

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT MEETING
Epsom Town Offices Meeting Room
August 17, 2022, 7:00PM**

PRESENT

Glenn Horner, Chair
Ryan Kehoe, Vice Chair
Alan Quimby, Member
Gary Kitson, Member

Prescott Towle, Alternate Member – excused absence
Andrew Ramsdell, Vice Chair - excused absence

ALSO PRESENT

Jennifer Riel, Recording Secretary
Virginia Drew, Board of Selectman
Daniel O'Hara, resident
Robie Parsons, resident
Brian Douglas, resident

CALL TO ORDER

Chair Horner called the meeting to order at 7:01PM.

Introductions were made of the Board members present.

APPROVAL OF MINUTES

Meeting of June 15, 2022 – The minutes were reviewed. **Mr. Kitson made a motion to approve the minutes as amended. Mr. Quimby seconded the motion. Motion passed, 4-0-0.**
Case 2022-05 (O'Hara – Var. & SE)

Daniel O'Hara has applied for a Special Exception, as required by Article III, Section G, Paragraph 1.e.vii, to create an accessory dwelling unit (ADU) on the property. The applicant is also seeking a Variance to Article III, Section G, Paragraphs 1.e.i & 1.e.v to allow for the removal of an existing garage, detached from the single-family residential unit, and replacing it with a detached ADU. The property is located on Old Turnpike Road within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U3 as Lot 22.

Chair Horner read the public notice into the record. He confirmed the public notice was advertised at the Town Offices, post office and published in *The Concord Monitor*. It was confirmed abutters were notified with no return receipts received from Oscar Couch, Mary Frambach and SBA Towers, LLC.

Chair Horner stated the applicants have the right to have their case heard by a full board of five members but it is their decision if they want to continue with the public hearing with four voting members. The applicants indicated they want to continue.

Dan O'Hara, applicant, stated his parents currently live in Florida but they are ageing, their health is declining, and it was agreed amongst him and his brothers, that it would be best if their parents returned to New Hampshire. He stated they would like to setup a modular home on their property for their parents to live in.

Robie Parsons, applicant, stated they want to remove the existing detached garage, remove the foundation, install a septic system and replace it with a modular one bedroom home; it will be within the 850 square feet. She stated it will be detached; because of the sloped property, there is no way to attach additional living space on the existing home.

Chair Horner explained the definition of an accessory dwelling unit as well as the requirements for a variance and special exception. He stated this situation is going to be more like a multi-family property, for which a variance would be needed as well as the requirement of four acres of land. Mr. O'Hara noted the lot is 2.1 acres. Chair Horner stated an ADU can be put within an existing attached garage; the septic can have an updated design which is kept on file in the event that the current system fails. Ms. Parson stated the unit for her in-laws will also need to be handicap accessible. Chair Horner suggested a variance would not be needed if they pursued the option of converting the attached garage. Ms. Parsons explained the drawbacks to using the attached garage. Mr. Kitson agreed that pursuing the option of utilizing the attached garage might be the most viable option; he stated there only needs to be a single door between the spaces but it can be locked. He also explained that the Epsom Village Water District would not grant permission to tap into the public water supply at that location as the water main was installed in 1941 and they don't want to mess with it.

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

Brian Douglas, resident, stated he is in favor of the proposal; he stated the existing garage isn't serving a purpose at this point so replacing it will replace it with a better structure that will allow his parents to live nearby. He stated he is also in favor of accommodating people who want to care for their parents.

Chair Horner opened the hearing to input in opposition to the case. None was indicated.

Chair Horner stated he has concerns about this application, particularly with setting precedence for the Board; he stated the ADU ordinance was to allow for expanded residency throughout the town but it requires the owner on premises and to be attached to the main house. Mr. O'Hara stated he will be on premises, his own residence will be 100 yards away, on the same lot. Chair Horner stated for a detached, second home requires 4 acres but a variance would also be needed in that case. Ms. Parsons stated the structure they are looking to replace is already existing so its not adding more structures; she doesn't see how its okay to put four bedrooms on a two bedroom system and just wait for it to fail. Mr. O'Hara stated what they are proposing makes the most sense. Ms. Parsons stated the existing septic was put in the 1970s; she stated Chair Horner's

proposal is to have three bedrooms, two kitchens and two bathrooms on the system. Mr. O'Hara stated he doesn't see the danger of a precedent because their property can support a septic and a well.

Chair Horner advised the applicants that if they want to change their plans, they could withdraw their plans before a vote of the Board occurs; if there is a denial, they cannot reapply. Mr. Kitson stated he doesn't see how they can grant a variance to allow two homes on a two acre lot with only 200' of frontage.

Mr. Kitson made a motion to close the public hearing. Mr. Kehoe seconded the motion. Motion passed, 4-0-0.

The public hearing was closed at 7:47PM.

Variance Discussion Checklist - Article III, Section G, Paragraphs 1.e.i & 1.e.v

A: The variance will not be contrary to the public interest. NO

B. The variance is consistent with the spirit of the ordinance. NO

C. By granting the variance, substantial justice is done. NO

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: NO

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. NO

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

Mr. Kitson motioned to deny the variance requested for Case 2022-05 for the following reasons:

1. The request is contrary to the public interest and inconsistent with the spirit of the ordinance with regard to ADUs. The creation of an ADU is intended to allow for dual residency on all properties with a single family residence provided the owner remains on the property. This relatively recent relaxation in zoning requirements came with the understanding that both the single family residents and the ADU residents would be housed within the same structure. Owner occupancy within a single structure is intended to ensure

the property is monitored closely and maintained appropriately. Creating a separate detached ADU would defeat the purpose of this close quarters living arrangement.

2. Granting the variance would not do substantial justice. To this point all prior ADU requests that have come before this Board have been for a single structure. Allowing for ADU residences in detached structures would be an injustice to those previous ADU applicants where detached living arrangements might have been preferable. In addition, it would set a variance precedent for future ADU cases encouraging noncompliance with the zoning ordinances.

3. No special conditions of the property have been found which make the ordinance an unnecessary hardship. The existing single family residence contains an attached garage which can be converted into an ADU making it compliant with the existing ordinances.

Mr. Quimby seconded the motion. Motion passed, 4-0-0.

Following the denial of the variance in this case, the associated special exception request was withdrawn by the applicant.

OTHER

The Board reviewed and discussed the revised RSAs in regard to planning and zoning laws.

ADJOURN

Chair Horner adjourned the meeting at 8:31PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary