

ZBA  
Town of Epsom  
**Zoning Board of Adjustment**  
**09/18/2019**

**In Attendance:** Glenn Horner, Chairman; George Carlson, Vice Chairman; Alan Quimby, Member; Gary Kitson, Alternate; Mike Bussiere, Alternate; Leann Fuller, Recording Secretary

**Not In Attendance:** Mike Hoisington, Planning Board Rep; Andrew Ramsdell, Member;

**Also in Attendance:** Cynthia Goodrich, Lillian Goodrich, Peter Arvanitis, Frank Quimby, Ken and Betty Walker, Paul Davis, Rick Davis, Joao Da Silveira, Ambria Doyle, Lisa Smith, Cheryl Gilpatrick, Melilotus Dube, Lisa Cote, Simon Leeming

**7:00 PM** Glenn called the meeting to order and introduced the members of the board.

The minutes of 07/17/19 were reviewed.

***Gary Kitson made a motion to approve the 07/17/19 meeting minutes as amended. Mike Bussiere seconded the motion. All in favor.***

Glenn reviewed the case and meeting procedures.

**Case 2019-07 (S&R Properties LLC - SE)** - Richard Davis, on behalf of S&R Properties LLC, has applied for a Special Exception to Article II [Zones and Districts], Section C [Table of Uses], Number 29, [Wholesale, trade, and distribution] to permit the construction of a bulk propane storage (60,000 gallons) facility along with other fuel tanks that will also provide a new location for the existing business in town. The property is located on the Suncook Valley Hwy (Rte. 28N) within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U-8 as Lot 89.

Glenn advised that this public hearing was published in the Concord Monitor, posted at the Town Office & the Post Office and all abutters were notified by Certified Mail. All certified receipts were received back except Brandon and Megan Millette, and Daniel Osborn.

Simon Leeming spoke to the board and stated that he did have a discussion with the chairman about submitting a site plan to the board. Unfortunately, the site plan is not available as Joe Wichert was unable to attend. Rick and Paul Davis, Owners of Davis Fuels, are in the audience. Glenn Horner stated that the purpose of the site plan is to discuss the traffic, landscaping and any other concerns relevant to this business. Simon Leeming mentioned that those are Planning Board issues. The task at hand is a Special Exception based on the use.

Glenn Horner reviewed the Special Exception Checklist which lists:

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.

***The Zoning Board was in agreement that the application can be presented tonight but will be continued to October 2<sup>nd</sup>, 2019 when the site plan is available to the board.***

Simon Leeming reviewed the case. A letter was submitted with the application to review the criteria. Davis Fuels is a long time Epsom business. They previously had the opportunity to go to a surrounding town but they wanted to stay in Epsom. This will add a commercial taxable value to the Town. This property is in an area where Eastern is directly across from it as well as Tim's Truck Capital and the Smoke Shop. The Special Exception is in regards to (2) 30,000 gallon propane tanks. The site will also include a 50,000 gallon oil tank, a 20,000 gallon kerosene tank and a 20,000 gallon diesel tank. Currently, Davis Fuels goes to the Seacoast to bring back their fuel. Having the fuel on site will add to efficiency and safety to the company. This business will only add about 20 trips to the traffic count. The whole facility itself will be designed for easy in and easy out with landscaping so it will be attractive. The property is a 7.7 acre undeveloped tract of land.

Rick Davis spoke about the 65'x65' containment dyke that will be installed for the underground tanks. The others will be upright vertical tanks. The propane tank will be outside of that footprint. The State Fire Marshall will also be involved for inspections. Typically, the safety person on site will work with the local Fire Department as well. There will be an 80x50 building that will have office space, truck storage and space for maintenance.

Glenn Horner asked about the septic. Simon stated that it was designed through Joe Wichert and DES. There will be about 10 employees. They have the site distance they need for the entrances. Rick Davis stated there will be two entrances so there will be a pass through so trucks will not have to back in from the highway. Mike Bussiere asked how close they can be to a residential property and Rick stated they have to be 50' from the property line but are planning on providing a 100' buffer. Glenn Horner asked what the plan is for their current location and they plan to return it back to residential only. Glenn requested that be part of the conditions, if this was to be approved and Rick was fine with that.

George Carlson asked how tall the tanks are and Rick answered that the 20,000 gallon uprights are 30' tall and the 50,000 gallon tank would be the same height but they will be wider. The tanks will be about 100' away from the road. Gary Kitson asked about the vehicle maintenance and Rick Davis said it would be greasing and changing oil, only minor maintenance and nothing would be done outside. Glenn Horner would like the landscaping preserved as much as possible.

***Glenn opened the public hearing for public comment at 7:31pm.***

No public comment.

Jay Hickey, Zoning Compliance Officer, believes it is a good idea and good location. Lisa Smith, 1110 Suncook Valley Highway, asked if the plan would be available for viewing prior to the meeting. Glenn stated that it is not usually but this is on the first step and after they will have to go to the Planning Board.

***Alan Quimby made a motion to continue Case 2019-07 (S&R Properties, LLC) to the October 2<sup>nd</sup> meeting, seconded by Mike Bussiere. Motion passed.***

Glenn Horner stated that he will be putting that as the first agenda item for the October 2<sup>nd</sup>, 2019 meeting.

**Case 2019-08 (Dube – SE)** - Ian and Melilotus Dube have applied for a special exception, as required by Article III, Section G, Paragraph 1.e.viii, to create an accessory dwelling unit in an existing single-family residence. The property is located on New Orchard Road within the Residential/ Agricultural Zoning District and is identified on Epsom Tax Map R-11, Lot 15.

Glenn advised that this public hearing was published in the Concord Monitor, posted at the Town Office & the Post Office and all abutters were notified by Certified Mail. All certified receipts were received back except for Brieanne Wilson, and Mary Ann Uphold.

Glenn Horner asked if George Carlson, as an abutter, feels that he will not prejudice on this case. George Carlson answered that he will not be prejudice.

Melilotus Dube presented her application. They are looking to finish the existing basement in the home. Their goal is to finish it as an ADU and rent it out for additional income. They do not intend to alter the footprint of the home. The driveway will not be increased as there is already plenty of parking as well as adequate outdoor space. They did have a new septic designed. State law does not require it be installed for an ADU unless it fails. George Carlson asked what the current septic system size is and Melilotus was unable to answer that question at the time. Mike Bussiere asked if there was an alternate access for the basement and Melilotus said there is an existing walk out and there will be an egress in the bedroom. The ADU will be about 490 square feet and 1 bedroom. They plan to retain part of the basement for their use to include the utility room.

George Carlson asked about the other building on their property and Melilotus stated they have a garage with a bonus space above it. Glenn Horner asked about the septic design and Melilotus did submit it with the application but it did not make it to the Zoning Board. Melilotus submitted documents different times as they were requested but states that the septic design is state approved. Glenn Horner clarified that she is under oath. Jay Hickey does not recall seeing the new proposed septic plan.

***Glenn opened the public hearing for public comment at 7:55pm.***

Lisa Cote, 202 New Orchard Road, asked about the traffic impact. Glenn Horner asked if she was aware of what Accessory Dwelling Units were and clarified that the State of NH Legislature decided that these are allowed with specific conditions. They are essentially “in-law apartments”. The thought is that a lot of these will be for aging parents, college kids, etc. The hope is that they will not become rental units everywhere. They must be contained within the home. There can only be one in each home. Lisa Cote stated that there is more than one structure on their property. She believes that there is an apartment above the garage as well as a yurt in the backyard. Melilotus stated there is a yurt in the back woods but it is not a residential feature. It is essentially a play house for the kids. It is like a fort built on a platform.

Mike Bussiere asked if there is an apartment above the garage. Melilotus stated there is a bonus space above the garage that her in-laws are staying in. She stated she would like to focus on the application at hand. Glenn Horner asked to clarify if there is plumbing there. If there is a 3 bedroom septic in place already but a 4 bedroom dwelling there is an issue.

Melilotus said the space above the garage is not a permanent residence in any way. They did not factor that into the new septic design. It is a space that they use and that

her in laws use. They also allow guests to stay in that space as well. Melilotus requests that the board research House bill 654, as it addresses the use of structures on the property for visitors including everything up to vacation rentals and short term rentals. George Carlson asked if the space is tied into the septic system and Melilotus answered that it is. Glenn Horner asked if she had house bill 654 as the board has not heard of this and if she would present the portion that states it is ok to exceed the septic design.

George Carlson would like to see the current and new septic plans. Melilotus stated that if the issue is with the septic for that bonus space, she will have to review that. The house bill stated that an occupancy permit is not necessary for that space as of 2017.

Mike Bussiere was reviewing the bill and read the following:

"78-A:27 (II) "Lodging accommodations" means any space offered to the public for lodging, including any hotel, motel, inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, residential home, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or space." The bill continues on to say "...for less than 30 consecutive days."

Melilotus Dube said that they do have that space and her in laws staying there. They do rent it out sometimes using Air B&B. They also use it for other family members or friends as short term rentals. Mike Bussiere clarified that both the basement and the bonus space above the garage could be rented out at the same time. Melilotus requested that the Board stick to the issue on the agenda. If there is a concern with the septic associated with that, they will discuss that.

Mike Bussiere clarified that it is not just the septic. The Zoning Boards job is to look at the property as a whole. There is a lot to the house bill. There are restricted use terms and also states to see the town enforcement for those. Melilotus stated that the house bill says "A city, town, or unincorporated place may not prohibit vacation rentals or short-term rentals." Glenn Horner stated that the board is blindsided by this as they were not aware of this bill. Glenn was having a hard time thinking there is a fifth bedroom with a 4 bedroom design and currently there is possibly only a 3 bedroom system installed. With the bedroom in the bonus space, it could be rented out for 30 days, then skip a day and another 30 days. Once a Special Exception is given, it goes with the property. The next person who buys it could rent it out a little less than 12 months a year. Glenn and the board have limited understanding of the House Bill. He is also concerned that the septic system is already being taxed. This seems to go against the DES regulations.

Gary Kitson stated that the septic is designed on bedroom numbers, if there is a 4 bedroom design, there could be 4 bathrooms. Mike Bussiere said there is a piece in the building code of what a finish living space could be. George Carlson stated that if there is a bathroom in the garage and it is tied into the septic, DES will want to know that. Glenn Horner made it clear that the septic design is critical. He requested the Melilotus provide some type of synopsis of the house bill that will be helpful. The Zoning Board does not do the research as the burden of proof is on the applicant.

Glenn Horner also brought up that if there is bonus space above the garage, it should be included in the property card. Mike Bussiere stated that the house bill does speak about taxes not being incurred differently. The biggest component is the two means of egress. As long as the finished space above the garage has a window and door, it will most likely meet the requirements of the Fire department.

Glenn Horner asked Melilotus if her intent is to stick with the 4 bedroom septic design and she stated that she will have to revisit that issue.

Glenn reviewed the remaining items that will need to be brought to the next hearing:

1. Septic Design (Existing and proposed) along with the DES approvals.
2. Clarification of items within House Bill 654.
3. Contact DES and have them provide a written answer as to whether or not the additional bonus space is acceptable with the approved septic plan.
4. Begin the process of updating the tax card to include that space.

Lisa Cote, 202 New Orchard Road, stated that there is currently a lot of foot and car traffic. There are a lot of people that walk through the back yard to the yurt and cars coming in and out in the early morning. Melilotus stated that yes, they do enjoy their property and have friends over and walk out back. They do have 15.5 acres of land. Gary Kitson stated that they are allowed to use and enjoy their land.

Melilotus Dube said their intent is that they will keep the house quiet and respectful as they are raising a family. Ideally, it would enable them to have a space for their kids in the future.

Peter Arvanitis asked if there was a bedroom in that bonus space. Melilotus said there is no technical bedroom. There is a bathroom and the remaining space is delineated. The application is not for the bonus space. Melilotus said that it is there bonus space and they use it for different things. Melilotus expressed her frustration as this application was not regarding her bonus space.

***Gary Kitson made a motion to continue Case 2019-08 (Dube) to October 16, 2019, seconded by Mike Bussiere. Motion passed.***

**Case 2019-09 (Da Silveira – Variance)** - Joao Da Silveira has applied for a Variance to Article II, [Zones and Districts], Section C-10, [Automotive and heavy equipment repair, automotive and heavy equipment service station or garage] to set up a full time tire shop in the existing “Junk Shop” building on the property. The proposed business is not permitted in this zoning district. The property is located on Dover Road within the Residential/Light Commercial Zone and is identified on Epsom Tax Map U-04 as Lot 7.

Glenn advised that this public hearing was published in the Concord Monitor, posted at the Town Office & the Post Office and all abutters were notified by Certified Mail. All certified receipts were received back.

Glenn Horner began the case by explaining a little about this property. The Zoning Board was presented Case 2019-06 at the last meeting. It was similar and was denied. That case was for a full blown automotive shop. This is a new application. Normally, the Zoning Board would not hear the same case over again unless it was dramatically different and this has been changed to only changing tires.

Paul Varge presented on behalf of the application. Mr. Da Silveira had an ongoing business called Concord Tire. He originally bought this property because he would like to put his tire business in the old “junk shop” building. Eventually he may want to go to Planning Board for a larger facility. There is no plumbing required and no liquids being used. All the tires will be picked up and disposed of. The driveway can easily hold 10 cars. He would like to add a garage door and have it be a one stall building. He does a

very cost sensitive business. This will not be a storage place. Everything is by appointment only. He does not want a big place, just wants to work out of his house and make a good living doing it. There will be day time hours with a sign on his building and closed on Sundays. He was not aware of these requirements when he bought the house. He is not a mechanic. That is all he has done for the last 6-7 years. He had a person who comes by once a week and removes the tires. Besides a sign on the building that is currently there.

Glenn Horner made a point that the board does have the last meeting minutes that clarify "Jay Hickey let them know that it would be better to apply for a Variance before purchasing the property because there is no guarantee it will be granted."

Joao Da Silveira stated that his neighbor on the left side told him that it would not be a big deal because there was a business there previously. He didn't buy the house just for the business. There will not be any lifts in the garage. It will only be cars and light trucks, no commercial vehicles.

Glenn Horner stated that auto repair is not allowed in the light commercial zone. Paul stated that the tires would be stored inside. Everything will be neat and clean. Glenn reviewed the checklist. The surround property values will not be diminished as the junk sign is gone and it will be an ongoing green business servicing the needs of residents. Everything will be contained inside. The unnecessary hardship was brought onto himself because he bought this property with the knowledge that this may not be approved. The property is non-conforming with 1.7 acres.

***Glenn opened up the public hearing to public comment at 9:26pm.***

Cynthia Goodrich, 1645 Dover Road, spoke about where she is located on the left side of the property. There is no way that she wants anything like that around her. She asked what happens to all the trash. There is already trash against her property line. There was a delivery truck that was worked on and the engine was out of it for a couple weeks.

Paul stated that the garage will not hold anything more than a pickup.

Mike Bussiere reviewed pictures provided by the abutters. He recommended getting a map from the Town and or getting a surveyor. He does not see a true violation from the pictures. It is hard to tell depth it looks like there are items on his side of the property. Glenn Horner said there is an important part of this that there is already debris moving towards a neighbor's boundary. How is this business going to be run in the future? Glenn recommended speaking with the neighbors to see if they will share the surveyed plan they already have. Paul clarified that they will certainly take care of items that may be on their property. They were unaware of the property line as they were informed by the realtor that the fence was the boundary line.

Cynthia Goodrich asked if the intention is to store the tires inside the building and if they are delivered daily. Paul stated that the tires are delivered daily and everything will be in the tire shop. Worst case scenario, they will store the tires in the basement of the house. Alan Quimby stated that if it is approved it then comes an enforcement issue. Glenn Horner stated that there was a previous court case regarding the "natural expansion" of a property. That could be run into with this property.

Gary Kitson mentioned that no matter what it is, a Special Exception or Variance, there is a burden put on the enforcement.

Cynthia Goodrich is also worried about noise and traffic. The driveway goes up alongside their property line and house. She is aware of what the noise impact guns make with a compressor. Mike Bussiere commented that they will only be going to the junk shop. He also asked if there have been any noise issues since they moved in and Cynthia state there has not.

Mike Bussiere asked if there was a possibility to add a couple chairs for seating if people were to wait for their vehicles. Joao stated yes. Cynthia had concerns that the traffic will be going up and down the driveway and will upset her mother but Gary Kitson stated that it should be going past the junk shop.

Glenn Horner stated that there is too much in the residential/ light commercial zone. Mike Bussiere stated that the complaint from the neighbor regarding trash is not enough to go on for a denial. Glenn then said that it gives an indication how the business will be fun. George Carlson made it clear that that is not a fair assumption. Gary Kitson stated that he would take offense to someone saying that because something was taken apart and left on the ground that is how they live. It may take time to pick some things up. Alan Quimby mentioned that they have already shown initiative by cleaning up some of the property.

Gary Kitson mentioned that in the future, they choose to expand, the land will not grow. If the applicant chooses to stay there with the business, he does not see that use growing.

***Alan Quimby Made a motion to close the public hearing at 10:30pm, seconded by Gary Kitson. Motion passed.***

The Variance Checklist was reviewed:

Question 1: All answered yes.

Question 2: All answered yes.

Question 3: All answered yes.

Question 4: All answered yes.

Question 5: All answered yes.

Question 6: All answered yes (F.1) no (F.2).

***George Carlson made a motion to approve Case 2019-09 (Da Silveira – Variance) - Joao Da Silveira has applied for a Variance to Article II, [Zones and Districts], Section C-10, [Automotive and heavy equipment repair, automotive and heavy equipment service station or garage] to set up a full time tire shop in the existing “Junk Shop” building on the property. The proposed business is not permitted in this zoning district. The property is located on Dover Road within the Residential/Light Commercial Zone and is identified on Epsom Tax Map U-04 as Lot 7, seconded by Mike Bussiere. Motion passed.***

The Variance was approved with the following conditions:

1. The business shall be restricted to tire repairs and replacement only. No other motor vehicle maintenance shall be performed.
2. All tire repairs and replacements shall be performed inside of the 24' x 24' tire repair shop, previously referred to as the “Junk

Shop". All tire repair shop doors shall be closed while work is being performed to minimize noise generation.

3. All tires and accessory equipment shall be stored inside of the tire repair shop.
4. Business hours shall be limited to Monday thru Friday from 9 am to 6 pm and Saturday from 9 am to 3 pm.
5. The number of vehicles related to the business shall be limited to
6. The applicant shall proceed to the Planning Board for Non-residential site plan review.

### **Other business:**

Glenn reviewed the Rules of Procedure for the Zoning Board of Adjustment. There are a few edits that need to be made to the Rules of Procedures. Most are RSA requirements.

The following edits were discussed at the 06/19/19 and 07/17/19 meeting:

1. In the event a regular member is absent for a meeting, the Chairman shall determine which alternate member stands in for the regular member. All alternates members may sit with the Board to hear and ask questions during a hearing regardless of whether or not they are standing in for a regular member.
2. All decisions are made based on a minimum of 3 Board members acting on the decision. For example, if 3 members are in the affirmative, the case is approved. If 3 members are in the negative, or if the case cannot attain 3 votes in the affirmative, the case is denied.
3. If the decision being made is a special exception or variance, all Board members shall complete the associated checklist prior to reaching a decision on the case. If questions on the checklist are answered in the affirmative by a Board member to approve the case, that Board member should endeavor to vote in favor of the decision when it is motioned.
4. Notice of the decision will be made available for public inspection within **5 business days (formerly 72 hours)**, as required by RSA 676:3, by recording a copy of the same at the Epsom Town office and may be mailed to all persons notified of the public hearing. If the appeal is denied (**or deferred has been DELETED here**), the notice shall include the reasons therefore. Any person affected by the decision has the right to appeal this decision in accordance with RSA 677:2. The motion for rehearing shall be in writing and must set forth the grounds for the basis of a rehearing. It shall be received by the Board within a **thirty (30) (formerly 20)** day time period beginning the next working day after the decision has been recorded.
5. Final written decisions will be placed on file within **5 days (formerly 72 hours)** after the decision is made in accordance with RSA 676:3.
6. In the event a member is absent, an alternate can sit in.
7. Application... 1. Set up a public hearing within 30 days of receiving a public hearing. Copy of application will be provided to clerk/secretary for notices of public hearing. New rule is 45 days.

The additional edits presented at the 07/17/19 and this meeting are as follows:

### **OFFICERS**



6. In the event a regular member is absent for a meeting, the Chairman shall determine which alternate member stands in for the regular member. All alternates members may sit with the Board to hear and ask questions during a hearing regardless of whether or not they are standing in for a regular member.

#### APPLICATIONS

- a. Each application for a hearing before the board shall be made on the forms provided by the board and shall be presented to the board's chairman who shall review the application for completeness prior to acceptance and record the date of acceptance on the top of the application with signature and/or initials. (DELETE -A copy of the application shall be provided to the clerk/secretary for notification of public hearing.) A public hearing shall be scheduled within 45 days of the receipt of the application by the Town.

#### DECISION

If the decision being made is a special exception or variance, all Board members shall complete the associated checklist prior to reaching a decision on the case. If all questions on the checklist are answered in the affirmative by a Board member that Board member should endeavor to vote favor of the decision when it is motioned.

***Alan Quimby made a motion to approve the edits to the Rules and Regulations of the Zoning Board of Adjustment, seconded by Gary Kitson. Motion passed.***

***Alan Quimby made a motion to adjourn at 10:45pm, seconded by Mike Bussiere. Motion passed.***