

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

**Wednesday May 1, 2019**

**PRESENT:** Don MacLaren, Kim Sullivan, Charlie Goodspeed, Rob Eldridge, Matt McNeely; Planner Brittany Howard.

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

**PLEDGE OF ALLEGIANCE TO THE FLAG**

**BAN DISSANAYAKE** – Chairman MacLaren read notice for a variance concerning Article 2 Section 2.3 permitted uses in the Residential Commercial Zone – to allow an inspection station and auto workshop. Parcel is located at 419 Calef Highway, Tax Map 016 – Lot 052 located in the Residential Commercial Zone.

Ban Dissanayake came before the Board with his proposal. He spoke of his approved business on Route 125 for a retail establishment to sell and rent farm equipment and attachments. He explained he would like to have permission to allow an inspection station and auto workshop. He was in the export business but the market has been shrinking. Dissanayake also stated her was having health issues and would like to turn the building over to Robbie who is a mechanic. By doing this, they will be able to pay the bills. It won't be any different than what is happening on the site now, it will just be automotive. Dissanayake spoke to his neighbors about the change of use, most had no concerns. Dissanayake spoke about the current traffic on Route 125 and how this site shouldn't be used residentially. If he used the property for any of the other permitted uses, it would be more intense than the use he is proposing. He spoke to a company regarding anti-freeze, they provide sealed containers and then come and collect it. He is currently using a waste oil heater in the garage.

McNeely asked about other variances given in the zone. Dissanayake stated that he meant that those were other uses permitted in the zone that would have more traffic. McNeely asked about Dissanayake statement that the volume of oil would be less since cars carry less oil than large equipment. McNeely has concerns that if his business is successful that he may actually have more oil. Dissanayake stated that he only has one bay to do work so it would be quite hard to work on that many cars.

Chairman MacLaren had Dissanayake go through the five criteria:

**1. The variance will not be contrary to the public interest;**

The following type of business are permitted as per the current zoning ordinance, Restaurants, Retail stores, Restaurants, Convenience Stores, Landscape, nurseries and garden supplies establishments, Light industry. The service station operation is well within the definition of any one of the above types of business and rather it will generate much less traffic and therefore it is not contrary to the public. It is well served to the community as there are few inspection stations available in Epping. The current permitted use of heavy equipment sales and rentals has not created any negative impact to the public as the current usage is no different than the requested usage.

McNeely stated that light industry is defined very clearly; no noise, glare, odor, dust, smoke, vibration detectable beyond the building. The spirit of the ordinance, they wanted a residential area but allow industry on 125. By having an open bay vs closed bay, could increase the amount of noise currently coming from the building. Dissanayake the fumes from large equipment is more than from a small car. He

has also spoke to abutters and the do not currently hear or smell anything from the site. He stated he is 150 from the industrial zone.

Howard stated that he is 150 from the Highway Commercial Zone which does not allow service stations.

Chairman MacLaren stated he is concerned about body work, and fluids leaking and ground water contaminations. Goodspeed asked about the body work and if they will have a spray booth. Dissanayake stated they are not in the business of body work but may to small touch-ups. MacLaren asked if they will paint a bumper or quarter panel. Dissanayake stated that they will not do big jobs like that.

**2. The spirit of the ordinance is observed:**

The zoning ordinance has made every effort to maintain the spirit of the rapidly developing route 125 which continue to create more services to the public. As the building in question is in commercial residential zone, the service station is much less industrial zone requirement than the current use of used equipment buying selling and rentals business. The zone spirit is to maintain the less traffic and there is no toxic waste is added to the residence around the building. We are currently doing the repairs for our own farm equipment that need maintenance to up keep the units for sale or rentals. The following work is carried out in the shop currently:

1. repair or replacement of engine, brake, or exhaust.
2. replacement of batteries, tires, seat covers, and window glasses, wipers, heaters and air conditions.
3. change of hydraulic oil, diesel, anti-freeze, brake oil or any other fluids as needed.
4. repair or replacement of cylinders, jacks, hydraulic lines, and fittings.
5. minor welding and body rust work.
6. painting as needed.

Please see the definition of the service station and the nature of the work is well within the current business and we will continue to maintain the 5 vehicles to be at the lot without any un registered vehicles to maintain the spirit of the zoning ordinance.

**SERVICE STATION:** means any building, structure, improvements, or land used for the replacement of any part, or repair of any part, to an automobile including, but not limited to the general repair, adjusting, overhauling, removing, replacing, rebuilding, or reconditioning of automobiles and engines, cooling, electrical, fuel and exhaust systems, wheel alignment and balancing, brake adjustment, relining and repairs, mufflers, batteries, tire services and sales, shock absorbers, installation of stereo equipment, car alarms or cellular phones, but excludes dismantling or salvage of automobiles, in whole or in part. No abandoned vehicles shall be stored on the premises.

Goodspeed stated he has concerns with number 5 as stated by Dissanayake, minor welding and body rust work which is not part of the definition for service station. This is what he has concerns with.

Dissanayake stated how can you have a service station without welding. If something is broken it has to be fixed. Goodspeed doesn't have concerns with welding more so the rust work because that has to be painted. Dissanayake stated that they will do minor painting.

Sullivan asked where the vehicles that are currently on site have been painted. Dissanayake stated that it was painted somewhere else.

McNeely stated that they were permitting this use that you would get a machine in fix it up and send it overseas. Then you asked permission to sell and rent them, which the Board approved. A service station is very different and you will have cars lined up waiting to get repairs. The ordinance is against this type of

business. Dissanayake stated if they are very successful, they will relocate the business since the site is so small. They are limited due to one mechanic and one bay. McNeely stated the Planning Board approved a different use and morphing it into a service station is a bit of a stretch.

Howard stated if he is granted a variance tonight, he cannot run the large equipment business anymore. He is only allowed on use on the property. The automotive use would be the only use on the property. Howard stated Dissanayake will have to pick which use he wants on the property.

Chairman MacLaren called for a recess to allow Dissanayake to speak to his business partner about what way they want to move forward, 6:42pm.

Chairman MacLaren called the meeting back to order at 6:47 P.M.

Dissanayake stated

**3. Substantial Justice is done:**

I bought this land that was in non-conformity standard due to size of the land for any establishment. However, last two years, with long effort to correct the legal description of the land is now declared to be 31,000 SQ. Feet as compared to originally described 15,000 Sq. feet.  $\frac{3}{4}$  of an acre is certainly large enough to have a service station for the community that would not only improve the quality of life and convenience but certainly support the spirit of the ordinance. If the establishment is currently not in any deviation to the approved use and granting the accessory usage would help to continue the business and add more facility to the community, rather than forcing me to close the business or declare bankruptcy. It is more tax revenue to the Epping town and more employment to the community while making this unusable piece of land being made to profitable addition to the community service while not increasing the authenticity of use.

**4. The values surrounding properties are not diminished:**

Dissanayake read a letter Peter Stanhope from the Stanhope Group LLC into the record. The letter is in the file for review.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

The current permitted usage will not be drastically changed by adding an inspection station with similar repairs. Last two years I have tried buying and selling equipment and it was found that buying and selling or rental equipment is seasonal and does not generate weekly income to take care of the overheads and to generate steady income to live. I have been behind the bank loans. The only way the place can run even for a while is to generate some regular income to pay the bills and pay back to the bank while Robbie will find the way to make his livelihood. Robbie is a certified auto inspector from state of New Hampshire and it is the quickest approach to meet the dire financial situation and certainly by granting the service station will not only provide an additional facility to the community but also zoning regulations will not be drastically infringed. Town has granted such variations based on the legitimate request from other business owners that are much away from the industrial zone. Hence this will not be the first variance ever granted.

Further, please note that I am not in a position to switch to any other permitted use due to lack of capital required and lack of skill set needed to succeed in any other business venture.

Finally, I urge, that this much needed facility to the community will certainly be very helpful to the community of Epping and I will be able to pay back to the bank loan that I am already in default. If I do not find the way to generate daily income, I have no other choice other than closing the business and bank will take over the place and Robbie will have no employment and I will have to declare bankruptcy. Please note that all other permitted usage in the zone has allowed much greater traffic, illumination and noise as compared to the service station. I sympathetically request this permission is granted and I personally guarantee that I will be in compliance with any restrictions that you may impose to maintain the spirit of the zoning ordinance and certainly make this once unusable property more economically viable.

McNeely stated he is sympathetic to his health and financial issues. A hardship is caused by the special circumstance of the property itself. Not because of the business is failing. Are you prepared to address that there are certain conditions of this property that cause an undo hardship not granting the variance is unfair? Dissanayake stated Robbie only has a certain skill set and any other permit uses requires a lot of capital. Also, the lot is small and not much else can be done on the lot. McNeely would be more sympathetic if Dissanayake owned the lot and the zoning was changed. McNeely stated that Dissanayake bought the property knowing its limitations.

Chairman MacLaren opened the meeting to the public.

Sharon Mendum, 421 Calef Highway, they have had no issues with the owners. They actually helped clear snow this winter. Noise is not an issue. They have a shared driveway and she has no problem with the proposed use. There is no smell or noise from the site.

Howard read a letter from Karen Leduc, 5 Jamie Circle, for the record, stating she is for the proposal.

Howard read a letter from Nathan Kamensky, 10 Heeding Road, for the record, stating he is against the proposal.

Dissanayake stated he will address Kamensky's issues.

Chairman MacLaren closed the meeting to the public.

McNeely spoke about justice. Does granting the variance go against the interests of the abutters and is this use creep?

Eldridge stated he has some issues with how the site is currently being used and what the Planning Board approved. Dissanayake stated that trailer is from the owner who was dropping off a piece of equipment, it is not his trailer.

Goodspeed has concerns if he plans to get into painting. He has no concerns with small spray paint fixes.

Sullivan asked about the approvals from the Planning Board. Howard stated that there was to be no work done outside the building, no storage of liquids on site, all vehicles shall be stored on the concrete pad or paved area, truck and empty trailer, all work is on rented equipment or equipment purchased from the business, this is not a service station.

Goodspeed motioned Sullivan seconded to approve the variance with the following condition: painting limited to small touch-ups i.e. scratch and small areas, no full panel type painting i.e. fenders, full doors, bumpers, or hood. Motion carried 3-2, with Eldridge and MacLaren voting against.

**MINUTES OF FEBRUARY 20, 2019 FOR SIGNATURE** – the minutes of February 20, 2019 were duly signed.

**MINUTES OF MARCH 27, 2019 FOR APPROVAL AND SIGNATURE** – the minutes of March 27, 2019 were approved and duly signed.

**ADJOURNMENT** – McNeely moved Sullivan seconded the motion to adjourn at 7:20 pm. The motion carried unanimously.

Respectfully submitted,

Brittany Howard  
Town Planner

---

Don MacLaren

---

Rob Eldridge

---

Kim Sullivan

---

Matt McNeely

---

Charlie Goodspeed