

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

Wednesday March 4, 2020

CONVENE: 6:00 P.M.

PRESENT: Don MacLaren, Kim Sullivan, Rob Eldridge, Matt McNeely; Alternate Robert Blanchette; Planner Brittany Howard; Secretary Phyllis McDonough.

PLEDGE OF ALLEGIANCE TO THE FLAG

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

MICHAEL PAUL -- Chairman MacLaren read notice for an Equitable Waiver concerning RSA 674:33-A. Parcel is located at 2 Paul Lane, Tax Map 021 – Lot 001/002 located in the Residential Zone. Abutters present: Town of Epping.

Michael Paul came before the Board. He explained purchased the property four years ago and approximately eight months ago decided to build a residential house on the property. He explained when he had the foundation certified he found out from the civil engineer who told him he built in the open space setback, and stated he's before the board for an equitable waiver.

The Board and the applicant addressed the criteria, and applicants' comments for the Equitable Waiver, which is attached to the application.

- (a) That the violate was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value. See file for applicant's responses.

Howard explained the Town was unaware of this issue until Mr. Paul brought it to the Town's attention.

The Board had no questions or comments.

- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agreed representative, but was instead caused by either a good faith error n measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority. See file for applicant's responses.

The Board had no questions or comments.

- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. See file for applicant's responses.

McNeely questioned if there is a building on the open space. Howard stated there is a house to the left but more up front.

- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost or correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. See file for applicant's responses.

The Board had no questions or comments.

Eldridge moved McNeely seconded the motion to approve the request for the Equitable Waiver. The motion carried unanimously.

PEARSON 03833 LLC -- Chairman MacLaren read notice for a Variance concerning Article III Section, Schedule I. Parcel is located at 84 Exeter Road, Tax Map 030 – Lot 080 located in the Industrial/Commercial Zone. Abutters present:

Joe Coronati came before the Board explaining this property is an odd shape of land that was subdivided over a decade ago to split off industrial land off Route 27 off a residential portion on Ladd's Lane.

Coronati explained the 6.3-acre parcel on 27 already has one building that was constructed and exists today, called Glass Pro. Coronati explained the plan from 2009 shows two buildings with a shared driveway and the owner asked what the option was for the second building. Coronati explained to the owner it would require variances to make it happen and if there isn't a variance a smaller building would have to be built 26 feet wide, 100 feet long without any variances and would have to be a condominium, not a subdivision.

Coronati explained there is over 1800 feet of frontage on 27 and frontage on Ladd's Lane and would be looking for a setback relief in the front of 94 feet from the centerline where it requires 100 feet, and a rear setback which is a 50-foot setback would be proposing 34 feet that allows building a similar size building 50'x100' industrial building which is 5,000 square feet.

Coronati explained there is a leach field on the side of the property where the second building is being proposed. Now that there is sewer and when water is finalized the leach field can be removed to tie into sewer and water.

Coronati explained the third variance request is for lot size, there is 6.3 acres and the lot requirement is 3 acres; stating unfortunately when the lot line is drawn in to have the existing building meet the setback there is only have 2.89 acres on the right line instead of the 3 acres that

is required. Coronati explained they are over 130 feet from the closest residential building and would accept any provision that there's no further development on the remaining portions of the property.

The Board and applicant addressed Article 3 Section I, front building setback –

1. The variance will not be contrary to the public interest because: See file for applicant's responses.

Sullivan asked if this was originally part of parcels on Ladd's Lane. Coronati explained this was land was owned by Leanne Campbell. Sullivan inquired when it was subdivided so there would be enough acreage. Coronati explained, at that time, they didn't know how it would be developed. Sullivan asked if this couldn't add land to the back properties to come up with the acreage. Coronati stated the back is owned by a different entity.

Blanchette asked if the subdividing is strictly to create another lot, not a business expansion need. Coronati responded, yes.

2. The spirit of the ordinance is observed because: See file for applicant's responses.

The Board had no questions or comments.

3. Substantial justice is done because: See file for applicant's responses.

The Board had no questions or comments.

4. The values surrounding properties are not diminished because: See file for applicant's responses.

McNeely asked that the property received variances approximately 10 years ago and because it was a non-conforming use when it was granted it doesn't mean that surrounding properties values won't be diminished because of this variance. Coronati stated the neighboring properties are apartments and they're all working together at this point to bring the utilities up and have had no issues with future development.

Howard stated this is also in the wetland buffer and the application also has to get relief from the Conservation Commission and Planning Board. Howard explained the Conservation Commission has to work with the applicant on this lot as they are being taxed on it, because of the approval by a past Planning Board.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: See file for applicant's responses.

Eldridge stated this seems as if the hardship is self-inflicted

Abutter Maderios questioned if the Board is just talking about the apartment buildings or talking about putting up another structure. Coronati explained the application is just for another building next to Glass Pro. He explained the apartments are already approved and under construction.

McNeely noted it was most likely that the plans were presented back in 2009 to Planning Board and the Conservation Commission was to have one lot there.

Chairman MacLaren agreed with Eldridge's statement that the hardship looks self-imposed, and doesn't think that should create a non-conforming lot. He stated it would be different if it wasn't self-imposed. The Chairman also concurred with McNeely on his comment regarding the intent by the Planning Board and Conservation Commission.

Blanchette also agreed that the only purpose to subdivide is to create another business, and doesn't see the hardship.

Sullivan questioned if the board is restricted from creating a non-conforming lot. Howard explained if there's a hardship it's one thing but there's six acres the building wouldn't meet the setbacks which would make the lot more non-conforming. She stated it's a six-acre lot on paper, but with the wetlands those six acres can't be used.

McNeely moved Sullivan seconded the motion to deny the request for Article 3 Section 1, building setback. The motion carried to deny the request.

Howard explained the request is to not create the lot, but would like to go forward to have a second building on the lot. She stated the proposal now would be to get relief from the dimensional setback, not from the wetland buffer.

Variance for Lot Area Requirement (Article III, Section Schedule 1)

1. The variance will not be contrary to the public interest because: See file for applicant's responses.

Coronati explained the front setback is 100 feet from the center line on Route 27 and the proposal is for a 94-foot setback, allowing for adequate parking.

Sullivan asked if it is possible that this variance is not needed because the building will be smaller. Coronati explained the lot size request does not have any correlation to the front or rear setback and if the building were smaller, he would only need to go to the Planning Board and Conservation Commission.

2. The spirit of the ordinance is observed because: See file for applicant's responses.

The Board had no questions or comments.

3. Substantial justice is done because: See file for applicant's responses.

The Board had no questions or comments.

4. The values surrounding properties are not diminished because: See file for applicant's responses.

Coronati added the building is slightly deeper and larger but the same width if they were to do a 20x100 foot building. This is the commercial zone so it's a conforming use.

The Board had no questions or comments.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: See file for applicant's responses.

The Board had no questions or comments.

Chairman MacLaren moved Eldridge seconded the motion to approve the Variance with the caveat going to site plan for the building on the plan shown to the Zoning Board. The motion carried 3 to 2, Chairman MacLaren and Eldridge voting against the approval.

Variance for rear building setback (Article III, Section Schedule I)

Coronati explained the rear setback in the Industrial Commercial zone is 50 feet and the request is to have a 34.3-foot setback, which would allow a rectangular building of 50'x100'.

1. The variance will not be contrary to the public interest because: See file for applicant's responses.

The Board had no questions or comments.

2. The spirit of the ordinance is observed because: See file for applicant's responses.

The Board had no questions or comments.

3. Substantial justice is done because: See file for applicant's responses.

The Board had no questions or comments.

4. The values surrounding properties are not diminished because: See file for applicant's responses.

The Board had no questions or comments.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: See file for applicant's responses.

The Board had no questions or comments.

Blanchette and McNeely both agreed and stated it's one thing to be six-feet back from a highway compared to a wetland, it's another issue and an existing residential area.

Coronati stated he withdraws the request for the rear setback variance request, without prejudice.

STEVEN KANEB -- Chairman MacLaren read notice for a Variance concerning Article III Section, Schedule II. Parcel is located at 38 Ladd's Lane, Tax Map 030 – Lot 050 located in the Industrial/Commercial Zone. Abutter present: Margaret Cabral.

Steve Kaneb came before the Board to explain his request for the Variance. He explained he and his wife bought this property approximately 12 years ago. He explained he has been working, along with others, to bring water & sewer to this property and anticipating that to be completed this year.

The Board and applicant reviewed the five criteria

1. The Variance will not be contrary to the public interest because: See file for applicant's responses.

Sullivan questioned if these building are currently in the Industrial Commercial zone. Kaneb stated all of these structures were built as residential structures and used as residential structures.

Howard stated because this is Industrial Commercial, residential is not an approved use in the zone. She stated if they were still being used as residences now, but because they were vacant for a period of time, they are no longer grandfathered in.

McNeely asked if there is a restriction on the number of residences. Howard stated not in industrial commercial zone.

Chairman MacLaren explained, if approved, the variance would not be for the whole property, only for these specific residences.

2. The spirit of the ordinance is observed because: See file for applicant's responses.

McNeely the spirit of the ordinance is to make that part of Epping Industrial Commercial. Kaneb responded he's not asking for the property to be rezoned as a residential use, it's intended to be developed as a mixed-use. And feels this property is uniquely suited to this mixed use and because they're on Ladd's Lane on not on Route 27 part of the property they are naturally conducive to bring used residentially.

3. Substantial justice is done because: See file for applicant's responses.

The Board had no questions or comments.

4. The values surrounding properties are not diminished because: See file for applicant's responses.

The Board had no questions or comments.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: See file for applicant's responses.

McNeely one of the buildings be handicap accessible. Kaneb responded yes. McNeely asked if there are people already lined up to take residence there. Kaneb explained there are a couple organizations looking at it for the best blend of residences on the property.

McNeely moved Blanchette seconded the motion to approve the Variance for only the five structures in question on the site. The motion carried unanimously.

MINUTES OF JANUARY 22, 2020 FOR APPROVAL & SIGNATURE – The minutes of January 22, 2020 were approved and duly signed.

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

APPROVAL NOTIFICATION: March 4, 2020 - Minutes of January 22, 2020 were approved and duly signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary