

ZBA
Town of Epsom
Zoning Board of Adjustment
07/17/2019

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: Virginia Drew, Cynthia Goodrich, Christopher Wry and Luiz Colos

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

The minutes of 06/19/19 were reviewed.

Alan made a motion to approve the 06/19/19 meeting minutes as amended. Gary seconded the motion. All in favor.

Glenn reviewed the case and meeting procedures.

Case 2019-06 (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 construct a 28' X 28' garage behind the existing "junk shop" to repair automobiles. 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.

The applicant was not present. The applicants certified notification was received back signed. There are abutters present.

All board members were in favor of proceeding with the meeting without the applicant present.

Glenn reviewed the application with the board. The applicant is looking to build a 28x28 garage behind the "junk shop" which they plan to convert into an office. The garage will be for mechanical use. It is a small business and will not disturb or create traffic. The business hours will be 9am-5pm. There are similar businesses in the surrounding area and Bickford's is across the street. Newstress produces a lot of noise across the street. The applicant is aware it is residential, and plans on about 3 cars a day entering and exiting the location. He plans to have a sign close to the road and the garage will be away from the road. Glenn read through the application and discussed the items on the checklist. The applicant wrote that they bought this property do build a garage and move his business there, he mentioned that he would be devastated if this is denied. The applicant stated that the property values will not diminish because he runs his business differently than other people. The applicant mentioned that the special conditions of the property are that there was already a small business located there. The selling point for the applicant was the business exposure on a busy road.

Glenn opened the public hearing for public comment at 7:15pm.

There were no abutters present that were in favor of this Variance.

Luiz Colos, 1645 Dover Road, spoke about the values of the surrounding properties. His location is downwind from there and they get any smell and noise coming from there.

Cynthia Goodrich, 1645 Dover Road, stated that there is 50 feet between the house and their driveway. Her concerns are that both her daughter's bedroom and her mother, who is 102 years old, bedroom, are both on that end of the house. They will get all the noise and smells. Having a 102 year old woman, who can be jumpy, hear an impact wrench would be a little too much.

Glenn Horner stated that the difficult thing about Variances is that it is not about the person coming before the board. The board has to look at the land because once a Variance is granted; it is with the land forever. Glenn continued that the applicant's answers on the application do not necessarily fit the criteria required for a Variance.

Mike Bussiere questioned if there is a waterway behind there? Cynthia clarified that there is, it is called the Little Suncook River. Mike is concerned for environmental impacts such as chemicals leaching into the waterway.

Glenn Horner clarified that if this would be approved there would be a condition that all hazardous materials must be disposed of properly. However, then Jay would have to police it.

Jay Hickey is concerned about the environmental impact. Jay did speak with a young lady regarding this property; he has not spoken to the applicant directly. He did let them know that it would be better to apply for the Variance before purchasing the property because there is no guarantee it will be approved.

Mike Bussiere clarified that the applicant can build a garage, if he received the appropriate permit from Jay, he just can't have a business in it.

Gary Kitson stated that if someone is working on cars, that will create more traffic.

Glenn Horner spoke about his reservations on this application. The key issue he has is that the lot is 1.7 acres where 2 acres is required for a business lot. This lot is a pre-existing non-conforming lot and the ordinance states that any pre-existing non-conforming lot may not substantially change or enlarge. This would ultimately cause the need for a second Variance.

Cynthia Goodrich asked if there was any way he could receive a Variance. Glenn went through the process. Once the decision is sent to him, he has 30 days to appeal for rehearing. Once that is received, the Zoning Board then has a meeting to discuss if there is any additional information provided that would warrant a rehearing. If there is, then another hearing would happen and all abutters would be notified again and everything would be posted again. If the board decides there is nothing warranting a rehearing, then the applicant can appeal to court.

**Gary motioned to close the public hearing at 7:36pm, seconded by Mike B.
Motion passed.**

The Variance Checklist was reviewed:

- Question 1: All answered no.
- Question 2: All answered no.
- Question 3: All answered no.
- Question 4: All answered no.
- Question 5: All answered no.
- Question 6: All answered no (F.1) no (F.2).

Alan made a motion to deny Case 2019-06 (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 construct a 28' X 28' garage behind the existing “junk shop” to repair automobiles. 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 Gary. All in favor.

The variance was denied for the following reasons:

1. The most significant special condition of this lot is that it is less than the minimum 2 acres required for a business lot. As such, the change of use of this substandard lot is substantial, as defined by the pre-existing, non-conforming lot ordinance, and contradictory to what should be considered a valid special condition satisfying the hardship criteria. Furthermore, the hardship to the owner was created by his recent purchase of the lot prior to ensuring that his plans for an automobile repair business met the conditions of a variance.
2. The intent of the RLC zone ordinance is to restrict the types of businesses in that zone and excludes motor vehicle repairs and sales. These types of businesses currently exist in the immediate area by prior variance and grandfathered exceptions. To continue to make exceptions for these types of businesses where special conditions are found which compound ordinance violations would be contrary to the public interest and inconsistent with the spirit of the RLC ordinance.
3. An additional special condition found contradictory to approval is that the property abuts the Little Suncook River, an environmentally sensitive area, which would be vulnerable to potential spills of hazardous waste created and used by an automobile repair business.

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 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 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 in for the decision when it is motioned.

Virginia brought up that the Board of Selectman have the PA-28 vote coming up on the July 22nd agenda. If the ZBA wants to give input they can attend. Virginia clarified

that she felt people were not educated about it and that was part of the reason she voted it down.

Mike Bussiere asked about what the repercussions were if there was something on the form that someone did not go through the appropriate channels to have and Jay stated that he addresses those and tries to work with people before initiating any fines or other legal ramifications. The only other items are if the form is not turned in by the due date, the resident could incur a \$50 fine. There is no fine if the form is not fully filled out as long as it was turned in. Glenn commented that Henniker did these and were able to skip the five year assessment and saved the town a lot of money.

Gary made a motion to adjourn at 8:30pm, seconded by Alan. Motion passed.

F E M I N A L