

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT MEETING
Epsom Town Offices Meeting Room
November 16, 2022, 7:00PM**

PRESENT

Glenn Horner, Chair
Alan Quimby, Member
Gary Kitson, Member
Prescott Towle, Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Julie Carignan, resident
Miriam Cahill-Yeaton, resident
Norm Yeaton, resident
Brian Douglas, resident
Peter Carignan, resident
Natalie Casey, resident
Alyssa Douglas
Austin Knightley
Virginia Drew, resident
Cheryl Gilpatrick, resident
Bob McKechnie, resident
Bill Schultz, resident
Justin Guth, resident
Kevin Morrisette, resident

CALL TO ORDER

Chair Horner called the meeting to order at 7:03PM.

Introductions were made of the Board members present.

APPROVAL OF MINUTES

Meeting of October 19, 2022 – The minutes were reviewed. **Mr. Towle made a motion to approve the minutes as presented. Mr. Kitson seconded the motion. Motion passed, 4-0-0.**

Case 2022-06 (Douglas – Var.) [Continuance] - Brian Douglas has applied for a Variance to Article III, Section G, Paragraph 1.b to permit a subdivision which creates a lot with no public road frontage (200' required). The property is located on Old Turnpike Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U2 as Lot 2.

Chair Horner stated this is a continuation from the public hearing opened at the meeting of October 19, 2022. He stated a lot can be subdivided with over 400' of frontage on Old Turnpike Road; there is also enough acreage unfortunately the access from the public road is steep and essentially inaccessible without blasting. He stated the original building site used White Birch Lane, a private road, to access the property. Chair Horner stated the proposal is to have a second lot with access also off White Birch Lane; the original proposal was to divide the lot in half and give all the frontage to one lot on Old Turnpike Road; at the last meeting it was determined other configurations were possible which would allow the back lot to come around and get 200' of frontage on Old Turnpike Road; both lots would have the 200' of frontage on the Town maintained road. No variance would be needed with that proposal. Chair Horner stated Mr. Douglas was advised to go to the Planning Board to see for their review.

Mr. Douglas stated he took the information to the Planning Board for a consultation; he stated at that meeting, the Planning Board indicated it was fine for him to go ahead and begin working with a surveyor. He stated the following Friday, he received communication from the Planning Board Chair indicating his plans may not be legal and more research needed to be done. He stated he does not know the conclusion of that research. Mr. Douglas stated he did some research; his driveway has been used on White Birch Lane for 24 years; it is maintained well, and he has never had any problems with access. He stated no emergency vehicles would have a problem going through on White Birch Lane. Mr. Douglas stated the new driveway would be 250' from the start of White Birch Lane and he has the means to get to the lot with no issues. He stated there are three other residents that use White Birch Lane to access residential homes; there are also three businesses operating on the road including adequate access for semi-trucks. Mr. Douglas stated another driveway won't affect anyone in the area; he has consent from the current owner of the private road. He stated his preference is to divide the lot from east to west; he is willing to divide the lot with frontage on Old Turnpike Road, but it will be a costly hardship to have the numerous points on the lot marked with the surveyor and it doesn't seem necessary as access and variances have been granted to other lots on White Birch Lane. He stated the precedent has been set for the private road. Mr. Douglas presented documentation supporting the variances granted, one being 10 years ago and one 30 years ago. He stated if anyone takes a look at White Birch Lane, they will see it meets the requirements of a Town road and is well maintained; he stated he has deeded access to White Birch Lane that runs with his land.

Chair Horner asked what the specific law that was being violated as suggested by the Planning Board. Mr. Douglas stated he does not know at this point.

Cheryl Gilpatrick, Planning Board, stated Chair DesRoches sent the email; information as received on the plan that indicated something is preventing the Board from approving a subdivision on the private road; she stated nothing is in the regulations stating it can't be done but it's still something Chair DesRoches is looking into.

Mr. Kitson noted the subdivision would be on a public road so why would there be discussion on the private road. He stated there is clearly enough frontage on the public road. Ms. Gilpatrick stated more information is needed for the access to the private road. Mr. Kitson stated the frontage needs to be on the public road. Ms. Gilpatrick stated when it was discussed with the Planning Board, different things were discussed including access from the private road and Chair

DesRoches will give a final response after she is done researching. She stated there is also the question of whether there would be problems with obtaining a building permit and the Planning Board wants to be sure they are advising the best they can before he spends money on surveying and subdivision plans.

Chair Horner outlined the requirements for a subdivision and compared it to the proposed plans.

Mr. Douglas reiterated he already has access to White Birch Lane.

Bob McKechnie, Planning Board, stated when the Planning Board started looking at the plans, he question whether they have the legal rights to subdivide a lot partially on a private road so that's where the research started. He stated there is also the fact that putting a 50' right-of-way is not usable because the land is too steep, and he asked if a variance would then also be needed for the access off White Birch Lane. Chair Horner stated there would not be any need for a variance for the driveway.

Mr. Douglas asked who would be negatively affected by his proposal; he stated all his abutters are in favor and many also have the same variances granted. He stated it's a private road and it isn't going to change anyone's property values; a new, modern and energy efficient house will be placed on the property. He stated he has been on the property for 24 years and using both the driveways; he stated he doesn't need a driveway permit because it's a private road. Mr. Douglas stated the easement also allows access anywhere along his property on White Birch Lane; the property was established in 1969. He stated that gaining access from the Town maintained road would be an extreme hardship due to the steep lot; he stated it's a waste of money to do the "flag" shaped lot and there is no reason other than to satisfy the road frontage.

Chair Horner suggested a joint meeting with the Planning Board may be necessary to decide what the best way forward is. He stated the "flag" shaped lot will be a conforming lot and no variances would be needed.

Mr. Douglas stated he has researched court cases and the Town has the option to waive requirements. Chair Horner stated they are trying to avoid violating zoning regulations, as there is an option with the "flag" lot to do so. He stated there are a lot of questions about the kinds of access the Town services have to a private road.

Ms. Gilpatrick suggested Mr. Douglas be in touch with the Chair of The Planning Board to be on the agenda for the meeting of November 23.

Chair Horner opened the public hearing to input from abutters. None was indicated.

The Board agreed to plan for a joint meeting with the Planning Board.

Mr. Douglas stated it was his understanding that he was given the go ahead with a survey by the Planning Board but did not want to do so to find out after the fact, that his plans would be denied.

Mr. Quimby motioned to continue the public hearing to November 23, 2022 at 6:30PM in a joint meeting with the Planning Board at the Epsom Town Officers meeting room. Mr. Kitson seconded the motion. Motion passed unanimously.

Case 2022-08 (Carignan – Var.) - Peter and Julie Carignan have applied for a Variance to Article III, Section G, Paragraph 1.b to allow construction of a single family home on a lot with 40 ft. of public road frontage (200 ft. required). The property is located on Black Hall Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U14 as Lot 2.

Chair Horner read the public notice into the record; it was confirmed all abutters were notified and the public notice published in *The Concord Monitor* and posted at the Town Officers and post office. Certified mail receipts were not received from Michael Yeaton, Robert and Catherine Reeves.

Mr. Quimby stepped down from the case due to family relation.

Chair Horner stated a case needs 3 affirmative votes for a case to be applied; he asked if the applicants want to proceed with 3 members hearing the case, noting they have the right to have their case heard by a full board. The applicants stated they want to continue.

Peter Carignan stated they own two lots; this variance is for the lower 39 acre lot that they want to put a single family home on.

Chair Horner asked if this lot has always had access to Black Hall Road. Mr. Carignan stated his parents owned it for 13 years and has had access as long as they've known. Ms. Carignan stated their father owned the land and a house which was subdivided off and sold. She stated there is a "tote" road per the mapping company and there is 40' of frontage for the right of way. She stated when they bought the land, they thought there was 75' of frontage for the right of way but the mapping company recently informed them the right of way belongs with the house so that leaves 40'.

Chair Horner stated if there is deeded easement, the driveway can go anywhere over the 75' but they will want to go over that with the abutter. Ms. Carignan stated that information is indicated in the house deed, but it was not included in the deed for the land. She stated a previous driveway was approved by the State when her father owned the lot, and a subdivision plan was also prepared. She presented a copy of the house deed for review by the Board. Chair Horner confirmed the quit claim deed indicates there is a 35' right of easement for the lot. Ms. Carignan stated she has talked to the abutter and they didn't realize the right of way was in their deed.

It was confirmed there would be no further subdivision of the 39 acre lot.

Chair Horner opened the public hearing to input from abutters.

Bill Schultz, abutter, asked if a residence is built on the lot, do they know where the house would be located. He stated there is a lot of wet property in the back and he wants to be sure there isn't a negative impact that could affect his property. Chair Horner stated there will be zoning regulations which will have to be met when they get to the point of building.

Mr. Carignan stated the intention is to put the house as far back from the road in the middle of the lot.

Chair Horner opened the public hearing to the public.

Kevin Morrisette, abutter, stated when he bought his last two years ago, he was under the impression that due to zoning regulations, there would be no further development in the area. He asked if a single family home is built, is there any potential for additional development. Chair Horner explained a condition of approval is that there would be no further development and only a single family home would be permitted. Mr. Morrisette stated he has no problem with a single family home.

Justin Guth, Deputy Zoning Compliance Officer, stated the Zoning Compliance Officer, Scott Lacroix, asked him to speak on his behalf and wants the Board to know that both he and Mr. Lacroix are supportive of the variance being granted.

Mr. Kitson stated that when looking at the other lots in the area, many have under the 200' required frontage, there are many small lots, and this isn't a lot that is out of the ordinary but is distinguished by the 39 acres in the back of the lot.

Chair Horner stated a case in 2011 that came before the Zoning Board was for building on a large lot with 50' of frontage but it would have been a 1700' long driveway; the case was denied as not being consistent with the ordinance with a remote property and scattered development. The long driveway was determined to be an unreasonable risk. Chair Horner stated after an appeal, approval was granted when driveway and drainage plans were provided by an engineer. He noted a 30,000 gallon cistern was also required or installation of a fire suppression system in the home. Mr. Carignan asked what a reasonable length of a driveway would be. Chair Horner replied a few hundred feet.

Mr. Kitson motioned to close the public hearing. Mr. Towle seconded the motion. Motion passed unanimously.

The public hearing was closed at 8:40PM.

The Board went through the variance checklist.

Discussion - Variance to Article III, Section G, Paragraph 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. NO

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 approve the request for a variance for Case 2022-08, to Article III, Section G, Paragraph 1.b to allow construction of a single family home on a lot with 40 ft. of public road frontage (200 ft. required). The property is located on Black Hall Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U14 as Lot 2, with the following conditions:

- 1. The approval is for construction of a single family residence only.**
- 2. The subject property, currently identified as Tax Map U14, Lot 2, shall remain intact and not be subdivided at any time in the future.**

Mr. Towle seconded the motion. Motion passed unanimously.

ADJOURN

Chair Horner adjourned the meeting at 8:51PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary