

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

MINUTES

Wednesday July 1, 2020

**Zoom Meeting: The Town of Epping Zoning Board of Adjustment will meet online on Wednesday, July 1, 2020 at 6:00 PM via Zoom Meeting software.
<https://us02web.zoom.us/j/84446278863?pwd=UmhoaXlxZEJoQldWT0RVanJ1eXp2dz09>**

Meeting ID: 844 4627 8863

Password: 405959

Phone Number: 1-646-876-9923 US (New York)

CONVENE: 6:00 P.M.

PLEDGE OF ALLEGIANCE TO THE FLAG

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

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

LEWIS & IRMINA BOND – Brittany Howard read notice for a Special Exception concerning Article 6 Section 6.6 – Expansion of a non-conforming structure. Parcel is located at 252 Calef Highway, Tax Map 023 – Lot 035 located in the Highway Commercial Zone. Abutters present: There were no abutters present.

Lewis Bond came before the Board to explain the request to put a small addition approximately 384 square feet expansion on the flower shop at 252 Calef Highway.

Article 6.6 requirements for Expansion of Non-Conforming Structures and how proposed addition meets the requirements of the Article.

- 1. The proposed expansion must intrude no further into any setback area than does the existing structure.**

The proposed expansion will not intrude any further into the front or rear setback areas than the existing structure and will not intrude at all into the left setback area. The proposed addition would be over 200' from the right property boundary.

- 2. The expansion must have no further adverse impact on the view, light and air of any abutter.**

All of the abutters are commercial properties.

The BP gas station at 242 Calef Highway has no view of the existing/proposed structure and their light and air will not be affected due to the distance from the new addition.

The Joker Fireworks store at 9 Elm St. does have a view of the left/rear of the existing/proposed structure but has no windows or in-use exterior doors facing that direction. The proposed addition would be further away from 9 Elm St., not closer, and would not impact their light or air.

The abutter at 268 Calef Highway, the Pond Side Motel, has no structures directly adjacent to the area of the proposed expansion and their view, light and air will not be affected. The closest structure at 268 Calef Highway is located several hundred feet away through trees and brush.

3. The expansion must not cause property values to deteriorate.

The expansion will have a positive impact on property values due to the improved aesthetics of the new structure and freshly resurfaced driveway/parking areas. The new addition will, of course, increase the value of the property and increase property tax revenue.

Sullivan asked if there any plans with the garages that are there. Bond stated he does not see any plans to reduce the number of garages.

4. The expansion must not impede existing rights of access or egress.

The proposed addition will not impact any access to or egress from the property. No abutter has any existing right of access or egress through this lot.

5. That portion of the proposed expansion, which will intrude into the setback, must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection.

Since the entire building at 252 Calef Highway is situated in either the front, left or rear setback area, according to Section 1.2 of the Zoning Ordinances, the allowed square footage of the addition would be limited to that of the original structure and so the proposed addition is limited to 384 square feet.

Blanchette asked if it is correct that the existing building is encroaching on the setback. Mr. Bond stated that is correct. Blanchette questioned by doubling the building to the right the percentage that's going to be encroaching is going to be the same as the current footprint. Mr. Bond stated that is correct.

6. In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.

Access from Calef Highway will remain unchanged. There are 2 driveways into the property from Calef Highway.

The proposed addition will not have an adverse impact on traffic flow along that stretch of Calef Highway. The business nature of Floral Expressions Boutique, a flower and gift shop, does not experience the same volume of traffic as that of a convenience store, gas station, or restaurant. The amount of traffic entering and exiting 250/252 Calef Highway is miniscule

when compared to other businesses along that stretch of Calef Highway, namely the Irving gas station, the BP gas station and Telly's Plaza.

Parking will be improved through the addition of extra parking spaces and additional maneuvering room. The area encompassing the additional parking spaces and maneuvering room should not result in any change to water runoff.

Lighting would be improved with the addition of building mounted fixtures, as necessary, to better illuminate the parking area, which will not impact any of the abutters and would be 'dark sky' compliant.

Safety will be improved with the creation of handicapped access to the structure and associated handicapped parking space.

The proposed expansion will not negatively affect any safety or visibility features of the existing structure. The existing entry to the original building, currently a set of pre-cast concrete stairs will be removed and the door blocked off, therefore improving the overall safety of the original building.

Criteria for Special Exception was addressed:

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.

A. The use will have no adverse effect on public health, safety, welfare, or convenience. The use will remain a permitted use within the Highway-Commercial zone; a retail business. The use will be located where there is an already existing retail business and products sold by the business, a retail flower shop, do not result in any harmful emissions or waste that would impact public health, safety, or welfare. Public convenience will remain unaffected. Traffic along Calef Highway should not be impacted as ingress and egress to/from the property will remain unchanged using the existing driveway. Public safety will be improved by relocating the main entrance to grade level, making it handicap accessible and removing the current entrance and concrete stairs.

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

A. The current use, a retail business, is completely compatible with all adjoining development in the area as the property is completely surrounded by retail businesses of varying types and sizes. The surrounding businesses are: gas station/convenience store (2), barber shop/hair salon (2), restaurant, fireworks store, motel, optician, tax preparation, car wash, The American Legion Hall and a former auto body shop.

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.

A. With the addition of 3 more parking spaces in front of the building, one being reserved for handicap parking, adequate off-street parking will be maintained. Ingress and egress to/from Calef Highway through the existing driveway will remain unchanged.

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

A. The use of the addition, an expansion of an already existing retail business, conforms with all applicable regulations governing the Highway-Commercial zoning district.

5. That the applicant for a Special Exception agrees as a condition of the Special Exception to obtain Planning Board approval of the site plan (if required for the development in question), prior to applying for a building permit.

A. Applicant will submit, if required, a site plan to the Planning Board for approval prior to applying for a building permit.

6. That if the application for a Special Exception is for the expansion of a Non-Conforming use, the granting of such exception will not adversely affect abutting or nearby property values, and that the Non-Conforming Use is not hazardous by its nature.

A. N/A. Application is not for 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. (Adopted by the Town of Epping March 12, 1996).

A. N/A. Application is not Dual Use related.

Chairman MacLaren opened the hearing up to any abutter questions.

There was a 45 second pause in case a resident wanted to call in.

McNeely question if this is granted could the applicant come back in a year and double this space. Howard stated he could, and it would depend on the board on that time.

Eldridge stated he has the same concerns stated by McNeely.

McNeely move Blanchette seconded the motion for Special Exception concerning Article 6 Section 6.6 – Expansion of a non-conforming structure. **Roll call; McNeely, Blanchette and Chairman MacLaren all voting aye; Eldridge and Sullivan voted nay. The motion passed 3 – 2.**

Sullivan voted nay, because the applicant is not making any concession for the four garage units.

ALICE ADAMS – Brittany Howard read notice for a Variance concerning Article II Section, 7.8 – Supplementary Use Regulations, Permissible Structures. Parcel is located at 50 Dearborn Road, Tax Map 014 – Lot 018 located in the Rural Residential Zone. Abutters present: There were no abutters present.

Joe Coronati explained this is a 14-acre lot that was previously subdivided and the owner as since subdivided off four parcels and are owned and lived on by family members. He explained another family member who would like to build a house on the 14-acre parcel. Coronati explained the zoning issue is the Town only allows one home per lot and there is another house on that parcel owned by Alice Adams. He explained the family member would like to build the new home behind Alice's. He explained there will be a time frame on that front house to be removed that will be a condition of approval. He explained the time frame will be ten years and when that house is removed which will be put on the deed restriction to be enforced.

CRITERIA FOR Variance for Supplementary Use Regulations – Permissible Structure (Article II, Section 7.8):

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

The first step in the ZBA’s analysis is to determine whether granting the variances is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to *Malachy Glen Associates, Inc. v. Town of Chichester*. Upon examination, it must be determined whether granting a variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” *Id.* “Mere conflict with the zoning ordinance is not enough. *Id.*

In considering whether variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives,” *Malachy Glen, supra*, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality... Another approach to (determine) whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

Zoning was adopted in Epping and all communities for various reasons years ago. One of the many reasons is overcrowding of homes and having sufficient space for a septic system and well (public health and safety). This property is unique because it is 7 times larger than the minimum lot size for this part of Town. By having two homes on this 14-acre property, we will not be overcrowding abutters, both homes will or do meet the setbacks. There will be plenty of space for another septic system and well and the situation is only temporary and will be deed restricted to this affect.

2. The spirit of the ordinance is observed because:

Granting the variance will not alter the character of the locality. The spirit of the ordinance is to allow the orderly development of the land of Epping. Dearborn Road is a rural country road and by allowing a relative to construct one house on this lot, with the restriction that the double wide will be removed in the near future, would allow this large lot to continue to be in the family ownership and will only have one house on it for the long term.

The other option would be to construct a roadway off of Dearborn and create a couple of lots in order to pay for the cost of the roadway. Although allowed by the ordinance, we feel that allowing one additional house to be constructed on this 14-acre property in a rural part of town would be more in keeping with the spirit of the ordinance and preserving the character of the street.

Blanchette stated he is concerned with this variance only being temporary bringing up a legal issue this is all fine in concept but if something happens with either resident and the property ends up in an estate, who is obligated to tear down that first house. Chairman MacLaren stated he does not feel that is the purview of this board.

McNeely questioned if the board grants the variance based on a condition that it is deeded and it does enter into a discussion?

Howard explained this has occurred on another property in town where a sunset clause was put in place and it was recorded in the deed that it needed to be removed so the property wouldn't be non-conformant so when the transfer of ownership, they found it was in non-conforming. It then had to tear the structure down and had to have the Board of Selectmen sign off on it to have the title cleared.

Sullivan commented this is very receptive to doing whatever it is to be done for a deed restriction that protects the town for whatever may happen, and if at the time when someone else owns it and the town has to incur expenses as long as the town is protected. He stated in his opinion this should be reviewed by Town Council that the applicant is willing to do deed restrictions.

Howard explained if this is approved it could become part of the condition of approval and that Town Council will review this.

The Chairman asked who would pay for this. Howard explained it would come out of the Zoning Board's budget or the applicant. Howard explained if approved, it will be approved with the contingency that this needs to be looked at by Town Council anything that is being proposed by the applicant.

Chairman MacLaren noted his concern would be the cost that this would cost going to Town Attorney and coming out of the ZBA's legal budget.

Howard explained she spoke with Coronati who explained the applicant would come up with the document and the Town Attorney looks it over. The applicant then pays the legal cost.

3. Substantial justice is done because:

If "there is no benefit to the public that would outweigh the hardship to the applicant" this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508 (2011). That is, "any loss to the (applicant) that is not outweighed by a gain to the general public is an injustice." *Malachy Glen*, supra at 109.

If the variance was denied, there would be substantial loss to the applicant. The goal of the family was to keep these properties in their name and live there together. Family currently lives on Lot 18 (subject property), 18-1, 18-2 and 18-3, which were all lots subdivided from this property in order to provide building lots for family members. In the future, this lot would once again have only one house on it and would remain in the family. By granting this variance, we feel that substantial justice would be done.

4. The values surrounding properties are not diminished because:

The existing house on the property is not currently helping with abutting property values. However, the new house that Jordan is proposing to build, would be a welcome addition to the street and the neighborhood. It would also sit farther back, keeping the rural character of the street intact. We feel that the temporary situation with both houses will not cause any issue either since the property is so large and wooded.

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

A. Special Conditions distinguish the property from others in the area:

The property is a large at 14 acres and has minimum frontage so no more lots can be subdivided off of it without a roadway construction. Dearborn is a dirt road with a rural character and we would like to keep it that way by just adding one additional home on this oversized lot.

B. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance:

The general public purpose of the Ordinance is to allow reasonable use of one's property while protecting the public welfare of the surrounding area. In this instance, the ZBA must balance whether what the owner can build on the property without relief would be better served by allowing variances. The restriction of a second home on the property makes complete sense when you have small properties. This situation, very much like the one at Verdant Pastures, would be multiple homes on one oversized lot and in this case would be a temporary situation. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

C. The proposed use is reasonable:

If the use is permitted, it is deemed reasonable. *Vigeant v. Hudson*, 151 N.H. 747 (2005). The proposed use of the property is permitted by right in this location and consistent with the overall intent of the Ordinance. As such, and for all of the reasons stated above, the proposed use is reasonable.

The proposal is reasonable as it would allow a family member to stay in Town and build a nice new house on a lot that has an older mobile home on it. The property is plenty large enough to temporarily accommodate two houses and the owner is not looking to over develop the property or create a new roadway.

Howard explained she spoke with abutter Arthur Snyder and explained the application with the conditions. She stated that abutter had no objections.

There was a 45 second pause in case a resident wanted to call in.

Sullivan move McNeely seconded the motion for the Variance with conditions: The mobile home on the site shall be removed in 10 years, this will be stipulated in the deed which will be reviewed by Town Council at the expense of the applicant. After the home is removed, the following will happen: septic tank shall be dealt with in accordance with NHDES rules and local regulations, and the pad for the mobile home shall be removed.

Roll call; McNeely, Blanchette, Eldridge and Sullivan all voting aye. Chairman MacLaren voting nay. The motion carried 4 – 1 to approve the Variance.

MINUTES OF MARCH 4, 2020 FOR APPROVAL & SIGNATURE – Sullivan move McNeely seconded the motion to approve the minutes. **Roll call; McNeely, Blanchette, Eldridge, Sullivan and Chairman MacLaren all voting aye. The motion carried.**

ADJOURNMENT – Eldridge moved McNelly seconded the motion to adjourn at 8:00 pm. The motion carried unanimously. **Roll call; McNeely, Blanchette, Eldridge, Sullivan and Chairman MacLaren all voting aye. The motion carried.**

APPROVAL NOTIFICATION: July 1, 2020 - Minutes of March 4, 2020 were approved and will be signed at the next meeting.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary