

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

Wednesday November 4, 2015

PRESENT: Charlie Goodspeed, Mark Vallone, Joe Bodge, Donald MacLaren, Kim Sullivan; Planner Brittany Howard; Secretary Phyllis McDonough; Building Inspector Dennis Pelletier.

CALL TO ORDER: Chairman Goodspeed called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE TO THE FLAG

TOM SUTLIFFE – Chairman Goodspeed read notice for an Appeal from an Administrative Decision, relating to the issuance of a building permit # 117 for Granite Coast Landcare, LLC/Ben Brown owner of 6 Plumer Road (Map 22 – Lot 064) to expand Residential use while maintaining Commercial use.

Vallone recused himself from the hearing.

Attorney Thomas Jay Leonard, representing Tom & Pat Sutcliffe from 2 Plumer Road, came before the Board. He presented a photo of the properties in question and explained both buildings in the photo have access to the driveway. He noted the permit in question # 117, dated 9/3/15 relates to 6 Plumer Road.

Howard informed the Board the note at the bottom of permit #117 was corrected and given to Brown.

Attorney Leonard explained his client is objecting to the approval to the permit because the permit asks for a residential and commercial use which is in violation of the Town's zoning and the primary reason for the objection. Attorney Leonard stated what is actually going on in the building at this time is a commercial business, which is a landscaping business, and presently three residential units. Attorney Leonard gave the Board a packet explaining the business questioned what the nature of the commercial business going on which started out as a snow plowing, and lawn mowing business with five employees.

Attorney Leonard questioned the heavy equipment that comes and goes which is not a small business and could be called an expanded home occupation.

Attorney Leonard referred to a chronological documentation given to the Board, of the status of the zoning and stated it is clear that mistakes were made in the past, and stated the largest mistake is to allow this commercial business to continue with a residence.

In 1992, David Brown owned both 8 & 6 Plumer Road and requested a florist shop and auto parts store, and was granted a variance, and the Board, at that time was very specific if there were any changes in the building the Brown's would come back before the board. In 1996 there was a question on the auto parts store wanted to expand and at that meeting there were concerns on traffic, cars parked out front, too many cars, etc. In 2005 an application came in requesting to expand the parts store and that variance was denied. In 2005 to 2008 the parts store and florist shop was no longer there and from this day forward. Attorney Leonard stated in his estimation if that variance has left after a year it has been abandoned and is no longer valid and the owner of the property is to comply with the zoning. In approximately 2009 a new business came although found no permits in the file that approve a new use in that building. In August 2009, David Brown still owned these properties and considered them one property, came for a specific design for the garage be permitted as an apartment, which was denied by the board September, 2009

agreed 4 – to 1 it should be denied. Request to have the apartment was denied. October 1, 2009 a new permit request came in for the exact same plan came in and for some reason Brown was given that permit, but not by the Zoning Board. Attorney Leonard explained pursuant to the permit which were unlawful, improvements were made to the apartment and Ben Brown moved in; now there's a 2nd residential unit on the property and a commercial use with no permits. After 2009 the business grew and is quite successful per the article in the magazine.

Attorney Leonard stated after 2009 the deed talks about two parcels and when 8 Plumer Road had an easement to the back side of the home which was to provide access to the rear of the property, and in 2011 there was a mortgage that was done improperly and was foreclosed upon and the foreclosure caused an unlawful subdivision, the only access is on the right-of-way and not on the main road.

Attorney Leonard explained after 2009 there was another permit in 2015 and prior to 2011 David Brown owned both properties, and in January 2015, Number 6 Plumer Road became a business entity Granit Coast Landcare, LLC, noting that 6 Plumer Road is owned by a business. He went on to explain in 2015 a request an interior wall partitions with no discussion of what this was, got approved. In late summer permit #117 for a residential in a commercial business. He stated now there is a building that has 1 to 3 residences and a commercial use with a building that is not permitted and an expanded occupation is not permitted. The permit is not lawful and needs to be corrected if it is an invalid permit.

Bodge asked Attorney Leonard why he continues referring to the two lots as one and asked if he's saying they are separate deeds. Attorney Leonard explained there was one deed for David Brown. Bodge asked as it stands are there two separate deeds. Attorney Leonard stated now there is because of the foreclosure.

Ben Brown explained when his father owned 6 & 8 Plummer there was one deed - two parcels, separate parcels, separate lots and when it went to foreclosure it was separated by the bank, not unlawfully, 6 & 8 Plumer were split and no longer in David's name; Six Plummer was the only parcel in David's name. Attorney Leonard stated he doesn't disagree with that.

Bodge inquired, referring to the business owning the property, asked if the LLC on the deed. Attorney Leonard answered yes.

Howard stated the original building permit in 2009 for the apartment it was denied because it was not connected to 8 Plumer and when reapplied as a single family unit and stated why the permit was given and not given unlawfully.

Howard noted that variances did not expire back then as they do now; they stay with the property, so when the original permit was issued there were no business on the property and why the building inspector gave the permit.

MacLaren noted in the interest of time what information needs to be talked about and what doesn't have to be talked about. Howard explained the Board looking at the September permit for the expansion of the residential use and stated she disagrees with the "commercial" use. She stated she does not think he is asking for commercial use which brings it to more of a conforming use because residential is permitted. MacLaren stated he feels there are valid arguments as to the permit itself, which pertain to the Code Enforcer.

Attorney Leonard explained he is not saying variances expire; it was abandoned and can't change from a parts store to a landscaping business. Attorney Leonard stated there is no area of the ordinance that these two uses can be in the same building.

Ben Brown explained the initial permit, dated August 2009, was for an in-law apartment that was denied and reapplied for and approved as a single family use, and being Rural Residential single family use was allowed and was approved. Then in September 2015 permit #117 is for the expansion of the original residential legal permit to turn the front of the building to a conforming use. He stated the intention was to benefit Mr. Sutcliffe. He explained there are two families living there, he and his wife and son, his cousin and his wife who is an employee, and his father lives there also. There is one residential space that takes up the entire front portion, the showroom space is no longer, the front garage is no longer, the entire front half of the building is one residential unit and father lives in the back side. He explains that he was told the landscaping business is a permitted use; agricultural based industries are permitted.

Attorney Leonard explained it's important in 2009 the addresses were owned by, would have to have a variance, permits to get to where it is now.

Chairman Goodspeed stated there has been a quite a bit of information given tonight and ask for a motion that a decision on this request be postponed to November 24. The Board concurred.

Ben Brown came before the Board and explained his family built the property and has a problem understanding the whole argument. He also informed the Board there are no business hours on the property.

Attorney Leonard noted he understands whatever permits have been issued, there are no CO's and would like to find out how many units there are.

Bodge moved, MacLaren seconded the motion to continue the application to Nov. 24, 2015 at 7:00 PM. The motion carried unanimously.

VAUGHN CLOUTIER – Chairman Goodspeed read notice for two Variance's concerning Article: 1.2 Lot Size of 87,120 Square Feet, Section: Highway Commercial Zone and Article: 1.2 Rear Setback of 50 feet, Section: Highway Commercial Zone. Parcel is located at 276 & 290 Calef Highway (Tax Map 023 – Lot 039) located in the Highway Commercial Zone. Abutter present: Brant Harding.

Joe Bodge explained for the record that he has Jones & Beach working on a personal project and asked the Board if they have any concerns with that he will recuse himself. The Board as a whole had no problems with Bodge sitting for the hearing.

Joe Coronati representing Vaughn Cloutier came before the Board to explain the proposal for two variances on Articles 1.2 Lot Size & 1.2 Rear Setback to subdivide Mat 023 – Lot 039 into two lots. He explained the Cloutier's are requesting to subdivide the existing office building from the multi-unit mobile home park and have it used commercially. Coronati explained the park has plenty of frontage on Route 125 and Elm Street and in other locations. He explained the existing building is located less than 50 feet, which is required, to the existing fence. He explained there is a fence line that separates the park from the office building that has been there for many years and are proposing to make it a six foot high stockade fence to be the line between the two parcels.

Sullivan noted the lot with the 29 acres is considered non-conforming due to residential density and the setbacks in the various zones, and if there is a subdivision of the four properties behind the office building, will they be conforming or non-conforming. Howard stated currently Pine & Pond sits in the High Density Residential, Rural Residential and Highway Commercial Zones, with the majority in the Rural Residential zone are non-conforming, as it stands now is non-conforming.

McLaren asked if the Board would have to give a variance for all the existing properties.

Howard explained the Board is looking at the setbacks and lot size. Howard stated the Board will be looking at giving setback relief for the office building, for the units and lot size for the office building. She explained, if approved, the application would have to go to the Planning Board for Subdivision.

Abutter Brant Harding asked if the setbacks within the park that it only relates to the south side of the property. The Board stated that is correct.

Howard advised that the four mobile homes that would be encroaching on the lot line will be granted the relief. Accept the variance on the offset between the proposed boundary line and community building if torn down and replace would have to meet lot lines, and home with the current standard, variance is only granted what is current today. Anything in the future will have to meet standards at that time. Side setback or rear setback commercial setback is 50 feet or in the residential side the setback is 25 feet.

Coronati gave a brief summary of the five criteria requesting a Variance for the Article 1.2 Lot Size of 87,120 square feet:

1. **Public Interest** –“The public interest will be better served if property is separated from the park and utilized commercially and taxed as such.”
2. **Spirit of the Ordinance** - “The uses next to and across the street are all commercial based.”
3. **Substantial Justice** - “has already been used commercially as an office building for the Park and has had spaced leased out if the past.”
4. **Diminution of Property Values** - “The uses, site standards and construction will be typical of the zone and consistent with values.”
5. **Hardship** - “The building and the park have been in existence for many years and the location of the buildings is creating the hardship.”

MacLaren moved, Bodge seconded the motion to accept the five criteria as read. The motion carried unanimously.

Coronati gave a brief summary of the five criteria requesting a Variance for the Article 1.2 Rear setback of 50 feet:

1. **Public Interest** -“The public interest will be better served if property is separated from the park and utilized commercially and taxed as such.”
2. **Spirit of the Ordinance** - “The uses next to and across the street are all commercial based.”

3. **Substantial Justice** - “justice is done where the zoning requirements can be adjusted to accommodate ownership structure without compromising the allowed development of the site. “

4. **Diminution of Property Values** - “The uses, site standards and construction will be typical of the zone and consistent with values.”

5. **Hardship** - “The building and the park have been in existence for many years and the location of the buildings is creating the hardship.”

MacLaren moved, Bodge seconded the motion to accept the five criteria as read. The motion carried unanimously.

MacLaren inquired on the restriction for the exiting footprint will not include if expired what is current today is what the board will grant, what happens if needs to be replaced.

Howard explained when a non-conforming use encroaches on granting the variance with the setback relief, anything new would have to be within the setback.

Howard stated, for the record, she is against creating a non-conforming lot.

Bodge moved, MacLaren seconded the motion to grant the Variance for lot size relief of 1.64 acres where two (2) acres are required. Existing structures abutting the new lot line (on either side) will be granted setback relief and any new structures will comply with the current setbacks when they are replaced or expanded upon, in any direction. The motion carried unanimously.

MINUTES OF JULY 22, 2015 FOR APPROVAL – Bodge moved, Vallone seconded the motion to approve the minutes. The motion carried unanimously.

MINUTES OF JULY 1, 2015 FOR SIGNATURE – The minutes of July 1, 2015 were duly signed.

ADJOURNMENT - Bodge moved, MacLaren seconded the motion to adjourn at 9:00 PM. The motion carried unanimously.

APPROVAL NOTIFICATION: November 12, 2015 - Minutes of July 22, 2015 were approved. Minutes of July 1, 2015 were duly signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary