will be adhered to. Mr. Prescott stated he would like to see the violations corrected before construction begins. The Board agreed.

Chair Horner closed the public hearing at 9:00PM.

### ***Discussion – Special Exception***

*After reviewing the petition, hearing all of the evidence and taking into consideration the personal knowledge of the property in question, the general conditions of a special exception are evaluated as follows:*

*1. A complete plan for the proposed development shall be submitted showing location of all buildings, parking areas, access, open space, landscaping and any other pertinent information. Such plan has been submitted to the satisfaction of the board. YES*

2. *The requested use is essential or desirable to the public convenience or general welfare. YES*
3. *The requested use will not impair the integrity or character of the immediate or adjoining areas. YES*
4. *The specific site is an appropriate location for the proposed use and will not be detrimental to the health, morals, or general welfare of the immediate or adjoining areas. YES*
5. *No factual evidence is found that property values in the area will be adversely effected by such use. YES*
6. *No undue traffic, nuisance or unreasonable hazard will result because of the requested use. YES*
7. *Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. YES*
8. *All valid objections presented at the public hearing are given full consideration. YES*
9. *The proposed use has an adequate water supply and sewerage system, and meets all applicable requirements of the State. YES*

**Mr. Kitson motioned to approve the request for a Special Exception for as required by Article III, Section G, Paragraph 1.e.vii, to construct a new single family residence with an attached accessory dwelling unit (ADU). The property is located on Dover Road within the Residential/Light Commercial Zoning District and is identified on Epsom Tax Map U5 as Lot 83. Approval was based on satisfying the Special Exception checklist and with conditions ensuring the use of the property will be in compliance with existing zoning requirements.**

**The Special Exception was approved with the following conditions:**

1. **Prior to issuance of a building permit for the new structures, the Zoning Compliance Officer (ZCO) will verify:**
  - a. **All zoning requirements of the residential light commercial zone district are being observed and adhered to on the lot by the owner.**
  - b. **The owner has made the necessary payment to the Epsom Water District if connecting to the town water supply.**
  - c. **An updated driveway permit from the State of NH has been obtained or evidence that it is not required.**
2. **All ADU requirements contained in the Epsom Zoning Ordinances, including owner occupancy, maximum square footage, etc., shall be observed and adhered to by the property owner.**



- 3. The installation of the new septic system servicing the ADU and new residence shall be approved through the New Hampshire Department of Environmental Services and the approval verified by the Zoning Compliance Officer prior to issuing an occupancy permit for the residences.**

**Mr. Kehoe seconded the motion. Motion passed, 4-1-0.** Mr. Quimby opposed.

#### **Public Input**

Gerry Paquette, resident, stated the ordinances have not been updated on the Town website. Chair Horner stated that is in the process.

Ms. Paquette asked when the short term rental requirements will be effective. Chair Horner stated the Zoning Board only gets involved when there are applications; he suggested she contact Board of Selectmen Cheryl Gilpatrick who is actively working on this issue. Ms. Paquette stated she has discussed her concerns numerous times with Mr. Guth and hasn't had any answers. Mr. Guth explained Ms. Paquette is claiming the issue is with a neighbor who purchased a property with the intent of a short term rental and claims it is a business; he stated the business is registered with the State and rents multiple properties. Mr. Guth stated there is nothing in the zoning ordinances that can address this. Chair Horner stated if something isn't specifically allowed, it is prohibited. He stated it would be an illegal business, effective when the ordinance passed. It was clarified rental of the property has not started yet.

#### **ADJOURN**

Chair Horner adjourned the meeting at 9:20PM.

Respectfully Submitted,

*Jennifer Riel*

Jennifer Riel, Recording Secretary