

**TOWN OF EPPING, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING
Epping Town Hall
OR
Join Zoom Meeting
MINUTES**

Tuesday January 18, 2022

Epping Television is inviting you to a scheduled Zoom meeting.

**Topic: Zoning Board of Appeal Jan 18, 2022 @ 6pm
Time: Jan 18, 2022 06:00 PM Eastern Time (US and Canada)**

**Join Zoom Meeting
<https://us02web.zoom.us/j/83033546718?pwd=SHN3NklKUWluUUJhVnBvL242c21rQT09>**

**Meeting ID: 830 3354 6718
Passcode: 458251**

PRESENT: Matt McNeely, Kim Sullivan, Rob Eldridge, Kevin Martin; Planner Kellie Walsh; Secretary Phyllis McDonough.

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

CONVENE: 6:00 P.M.

PLEDGE OF ALLEGIANCE TO THE FLAG

ALL PHASE PAVING/JOE GALINHA OF BRICKYARD REALTY, LLC – Chairman McNeely read notice for a Variance concerning Article 3, Section Schedule II, (Permitted Uses) to allow a residential structure in an industrial commercial zone. Parcel is located at 123 Exeter Road Tax Map 030 – Lot 067 located in the Industrial Commercial Zone.

Joe Coronati, representing Joe Galinha who owns All Phase Paving and lives at 165 Exeter Road, came before the Board with the proposal. He explained Galinha bought the property at 123 Exeter Road, mainly because it has a house on it, with the idea to subdivide it and build another house. Coronati explained to Galinha this is an industrial commercial zone, not allowing residential uses; this site is surrounded by residential homes. Requesting a variance allowing to build a house on the newly subdivided lot and keep the existing house which has enough land area, 6.8 acres and 570 feet of frontage.

Coronati stated wetlands that have been delineated and if approved the applicant would go before the planning board for the subdivision.

The Board and the applicant addressed the criteria and applicants' comments for the Variance:

1. The variance will not be contrary to the public interest because: See file for applicants' responses. No questions or comments by the Board members.

2. **The spirit of the ordinance is observed because:** See file for applicants' responses.
No questions or comments by the Board members.

3. **Substantial justice is done because:** See file for applicants' responses.
No questions or comments by the Board members.

4. **The value of surrounding properties are not diminished because:** See file for applicants' responses.
No questions or comments by the Board members.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:**
See file for applicants' responses.
No questions or comments by the Board members.

Chairman McNeely opened the public hearing. As there were no abutters, the Chairman closed the public hearing.

Martin asked if this meets the lot size requirements in the zone. Coronati responded it does meet all lot size requirements. He explained the haven't fully surveyed the property, the tax map and deed show it's over six acres and forty feet if frontage.

Eldridge moved Martin seconded the motion to approve conditional on the Planning Board decision. The motion carried unanimously.

46 MARTIN ROAD, LLC – Chairman McNeely read notice for a Variance from Article 3, Section 3.8.7(d) Parcel is located at 46 Martin Road Tax Map 036 – Lot 023 located in the Industrial Commercial Zone. Abutter Michelle Curtis

Attorney Manzelli, Alexa Carpenter, James Prito and Austin Turner were present for the meeting. Attorney Manzelli explained the proposal is for a 315-unit work force housing project.

Attorney Manzelli explained, for the record, documents that were submitted with their application:

- Cover letter outlining the details
- The application form, deed, tax card, conceptual plan showing where the wells will go on the property
- A letter dated November 23, 2021, on the Town of Epping letterhead, from the Water & Sewer Commission

Attorney Manzelli stated they had many, many meetings with the Water & Sewer Commission where they were told there is no water from the Water & Sewer for this project which is why the application is before the Board.

Attorney Manzelli stated under town law, water is to be provided by a municipal source and the municipal does not have the water at this time.

Alexa Carpenter gave an overview what it means to have workforce housing and submitted a document explaining just that, which is part of the file.

Chairman McNeely explained briefly the applicant is before the board for one specific reason, requesting a variance to find water for their property. He advised the Board to keep the discussion within the scope of the request.

Sullivan questioned when the applicant says “workforce housing” is the applicant stated the Town is 388 units short, and is there a dollar amount of what workforce housing supposed to be valued at. Attorney Manzelli stated there a couple definitions in the state law, “housing that is intended for sale and which is affordable to a household of an income of no more than 100% of the median income for a four-person household by the metropolitan area or county in which the housing is located as published annually by HUD.”

Martin explained he did some research and came up with 30% or less of 100% of the median income. Attorney Manzelli stated what is affordable per RSA 674:58 (1) means a housing with a combined rental and utility cost or combined mortgage loan, debt services, property taxes and required insurance that do not exceed 30% of a household’s gross annual income.

Sullivan question the concept is a workforce housing project with only 20% of it to be workforce housing how can that be. Attorney Manzelli explained the definition of workforce housing projects doesn’t have a minimum number of units; it needs to be economically viable to interest the buyer to do the project. She explained the funding for this project is private and it’s paid for by having market rate units.

Walsh explained part of the reason for not defining how many units a workforce housing project needs to have is because the town of Epping does not have density requirements for workforce housing.

Eldridge questioned hearing sales and mortgages; these are apartments? Attorney Manzelli responded is full rental apartments, some at workforce housing and some at market rates.

The Board and the applicant addressed the criteria and applicants’ comments for the Variance:

Attorney Manzelli explained she will be combining criteria #1 and #2.

1. The variance will not be contrary to the public interest because - 2. The spirit of the ordinance is observed because: See file for applicants’ responses.

Sullivan stated he does think it is contrary to public interest as it doesn’t meet the criteria adding approximately 700 new residents to the town, which is 10% growth in the school, etc. Chairman McNeely reminded Sullivan that it is not the Board’s responsibility to indicate that the project is in the public interest it’s whether or not the project is in the public interest it’s whether or not granting the variance for no town water is against the public’s interest. Sullivan stated it is in his opinion this is adding something adverse to the public interest to allow the project to go forward. Sullivan noted the Town’s people voted this area to be an industrial area and with this project it’s allowing residential is not in the spirit of the ordinance.

Chairman McNeely questioned the attorney, when this part of the ordinance was written public water and sewer shall be available to the site. He noted that one interpretation might be that the Town wanted to ensure that any projects such as this, the Town’s water supply system also will grow and take benefit from the development in town, and that is the actual spirit of the ordinance. He questioned the response from Attorney Manzelli in the first two criteria, the spirit of the ordinance is not actually covered so he asked the attorney for some defense on the spirit of the ordinance and how this variance should be granted.

Attorney Manzelli responded that there's nothing that indicates that that was the intent of the ordinance. She stated she feels the letter from Water & Sewer Commission covers this. She explained they are specifically saying that this project should be granted a variance to have its own onsite water. Attorney Manzelli explained another public purpose that private community systems are required to provide safe drinking water, which is another purpose to this requirement which will be achieved in this proposal.

Attorney responded to Sullivan's comments that this use, a multi-family workforce housing is an allowed use that is permitted as the town voted. The decision tonight is whether the project should be permitted to have water on site.

Martin stated, in his opinion, that the town voted for this because they felt they couldn't handle the amount from the Town's water sources.

Attorney Manzelli explained the conversation with the Water & Sewer commission is that they did say they probably could handle it but not at this time and that's why they wrote they are supportive of this variance.

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

Martin asked if the question was brought to the Water & Sewer Commission to see if they could provide water to just the workforce housing units.

Attorney Manzelli responded there were different alternative were proposed, but doesn't believe that was one of them. She explained this property is so far removed they would have to drill under route 101 to pipe into the system.

Austin Turner from Bohler explained in the discussion with the Water & Sewer Commission, what became apparent if the request was for only one gallon, the town couldn't even provide that. He explained the state has changed the standards and increased the performance expectation for the water supply system. Turner went on to explain the different standards, it creates a hardship and the need to pursue different alternatives.

Sullivan explained the way he understands this is the state has required the Town to shut down Hoar Pond and the wells that the Town does have are not adequate to replace it under the current guidelines. Sullivan stated his concern is, if the applicant connects to their own water supply and something goes wrong, then the town is left with the problem. Turner explained this would be a private water supply system that DES would regulate; the landowner would be responsible not the Town.

4. The value of surrounding properties are not diminished because: See file for applicants' responses.

Chairman McNeely questioned how the abutters can feel assured that drawing so many gallons from the aquifer, wouldn't affect their wells.

Attorney Manzelli explained water systems are connected and if this site is overdrawing from their water supply and an abutter is having an adverse effect on their water supply then it would be soon that this site would have an adverse effect on their water supply.

Austin Turner explained it could take a year for all the testing to be complete and get permits from DES.

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

Martin stated he would like to see a study that they would be able to pull that water to help with this decision.

Chairman McNeely explained it's not in the purview of the board, although the board could put a condition if approved.

Eldridge stated he does not see this as a hardship there's other purposes to use this land that wouldn't require this much water or have that much impact on the demands on water. Turner brought up the issue between Epping and Fremont and truck traffic on the road. He stated it was contemplated early on to do something industrial. Eldridge stated 20 trucks a day is a lot less than 500 cars a day.

Attorney Manzelli added that this use is a permitted use and a reasonable use and when Epping is not meeting its fair share of workforce housing, that nudges the request even closer to finding a hardship in this case. It's hard to think of what use an industrially zone property this big that can be done with no water any use would need this variance. She noted they have met their burden for an unnecessary hardship, no water for a permitted workforce housing.

Eldridge stated the town voted on this to be allowed, but the Town also voted there must be municipal water.

Sullivan stated the conditions that are on this property now were here last year prior to the property being sold, and as stated by Attorney Manzelli, this is a viable, legal use for this property doing 315 units on 46 acres is overreach in creating some of the hardship, he stated he does not see that as a hardship.

Attorney Manzelli referred to and read from a document she presented to the board, RSA674:59(1) explaining where the town has to provide their fair share, which is part of the file. She then referred that same document that talks about reasonable and realistic opportunities.....the ZBA and its deliberations...as it states in RSA674:33(1)(b)(5). Attorney Manzelli explained the workforce housing state law intersects directly with the analysis on hardship, which matters when talking about "reasonable use."

Eldridge responded to what Attorney Manzelli's read from the RSA's, stated that only 20 percent is workforce housing.

Chairman McNeely opened the public hearing, and asked that those in favor speak first.

Residents via Zoom:

Nico Zottos 19 Ginaco Road, in favor

Michele Shore 21 Ladd's Lane, in favor

John DiFrancesco 250 Prescott Road, in favor

Greg Dumont 10 Apple Way, in favor

Mr. Ravenell 30 French Road, in favor

Chairman McNeely opened the public hearing, and asked those not in favor.

The Chairman read for the record emails received by the Planning Department on 1/18/21:

Audrey Perry, in favor
Matt Prairie, in favor
Nicholas Smith, 117 Main Street, in favor
Thomas Bullock, in favor
Dan O'Neil, O'Neil Cinemas, in favor
Colin McDonough, 96 Main Street Unit 4, in favor

Chad Curtis, 10 Fremont Road, against the proposal

Attorney Manzelli stated she is excited about the work force housing and need a variance for water, their position is they have met more than the burden of proof. The Attorney stated all she's heard to not grant the variance are irrelevant to the five criteria, they all relate to a distaste for workforce housing or for increasing the population of Epping by 10 percent, not related to is the public interest carried forward by allowing safe drinking water to be drawn to be brought on site. Attorney Manzelli stated those concerns do not relate to the hardship of the property.

Chairman McNeely closed the public hearing.

Martin stated at this time the town is having issues with water.

Chairman McNeely stated for the record regarding the spirit of the ordinance he feels he presented a reasonable argument that the Town didn't want to miss out on having to approve for such a large development being built, a lot of what has been heard has no bearing on the board's decision whatsoever.

Chairman McNeely reopened the public hearing.

Resident Mike Yergeau 36 Long Meadow explained the only challenge he had is with Austin Turner from Bohler is they did the same draw down test at the Colt Lane project that he represented and there was the same MBTE issues once those houses were built. Yergeau stated the only consideration is if this request gets approved then the MBTE travels, the town has to incur that cost of taking over the infrastructure.

Yergeau explained the town is about to put in 24,000 feet of water line in because of the MBTE issue so that should be a consideration, the state is paying but the town is going to have to monitor. Turner stated this is wider spread and can't speak to that issue.

Attorney Manzelli stated what she believes they will be drawing from is an over burden aquifer that's shallow and localized, so she does not believe they are talking about an aquifer system that has any geological connection to where that subdivision is.

Yergeau responded if that has to be proven because if it does happen the town should not have to take that cost on.

Attorney Manzelli explained if this project is approved it will be DES's job to look at this issue.

Chairman McNeely closed the public hearing.

Sullivan stated he takes offense to Attorney Manzelli's comments about the board not showing support to workforce housing we are averse to it. He stated his in his opinion that is totally false, and the point that one development is increasing the population by 10 percent is something the Board should be concerned about.

The Board addressed the five criteria:

1. The variance will not be contrary to the public interest because - 2. The spirit of the ordinance is observed because:

Sullivan stated he believes it is contrary to the public interest.

The Chairman stated this is the one criteria, the spirit of the ordinance, could be a problem.

Sullivan concurred with the chairman on the spirit of the ordinance.

Martin stated is not met because it's increasing the town's population by 10% and will also increase the water needs.

3. Substantial justice is done because:

The Board had no comments

4. The value of surrounding properties are not diminished because:

The Board had no comments

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

Chairman McNeely stated he feels this meets the criteria of hardship because of the lack of water and where the property is located.

Sullivan doesn't feel it meets the criteria.

Eldridge moved Chairman McNeely seconded the motion to approve the variance. The motion failed 3 -

1. Eldridge, Martin and Sullivan voting to deny. Chairman McNeely voting to approve.

Martin explained his reason for denying the request is the water issue and would like more research to make a good decision regarding substantial justice. Martin added he feels his reasons were during discussions.

Sullivan stated he does feel it's contrary to the public interest or the spirit of the ordinance.

KEVIN MARTIN – Chairman McNeely read notice for a Variance concerning Article 2, Section 6.2 (Lot Dimension and Setback requirements) to build an attached 2-story garage addition and remove the current garage. Parcel is located at 91 Cote Drive Tax Map 023 – Lot 150 located in the Residential Zone.

Kevin Martin came before the board with his proposal to construct an attached two-story garage, approximately nine feet from the property boundary. He explained his property has a steep hill and a well on one side, a septic system in the back and the road close to the front keeps him from building this any other way.

Chairman McNeely asked if the existing garage will be taken down. Martin responded yes; it will be.

Sullivan questioned where the garage will be built if that is on a town right-of-way. Martin responded the town looked at that and stated it would cost too much to bring it up to town standards.

The Board and the applicant addressed the criteria and applicants' comments for the Variance:

1. The variance will not be contrary to the public interest because: See file for applicants' responses. No questions or comments by the Board members.

2. **The spirit of the ordinance is observed because:** See file for applicants' responses.
No questions or comments by the Board members.

3. **Substantial justice is done because:** See file for applicants' responses.
No questions or comments by the Board members.

4. **The value of surrounding properties are not diminished because:** See file for applicants' responses.
No questions or comments by the Board members.

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

Sullivan asked if there's enough frontage. Martin stated almost 500 feet of frontage.

Chairman McNeely opened the public hearing.

James Gatto 56 Delaney Road stated he has no objections to the request as it will enhance the property.

The Chairman closed the public hearing.

Eldridge stated he likes that the neighbor has no objections, and that the buffer is there.

Sullivan moved Eldridge seconded the motion to approve the Variance. The motion carried unanimously.

MINUTES OF 11/23/21 FOR APPROVAL & SIGNATURE – Martin moved Eldridge seconded the motion to approve the minutes. The motion carried unanimously.

APPROVAL OF THE 2022 ANNUAL REPORT – Martin moved Eldridge seconded the motion to approve the 2022 annual report. The motion carried unanimously.

APPOINT VICE CHAIRMAN – Martin moved Sullivan seconded the motion to appoint Eldridge to sit as Vice Chairman. The motion carried unanimously.

ADJOURNMENT – Eldridge moved Martin seconded the motion to adjourn at 8:15 pm. The motion carried unanimously.

APPROVAL NOTIFICATION: January 18, 2022 - Minutes of November 23, 2021 were approved and signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary

Matt McNeely

Kim Sullivan

Rob Eldridge

Kevin Martin