

**TOWN OF EPPING, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING**

Wednesday February 18, 2015

PRESENT: Dave Mylott, Joe Bodge, Mark Vallone, Charlie Goodspeed, Fred Horne; Alternate Kim Sullivan; Secretary Phyllis McDonough; Planner Brittany Howard.

CALL TO ORDER: Chairman Mylott called the meeting to order at 7:00 P.M. and appointed Sullivan to sit as a voting member.

PLEDGE OF ALLEGIANCE TO THE FLAG

EASTERN PROPANE & OIL, INC. – Chairman Mylott read notice for a Variance concerning Article 3 Schedule 1. Parcel is located at 37 Shirking Road (Tax Map 035 – Lot 004) located in the Industrial Commercial Zone.

The applicant was not present to explain the proposal.

REALTY ACQUISITIONS, LLC -- Chairman Mylott read notice for a Special Exception concerning Article 6, Section 6.10 (3)(c) & (e) and Article 6, Section 6.10(2)(a), and a Variance concerning Article 2 Section 1.3 and Article 6 Section 6.10 (3). Parcel is located at Route 125 (Calef Highway) (Tax Map 030 – Lot 042) located in the Industrial Commercial Zone & the Highway Commercial Zone. Abutters present: Gregory Morin & Jennifer Roy, American Legion Post 51, Town of Epping, Garth Ely, Diane Brangiel, Telly's Realty, LLC, Kokua, LLC, Thomas & Brenda Weisensee, Vicki Inskeep-Brown, Soaring Hawk, LLC.

Rob Graham representing Realty Acquisitions LLC came before the Board to explain the proposal. He submitted information to the Board series of pictures of the facility that is being proposed. Graham explained the format to give the Board an introduction to the project, and a review of the ordinances, and informed the Board Joe Coronati will also speak on the application. He explained he will speak on what is statutorily referred to as Work Force Housing. Graham noted this project is not a low income, not a low rent project, not a Section 8 project. Graham explained after reviewing the state statutes and the housing needs assessment, they recognized the need for this housing type. He explained they originally scoped this project on the Industrial land behind Walmart, and looked at Route 27 that has a potential to bring water and sewer, and noted due to some issues the project wouldn't work. Graham explained the proposed project is to the north on Route 125 on approximately 42 acres.

Joe Coronati from Jones & Beach came before the Board and explained the back of the property is in the Highway Commercial and Industrial Commercial zone. He stated the front of the site is flat, and opened to 125. Coronati explained the back of the site is open to two upland components, one on the north side, and one on the south side. He explained the TOPO on this site is over 20 feet vertically to where there wetlands and uplands are. He explained it abuts two sides of the Lamprey River. Coronati explained there shoreland setbacks, wetlands, and what is challenging is the visibility in the back portion of the site, and a power line that runs through it. Coronati explained this proposal is a great site for mixed use with the commercial in the front and residential in the back. He noted it will have some wetlands impacts, some shoreline setback, and they will not have to relocate the power line, and will not have visibility from 125.

Coronati explained the proposed development entrance will be right across from the new Core medical building. He explained the front of the lot will have four commercial lots to be created, with frontage on 125 and access to all the commercial lots is a proposed drive and showed another access making it two access points. He explained the residential will have a private drive. Coronati explained the site has a shoreland protection setback, a river bank setback and a flood plain setback. He showed on the plan seven buildings with 232 units, 533 parking spaces, two parking spaces per unit, and about 69 visitors parking; parking outside the buildings and within the inside of the buildings. Coronati briefly stated the recreational aspect to the Lamprey.

Graham presented a slide show of a plan of Sterling Hills in Exeter, NH, showing what this proposed complex will resemble. He also informed the Board the plan being presented is a flexible plan. He explained there will be single and double bedroom units and over 55 units and workforce housing.

Jeffrey Betterini, Wilson Drive, stated he has concerns with one single access and egress in a proposed development of this size stating he sees a primary setup for a disaster. He stated with buildings this size do not have the rural character, and has concerns with fire apparatus. He stated this is not conducive for a residential development. He cautioned the board that a development such as this not the proper use of this property. He also noted there must be consideration of safety concerns for the people who would live in these units.

Chairman Mylott explained the application before the Board to the public. He explained the board will be taking specific requests, and if the Board were to grant this application the next step would be to go before the Planning Board.

Abutter Thomas Weisensee spoke about the recreational aspects to the lamprey, and stated as an abutter the only recreation he's seen in years is the canoe race in the spring.

Abutter Cory McPhee stated the Zoning Board holds more power than the Planning Board, once these special exceptions are on the way it basically is a done deal and this all needs to be ironed out. He noted that traffic and lighting need to be addressed. He spoke about the traffic on 125 and stated coming out of Telly's is almost impossible to go south, and leaves the Town with challenges. He explained if done appropriately, he is for more concentrated development. McPhee addressed the school impact and tax impact with a project like this.

Jim Rogier asked if this proposal fits into the Master Plan, and if Epping is in non-compliance of not having enough affordable housing according to State Statutes. He stated his concerns are with traffic on Route 125, and the runoff into the Lamprey.

Tom Dwyer stated he likes the idea and the concept, and stated every piece of land is developable to what is allowed. Dwyer advised that this board has to answer what the hardship is.

Henry Deboer Chairman of the Water & Sewer Commission explained the Town does not have enough water for this project. He stated although with this size project, the water and sewer connection fees and this type of project are needed to help pay for the well bond.

Amos Clapp stated the Town wouldn't need water for 232 units if this development didn't come in to town. He noted that he doesn't see how a development like this would service this town. Clapp

questioned if this project would need another traffic light. Clapp noted the impact on the town with traffic and the school and use of the water and sewer this project goes against the core of the town.

Jane Kelly stated as a resident, a project such as this will create an impact on the Town. She stated she does not think a traffic light will help the situation. Kelly asked what the setbacks are for the parking to the wetlands, and stated she is concerned with the egress, and a one way in.

Abutter Dennis Brown noted this project is focused on 30 acres, and questioned how a developer would position 30 acres where they're not just after residential or high density residential, and would be looking for 232 units to be on 30 acres. He stated he has no problem on the commercial aspect, but doesn't understand why the Town would want residential in a commercial zone. He stated he feels the Town should vote on something like this proposal.

Chairman Mylott addressed the questions asked, and informed the public that some questions aren't zoning related. The questions are: **concerns on having only one access point, height of the buildings, safety, fire concerns both with one access and will the Town have the equipment, consistency with the rural characters, school and other resource tax impacts, affordable housing, turning a commercial industrial zone into a residential zone, visibility and lighting, runoff, changing wetlands.**

Coronati responded to the questions: **he explained the access is across from the Core building with a connection access through Telly's. Coronati explained they met with DOT for a curb cut. Coronati stated the buildings will be sprinkled, and will not exceed 50 feet high. Storm water runoff will have to go to the AOT Bureau and the Town engineer has to approve this. Wetlands can change on some sites; the difference on this site will not change that much because of the old cuts. Lighting for residential use is minor with porch lights, lights in the parking lot but overall lights for residential are less intense than commercial lighting. The DOT does not want to see a traffic light at this point that is so close to Route 27 and not having a light will take a little longer taking a left, and if people move there they'll already know the traffic patterns.**

Chairman Mylott asked if not having a light at that spot is a benefit to the Town. Coronati explained the DOT wants to stop adding lights on 125 to keep the traffic flowing.

Goodspeed asked if there's any way there can be two ways for egress to make this easier. Graham explained traffic is a planning issue. He stated this is a concept plan and is subject to reviews.

Graham explained the site will be on town water and sewer. He stated that roughly 40 percent of this development is a single bedroom unit or over 55 units. Graham addressed the question on the impact to the school and explained when the buildings are built and CO is given, an impact fee will be assessed. Graham also stated the state requires housing such as this.

Abutter Brenda Weisensee, stated that most people 55 and older don't have children and is familiar on this type of development. She also stated the whole Town should have been notified of the hearing. It was explained, legally all steps to notice abutters were taken, and a notice was in the Union Leader, Post Office and Town Hall, along with and the agenda posted on the Town's website. Weisensee asked who reads the Union Leader and stated her computer is not working.

Graham addressed the 5 criteria (all submittals will be attached to the file):

The variance is not contrary to the public interest:

The proposal achieves 3 major objectives of the Epping Zoning Ordinance and is not contrary to public interest because these objectives are in the public interest.

- The variance permits protection of significant natural resources.
- The variance is required to provide diverse housing opportunities.
- The variance is required to permit the development to achieve the Town's obligation to provide for workforce housing.

The spirit of the ordinance is observed:

- The variance observes the spirit of the ordinance because it is required to achieve the stated goal to enhance housing opportunities and workforce housing and is limited to a use that would be permitted on the property but very close to the Lamprey River.

Substantial justice is done:

- Providing for the opportunity to meet 3 major stated objectives of the ordinance, especially workforce housing, provides economic and environmental justice to be done. Epping's statutory responsibility to provide diverse workforce housing is, in itself, a just cause and can only be achieved with the variance requested.

The values of surrounding properties are not diminished:

- The current property is not maintained and the proposed development will include well-maintained grounds and vegetation.
- Screening will be consistent with the high-quality of the development scheme and will contribute to a fabric of value across the area. The transition from the site to neighboring properties will not be abrupt.
- Preservation of natural resources will enhance the scenic preservation and use of the Lamprey River – actually enhancing value.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

- Under test one of hardship – no fair and substantial relationship exists between the general public purpose of providing for workforce and multi-family housing and the restriction on the rear portion of the property that is already partially in the Industrial Commercial zone.
 - The specific application of the use restrictions of the ordinance to this property prevents the accomplishment of the public purpose of the ordinance itself – to provide workforce housing in the Industrial-Commercial Zone – which applies to the rear portion of the land.
 - The rear portion of the land is a great distance from the Route 125 frontage, adjacent to residential uses and sensitive environmental resources. The variance will provide a more appropriate and reasonable use for the portion of the land.
- The proposed use is a reasonable one. The use is permitted in the Industrial Commercial Zone which covers a portion of the land and is part of a statutory mandate for the Town to provide a regional fair share of work force housing. The variance to permit workforce housing in accordance with the Industrial Commercial Zone insures that the development will meet the

Ordinance's requirement that workforce housing is "affordable to build and stable in its costs to own and operate." Epping Zoning Ordinance, Article 3, Section 3.9(7).

Goodspeed noted what is being requested is to change where the boundary is between the commercial and highway zones. Graham stated they want to apply the Industrial standard to a greater portion of the site. Howard explained in the Industrial Commercial zone the line cannot be moved.

Jeff Betterini stated the relief to move the industrial line would set a very dangerous precedent resulting in spot zoning and would take a town vote to change the zone. Chairman Mylott explained the applicant is not looking to move the line.

Sullivan stated, should this variance be voted down the other requests would become moot.

Chairman Mylott asked the applicant if this variance doesn't pass then the rest of the requests become moot. Graham replied he does agree. Chairman Mylott asked if the presentation of the other material would impact or relate to this variance. Graham replied, it depends and are not attached to the height presented. Graham spoke of the building height stating he was willing to compromise knowing the height restrictions in Town, and is willing to decrease the number of units which would adjust the variance request.

The subject variances are for a building height permitted in the Industrial-Commercial Zone and for locations of construction on land in the rear of the lot.

Bodge questioned if the number of parking spaces remain as the initial request. Graham explained that would reduce the number of parking requirements.

Vallone stated the applicant hasn't proven that Epping isn't already providing diverse housing, and stated a hardship hasn't been proven that residential housing should be on this site.

Howard addressed her letter to the Board (Attached), and stated she does not feel there's a need for work force housing.

Graham stated he feels the numbers he received from the Planning Commission are correct.

Vallone questioned if this is what the actual reality of what the town needs and has not seen that proven. Graham stated they have submitted the evidence with the application.

Graham stated the he would like to amend the height of the building and amending the number of units bringing it down to 180 units.

Howard asked for a breakdown on the apartments. Graham explained the apartment blend on level one is the most affordable single bedroom, 60 percent market rate double bedroom, and the third tier would be over 55.

Chairman Mylott stated he would like to act on the first request on the variance 2.1.3, Permitted Uses. Graham agreed.

Bodge asked about the zone line that runs north to south, Amber Way and Ladd's Lane are in the Highway Commercial zone. Howard stated they are grandfathered.

Vallone asked what the hardship is on this site. Graham stated there are a couple of hardships being the general purpose of providing workforce housing in the Industrial Commercial zone is established but unable to be applied because it does not work and are restricted in doing so. Graham explained applying it to a site that has challenges that make it unsuitable for a development as its zoned, such as TOPO and wetlands and the site design characteristics. Vallone stated he still does not see the hardship and advised that a commercial development could go on this site, or could do a conservation easement.

Chairman Mylott stated there is substantial frontage but does not see a hardship, and also noted it does not meet several of the requirements.

Howard advised that the vote should be worded for workforce housing and not just a vote for a residential use.

Bodge asked about the wetland area that goes right down the middle of the property won't be affected. Graham stated that is correct.

Vallone reiterated that this is not the only area that workforce housing could go, and therefore does not see a hardship and sees no substantial justice being done.

Goodspeed stated he is not opposed to some housing on the site, and understands the plan will go to planning but does not feel the plan is acceptable.

Goodspeed asked if this could be tabled. Graham stated he would like a vote on the application at hand.

Chairman Mylott stated the number of units becomes unimportant and although it's not a completed plan it's against what's allowed.

Goodspeed stated he feels it's too much for the area, and if he can come back with a reasonable number he would feel differently.

Howard stated the Board needs to look at this application if there's a hardship. She stated it doesn't matter if it's one unit or 1,000 units.

Jeffrey Betterini reiterated the opposition for residential housing in this zone which is a commercial zone. He stated the general makeup of the land that is there, he does not believe it is best suited for this site and the access and egress issue if allowed will be a disaster. He stated this property is zoned for commercial uses, and can be developed in a commercial nature. Betterini stated this proposal will not be in the Town's best interest.

Brenda Weisensee, stated this is not an asset to the Town.

Abutter Jennifer Roy questioned how this will affect the water treatment facility, with no sidewalks and the impact to the school system. And wonders how people will like living next the water treatment facility.

Thomas Weisensee noted he has not been shown that there is a need for work force housing and feels it is only for financial reasons. He stated he's been to Sterling Hills and finds it boring and wouldn't want to live there.

The Board addressed the 5 criteria for Article 2, Section 1.3

1. Will not be contrary to the public interest –

Vallone stated there is still the questioned if there is a need for work force housing and granting the variance will be contrary.

Bodge stated his concern is the large wetland and would use the site for what it's zoned for.

Chairman Mylott noted this does not meet the public's interest. There are other things that can go on this site.

2. Spirit of the ordinance is observed –

Vallone stated the proposal is not required in the zone. Epping has a history for providing work force housing with developments going on at this time.

Chairman Mylott noted that Howard hit on this that the zone doesn't allow moving the line and is not an allowed use and not the interest of the Highway Commercial zone.

3. Substantial justice is done –

Vallone stated workforce housing is substantial justice but does not have to be done through this development.

Goodspeed stated he likes the commercial up front; although does not like the amount of units being proposed. He stated he doesn't want to see the commercial part of the application killed. He stated having commercial in the back wouldn't have the exposure unless there was a sign on 125.

4. Values of surrounding properties are not diminished –

Vallone stated there were no comments from abutters about diminishing property values.

Chairman Mylott doesn't feel the proposal would diminish property values.

5. Result in unnecessary hardship –

Vallone noted he has not seen a hardship with this application.

Chairman Mylott agreed no hardship with the application.

Bodge stated the wetlands cause a hardship.

Howard showed on the plan where the project could go on the site and stated the wetlands do not cause a hardship.

Vallone moved, Chairman Mylott seconded the motion to deny the variance for Article 2, Section 1.3. The motion carried 3-1-1 to deny the application; Bodge voted to grant the Variance, Goodspeed abstained.

Chairman Mylott asked the applicant if he wanted to continue on with the rest of the application. Graham replied he would not.

MINUTES OF FOR JANUARY 21, 2015 APPROVAL -- Bodge moved, Vallone seconded the motion to approve the minutes. The motion carried unanimously.

MINUTES OF DECEMBER 11, 2014 FOR SIGNATURE – The minutes of were duly signed.

ADJOURNMENT: Vallone moved, Bodge seconded the motion to adjourn at 10:15 PM. The motion carried unanimously.

APPROVAL NOTIFICATION: February 18, 2015 - Minutes of January 21, 2015 were approved. Minutes of December 11, 2014 were duly signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary

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**Town of Epping, New Hampshire
Community Planning and Development**

February 9, 2015

Zoning Board of Adjustment

RE: Calef Highway
Tax Map 030 Lot 042

Special Exceptions – Multifamily Regulations
Setbacks
Parking
Number of Stories Containing Habitable Space

Varaince:
Density
Building Height
Residential Use – Workforce Housing

Dear Honorable Board,

The Property:

The property is dual zoned. The majority of the lot is in the Highway Commercial Zone (HC) while a small back section of the lot is located in the Industrial Commercial Zone (IC). The applicant cannot declare the whole property IC, it is not allowed in that section of the zoning. The proposal before the Board is to allow Work Force Housing in the HC zone. Workforce Housing is allowed in the IC with a conditional-use permit from the Planning Board.

There are many aspects to this application. I am going to go through each one separately.

Special Exceptions:

Parking – Our current regulations would require 580 parking spaces for 232 residential units. The applicant is requesting a special exception on the multi-family parking requirements. The proposal is for 514 spaces, a reduction of 66 spaces. There are some concerns with limited parking. The applicant is proposing a mix of one and two bedrooms. By only supplying two spaces per unit it does not take into account families with teenage children and additional vehicles. Parking lots also become locations for snow storage during the winter month, restricting parking even more.

Setback – The applicant is requesting a setback of 50 feet when 100 feet is required. The site is located at the rear of the lot and abuts one residential street. There is some concern about placing large residential structures 50 feet from an existing residential neighborhood. The applicant would have to ensure proper screening.

Number of Stories Containing Habitable Space – Multi-family buildings are allowed to have two stories of habitable space. The applicant is requesting four stories. The building and fire suppression

system would have to be reviewed by the Fire Department. Also, the Fire Department has no way of reaching the fourth floor from the exterior due to equipment restraints.

Variances:

Density – Density is calculated per square foot. In all zones that allow for multi-family it is one unit per 40,000 square feet. The one exception is the High Density Residential Zone which allows for one unit per 10,000 square feet. The applicant is requesting one unit per 6,000 square feet for a total of 232 units. If this property was located in the High Density Zone (our most dense zone) only 139 units would be permitted, a difference of 93 units.

The applicant is looking to construct Work Force Housing. A regional housing needs assessment was done by the Rockingham Planning Commission (RPC) in 2008. This Report addresses Workforce Housing as well as other Housing needs. It calculated that Epping needed to construct 133 additional units between 2006 (1,063 total homes) and 2015 (1,196 total needed homes). As part of the RPC's Master Plan update, the housing need assessment table was updated (this is still in draft form). It calculated that Epping needs to construct 142 units between 2015 (1,058 total homes) and 2020 (1,201 total needed homes).

The estimated Max purchase price for this area is \$239,236 (with 10% down payment) and \$259,069 (with 20% down payment). This includes mortgage, taxes and insurance. The estimated max rent payment per month is \$1,045 and includes utilities. The Workforce Housing / Municipal Guidebook: Meeting the Workforce Housing Challenge published by the state shows similar figures.

I asked the Town Assessor to create a report of all housing assessed equal to or less than \$260,000 to see what Epping currently has on the tax rolls. The results are as follows:

- Condos: 205
- Manufacture Homes: 181
- Single Family Homes: 1359
- Total: 1,745

Even if you lose a third of those homes, due to fluctuation in the market or taxes and insurance putting the higher houses out of reach, the Town would still have 1,164 homes under \$260,000. It is also important to note, that this does not include apartments which are included in the workforce housing calculation.

Building Height:

The HC Zone and Multi-family regulations permit buildings to be 35 feet. The applicant is requesting a building height of 50 feet. Similar to the number of stories containing habitable space above under special exceptions, the building and fire suppression system would have to be reviewed by the Fire Department and the Fire Department has no way of reaching the fourth floor from the exterior due to equipment restraints. The IC zone does allow for building to be 50 feet in height as long as they have adequate fire suppression systems. It is important to note that most of those buildings are one story, not multiple occupied stories.

Residential Use in HC Zone:

Residential uses are not permitted in the HC zone. In 2010 the Town voted to add Multi-family as a permitted use in the IC zone as part of the Flexible Use Development section of the Ordinance. This was so that the Town could comply with the Work Force Housing provisions from the State. This does not apply to the HC zone. As stated above the applicant cannot declare the whole lot IC so there the applicant cannot use the Flexible Use Development section of the zoning ordinance. There are some concerns with only having a single point of access for 232 residential units.

The applicant would have to show a hardship to allow for this development. As the lot stands, it can be developed with any use that is permitted in the HC zone.

If you have any questions, please contact me at 679-1224 ext. 33.

Dave Mylott

Mark Vallone

Joe Bodge

Charlie Goodspeed

Kim Sullivan