

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT MEETING
Epsom Central School, 282 Black Hall Road, Epsom, New Hampshire
October 18, 2023, 7:00 PM**

PRESENT

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

ALSO PRESENT

Jennifer Riel, Recording Secretary
Virginia Drew, Board of Selectman Representative
Justin Guth, Zoning Compliance Officer
Meadow Wysocki, resident
Steven Rhoades, resident
Patricia Rhoades, resident
John Newman, NH Land Consultants
Mike Keeler, resident
Rob Topik, resident
Francis Mangione, resident
Marianne Mangione, resident
Jeff Yeaton, resident
Neil English, resident
Vincent Pagano, Central New Hampshire Regional Planning
Bob McKechnie, resident
Jim Creighton, resident
Scott Zabloudil, applicant
Don Paquette, resident
Judy Yeaton, resident
Lisa Acheson, resident
Bill Acheson, resident

CALL TO ORDER

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

Introductions were made of the Board members present.

APPROVAL OF MINUTES

Meeting of October 4, 2023 – Edits were made.

MOTION: To approve the minutes as amended. Motion by Mr. Towle. Second by Mr. Kehoe. Motion passed, 6-0-2.

Case 2023-13 (Zabloudil – Var.) - Scott and Samantha Zabloudil have applied for a Variance to Article III, Section G.1.b to construct a single family residence on a lot (Lot 13) with 48.4' of public road frontage (200' required). If merged with an adjacent lot (Lot 14), currently owned by the same owner as Lot 13, the total area of the combined properties would comprise over 28 acres. The combined properties are located on North Road within the Residential/Agricultural Zoning District and are identified on Epsom Tax Map R10 as Lots 13 & 14.

Chair Horner read the public notice into the record. It was confirmed the public notice was published in *The Concord Monitor*, posted at the Town Offices and the Post Office; certified letters were sent to abutters. Receipts were not received from Lee and Jesse Ransom, David and Amanda Bond, Glenn Savastano, and Tucker Mulholland.

Chair Horner opened the public hearing at 7:17 PM.

John Newman, surveyor, presented conceptual plans for the proposed variance; he stated two lots are owned by the applicant, and they are looking to combine the lots in order to put a single residence on the lot. He clarified the 48.4' indicated on the application was incorrect as the map was missing a marker but it's actually 50.32' between the pins. Mr. Newman stated both are lots of record and subdivided for the purpose of single family residential home, but this will combine the lots and have a single residence. Chair Horner stated the Board discussed lot 13 and 14 at the last meeting; lot 13 came in with a variance in the 1990s but it was denied on hardship. However, the criteria has changed since that time so that is rational for seeking another variance. Chair Horner stated by combining the lots, lot 14 will have frontage on North Road.

Chair Horner opened the hearing to questions from the Board. No questions from the Board. Chair Horner stated this case is pretty straight forward.

Chair Horner opened the hearing to input from abutters in favor of the application. None were indicated.

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

Francis Mangione, resident, asked where the home is going to be located on the lot. Mr. Zabloudil stated test pits have been done on the lot and he pointed out on the maps the approximate location of the proposed house which would be in the middle of lot 13. Mr. Mangione asked if a full road will be put in to lot 13. Mr. Zabloudil stated there is a pathway that goes almost to the location of the proposed house. Chair Horner stated that was part of the previous administrative appeal in the 1990s and was denied but that is not the case now. He stated the criteria has changed for lot 13 and lots are being combined.

Marianne Mangione, resident, stated behind the stone wall there is a brook and asked if the building would be on the stonewall side or the opposite side. Mr. Zabdoudil stated the house would be on the far side of the lot. He confirmed it will be a single family home. Ms. Mangione stated she is concerned about the animals in the area ants to know if the lot will be left forested. Mr. Zabdoudil stated they haven't planned out the entire lot yet. Chair Horner stated the lot is going to be 28 acres while the minimum is only 2 acres.

Jeff Yeaton, resident, stated they own lot 3 and are responsible for the maintenance of the road the applicant is looking for a variance on. He stated he has maintained the road for 30 years and doesn't believe it will hold up to the construction process and it will deteriorate more rapidly. He stated he would like to see the deed reworded so he isn't responsible for the entire right of way. Mr. Newman confirmed the Zabdoudils owned the land which has the easement across it. Mr. Yeaton stated his deed states he is responsible for the maintenance of the road and doesn't want to have the added costs. Mr. Zabdoudil stated it will be a shared private road; he stated he is willing to talk about the situation with Mr. Yeaton and make sure they take care of it together. Mr. Yeaton stated he shouldn't have to pay for any damages during the construction process. Chair Horner stated there will be a new deed for the merged lots and suggested they come up with a suitable maintenance plan with the other owners on Berry Lane. Mr. Quimby stated it will end up being Mr. Zabdoudil's driveway to his house, so he won't want to destroy it. Chair Horner noted lot 1 and 3 will both need to work out a maintenance agreement with the Zabdoudils.

Mr. Yeaton asked if the path is extended, will he also be responsible for the additional road. It was clarified that his responsibility with the deed only goes to the point indicated in the deed and maps. Chair Horner reiterated they would need to work together to come up with a revised maintenance plan.

Neil English, resident, stated he was on the Planning Board in 1976; the subdivision as done at that time and the original applicant put in footings for four houses in one day with no permits, no subdivision regulations and the houses were built. He stated the Town took the developer to court and it was determined the Town would have to make the plan work even though there isn't frontage on lots 3 and 6. He stated there are other lots on Ox Lane which are substandard; also at that time, the frontage of lots 13 and 14 was assigned to lot 3. Chair Horner stated any assignment is going to be in the deed; the other properties have deeded rights-of-way to access their lots. Mr. English stated he has concerns about the continuity between the boards down through the years and believes there is a conflict between who owns the property. Chair Horner stated the lots have been surveyed and Mr. Newman confirms the deeds and lots. Mr. Newman stated this is an approved subdivision; they aren't talking about creating new lots but actually combining lots. Mr. English stated the subdivision as approved with some conditions, particularly concerning the frontage on North Road. Vice Chair Kehoe stated by deed today, the frontage is owned by the Zabdoudils. Mr. Newman clarified easements are not ownership but only for use.

Bob McKechnie, resident, asked for clarification on the maps numbers, and whether the lots being referenced as 3 and 1, are R10-19 and 12. It was confirmed it should be tax map R10-12 and 19; the lots in the application are tax map R10-13 and 14.

Chair Horner closed the public hearing at 7:56 PM.

Chair Horner outlined suggested conditions.

The Board went through the Variance Discussion worksheet.

Discussion - Variance to Article III, Section G.1.b

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

Findings of Fact:

1. Both lots were denied an appeal for establishing a single family residence. Lot 13 by variance in 1996 and Lot 14 which, has no frontage, by administrative appeal in 2001.
2. The Board found that by combining the two lots and recognizing the 50.3 ft. of public road frontage on North Road the new variance appeal was materially different than prior appeals and could be heard.
3. The public access to the buildable portion of the combined lots is adequate and currently serving other residents.
4. It is agreeable to the owner to merge the two lots and restrict the combined lot from further subdivision.
5. It is not contrary to the public interest and consistent with the spirit of the ordinance to allow for a single family home on a lot with some public road access as well as an adequate private road serving other residents.

6. Combining the lots and preventing future subdivision preserves open space and in turn the rural atmosphere of the town providing substantial justice to the town.
7. An additional single family home in this location is not expected to diminish the property values of existing adjacent homes and properties.
8. Special conditions of the property with respect to hardship include significant acreage well beyond the 2 acre minimum while still having some public road frontage for access. It would be an unnecessary hardship to the owner if use of their property was restricted to only a wood lot.

MOTION: To grant the request submitted by Scott and Samantha Zabloudil for a Variance to Article III, Section G.1.b to construct a single family residence on a lot (Lot 13) with 48.4' of public road frontage (200' required). If merged with an adjacent lot (Lot 14), currently owned by the same owner as Lot 13, the total area of the combined properties would comprise over 28 acres. The combined properties are located on North Road within the Residential/Agricultural Zoning District and are identified on Epsom Tax Map R10 as Lots 13 & 14, with the following conditions:

1. Tax Map R10, Lots 13 & 14 shall be merged into a single lot and the newly created lot shall remain intact and not subdivided at any time in the future.
2. The owner of Tax Map R10, Lots 13 & 14 shall work with the owners of Tax Map R10, Lots 12 & 19 to update the current shared maintenance directive for the private drive (i.e. Berry Lane) contained in Merrimack County Registry of Deeds (MCRD) Book 3691, Page 2852. The mutually agreed upon shared maintenance directive shall be included in the new deed created for the merged Tax Map R10, Lots 13 & 14. Owners of Tax Map R10, Lots 12 & 19 (identified on MCRD Plan # 12494 as lots 3 and 1 respectively) shall be responsible for updating their deeds with the mutually agreed upon shared maintenance directive as necessary.
3. The approval is for construction of a single family residence only on the newly created merged lot.
4. The ZCO shall verify Tax Map R10, Lots 13 & 14 have been combined in a new deed recorded at the MCRD prior to issuing a zoning compliance (building) permit.

Motion by Ms. Thorne. Second by Mr. Quimby. Motion passed 5-0-0.

Any person affected has the right to appeal this decision and/or conditions of the approval. 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. You must apply within a thirty (30) day period beginning with the next working day after the Zoning Board of Adjustment meeting when the decision was made.

Case 2023-12 (Norton – AA) – *The Board has received new evidence pertaining to one of the conditions contained in the approval of John and Maria Norton's Administrative Appeal establishing grandfathered rights to use their property for short term rentals. Based on the*

new evidence, the condition will be reviewed and modified as necessary. The property is located on Lake View Road within the Residential/Agricultural Zone and is identified by Epsom Tax Map U-19 as Lot 21. Public testimony will not be taken during these deliberations.

Chair Horner stated the Zoning Compliance Officer researched records and found that 4 Lakeview Drive, application which indicates there were past residents who signed an application indicating an intent to live there full time. He stated he wants to leave the decision up to the ZCO as to the extent of the use of the Nortons property. Chair Horner stated he would suggest revising the conditions in the case to delete Fact #5; as well as the conditions of approval and remove the confines of seasonal use. Chair Horner stated it has been less than 30 days so the Board can make the changes as the decision will not be more restrictive and is based on new factual information. Mr. Guth stated there was nothing in the property file to indicate it was seasonal use but there was mention about the property being used for year-round use when the house was built in the 1960s.

Chair Horner asked Mr. Towle and Mr. Johnson to sit on the board for this decision as Ms. Thorne and Mr. Kitson were not present.

Findings of fact:

1. The applicant contracted with Vbro and Airbnb, recognized short term rental assistance companies, to collect rent as well as pay the associated NH State Meal and Rooms tax.
2. A phone conversation between the Zoning Board Chairman and personnel at the State of New Hampshire, Department of Revenue Administration on October 4, 2023 confirmed that Vbro is a legitimate service which a property owner can use to ensure short term rental taxes are paid. Airbnb is considered an identical service for these purposes.
3. A spreadsheet verifying that Vbro and Airbnb collected and paid the taxes was included as evidence.
4. Such method of paying the taxes using Vbro and Airbnb satisfies the requirements contained in Article III.U.4 for paying the NH State Room and Meals Tax to the State of New Hampshire, Department of Revenue Administration.

Conclusion:

Based on the evidence submitted by Vrbo and Airbnb documentation, the seasonal dwelling identified on Tax Map U19 as Lot 21 was used as a short term rental prior to the enactment of Epsom Zoning Ordinance, Article U, Short Term Rentals. As such, the property is “grandfathered” for continued pre-existing use for Short Term Rentals per Article III.U.4.

This decision overrides and negates the prior Case 2023-05 (Norton) Variance and Special Exception decision made on June 21, 2023 which denied the use of this property as a short term rental including the need for the applicant to pursue a rehearing before the Board in that case.

Revision: Following receipt of evidence that the property had been previously used as a full time residence, the Board revised the original decision by unanimous vote on October 18,

2023 to delete references to time frames for usage of the property including Findings of Fact #5 and the second sentence of the first paragraph contained in the Conclusion.

MOTION: To strike the time limitations from the Case of 2023-12. Motion by Mr. Quimby. Second by Mr. Kehoe. Motion passed 5-0-0.

Chair Horner stepped down from the Board.

Case 2023-06 (Topik-AA) Rehearing – Robert Topik has requested the Board of Adjustment reconsider its August 30, 2023 decision to uphold the Planning Board’s May 10, 2023 decision that a proposed Federal Firearms Licensed gun and sporting goods business was permitted as a home occupation in the Residential/Agricultural Zone in accordance with the Epsom Zoning Ordinances. The property is located on Lena Lane within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map R01 Lot 30-26.

Vice Chair Kehoe asked Mr. Johnson to sit on the Board for this case. Public testimony will not be taken during deliberation of this rehearing request.

Vice Chair Kehoe summarized the reasons outlined in the request for the appeal. He stated some items which cannot be addressed include multiple references to the previous case which cannot be considered as well as weapons and manufacturing which also can’t be discussed.

Vice Chair Kehoe stated one concern is a procedural issue with the Planning Board not providing the Zoning Board with the application received by the Planning Board. Mr. Kitson asked if that was the entire file, not just the application. Vice Chair Kehoe stated, correct. Ms. Thorne stated the question is whether or not that would have materially changed the Board’s decision. Vice Chair Kehoe stated the Planning case included Town maps, a google overview, permission release forms. Mr. Kitson stated he was sent no minutes. Vice Chair Kehoe stated the minutes were in the file from the first hearing. Vice Chair Kehoe stated he understands there was a procedural error but he doesn’t believe it would change the decision on whether the case was a home occupation. Mr. Johnson stated he doesn’t see how it would change the information presented to the Zoning Board. Mr. Quimby and Ms. Thorne agreed.

Vice Chair Kehoe stated spirit of the ordinance variance terminology was used within the ZBA Findings of Fact and it was not administrative appeal criteria; he asked the Board if any of the members were using variance criteria or did they mean to consider variance criteria when making a decision. Ms. Thorne stated it was a terminology issue. Mr. Kitson stated the spirit of the ordinance was used in the findings of fact and the case didn’t reach that bar; he stated a variance lowers the bar, but it didn’t get over that bar because it only tried to reach the spirit of the ordinance. Mr. Johnson stated he used the spirit of the ordinance phrasing, but he wasn’t referring to the variance in any way; he meant to show that they were looking at the totality of the circumstances. Ms. Thorne stated she agrees. Mr. Johnson stated it was clear that a variance and special exception were not being established at that hearing. Mr. Kitson stated the spirit of the ordinance wasn’t mentioned in the minutes and the only place it appears is in the findings which Mr. Kitson stated is the meat of the whole thing. The Board agreed the criteria was not

discussed at any point. Mr. Quimby stated he took spirit of the ordinance to be in reference to the totality of the zoning ordinances.

Vice Chair Kehoe asked if any member of the board had any new information they would want to include. Mr. Kitson stated in reference to the majority of business will take place on the internet and is reasonable; he stated there is no mention of the internet in the regulations, so he doesn't believe it is allowed. Vice Chair Kehoe stated he thought behind that is it is a home occupation, but the majority of the business doesn't take place at the home; but because the operations occur within the home, the Board felt it aligns with the glossary definition of home occupation. Mr. Johnson stated Town Counsel pointed out the ordinance indicates business "such as" and the ordinance is not an all-inclusive list. Mr. Kitson stated if you go to retail establishments, general merchandise, it says "including but not limited to." There is no but not limited to in the items we are dealing with. Mr. Kitson wanted to refer to the first hearing decision but was told we cannot hear the first case. Mr. Kitson stated there are specific items listed and anything beyond those is not allowed, so wouldn't that create a conflict? Mr. Johnson stated that is not how the Town Counsel explained the ordinance to them. Mr. Kitson stated the zoning ordinances are written by the Planning Board and it is the responsibility of the Zoning Board to hold those up, not to start swaying away. He stated an administrative appeal is literal, by the book. Vice Chair Kehoe stated that while it involves being an internet business, the discussion focused around whether the business is customary; it is a legal business within the Town and the State identifies the selling as selling any other legal goods. Mr. Johnson stated there was also discussion about the internet business having a lower impact on the neighborhood as there would not be people coming and going all the time; there would be virtually no impact on the neighborhood; the online portion was relative to making a decision. Vice Chair Kehoe stated they focused on the glossary definition of home occupation; many things are not listed so the Board did their best to make a decision based on the ordinance. Mr. Johnson stated a dressmaker could use the internet to sell dresses. Mr. Kitson stated if the dress maker wanted to sell dresses online and it would be a formal business, but the internet is not addressed; he stated the Board would be changing the rules that were given to "them." Vice Chair Kehoe stated the Board did not try to change the ordinance to fit but focused on interpreting it; it is a home occupation that uses the internet which most home occupations do so today. Mr. Towle stated it is not a store front and is not a retail sale. Vice Chair Kehoe stated the Board also discussed that dressmaking could be considered retail as well. Mr. Johnson stated Town Counsel explained the interpretation of the ordinance that not all occupations are going to be listed in the Table of Uses. Mr. Kitson stated maybe he agrees but that is not what the book says. All ordinances are stuck in time and continually updated, and internet sales is new for use, and he doesn't remember guns being brought up in the last 10 years. Vice Chair Kehoe stated the Board cannot consider gun making, there is a State law which dictates that they cannot treat gun sales or manufacturing any different than another item, likening it to making dog collars. He stated the Board did their best to make a decision based on the application and testimony given. Ms. Thorne stated we are only here to consider the two big issues, the Planning Board transferring the record and the spirit of the terminology. Mr. Quimby stated the ordinance can't be specific to list every occupation, since he could come up with 18 different home occupations. Mr. Kitson suggested the ordinance could have been updated to have the verbiage "not limited to" added, but it's not the job of this Board to make those changes. Mr. Quimby said they could have updated but they didn't. Vice Chair Kehoe agreed that the job of the Board was to interpret the definition of home occupation.

Mr. Johnson stated he doesn't see anything in the application to believe there needs to be a rehearing. Mr. Quimby, Mr. Towle and Ms. Thorne agreed.

MOTION: To deny Mr. Topik's Motion for a Rehearing. Motion by Mr. Johnson. Second by Mr. Quimby. Motion passed 4-1-0. Mr. Kitson opposed.

Chair Horner rejoined the meeting.

Economic Revitalization Zones – Vincent Pagano

Mr. Pagano distributed information for review by the Board regarding Economic Revitalization Zones and the programs available for assisting municipalities. He stated there are to ERZ in Epsom, established by the Economic Development Committee; he explained the designation allows the parcel owners for vacant or underused lots, to apply with the State to get business tax credits. Mr. Pagano outlined the benefits to the Town and property owners. Mr. Ramsdell asked how zones are identified. Mr. Pagano stated its handled mostly by the EDC which has Planning, Zoning and Board of Selectmen representative; he stated the proposal is then reviewed by Planning Commission and the State. The Board discussed how the ZBA could consider lots within the ERZs.

ADJOURN: Motion by Mr. Ramsdell. Second by Mr. Towle. Motion passed, 5-0-0.

The meeting was adjourned at 9:03 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary