

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

Wednesday August 1, 2018

PRESENT: Don MacLaren, Charlie Goodspeed, Joe Bodge, Kim Sullivan; Alternate John Dold; Planner Brittany Howard; Secretary Phyllis McDonough.

CALL TO ORDER: Chairman MacLaren called the meeting to order at 6:00 P.M.

PLEDGE OF ALLEGIANCE TO THE FLAG

REALITY ACQUISITIONS – Chairman MacLaren read notice for two (2) Special Exceptions Article 6 Section 6.10.2(b) Max number of stories - to permit buildings with four (4) habitable floors, and Article 6 section 6.10.2(a) Parking – two (2) parking spaces per dwelling. Also, four (4) Variances regarding Article 6, Section 6.10.2(a) and Article 2, Section 7.2 Max height – building height 57'; Article 2, Section 7.3 Permitted uses - multi-family in the Rural Residential zone; Article 2, section 7.8 Permissible Structures - four (4) total structures; Article 6.10.3(a) Max density – four (4) buildings having forty (40) dwelling units. Parcel is located on Fogg Road, Tax Map 022 – Lot 82-001 located in the Rural Residential Zone. Abutters present: Edwin Levitt, Coombes, Kawejsza, Parisi, Bundzinski, Townsend, Greenwood, Glover, Day & Sabin.

Chairman MacLaren explained to the applicant there is a new member, an Alternate to the Board, that will be sitting in for Mark Vallone and asked Graham if he wanted to wait for a full Board to hear the application. Graham thanked the Chairman and opted to proceed with the hearing.

Rob Graham representing Realty Acquisitions LLC, came before the Board on the proposal. He introduced those that will also speak on the application. Attorney Peter Loughlin, Joe Coronati and Paige Libby Engineers from Jones and Beach and Architect Michael Keene.

Graham explained this is a project where a Variance for elderly housing was approved in 2004 for 160 units that never got built, and the proposed project before the Board is for 160 units. He explained the applicant has applied for multiple variances to consolidate single family homes to a fewer number of larger buildings and the additional height for this type of product which is moving toward the market place. He explained this limit the impact to the environment with all private roads and all private buildings.

Graham explained they flew a drone on the site up to the height of the buildings and videos to show neighboring houses cannot be seen from this site and took pictures from every address that abuts this property.

Coronati showed a plan explaining the left side of plan is from 2004/2005, and the right side of the plan is the new proposed plan with larger buffers. He explained they are looking to consolidate the design into four buildings to reduce the disturbance on the property. Coronati explained there are also larger buffers on Fogg Road and Pine and Pond. He explained the buildings area 220 feet off the right-of-way on Fogg Road, approximately 300 feet to the closest house, and on the Pine and Pond side approximately 380 feet further. Coronati stated the area that will be cut is just over 11 acres, 16 acres preserved as open space. Coronati explained the club house is closer to the buildings and an area behind the club house is a recreation area.

Architect Michael Keene showed a conceptual plan for four stories and underground parking, added a pitched roof to try and make it look more rural, which also adds height to the buildings. He explained each unit has a deck and exterior living space. There's a main front entrance with a bit of a tower look that leads to a stairway and an elevator, treating the building with different colors and textures to break up the mass of the height of the building, and clapboard vinyl siding. Keen showed the back of the building plan which will be treated the same as the front of the building. Next Keene showed the elevations plan and the relative heights which is 57.6 feet from the first floor to the top peaks; the zoning allows for 35 feet. He showed parking level a space for each unit and storage units, the elevator access to the basement, and the typical floor plan shows 10-2-bedroom units per floor. Keene explained these buildings are designed to building code and have sprinkler systems. These are wood frame building so anything that is structural has to have one-hour rating in the ceiling and wall assembly. There are three sets of stairs, where only two set of stairs are required some of that is for function, some for safety concerns because this is four stories high they have to be two-hour fire rated and based on meetings with the fire department there will be an open ceremonial stair to give access to the roof.

Chairman MacLaren moved, Sullivan seconded the motion for a role call of the Board if they needed further clarification on the court cases presented with the application. Bodge-no; Goodspeed-no; Dold-no; Sullivan-no; Chairman MacLaren-no.

Lieutenant Paul St. Cyr from the Epping Fire Department came before the Board to read his letter for the record regarding the safety of this proposal. St. Cyr explained the Epping Fire Department does not have a ladder truck, and this building has sufficient fire protection. He explained the closest fire departments with ladder trucks are Raymond and Exeter who would respond if needed.

Dold asked St. Cyr if the fire department is comfortable with the design of the building other than the ladder truck. St. Cyr responded he and the Chief are satisfied.

Sullivan noted if this goes to the Planning Board that the fire department should submit more certification of their belief that these structures will be safe. He stated he thinks the letter read by St. Cyr is written poorly, doesn't say anything and is almost negative. There's no conclusion at the end of it that this should be approved it only says what should be done. It's not signed by anyone it's just typed, so if this goes forward a request should come from Planning Board from the fire department better clarification that this is adequate and safe.

The applicant showed videos of balloon tests taken in the area to show this project will not be seen from abutting properties.

Abutter Lee Townsend questioned what the detention pond area means in regards to the water. Graham explained the detention pond is on the other side of the site and the detention pond is to basically catch the water. He stated there's an AOT permit where the state makes them control all rain water runoff.

Abutter Randall Greenwood stated he is happier with plan B, but is concerned if the board allows the variances what would stop the developer from continuing on. Chairman MacLaren explained the variances, if granted, are only for what is before the Board. Greenwood stated he is concerned with the sewer. Chairman MacLaren explained that will be taken care of at Water & Sewer and Planning Board. Graham explained he met with Dennis Koch of Water & Sewer and advised there is sufficient capacity with sewage, tight with water. This project may not start for another year but they may be able to reallocate to this site to borrow the capacity.

Heidi Dunham explained she bought her property four years ago and after attending the previous meeting she feels the new plan is best. She stated her largest concerns is traffic on Fogg Road and wildlife.

Chairman MacLaren questioned the old plan being able to exit onto Route 125 and with the new plan, all traffic will be using Fogg Road. Graham explained when they go before the Planning Board they will eliminate the outlet onto Route 125 as it will cause more traffic problems. He explained Fogg Road will be a slower, safer traffic point. Graham stated he sees this project as a "snow-bird" type of project with less traffic.

Abutter Richard Pelletier stated he approves of the new plan over the old plan.

Graham asked for a raise of hands from the abutters on which plan they prefer. All abutters appearing at the meeting prefer the new plan.

Bodge asked if the road throughout this project is a private road or town road. Graham stated all roads on the new plan are privately maintained roads, there are no town responsibilities, they will building a 24-foot width road, and will also be carrying the water mains out to Fogg Road with a hydrant on Fogg Road as well.

Sullivan questioned the Variance that was approved 15 years ago with no time on it, and that variance still stands. He questioned if this is approved how does the variance work. Howard explained there is a state law that a variance now for only two years and if not acted on the variance goes away, which the Town has adopted that statute. Sullivan questioned on the variance that was previously granted, are the variances two, three, and four already been approved in accordance with the multi-family, multi-structures and maximum distances. Howard explained they were given a variance to apply the elderly housing for this lot and the

elderly housing allowed for multiple dwellings and multiple houses on the property so now they're before the board to do the elderly housing, not the way the elderly housing requires. Graham explained they are compelled to apply anew. Part of the variance will be stipulated this is for over 55. Graham explained RSA (354-A:15) is a permit by the federal government says the age is 80-20%. He explained this is requirement the Attorney General's office monitor and report annually obligated to tract the ages at real estate transactions, which gets reported annually to the state. This is a state RSA 354-A, also the Selectmen are required to have a report as well.

Sullivan stated one thing in the layout from the previous request has advantages, and based on Attorney Loughlin's seems this change is being driven for marketability and the cost of the development. It will be cheaper to build it this way. He stated this looks like a one hundred and fifty-million-dollar development, and will increase the population in Epping five percent. He stated he doesn't know what the demands on water and sewer and how many over 55 will be approved for elderly exemptions.

Dold asked if this will be the first over 55 development. Graham stated it will not be the first.

Chairman MacLaren stated the Board will proceed to the Variance and Special Exception requests.

Variances

Article 2 section 7.2 and Article 6 section 6.10.2(a) building heights – these two sections allow for the building height of 35 feet and the applicant is requesting 57 feet.

1. The granting of the variance will not be contrary to the public interest.

Attorney Loughlin explained the granting of this relief will not alter the essential character of the neighborhood, in fact there will be significantly less impact to the site. It will not threaten the public health, safety or welfare of the community. The height, because it's isolated property, will have less impervious material and more open space.

Bodge added it wouldn't bother the neighbors as it's set back far enough. Attorney Loughlin stated in this particular location it works.

Bodge moved Goodspeed seconded the motion to approve Article 2 - Height. The motion carried 4 to 1. Sullivan voting against the variance would prefer to see something more from the fire department.

Howard suggested to the Board with each variance that is granted, a condition shall be attached that the project is for 55 years of age and over, and the project needs to connect to water and sewer.

Bodge moved Goodspeed seconded the motion to approve the stipulation, the project is for 55 years of age and over, and the project needs to connect to water and sewer. The motion carried unanimously.

2. The granting of the variance will not be contrary to the spirit or intent of the Ordinance.

Attorney Loughlin explained it lessens the congestion in the streets, secure safety from fires, panic and other dangers; provides adequate light and air; prevents overcrowding of land. The configuration of this proposal is reducing the footprint of the development on the land by pulling the development back from surrounding residences.

3. Substantial justice is done.

Attorney Loughlin explained if relief is not granted the site will be left with the approved project, same number of units, etc. A much greater impact on the land and less efficient neighborhood to construct and maintain.

4. The granting of the relief of the requested variance relief will not result in the diminution in value of surrounding properties.

Attorney Loughlin explained the nearest structure to be constructed as part of the proposal will be more than 250 feet from the nearest home on Fogg Road and the traffic on Fogg Road is not anticipated to be any greater.

Bodge asked with this project the surrounding house values would rise because there would be fire hydrants. Graham agreed.

5. The literal enforcement of the provisions of the Ordinance would result in the unnecessary hardship.

• **No Fair and Substantial Relationship:**

“RSA 674:33, 1(b)(5)(A) provides that for purposes of the variance criteria test, “Unnecessary Hardship” means that owing to special conditions of the property that distinguish it from other properties in the area.”

Attorney Loughlin explained given the unique circumstances impacting this particular lot, there is no far and substantial relationship between the general public purpose or the ordinance provision and the specific application of the provision to this property.

Graham added the literal enforcement of the ordinance would force a hardship on the land. Chairman MacLaren stated he doesn't feel it could be applied to the land. What special conditions are there with this property doesn't meet the hardship.

Attorney Loughlin explained this property is different than other properties in the district and with this ordinance that can have 160 units on this property. He explained they have officially located the units in a way that the height restriction is not necessary as applied to this project. Chairman MacLaren stated it doesn't prove the hardship that is being sought for the height when there is the ability to do so, it's saying that the applicant wishes to do it the matter to do it previously.

Goodspeed stated by doing the four stories the impervious area is reduced, the size of the retention pond is reduced. Chairman MacLaren questioned Goodspeed on what the hardship is. Goodspeed responded, money. Chairman MacLaren stated, money is not a hardship.

Chairman MacLaren polled the board to see if they would like to vote on each variance. The Board agreed with however the Chairman would like to run the meeting.

Article 2 section 7.3 – Permitted Uses in the Rural Residential Zone – Multi-family is not a permitted use in the zone.

1. The granting of the variance will not be contrary to the public interest.

Attorney Loughlin explained any variance must unduly and in a marked degree, conflict with the ordinance such that it violates the ordinance's basic zoning objectives. This proposal does not conflict with the ordinance. Granting a relief does not threaten the public health, safety or welfare. These are larger buildings, isolated and well designed.

2. The granting of the variance will not be contrary to the spirit or intent of the Ordinance.

Attorney Loughlin explained this is already approved for multi-family which continues to promote safety for fires in the development and positively impact surrounding properties.

3. Substantial justice is done.

Attorney Loughlin explained there's no gain to the public by saying you can't have multi-family in this area is offset by this proposal.

4. The granting of the relief of the requested variance relief will not result in the diminution in value of surrounding properties.

Attorney Loughlin explained this is a very large tract of land, by having multi-family on it, it will not negatively affect the neighbors and values won't diminish.

5. The literal enforcement of the provisions of the Ordinance would result in the unnecessary hardship.

Attorney Loughlin explained there are special characteristics, besides size and the way it's laid out with the vegetation on it, when the ordinance is applied to this property that there can't be multi-family on it, it's not fair and substantial relationship especially with the use is already approved.

Sullivan moved, Bodge seconded the motion to approve Article 2 section 7.3. The motion carried unanimously.

Article 2 section 7.8 – Permissible Structures – this zone only allows one permissible structure per lot. The applicant is requesting four separate buildings.

1. The granting of the variance will not be contrary to the public interest.

Attorney Loughlin explained the property is approved for many individual structures on this lot and the reconfiguration of those structures so that there are four (4) structures on the lot, under the circumstances, does not conflict with the Ordinance or violate the Ordinance's basic zoning objectives and will not alter the essential character of the neighborhood.

2. The granting of the variance will not be contrary to the spirit or intent of the Ordinance.

Attorney Loughlin explained this type of Ordinance provision is designed to prevent the average one (1) or two (2)-acre single family lot from being populated with multiple structures. Given the history of this lot and its size, topography and makeup, allowing four (4) buildings on this lot will not violate the spirit and intent of the Ordinance.

3. Substantial justice is done.

Attorney Loughlin explained there is no benefit to the public of not allowing the units on this lot to be configured into four (4) buildings and denial of the variance would result in an injustice.

4. The granting of the relief of the requested variance relief will not result in the diminution in value of surrounding properties.

Attorney Loughlin explained the proposed 160-unit neighborhood will essentially be an island surrounded by an ocean of green forest. The nearest structure to be constructed will be more than 250' from the nearest home.

5. The literal enforcement of the provisions of the Ordinance would result in the unnecessary hardship.

Attorney Loughlin explained the prohibition against multiple buildings on a single lot, as applied to this particular lot, does not have a fair and substantial relationship to the general public purposes of the Ordinance. The proposed use is a reasonable one.

Bodge moved Goodspeed seconded the motion to approve Article 2 section 7.8. The motion carried unanimously.

Article 6 section 6.10.3(a)- maximum Density – This article allows one (1) unit per 40,000 sq. ft. excluding wetlands. This lot would be roughly allowed 51 units, the applicant is requesting 160 units. The original 2003 approval was for approximately 160 units.

1. The granting of the variance will not be contrary to the public interest.

Attorney Loughlin explained the public interest regulates density and the lot is already approved for 160 dwelling units and this Zoning Ordinance simply allows the reconfiguration of the density and, therefore, is not contrary to the public interest.

2. The granting of the variance will not be contrary to the spirit or intent of the Ordinance.

Attorney Loughlin explained the granting of the variance relief allowing greater density than normally allowed in the Rural Residential Zone is not contrary to the spirit and intent of the Ordinance as the reconfiguration of the units will lessen congestion in the streets (many already proposed and approved streets will be eliminated) and will thus secure safety from fires, panic and other dangers and all utilities, etc. are provided.

3. Substantial justice will be done

Attorney Loughlin explained in that any loss to the owner (by not allowing these four (4) forty (40) unit buildings), is not outweighed by a gain to the general public and is thus an injustice.

4. The granting of the relief of the requested variance relief will not result in the diminution in value of surrounding properties.

Attorney Loughlin explained the granting of relief will allow four (4) forty (40) unit buildings which will allow the already approved 160 dwelling units to August 1, 2018 Page 7 be pulled back from Fogg Road and thus not visible from neighbors on the opposite side of Fogg Road and will pull the property back from Pine & Pond Mobile Home Park, where existing mobile home units are within 20' of the rear property line and the approved proposal would allow units on the subject property to be very close to the property line. The proposal would result in a buffer approximately the length of a football field between these units and the proposed buildings, thus there would be no diminution in the value of surrounding properties.

5. The literal enforcement of the provisions of the Ordinance would result in the unnecessary hardship.

Attorney Loughlin explained prohibiting the consolidation of the 160 dwelling units into four (4) forty (40) unit buildings under the circumstances of the makeup of this property, size of property and the existing approval of the property, causes the prohibition and the Ordinance to have no fair and substantial relationship between the general public purpose of the Ordinance and its application to its particular property. The proposed use is a reasonable use.

Bodge moved Dold seconded the motion to approve Article 6 section 6.10.3(a). The motion carried unanimously.

Special Exceptions

SPECIAL EXCEPTION #1 – ARTICLE 6, SECTION 6.10.2(b), MAXIMUM NUMBER OF STORIES TO PERMIT FOUR (4) HABITABLE FLOORS

Attorney Loughlin explained The Board of Adjustment may grant a Special Exception to any of the dimensional requirements relating to the number of stories, frontage, setbacks or off-street parking.

The ground coverage by the buildings, driveways, parking areas and other paved or impervious surfaces do not exceed fifteen (15) percent of the site and maintains the standards of public health, safety, welfare of the zoning regulations.

1. That the use is so designed, located and proposed to be operated so that the public health, safety, welfare and convenience will be protected.
 - This use is located in the center of a 47-acre tract of land with municipal water and sewer and its driveways and buildings have been deigned in consultation with the fire department to ensure adequate protection.
2. The use will be compatible with adjoining development and the proposed and the proposed character of the zone where it is located.
 - The proposed development will be a residential neighborhood with one driveway onto Fogg road and will preserve the character of the area with a large on-site buffer being preserved as open space.
3. That adequate off-street parking and loading is provided. Ingress and egress is so designed its to cause minimum interference with traffic on abutting streets.
 - The single access driveway to the property minimizes any interference with traffic on abutting streets.
4. That the use conforms with all applicable regulations governing the zone where located, except as may otherwise be determined for large-scale developments.
 - The proposed development conforms to all applicable regulations governing the zone where it is located.
5. That the applicant agrees as a condition to obtain Planning Board approval of the sit plan, prior to applying for a building permit.
 - The applicant agrees as a condition of the Special Exception to obtain Planning Board approval of the site plan.
6. If the application for SE is for the expansion of a non-conforming use.

- The proposed development is not an expansion of a non-conforming use.

7. For any dual use related special exception an added use must be a permitted use in the zone.

- The proposed development is not a dual use.

Goodspeed moved Bodge seconded the motion for Article 6, section 6.10.2(b). The motion carried 3 to 2, Sullivan and Chairman MacLaren voted against the motion.

SPECIAL EXCEPTION #2 – ARTICLE 6, SECTION 6.10.2(a), PARKING, TO ALLOW TWO (2) PARKING SPACES PER DWELLING INSTEAD OF 2.5 PARKING SPACES PER DWELLING

Howard explained the Planning Board saw this plan and stated there were a couple of the Board members who were not in favor of reducing the parking allowances.

Sullivan asked for more clarification on the parking. Graham explained there will be one parking space per unit in the building underground and one outside. Graham stated they have added guest parking.

1. That the use is so designed, located and proposed to be operated so that the public health, safety, welfare and convenience will be protected.

Graham explained the primary design is that they have a secure, heated parking area and serviced by elevators. There is also additional land if the Planning Board or Fire department require it.

Howard explained the Board could vote with the stipulation for the potential surplus parking area that was discussed at the meeting. She stated her only concern is that at some point in time this ownership will be condos and the Planning Board will have to deal with the condo association and not the developer, so something would have to be stated in the condo documents.

2. The use will be compatible with adjoining development and the proposed and the proposed character of the zone where it is located.

Graham explained this use is residential and over 55 and the adjacent parcel is also over 55.

3. That adequate off-street parking and loading is provided. Ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.

Graham explained this is designed primarily for underground parking also the additional parking is on the internal roads.

4. That the use conforms with all applicable regulations governing the zone where located, except as may otherwise be determined for large-scale developments.

5. That the applicant agrees as a condition to obtain Planning Board approval of the site plan, prior to applying for a building permit.

Graham, agreed.

6. If the application for Special Exception is for the expansion of a non-conforming use. The proposed development is not an expansion of a non-conforming use.

7. For any dual use related special exception an added use must be a permitted use in the zone. The proposed development is not a dual use.

Bodge moved Goodspeed seconded the motion to approve Article 6, section 6.10.2(a) with the stipulation of the potential surplus parking area to have 80 additional parking spaces. The motion carried unanimously.

JOSEPH BODGE/ROSELYNN'S ICE CREAM – Chairman MacLaren read notice for an Appeal from an Administrative Decision, relating to the interpretation and enforcement of the Zoning Regulations, Article 19, Section 2E & 4D. Parcel is located at 153 Exeter Road, Tax Map 030 – Lot 064 located in the Industrial Commercial Zone. There were no abutters present.

Joe Bodge came before the Board with his appeal and read his letter attached to his application for the record.

Bodge read the meaning of “balloon” from Webster’s dictionary. He explained when air is blown into this it is upright and taut and as soon as one of the tethers is undone it flops over. He stated if the blower is shut off it flops to the ground. Bodge contends this not a balloon and is something he started putting up over 12 years.

Goodspeed asked how this came about. Bodge explained Miss Howard drives by his property either on her way to work or way home on her own personal time and saw it out there and decided to make an issue of it.

Howard explained this is her route to and from work. She stated she receives messages over the weekends at times about properties that are in violation, driving around town she sees violations.

Howard read the Town’s Ordinance for signs, Article 19 section 2E. Howard stated with this article it shows that Bodge is advertising with this display. Howard referred to Article 19 Section 4D stipulates that blow-up signs and balloons are prohibited.

Dold asked the definition of a sign. Howard read Article 19 section 19.2.

Chairman MacLaren informed Bodge this is a sign, it’s an ice cream cone outside of his business where he sells ice cream. Bodge stated he’s being discriminated against. Chairman MacLaren disagreed with the discrimination.

Howard also stated temporary signs are not grandfathered.

Bodge asked that a full “regular” board hear this application.

Chairman MacLaren questioned how the board felt if they wanted to vote to continue or vote on the appeal before them.

Goodspeed stated he spent so much time on the previous application that he never had time to look at the application for the appeal.

Chairman MacLaren stated this is clearly a temporary sign and finds it typical of a sign and is in contempt of this ordinance, it’s a business that sells ice cream. If this is approved the Board is not following the spirit of the ordinance.

Dold stated he doesn’t know enough about it. He stated he’d like to know how everyone else is treated in town.

Chairman MacLaren advised every member to do their due diligence and be prepared for applications before the Board.

Sullivan moved Goodspeed seconded the motion to continue to August 22 at 6:00pm. The motion carried unanimously.

MINUTES OF MAY 2, 2018 FOR APPROVAL – MacLaren moved Sullivan seconded the motion to approve the minutes. The motion carried unanimously.

MINUTES OF MARCH 28, 2018 FOR SIGNATURE – The minutes of March 28, 2018 were duly signed by the Board.

ADJOURNMENT – Sullivan moved Dold seconded the motion to adjourn at 9:15pm.

APPROVAL NOTIFICATION: August 1, 2018 - Minutes of May 2, 2018 were approved. Minutes of March 28, 2018 were duly signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary