

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT MEETING
Epsom Public Library, Dover Road, Epsom, New Hampshire
November 29, 2023, 6:30 PM**

PRESENT

Glenn Horner, Chair
Gary Kitson, Member
Alan Quimby, Member
Lisa Thorne, Member
Jason Johnson, Member
Andrew Ramsdell, Alternate Member
Prescott Towle, Alternate Member
Roger Rheame, Alternate Member
Gary Matteson, Alternate Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Justin Guth, Zoning Compliance Officer
Virginia Drew, Board of Selectmen Representative
Meadow Wysocki, resident
Ricky Harrison, applicant
Mildred Harrison, applicant
Daniel Muller, Esq., representative for applicant
Don Fuller, resident
Rob Topik, resident
Sean Heichlinger, resident
Phil Tomarchio, resident

Kristen Tomarchio, resident
Bob McKechnie, resident
Joyce Heck, resident
Adam Reardon, resident
Jaqueline Masson, resident
Art Laro, resident
Allison Gardner, resident
April Ross, resident
Deb Sargent, resident
Leon Sargent, resident
John Klose, resident
Paul Moran, resident

CALL TO ORDER

Chair Horner called the meeting to order at 6:30 PM.

Introductions were made of the Board members.

APPROVAL OF MINUTES

Meeting of November 14, 2023 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Mr. Quimby. Second by Mr. Johnson. Motion passed unanimously.**

Case 2023-07-1 (Harrison – Var.) - *Ricky Harrison has applied for a Variance to Article II, Section B (Purpose and Location of Zones) Paragraph 2 (Residential/Light Commercial Zone) Subparagraph c (Uses) to establish a business consisting of an enhanced parking area for paving vehicles and associated office use of an existing single-family residence in the Residential/Light Commercial Zone. This use is not permitted in the Residential/Light*

Commercial Zone. 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.

Public testimony will be considered in determining if sufficient evidence has been submitted to justify granting this zoning appeal.

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, the Town website, and the Post Office; certified letters were sent to abutters. Receipts were received from all abutters except Mike and Jennifer Tinsley, Joyce Bickford, Cheryl Day, DRKEOX, Susan Bailey, and Honeybee Happy Homestead.

Chair Horner opened the public hearing at 6:36 PM. He stated at the last Board meeting, they reviewed the application and determined it to be substantially different from the application previously submitted by the applicant allowing for a new hearing

Daniel Muller, Esq., representative for the applicants, stated a similar proposal was before the Board during the summer; one of the concerns by the Board at that time was the parking should be within a structure and other changes were also suggested. He stated the lot is a split zone lot; the front portion is in the residential light-commercial zone and the back of the property is in the residential/agricultural zone and the entire lot is within the ground water protection district. He stated they are here relative to light commercial and there is nothing to indicate that this proposal violates the Aquifer Protection requirements. Mr. Muller stated the Harrisons are building a single-family home on the property; Mr. Harrison is looking to conduct office activities from the home for his paving business as well as parking for his three trucks and a trailer. Mr. Muller stated the ordinance doesn't have a paving business classification but typically "contractors' yards are utilized for this purpose. He stated the house will be at the front portion of the lot and a metal carport will be at the back of the lot with the vehicles parked undercover; he stated in the next couple weeks a fence is going to be erected on the majority of the eastern boundary of the property. Mr. Muller stated inquiries were made with the Epsom Water District and it was confirmed the garage is not going to be near the aquifer itself but steps will be taken to contain any potential contamination which was a concern by the Board previously. Mr. Muller explained the process for Mr. Harrison's business operations; he stated there will be no storage of asphalt on the property; they are willing to add that as a condition if the variance is granted. Mr. Muller stated that would never happen due to the state-regulated process for storage of materials. All equipment associated with the business will be contained within the garage, except for phones and a computer within the home. Mr. Muller stated when driving by this property, all that will be seen is the house near the road and the garage is set back from the road, behind the house; the garage also meets all the setbacks from abutting properties. All business equipment and vehicles will be hidden from view within the garage. Mr. Muller stated since concerns were previously expressed about contamination of the aquifer, Mr. Harrison is willing to install a drain that will capture all runoff within the garage; it will be cleaned and maintained as needed. He stated Mr. Harrison has consulted with H.L. Turner Group of Concord, regarding the requirements for a drain; there will be a 1,000-gallon holding tank. There are rules that must be followed from the New Hampshire Department of Environmental Services. Mr. Muller distributed recommendations from an engineer.

Ms. Thorne asked if 80% is the trigger when the alarm goes off, indicating the tank needs to be emptied. Mr. Harrison confirmed that this is correct.

Mr. Towle asked if the building would be enclosed. Mr. Harrison confirmed the building will be closed on all four sides. Mr. Muller confirmed a building permit has been obtained for the garage.

Mr. Muller gave a summary of the variance criteria: he stated the variance will not conflict with the zoning conditions and the office aspect is going to be conducted within the house; there won't be any signage. The parking portion of the business is going to be conducted within a garage at the back of the lot, the garage will be enclosed and there will be a fence on the east side of the lot. The only business equipment, trucks and trailers, will be in the garage. Mr. Muller stated from a visual standpoint, it will retain the appearance of a residential home; he stated at 1640 Dover Road, there is a commercial concrete business which is much more obvious than what is being proposed. He stated in terms of public health, safety, and welfare, the main concerns about the effect on the aquifer have been addressed with parking vehicles within a garage and a drain system. It was also confirmed with the Epsom Water District that this area is not within the aquifer area. Mr. Muller stated the light commercial district does allow commercial vehicles and, in this case, there will be less visibility of commercial vehicles. Mr. Muller stated a driveway permit was received from the New Hampshire Department of Transportation; he stated this lot has a wide right-of-way from Route 4, which pushes everything on the lot, further back from the road and neighboring buildings. Mr. Muller stated this will not be a situation where customers are coming and going from the site; all paving business is conducted off-site. It will only be Mr. Harrison and his employees at the site.

Mr. Muller stated in terms of substantial justice, the Harrisons made an inquiry to the Zoning Compliance Officer prior to purchasing the property and were told they could do what they were proposing; however, that town official is no longer with the Town. He stated the Harrisons have made a substantial investment in the property. Mr. Muller stated in this instance, the zoning ordinance, in terms of intent, looks to have a certain character within this district and what is going to be seen on the property, is going to look like basically a single-family residence as there won't be any signage or other elements that make it appear to be a commercial property. He stated an effort is also being made by the Harrisons to address any concerns about potential contamination. Mr. Muller stated there are numerous asphalt driveways in the area. He stated the use is permitted within the ordinance. The only business elements will be the office elements, which are not seen outside the house. The parking of commercial vehicles will be within a type of accessory structure, which is permitted on residential property. Mr. Muller reiterated there won't be signs or materials on site, which are usual commercial elements.

Mr. Muller stated hardship in this case is established within a split-zone lot and unlike other lots in the area, it has depth and width; it is already being used for residential use; he stated there is no aquifer under this lot. The garage will be on the wider portion of the property, away from the road and adjacent buildings so it is to the extent possible, the commercial vehicles will be significantly screened from both the general public and abutting neighbors, which the conditions of the property allow. Mr. Muller stated the proposed use is reasonable.

Mr. Johnson asked how large the garage would be. Mr. Harrison replied that it would be 4800 square feet. Mr. Muller reiterated the building permit has already been granted for the garage. It was confirmed the structure will have doors and be weather-tight. It will be a steel structure.

Mr. Rheume asked if the business grows in the future, will there be more equipment parked outside. Mr. Muller stated the intent is to keep all equipment within the garage and nothing will be outside. Mr. Harrison stated no additional equipment would be stored in the vehicle. He stated he has no intention of having any signs on the building or in the yard, as another variance would be needed in the future.

Ms. Thorne asked if there is anything in writing regarding the Water District. Mr. Kitson stated the Water District has no concerns with Mr. Harrison's proposal and no problems with the garage and drainage system.

The Board reviewed and discussed the Ground Water Protection District ordinance. Chair Horner confirmed this lot is within the Epsom Aquifer Protection Zone per the maps within the Zoning Ordinance. He stated this is a business, which has regulated substances. Ms. Thorne stated the substances won't be stored on the property. Mr. Harrison confirmed no chemicals, more than five-gallon quantities, would be stored. Mr. Rheume stated the ordinance refers to gallons which would be liquid, and paving materials are aggregate.

Ms. Thorne asked who would empty the drainage tank. Mr. Harrison stated the engineering firm would provide recommendations for a company to handle the disposal.

Mr. Johnson stated he believes there are multiple exceptions why this case would not be covered by this ordinance.

Mr. Harrison stated the seal coating materials are water-based, not a regulated substance and is emptied before returning to the lot.

Chair Horner asked for details on the vehicles to be parked on the lot. Mr. Harrison stated he has Peterbuilt, Kentworth and Sterlin tri-axle dump trucks and a tri-axle trailer.

The Board reviewed the proposed layout of the lot; it was noted the garage will be far back on the property. Mr. Harrison stated there would be a pitch on the floor, running toward the drain.

Mr. Guth stated they had complications over the last few months since the Harrisons purchased the property; he stated many complaints came into his office; all the concerns were investigated and many were unfounded. He stated his suggestion is to have a time limit for the idle time for the trucks due to concerns about noise. Mr. Harrison stated his trucks have DOT DEF systems, which means they are quiet and sound no different than a half-ton pickup truck; he stated typically they start the trucks around 6:30 AM and run for ten minutes or so then are off the site until the end of the day. He stated they are looking into a ventilation system to possibly be able to start the trucks in the garage. Mr. Harrison stated his business is seasonal, during the warmer months, but it is weather dependent. He stated they may run the trucks for emergency work during the colder

months. He stated the highway traffic is much louder than his trucks and if the trucks are idling, they will be at the back of the lot.

Chair Horner asked if there is a monitoring process for the drainage tanks. Mr. Harrison stated they haven't looked into it too much but there is an alarm to indicate when it needs to be drained. He stated since the garage is enclosed, there might not be much, if anything, going into the tank.

Mr. Ramsdell stated it was previously indicated that the trucks are washed out before returning to the lot. Mr. Harrison confirmed that is correct. He stated they use regular vehicle soap for the bodies and the beds are cleaned at Continental Paving in Concord.

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

Adam Reardon, resident, stated he works for the Harrison; they are good people to work for and do business by the books; he stated the crew gets to the site about 6:30 AM and leave from there.

Don Fuller, abutter, stated he is in favor of the proposal; he stated the road noise is much louder than any idling truck sounds.

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

Joyce Heck, abutter, stated she believes the proposed plan does alter the character of the neighborhood; the Town on Route 4 is going more and more industrial, and she doesn't want it more than it is currently. She stated the regulations are there for a reason. Ms. Heck stated she is concerned it will encourage future requests for further industrial development. Mr. Muller stated this is a mixed zone and businesses are allowed by a matter of right or by special exception; he stated in this case, there won't be an industrial or commercial feel to the property as the office will be within a residential dwelling and the parking of equipment will be within an enclosed accessory structure which is set further back, which can't really be seen from the road. Mr. Muller stated the garage will be on the lower portion of the lot and when driving by the lot, you will see the residential aspect. Ms. Heck stated the vehicles being proposed are large and different from an RV that is in other residential yards.

Phil Tomarchio, abutter, stated he is opposed to this application; he stated no due diligence was done by the Harrisons and they didn't talk with the previous Building Inspector. He stated the water protection involves a contract with the State of New Hampshire and the lot is right on the aquifer. He stated a concrete tank can burst and poison their drinking water and referenced recommendations from NH DES. Mr. Tomarchio stated there are unregistered vehicles on the lot and a trailer with chemicals in it; he stated he has seen employees dumping chemicals on the ground. Mr. Tomarchio presented photos of his observations from vehicles on the lot which trace materials into the parking area and leave contaminants. He stated the trucks are started at 5:30 AM and idle for twenty minutes.

Mr. Johnson stated if the conditions are followed, what does Mr. Tomarchio feels is inappropriate. Mr. Tomarchio stated the ordinance is in place for a reason and needs to be followed; he questioned who is going to monitor adherence to the conditions. He stated Mr. Harrison insulted his wife on

the first day of them being there. Mr. Johnson suggested Mr. Tomarchio has a personal conflict with the Harrisons. Mr. Tomarchio stated water contamination is a huge concern and there are multiple cases where these products are causing problems. Mr. Johnson asked if the materials Mr. Harrison is using are any different than what is covering 90% of the roads in New Hampshire. Mr. Tomarchio stated it is not, but some states are trying to move away from the products. He stated the State does have asphalt listed as a hazard.

Mr. Muller stated many of Mr. Tomarchio's concerns are personal toward the Harrisons, noting there is a no-contact order between the parties; he stated Mr. Tomarchio also presented a lot of "research" but isn't sure about his background to make statements regarding the materials; he stated under the law, there can be reasonable conditions, one of which is that there will be no asphalt stored on the property. Mr. Muller stated the plan is to have the vehicles cleaned off, off the property prior to returning to the garage; he stated many of the concerns expressed, are not going to be an issue. Mr. Muller stated they are looking for office use and to park the vehicles in a garage, which is not near Mr. Tomarchio's property. He stated in regard to a diminution of property values, the work is being done off-site and doesn't believe that employees are at the site throughout the day if they are working on job sites all day. Mr. Muller stated he hasn't seen the contamination allegations suggested by Mr. Tomarchio but that would be handled with NH DES. Chair Horner asked if the property has been surveyed for wetlands and suggested that needs to be confirmed. Mr. Harrison stated he isn't sure but the Zoning Compliance Officer and Mr. Kitson both saw the site and had no concerns. Mr. Muller stated in regard to the Aquifer Protection District, the Town has a constitutional duty to assist in how to go about developing property and the Zoning Compliance Officer did his job, reviewed the site, and there were no concerns. He stated wetlands would have been considered when reviewing the application for the garage building permit. Mr. Johnson, Ms. Thorne and Mr. Kitson agreed there is no reason to have concerns about wetlands setbacks as the site has been reviewed and approved by the Zoning Compliance Officer.

Ms. Thorne stated since the previous application was denied, have trucks been parked on the property. Mr. Harrison confirmed the trucks have been parked off-site since that time so the pictures presented by Mr. Tomarchio are prior to that time.

Mr. Ramsdell asked about the pictures showing runoff. Mr. Harrison stated the photos are on Mr. Tomarchio's property. Ms. Thorne noted there are no dates on the photos so its unclear whether they should be considered; it was also noted the photos presented are not all from the Harrison's property but again, no notes on the photos.

Ms. Heck stated she believes her property value would be lowered with this kind of business in proximity to her and all the properties would be affected. Mr. Muller stated it is zoned light commercial therefore commercial use is to be expected and individual preference doesn't necessarily affect value; he noted there is a concrete business, a gas station, and other businesses in the area near Route 4. He reiterated that the office operations will be within the residential home; the equipment will be parked within the garage, and it isn't going to appear commercial or industrial. Ms. Thorne stated any potential diminution of the property, is being balanced out with the new residential home, taking the place of a vacant parking lot; she stated it's hard to say though without a real estate professional's opinion.

Kristen Tomarchio, abutter, stated in regard to the no-contact order, that was for a sign that was formerly in front of the Harrison's property and there is signage on the mailbox currently; she stated she doesn't have a problem with the noise of the trucks on the property, but she is concerned with contamination of the protected water aquifer. Ms. Tomarchio stated the Town hasn't identified all the aquifers, but it clearly states in the ordinance that it's a protected area. She stated in March of 2023, paving operations were underway for 50 days before the Board denied the variance; since then, the equipment has been at another site but she isn't sure if approvals were granted for the other site either. She stated if the Harrisons have been in business for 50 years, as they claim, they should have known the due diligence needed to operate their business. Mr. Muller stated the Harrisons did specifically ask the Zoning Compliance Officer, at the time, whether dump trucks could be parked on the property and it was confirmed they could do so. He stated in regard to concerns about the water, the case is for a variance to the business and there is no indication the Aquifer Protection is being violated; he reiterated the drainage system that will be registered and regulated by NH DES; this will provide two levels of protection to the ground. What is being proposed, is protection against potential contamination. Mr. Muller stated this is the Harrison's home too and they don't want contaminations flowing all over their own property so there is a self-interest as if there were any problems, they would be directly affected.

Deb Sargent, resident, stated she is in favor of the proposal; she stated she goes by this property many times and when seeing the house which was built, she believes the Harrisons have done a good job making the property a residence and supports them making it suit their business as well.

Rob Topik, resident, stated he isn't opposed or in favor of the application; he stated legitimate business concerns need to be considered in a variance but so do concerns of the public.

Bob McKechnie, resident, stated some of the photos presented do not pertain to the case and should be stricken from the record. Chair Horner replied the photos were submitted as an abutter's testimony so should remain in the record and the Board would take the facts into consideration.

Chair Horner suggested the Board discuss the information presented. Mr. Johnson stated the public hearing needs to be closed before discussion by the Board. Chair Horner suggested discussing the information in case additional clarification is needed. Ms. Thorne stated she does not need further clarity. Mr. Johnson and Mr. Quimby agreed.

Chair Horner presented suggested conditions. He stated the purpose of the zone is to establish a business center, but the spirit of the ordinance is contrary as this is more of an industrial use. Mr. Quimby stated there would be minimal traffic impact. Mr. Johnson stated the Harrisons have gone out of their way to address the concerns, which is in the spirit of the ordinance.

MOTION: To close the public hearing. Motion by Ms. Thorne. Second by Mr. Johnson. Motion passed unanimously.

The public hearing was closed at 9:10 PM.

The Board went through the Variance Worksheet.

Discussion – Variance to Article II, Section 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. NO

MOTION: To grant the request for a variance submitted by Ricky Harrison a Variance to Article II, Section B (Purpose and Location of Zones) Paragraph 2 (Residential/Light Commercial Zone) Subparagraph c (Uses) to establish a business consisting of an enhanced parking area for paving vehicles and associated office use of an existing single-family residence in the Residential/Light Commercial Zone. 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, with the following conditions:

- 1. Paving trucks and paver shall be emptied of all paving material contents prior to being parked on the property.*
- 2. Cleaning of paving trucks, trailer and paver of paving debris shall not be performed on the property.*
- 3. Paving trucks, trailer, and paver will be parked within a garage, as depicted in the drawings submitted in evidence, at all times except when necessary to perform maintenance on the garage.*
- 4. The garage floor shall be designed in such a way that all liquid is directed to a common drain.*
- 5. The drain shall direct liquids to a 1000-gallon tank with a level system as engineered by The H.L. Turner Group, Inc. and submitted in evidence.*

- 6. The collection tank shall be pumped as necessary and all liquid disposed of off-site following best management practices.*
- 7. Satisfactory level system performance and tank integrity shall be documented and available for review by the Zoning Compliance Officer (ZCO) upon request.*
- 8. Physical inspection of the level system and garage drain system may be made by the ZCO upon request at any time without notice.*
- 9. There shall be no business activities conducted in the rear portion of the property that is within the Residential/Agricultural zone.*
- 10. Business clerical work may be performed in either the single-family residence or Accessory Dwelling Unit on the property.*
- 11. A fence shall be constructed on the eastern portion of the property.*
- 12. Signage on the property shall be restricted to that allowed for a home occupation.*
- 13. All representations for the intended use by the applicant and his council presented during the public hearing, and included in the minutes, are included in this decision.*
- 14. The applicant shall contact the Planning Board to determine what additional approvals are necessary (e.g. Nonresidential site plan review, Groundwater Protection District considerations, etc.) and complete the necessary approvals before commencing business operations on the property.*

Motion by Mr. Johnson. Second by Ms. Thorne. Motion passed unanimously.

Case 2023-13 (Zabloudil – Var.) – Jeff Yeaton has requested the Board of Adjustment reconsider its October 18, 2023 approval of a Variance to Article III, Section G.1.b to construct a single family residence on a lot (Lot 13) with 50' of public road frontage to be merged with an adjacent lot (Lot 14), for a combined total of 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. Public testimony will not be taken during deliberation of this rehearing request.

Chair Horner stated that since the application was submitted, an agreement was made between Mr. Yeaton and Mr. Zabloudil; although, the third property owner is not working with the other two lot owners to develop the maintenance agreement as required as a condition of approval for Mr. Zabloudil's recently approved lot merger. Chair Horner advised they discuss this with the Zoning Compliance Officer to come to a mutual agreement. It was noted that any agreement will not be enforceable by the Town and would become a civil matter.

ADJOURN: Motion by Ms. Thorne. Second by Mr. Johnson. Motion passed unanimously.

The meeting was adjourned at 9:32 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary

APPROVED