

ZBA  
Town of Epsom  
**Zoning Board of Adjustment**  
**06/19/2019**

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

**Not In Attendance:**

**Also in Attendance:** Virginia Drew, Selectman; Cheryl Gilpatrick, Selectman; Katie Carleton; Frank Cassidy; Ethan Ash; Eli Carleton; Dave Ganvay; Marc VanLantin; Scott Sewbert; Andy Davis; Wayne Morrill; Betsy Bosiak; Priscilla Thompson; Judith Todd

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

The minutes of 04/17/19 were reviewed.

***Gary made a motion to approve the 04/17/19 meeting minutes as amended. Mike B. seconded the motion. Motion passed. Mike H. and Andrew abstained due to not being in attendance.***

Glenn reviewed the cases and meeting procedures.

**Case 2019-04 (AV Bedford, LLC - Var.)** - Alex Vailas, on behalf of AV Bedford, LLC, has applied for a Variance to Article II.A.2 (Minimum 2 acre lot size requirement) to remove an existing structure and construct a new approximate 12,000 sq. ft. building as a retail establishment on a lot containing 1.38 acres. The property is located within the Residential/Commercial zone and is identified by Epsom Tax Map U-5 as Lot 51.

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 Larrabee Commons, and New England Postal Properties. .

Glenn reviewed the application. Currently, Care Pharmacy is located on the property. The property is changing and there is a criteria to meet to see if it would require another variance. This is a big change in use.

Marc VanLantin (Attorney for AV Bedford LLC) spoke to the application. The lot requirement is a 2 acre minimum. The existing structure does not have the space required, the application is to build a more modern 12,000 square foot retail space for a New Hampshire State Liquor Store. Mr. VanLantin reviewed the five criteria required to approve a Variance. The value of the property can only increase with a new more modern building with associated landscaping. Currently, the building is old and outdated. The hardship is clear, the acreage itself is undersized. The lot itself does require the use of a Variance. Mr. VanLantin believes that this plan will maximize the use of the property. Overall, they are not looking to alter the general nature of the community. The neighborhood is mostly commercial with restaurants surrounding the area.

Glenn asked if this would be private property or would the State own it?

Mr. VanLantin stated this will always be a privately owned building, allowing it to always be a taxable property. The State will lease the building. This will increase the tax base.

There is currently no signed lease yet. This developer works closely to put state liquor stores in NH. They would not go through this much work if they were not sure it would work out. There is no lease timeframe yet.

Mike B. asked what the height of the new building will be. Engineer Wayne Morrill stated that it will be very similar to the Pembroke Building, almost two stories. Mr. Morrill discussed that the large curb cut at the circle will be closed off. This allows the traffic to get away from the circle. There will be an entrance and exit (to the right only) on Route 4/202 heading towards Concord right before Sawyer Ave. There will be another entrance and exit on Route 28 South.

Andrew stated that the State has a plan for the circle and asked if that would impact this lot. Mr. Morrill stated they have taken what they want from the property for their plans. They have been working with DOT including recent scoping sessions.

Mike B. asked what the increased area of pavement would be. Mr. Morrill stated that the proposed sealed surface of Lot 51 (Liquor Store) is 44.95%, the proposed sealed surface of Lot 52 (Aroma Joes) is 68.38%. It is a definite increase. The current gravel there is considered impervious in the States eyes. The building will be about 90 feet away from the circle. The stormwater management requirements are met. Currently, the Care Pharmacy is 5,347 square feet. The new building will be a single use. It will use municipal water and a septic system on each lot.

Andrew asked what the anticipated value of the building would be but Mr. Morrill was unable to answer that question at this time. George asked about the traffic impact for these properties. Mr. Morrill stated that the two uses offset each other. Aroma Joes has a high time in early morning and the Liquor Store has high time of around 10am throughout the day. Both driveways will support the uses. The important part is that if there is any backup in the traffic, it will be on site. For the drive-up window, the plan shows the approximate stacking of 11 cars with a significant amount of area remaining for more. Aroma Joes will also have a walk-up window. Andrew asked how many parking spots are included in the plan and how the lighting will be on the property. Mr. Morrill stated that the Liquor Store requires 33 parking spots and Aroma Joes requires 11, the plan shows a total of 65 parking spaces with 3 handicap spots. The lighting with downward shoebox lighting similar to the Pembroke location. That is all included in the Planning Board packet.

Glenn asked that Mr. Morrill give the conclusions of the traffic Study. Mr. Morrill stated that in May 2019 the peak traffic hours were from 7:15am-8:15am and 4:15pm-5:15pm and on weekends the peak hours were from 10:45am-11:45am. The count was 881 vehicles on Route 28 and 1,663 vehicles on Route 4/202. The general approximation of traffic entering the location would be 130 in the morning, 158 in the afternoon and 229 on Saturdays. The former pharmacy likely had 16 in the morning, 46 in the afternoon and 57 on Saturdays. George asked if the state was happy with the plan. Mr. Morrill had a scoping session with the state. There is no permit yet but they had concerns with the original plan of the driveway in the circle and that was changed immediately. They also did not like having a left hand turn onto Route 4/202 and that was changed. The State also had them look at exiting onto Sawyer Avenue but due to the topography it was not safe.

***Glenn opened the public hearing for public comment at 7:40pm.***

Mr. VanLantin clarified for the board that the State has no interest in buying the property and his client has no interest in selling it.

Glenn reviewed the potential conditions of approval:

1. The site shall be developed as shown on site utility plans done by Jones and Beach Engineers.
2. New structure and property shall remain as private ownership.
3. New structure shall be used exclusively for a state liquor store.

Mike H. stated he would not vote to force that property to be exclusively for a State liquor store. That condition was removed.

4. NHDOT shall review and approve the access driveway permit prior to commencing operations.
5. Applicant shall proceed to Planning Board for nonresidential site plan review.

***Mike H. motioned to close the public hearing at 7:50pm, seconded by George. 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).

***Mike H. made a motion to conditionally approve Case 2019-04 (AV Bedford, LLC - Var.) - Alex Vailas, on behalf of AV Bedford, LLC, has applied for a Variance to Article II.A.2 (Minimum 2 acre lot size requirement) to remove an existing structure and construct a new approximate 12,000 sq. ft. building as a retail establishment on a lot containing 1.38 acres. The property is located within the Residential/Commercial zone and is identified by Epsom Tax Map U-5 as Lot 51, seconded by Andrew. Motion passed.***

The Variance was approved with the following conditions:

1. The property shall be developed as shown on the site plan created by Jones and Beach Inc. and submitted with the appeal.
2. The new structure and property shall remain in private ownership.
3. The NH Department of Transportation shall review and approve the driveway permit prior to commencing business operations.
4. The applicant shall proceed to the Planning Board for Non-residential Site Plan review.

***Case 2019-05 (AV Bedford, LLC - SE and Var.) - Alex Vailas, on behalf of AV Bedford, LLC, has applied for a Variance to Article II.A.2 (Minimum 2 acre lot size requirement) and a Special Exception, as required by Article II.C.4 (Drive-in Eating Establishment), to construct an approximate 800 sq. ft. building housing a drive thru***

specialty coffee shop on a lot containing 0.75 acres. The property is located within the Residential/Commercial zone and is identified by Epsom Tax Map U-5 as Lot 52.

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 Larrabee Commons.

Glenn reviewed the application. This is a vacant lot and has not been utilized before.

Mr. VanLantin stated that the hardship is the same thing, it is a small lot. It is a vacant lot, not being used. This would be an increase the tax base. The reasonable use is always left to the board whether this would be a reasonable use or whether it is in the public interest for another coffee shop. The special exception is obviously for the drive thru. There is no seating within this structure. It is strictly drive-up or walk up. It is a permitted use if the criteria is met. This will only increase the values of the area and the tax base by having this structure there. Traffic study has been done with stacking. The engineer has addressed the issues of the water and sewer. The water line will be hooked up once the State puts it in. As far as the remaining criteria, this will not cause any harm to the public interest. The Hardship is the lot can't be used without any kind of variance. This will maximize the use for the client and the Town. The spirit of the ordinance is the town wants to develop to a certain degree. We feel that this is within the spirit of the ordinance to develop an otherwise vacant lot. The overall impact to the town would be beneficial. It is within the same sort of context with the area. There is food, breakfast sandwiches, donuts, pretzels, etc. If this doesn't get approved, the site may remain vacant and there will be a new redesigned plan for this site.

Alan asked what the hours of operation will be and if there is a canopy for the walk-up window. Katie and Eli Carleton will be the owner of Aroma Joes, they stated the hours will be 5am-9pm, 7 days a week. There is a small canopy over the walk up window.

***Glenn opened the public hearing for public comment at 8:10pm.***

Gary asked what the estimate timeframe for construction would be. Mr. Morrill said once they have the DOT driveway permit, they plan to break ground. They hope to have that by fall, work through the winter and open up in the Spring.

***Mike H. motioned to close the public hearing at 8:12pm, seconded by Alan.  
Motion passed.***

Glenn reviewed the conditions if the case is approved:

The Special Exception checklist was reviewed:

- Question 1. All members answered yes.
- Question 2. All members answered yes.
- Question 3. All members answered yes.
- Question 4. All members answered yes.
- Question 5. All members answered yes.
- Question 6. All members answered yes.
- Question 7. All members answered yes.
- Question 8. All members answered yes.
- Question 9. All members answered yes.

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) yes (F.2).

***Mike H. made a motion to conditionally approve Case 2019-05 (AV Bedford, LLC - SE and Var.) - Alex Vailas, on behalf of AV Bedford, LLC, has applied for a Variance to Article II.A.2 (Minimum 2 acre lot size requirement) and a Special Exception, as required by Article II.C.4 (Drive-in Eating Establishment), to construct an approximate 800 sq. ft. building housing a drive thru specialty coffee shop on a lot containing 0.75 acres. The property is located within the Residential/Commercial zone and is identified by Epsom Tax Map U-5 as Lot 52, seconded by George C. Motion passed.***

The Special Exception and Variance were approved with the following conditions:

1. The property shall be developed as shown on the site plan created by Jones and Beach Inc. and submitted with the appeal.
2. Retail sales shall be by drive thru or walk up window with no in house seating.
3. The new water supply system shall be completed to the site and the new septic system shall be approved through the NH Department of Environmental Services prior to commencement of business operation.
4. The NH Department of Transportation shall review and approve the driveway permit prior to commencing business operations.
5. The applicant shall proceed to the Planning Board for Non-residential Site Plan review.

**Other business:**

Glenn and Mike B. attended the June 1<sup>st</sup> Strategic Initiatives training seminar. Glenn found some things missing in the rules and procedures. In order to add and/or edit them into the rules and procedures, they must be read twice and the second meeting they will become part of the rules and procedures.

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 all questions on the checklist are answered in the affirmative by a Board member, that Board member should endeavor to vote in for 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.

Mike B. questioned why landowners with two properties that are next to each other are not forced to merge the lots when they are less than the lot acreage requirement. Mike H. mentioned that they do not have to do that if they don't want to. It has to be voluntary.

Questions for Jay Hickey, Zoning Compliance Officer:

Mike H. asked about the cars on their side on 28 North and what is going on with the old Jungle Jim's property? Jay stated that the gentleman on 28 North is being dealt with and the Police are involved. Jay will investigate what Jungle Jim's was given for items they could sell.

Virginia Drew appreciates and applauds the approval for the businesses. She did make the board aware that Ms. Thompson could not hear anything and that if there is a public hearing, the plans should be turned towards the public for comment.

Cheryl Gilpatrick asked if there is any reason to check on the Getty Station as there is a car parked there and the restrooms are open. The owner of the property and the police are aware and are not concerned.

Andrew asked about the mobile home on Route 4. Jay stated that it was addressed with the owner and it should be removed in two or three weeks. It was supposed to go to someone who was upgrading their home but it was too old to do that.

Glenn updated the board on the case with Jabour. Glenn received an email that Mr. Jabour did not show up to the court hearing so the judge cited him for a default judgement and he has 10 days to rectify it. If he does not, the case is thrown out. Virginia asked if legal costs were incurred and Glenn stated there were but he believes they may be minimal.

***Andrew made a motion to adjourn at 9:08pm, seconded by Mike B. Motion passed.***