

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

Wednesday July 24, 2019

PRESENT: Don MacLaren, Charlie Goodspeed, Kim Sullivan, Rob Eldridge, Matt McNeely; Alternate Robert Blanchette; 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

CHERYL & MIKE LEE – Chairman MacLaren read notice for an Appeal from an Administrative Decision Per RSA 676:5, the Board of Selectmen’s denial at their meeting on June 3, 2019, regarding driveway regulations width greater than 25 feet. Parcel is located at 19 Pike Street, Tax Map 029 – Lot 156-001 located in the High-Density Residential Zone. Abutters present: Susan Bouchard.

Mike & Cheryl Lee came before the Board on an appeal from the denial by the Board of Selectmen regarding driveway regulations. Mike Lee explained he is looking for a waiver on his driveway on his house that was built over a two-year period. He explained when he came in to pull the permits, he was told to hold off on the driveway permit until he knew what the house would look like. He stated he submitted a picture of the driveway and when the site guy went to pull the permit, he was he was told the permitting process was done just to go ahead and pave it and when he arrived home it was paved. He explained when he went to get the occupancy permit, which was in May of this year, is when he found out there was a problem with the driveway.

Sullivan stated looking at the application, originally the applicants were both residents at 15 Pike Street. Mike Lee stated that is correct since 2000. Sullivan asked if 19 Pike Street was sold to Cheryl.

Howard explained the lot was involuntary merged by the Town and Mike unmerged them, and in order for the unmerge Mike couldn’t own both properties because owning both properties it would be a conforming lot so Cheryl had to own one lot Mike owns the other lot.

Sullivan asked how the confusion happened with the driveway permit going from 25 feet to 50 feet. Mike explained his site guy put the gravel down which was there for two years, then his site guy went to the Town to pull the permit to pave the driveway and was told the permit was done but not paid for, he was told the permit was all set and could pave it.

Sullivan questioned that the contractor didn’t know there is a 25-foot maximum requirement. Mike Lee stated that his driveway is actually 38 feet with turn-ins that are six feet on each side.

Goodspeed asked if at any time was there a permit submitted that said greater than 25 feet in width. Lee responded, no.

Howard stated she's not sure who the "they" is that said a permit was not needed because a permit is always required with an application, it was filled out and was in the folder. Goodspeed asked what the width was on that permit. Howard responded, 25 feet. Goodspeed questioned at no time did the Town have something showing 38X12. Howard responded, no. Howard explained another permit was pulled in May showing the 50-foot driveway after it was built. Goodspeed asked who made the decision to go to the 50 feet. Lee stated it was the contractor.

McNeely asked if it was graveled. Lee stated it was graveled since the day it was started.

Goodspeed asked Lee this was not your decision to go to 50 feet? Lee stated it was not.

McNeely asked what is the maximum waiver given in town. Howard stated since 2010 it was 30 feet.

Sullivan asked why there is a regulation for max 25 feet. Howard explained it's what the Planning Board's decided with the Selectmen.

Lee explained to the Board that he walked the neighborhood and measured some of the driveways. He stated the house at 43 Mill Street is only three years old and their driveway is 33 feet, 25 Elm Street is 50.8 feet, 64 High Street is 43 feet. Howard explained these homes are older and grandfathered.

Chairman MacLaren asked where the driveway starts to taper six feet on each side of the 38 feet. Lee showed a photo of his driveway to the Board.

Chairman MacLaren read a letter from Newman Family Revocable Trust into the record.

Abutter Susan Boucher stated she doesn't mind how big the driveway is but has an issue with the water run off onto her property. Her whole driveway floods and now seeps into her basement. She stated there's no culvert and fills half of her driveway, and has never had it this bad.

Goodspeed asked if this is since they started building only since the impervious material went in. Boucher responded it didn't flood her whole driveway until this house was built. Boucher asked if a culvert could be put in or could Lee fill in her driveway to help with the problem.

Goodspeed difficult situation should be able to work out something and asked Lee if he could do anything to help. Lee stated he doesn't know what could be done and explained that whole area has flooded over the last 20 years that he's lived there.

Eldridge explained after driving by Lee's house and seeing the driveway, he feels there should have been some type of variance initially for this because it fits in with the house and the purpose of the use with the three-car garage. He stated the drainage seems to be a continuous problem on the street.

Goodspeed stated he wasn't comfortable with the information before the Board and suggested a continuance.

McNeely disagreed with the continuance. He explained the appeal before the Zoning Board is the Board of Selectmen made a decision and Mr. Lee feels it was incorrect. He stated this board needs to decide whether or not the facts that the Selectmen based their decision on were correct. McNeely advised the drainage situation in that area is not in the Zoning Boards purview. McNeely commented that among others, one of the issues that the Selectmen raised was that the contractor knows the ordinance.

Sullivan moved Goodspeed seconded the motion to continue the hearing. The motion for a continuance was withdrawn.

Sullivan moved Chairman MacLaren seconded the motion to Grant the waiver for maximum total width of 38 feet in the right-of-way. The motion carried 4-1, with 1 abstention by Goodspeed.

FIRST FRUITS DEVELOPMENT, LLC C/O DANIEL CASTINE -- Chairman MacLaren read notice for a Variance concerning Article II, Section 6.2 (Lot Dimensions and Setback Requirements). Parcel is located at 97 Jenness Road, Tax Map 028 – Lot 013 located in the Residential Zone. Abutters present: Ricky Southers, Kevin Delay and Sean Gagnon.

Bob Stevens and Jim Turner representing first Fruits Developers, along with Dan Castine and Jay Clemente, came before the board to ask for a variance for frontage on the proposed lots. Turner explained part of the proposal is to create conservation land that would be owned by the Town while working on this project. Turner noted the shape of the property being narrow at the south of the property and wider at the north of the property.

Chairman MacLaren questioned the piece of land that the applicant mentioned to be in conservation land, if they were selling that property to the Town or planning to keep it in open space. Turner stated it will be Town ownership, then there's easement for ownership from the development into the property.

Chairman MacLaren asked Howard if this gets transferred to the town does the Town get to choose if it's conservation or open space. Howard responded the developer gifts it to the town and that is between the developer and conservation commission.

Turner showed a plan with two lots fronting Jenness and 12 lots fronting the access road and what's limiting the large part of the frontage is in the back part of the property there's limitations that result in the layout before the board.

Turner explained in the letter provided, this request is to provide some public benefit and is intended to a site that's contaminated towards remediation closure, and intended to provide some access to the open space area and intended to take what was an auto salvage facility and build single family homes. It's also consistent with the zoning ordinance.

Goodspeed asked if they met with the Conservation Commission. Turner state they did meet with Conservation who were in favor of the proposal.

Abutter Steve Hale 3 Hackett Court stated there was a problem with the property, and asked what will happen to the pumping station that cleans the water. He stated the property that will have the road through it is where the contamination was.

Howard explained they are able to develop the property and that DES will be involved. She stated if there's contamination found the State will work with them.

Abutter Correen Hale informed the board that the State has red flagged all the wells in this area; approximately 164 wells. Howard reiterated DES will look at that problem. Howard also explained there's a fund that has been set up through the gas companies that caused the MBTE problems, to remediate the problems.

Abutter Kevin Delay stated his water has been contaminated as well, adding he's not for any more development.

Abutter Sean Gagnon 92 Jenness Road inquired about the homes on the left-hand side or the proposed road if they will be part of the new development. Turner explained all the structures that are there now will be taken down, the mobile home on the corner will stay.

Abutter Ricky Southers 93 Jenness Road stated he's in favor of tearing up those trailers on the left-hand side.

Dan Castine explained his grandmother still lives on the property and stated the property was turned over to his uncle with the intention to take care of his grandmother which he never did. He explained he jumped in too deeply from a financial standpoint he doesn't have the funds or the means to do what he needs to do, so in order to justify it he needs to get as much out of it as he can. He stated the property is an eye sore and needs to be cleaned up.

The Board addressed the five criteria:

1. The variance will not be contrary to the public interest because:

Turner stated this proposal benefits the public interest, and is similar to the frontage or existing lots in surrounding areas. The Zoning Ordinances speaks achieving the density that is provided, therefore will not be contrary to the public interest.

2. The spirit of the ordinance is observed because:

Turner stated the ordinance speaks to its purpose and referred to his answer in question 1.

3. Substantial justice is done because:

Turner stated it does not cause harm to anyone that outweighs the benefits of the property owner, and denying the variance would not benefit the public. Granting the variance will benefit the public by enhancing environmental remediation of the contamination of the site; therefore, both the owner and public will benefit if the variance is granted.

4. The values surrounding properties are not diminished:

Turner stated this will redevelop a former contaminated site in to a residential neighborhood which will enhance the environmental remediation of the property and include new open space that's accessible to the public.

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

Turner explained this will result in fewer lots and limits the size of the lots and the unnecessary hardship is created because the entrance to the property presented unusual hardships on how to organize the parcels making the property subject to special conditions that distinguish it from surrounding properties.

McNeely asked the applicant to elaborate on the entrance to the property where the road comes into the development. Stevens explained where the road comes into the development, they have to limit the houses in that area. McNeely referred to the three houses, lots 1, 14 & 2 all have adequate frontage, but somehow the entrance is restrictive and was pointed out that this was a special condition that needs attention for the variance.

Turner explained if there were no restrictions on the site boundaries and the access road is limited to 1200 linear feet it would all add up. Because the lots are narrow it pushes everything else down the road further where the site is larger, and now there are restrictions by the length of the road and the wetlands so now the lots become narrow and taller.

McNeely explained that that part of the criteria it has to be proven that this lot is substantially different from surrounding lots, and asked if this was part of their process.

Turner explained they looked at the lots in surrounding neighborhoods that have frontages similar to this lot.

McNeely referring to the two roads to the west of this proposal stating they have minimum frontage, and asked what the other two roads are that the applicant indicated were examples.

Turner responded Crown Court and Gable Drive. Howard explained McNeely is talking about the two roads that come off Jenness.

Chairman MacLaren addressed a comment on whether or not the town takes in more tax revenue is a consideration for how variance considerations are made. The Chairman stated he is not comfortable that the applicant is looking for more than 50 percent of the lots, and again looking at it with a financial reason, which is not a hardship.

Goodspeed noted, looking at lots 7, 8, 9, 10 they are steep lots he has a problem with that. He stated he would feel better if it would be possible to merge lots 9 and 10 into one lot and lots 7 and 8 into one lot.

Sullivan stated looking at this request for a variance and doesn't see where his request for the general public interest or that substantial justice is done. He agreed with the Chairman that the hardship cannot be based on financial reasons.

Sullivan moved Eldridge seconded the motion to deny the request for the variance. The motion carried unanimously.

MINUTES OF JUNE 5, 2019 FOR APPROVAL & SIGNATURE – Goodspeed moved McNeely seconded the motion to approve the minutes. The motion carried 4-0-1, Goodspeed abstained.

ADJOURNMENT – McNeely moved Eldridge seconded the motion to adjourn at 8:00 pm. The motion carried unanimously.

APPROVAL NOTIFICATION: July 24, 2019 - Minutes of June 5, 2019 were approved and duly signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary

Don MacLaren

Rob Eldridge

Kim Sullivan

Matt McNeely

Charlie Goodspeed