

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

April 19, 2022

PRESENT: Brian Reed, Kevin Martin, Kim Sullivan, Cassaundra Hojaboom, John Horne, Jr.; Planner Kellie Walsh; Secretary Phyllis McDonough.

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

PLEDGE OF ALLEGIANCE TO THE FLAG

46 MARTIN ROAD, LLC FOR THE FOLLOWING – Chairman Reed read notice for a

1. Variance under Article 6, Section 6.10(2)(d) – To permit three habitable stories whereas a maximum of two habitable stories are permitted.
2. Variance under Article 3, Section 3.6.12 – To permit building height excluding architectural details of 60 feet and including architectural details of 64 feet whereas 35 feet and 40 feet are the maximum permitted.
3. Variance under Article 7, Section 7.4.2 – To permit 25% lot coverage whereas 10% maximum lot coverage is permitted.
4. Special Exception under Article 7, Section 7.4.6(2) – To permit multifamily in the Aquifer Protection District.
5. Request for Rehearing in which the Board denied a variance under Article 6, Section 6.10(2)(d) to permit four habitable stories whereas a maximum of two habitable stories are permitted.

Parcel is located at 46 Martin Road Tax Map 036 – Lot 023 in the Industrial Commercial Zone.

Hojaboom moved Martin seconded the motion that the proposal is not a regional impact. Motion carried unanimously.

- 1. Variance under Article 6, Section 6.10(2)(d) – To permit three habitable stories whereas a maximum of two habitable stories are permitted.**
- 2. Variance under Article 3, Section 3.6.12 – To permit building height excluding architectural details of 60 feet and including architectural details of 64 feet whereas 35 feet and 40 feet are the maximum permitted.**
- 3. Variance under Article 7, Section 7.4.2 – To permit 25% lot coverage whereas 10% maximum lot coverage is permitted.**

Attorney Manzelli provided an overview of the three variance requests and referenced at the meeting on March 30, the five variance criteria were covered in great detail and in the interest of time, she does not plan to repeat the same information.

The Board agreed to this approach.

Manzelli shared information from the guidebook.

Copies were offered to the Board however the Board stated they would not be accepting new information. Manzelli read from the guidebook “to the extent any zoning ordinance prescribes minimal dimensional and density standards for residential use, compliance with RSA 674:59 may require a municipality to revisit its zoning ordinance to ensure that a rational nexus in fact exists between the true character of the land and the minimum dimensional and density standards required under those ordinances” She reiterated the purpose of reading the excerpt is because it is the primary reason the applicant is before the Board. For the dimensional requirements – habitable stories, height, and lot coverage.

Manzelli highlighted the importance of the Board being a “pressure release valve”, issuing variances when the applicant has provided information that meet the variance criteria when you consider the workforce housing requirements.

Manzelli referenced the change.org petition with many signatures in support of the project.

Manzelli noted they have also submitted a request for rehearing for the denial of 4 habitable stories.

Manzelli emphasized the applicant and team have heard the concerns and comments raised by the board related to habitable stories and as a result have made significant revisions to their plans to try and accommodate the feedback received. These revisions have resulted in an additional building being added to the site which increases the lot coverage and the economic cost; however, it allows the applicant to ask for 3 habitable stories and a 53-foot building height as opposed to 4 habitable stories and 64-foot building height.

Manzelli verbally amended the variance for height to 53 feet.

Manzelli provided visuals to the Board showing the street level view of the 53-foot building height.

Manzelli offered another handout to show an existing project the developer has done to the Board however the Board refused stating they are not accepting new information.

Manzelli said the Board should confer with legal counsel on refusing information

Chairman Reed stated the Board has already received a lot of information in the applicant’s initial submittal and it is unnecessary to receive more information. He polled the Board on how they wish to proceed.

The Board agreed they do not need new information about an existing project.

Manzelli reiterated the applicant heard the Board’s comments and concerns related to the height and stories and has revised the plans and required variances to reflect the changes made by the applicant to accommodate the comments raised.

A video was played providing a visual overview workforce housing in Epping.

Austin Turner provided an overview of the new building layout and 25% lot coverage area. He stated the revised plans adjusted for the 3 habitable stories and 53-foot building height. This results in a sixth building. He said the core of the project remains the same visually.

He noted the open space (naturally vegetated area) is about 75% of the site. The minimum open space requirement in the industrial commercial district is 35% per the zoning ordinance. The relief being sought (25% lot coverage) is due to the aquifer overlay district, but the provisions of the ordinance state you may increase the coverage provided you can demonstrate that you have achieved the requisite stormwater

management standards, namely, stormwater infiltration and meeting the State standards for stormwater treatment design and attenuation. This project will meet or exceed the state and local standard for treatment, groundwater recharge and attenuation.

Sullivan said he understands what the applicant is representing but thinks they should proceed on with the application criteria.

Martin said the applicant is giving an overview/visual of the variance request for lot coverage.

Sullivan said this board is considering the 25% lot coverage variance which is relative to the aquifer protection district. The overview and reference to the 35% area is not needed.

Hojaboom agreed.

Chairman Reed asked if the Board would like to proceed.

Manzelli said the applicant is done with their presentation unless the Board would like the applicant to start specifically going through the Variance criteria. She reiterated a large amount of the criteria was covered at the last meeting but they are happy to review again if the Board would like.

Sullivan said he expects to see a presentation from the Fire Department regarding their views on the three stories.

Manzelli said the Fire Department testified last meeting that they were agreeable to four stories.

Sullivan said the applicant only went to the Fire Department that day and had discussion. The Board did not receive anything in writing or construction drawings or fire suppression. The Chief had nothing in writing that was agreed upon between the fire department and the applicant. He said he is looking for the fire department to say, in writing, the way the buildings are constructed is satisfactory.

Walsh said the fire department is able to provide input during the public hearing process tonight.

Sullivan said he would like to hear from the fire department prior to reviewing the five criteria.

Walsh said the information being requested by Sullivan regarding the fire departments comments on building construction and safety is done during the planning board process.

Sullivan said if the Board is voting on the habitable stories, he would like input from the fire department.

Walsh said the fire department is present this evening and may speak during the public hearing.

Chairman Reed asked if the Board wanted to proceed with the five criteria (again) or if they feel they have enough information from the March 30 meeting to proceed with the public hearing and decision. Martin clarified the variances being discussed currently are related to habitable stories, height, and lot coverage.

Sullivan said he would like to hear from the Fire Department.

Hojaboom said the criteria were covered at the last meeting and doesn't need to be repeated.

Chairman Reed opened the public hearing.

Chairman Reed read written comments received against from Town of Fremont, Stephen Bettencort 16 Debbi Lane, Hunter Phelps 21 Robinson Ct Fremont NH

Written comment received in favor from Mark Fougere Fougere Planning & Development, Jacob Horton 24A Old State Road, Jordan Hoton 22 Chandler, James Butterfield 2 Pike St, Todd Bonner 14 Ironwood Dr, Nico Zottos 19 Ginaco Rd, Christopher Callahan Exeter Health Resources, Rob Grinnell 96 Main St, Audrey Perry 46 Water St, Matthew Hurteau 85 Coffin Rd, Cody Plante 39 Dearborn Rd, Tod Monroe 8 Molly Way.

Mary Hosel, 1 Fremont Road spoke in opposition stating concerns about the visual impacts and the aquifer.

Michelle Curtis, 10 Fremont Road spoke in opposition stating concerns about the building heights, lot coverage, and the aquifer.

Scott Barthelemy, 154 Martin Road Fremont NH spoke in opposition stating concerns about height and the use.

Roland Red Oak Hill Road, raised concerns about the aquifer sustainability and the fire department's ability to provide services to this type of development.

Dan McCombs 22 Church St, asked how this project is different from the canterbury commons project.

Craig Safo, 18 Dorothy spoke about general concerns related to traffic, population and Epping's character.

Diane Macpherson, 11 Sawmill Lane Fremont NH, spoke in opposition and raised concerns about visual impacts, traffic, noise.

Harley Volkers, 95 Pleasant St, spoke in opposition and raised concerns about traffic, Epping's character, and the affordable housing aspect.

Richard Cooper, North Road Fremont NH, spoke in opposition and raised concern about the size of the variance requests, traffic, water.

Laura Greenhalgh, 77 Brown Brook Fremont NH, spoke in opposition and raised concern about the wildlife, water, traffic and density.

Jeremy Robosa (59 Pleasant Street) spoke in favor. He spoke about the height of the project being necessary to accommodate the density and keep this number of units in one area as opposed to being sprawled across town. He is in favor of the density being condensed on this site and location as opposed to sporadic dense developments across town. He is in favor because he is seeking this type of housing as a recent graduate who cannot afford a single-family home right now.

Trevor St. Laurent St, spoke in favor. He spoke about the need for this type of housing and the impacts not being as great as some may think.

Erna Horton 22 Chandler spoke in favor of the project.

Deputy Chief Lombardo Epping Fire said the fire department will not be speaking for or against the project, but will discuss what their expectations are related to life safety. He said the department does not have the resources to address a fire that may take place at this building height because they do not have a ladder truck. There has been discussion with the applicant about acquiring a fire truck. There are safety concerns related to the ability of the department to handle this development based on the resources they currently have available. The code requirements will be reviewed by Lt. St Cyr once the project reaches the Planning Board. It is not something the department reviews at the zoning board stage.

Sullivan asked if they had any finalization related to approval or disapproval of the project.

Lombardo said not at this time. No construction drawings or plans have been reviewed at this time. The project is conceptual at this time, until they go before the planning board. The fire departments responsibility is to ensure life safety which will be done once plans are being reviewed.

Roland Tremblay, 95 Red Oak Hill, asked about the number of units and bedrooms.

Turner said there will be a mix 1 and 2-bedroom units.

Hojaboom confirmed 64 units will be workforce housing.

Manzelli said Canterbury Commons is not a workforce housing project which is what makes this application different. Workforce housing applications receive special consideration under state law. Manzelli emphasized the compromise the applicant has made related to height and habitable stories. She said the project will not be visible except for when you enter the driveway to the site. Related to the comments made about the town taking time to consider what the town 'wants to be like' Manzelli said the town has done that by adopting the zoning ordinance and master plan. She said this is a permitted use in this zoning district and the master plan references support for affordable housing, housing diversity, meeting fair share of workforce housing. This project fit within the vision.

Manzelli said through the public comments it has been said that a lot of the people who would live in this development, already live in Epping.

Manzelli said the Board cannot deny the project based on the type of people who may choose to live there.

Manzelli said the lot coverage 10% limit is not related to the aquifer district. She said in this zone you can only have 10% coverage. This is an example of the law discriminating against workforce housing development and the 'fix' for that is to grant the variance.

Manzelli referenced the Elm St and Ladds Lane projects which are examples of density and height variances being granted. The Elm St project was granted a variance for three habitable stories.

Manzelli referenced 672:13E which discusses how citizens benefit from a balanced supply of housing.

Manzelli said school enrollment is beyond the scope of this application, it is for the Planning Board. She referenced a study done by Mark Fougere which states it is estimated 16-35 students will be a result of this application. she said the applicant spoke with the superintendent and they said the school has the capacity to support 16-35 students.

Manzelli said when the applicant goes to the Planning Board a full fiscal impact analysis will be done in addition to traffic study and any other required material. She said her client is committed to paying any of the equitable costs/impacts associated with this project.

Manzelli referenced the Kavet Rockler report which states NH is short 30,000 workforce housing units which is contributing to the statewide difficulty with hiring employees. Epping needs at least 192 workforce housing units.

Chairman Reed closed the public hearing.

Attorney Ratigan provided background information about the discussions between Epping and Fremont and the Martin/Shirking Road area. He said he worked with the Epping Selectmen trying to address the very disruptive decision made by the Town of Fremont to place a weight limit on Shirking Road (Fremont side). He said the effect of that limitation is the undermine of industrial commercial use of properties in this zone that would like to continue or newly developed. The weight limit prohibits industrial commercial traffic from using the road. This residential use is permitted in this zoning district. He said if there is any question from Fremont residents regarding why this project is proceeding and not an industrial commercial project, they should look to their Selectmen who were unwilling to work with the Town of Epping to address maintenance of the road which Epping offered funding to do and was rejected by Fremont.

Chairman Reed opened to the Board for discussion.

Hojaboom stated the request for the building height is definitely a better choice but is not in the best interest of the public to have the extra building. And it does affect the values of the surrounding properties.

Sullivan disagrees with the applicant saying there will be no population increase. He spoke that the health, safety and welfare far outweigh that and whereas the fire department hasn't had the opportunity to give the board any information is still needed. He stated this is not in the public interest for the health and safety. He referenced the last meeting when the applicant said the economic viability is barely met with five buildings and now, they have six buildings. He is unsure how that is justified. He said the board has to be reasonable and realistic with workforce housing, but the health and safety of Epping outweighs this in his opinion and that is not being met. He said he wants input from the fire department supporting or not the number of stories.

Walsh reiterated the process for receiving municipal department input, related to the construction of the development, is done during the planning board process. A condition of each of these variances is to receive planning board approval which encompasses the requirement of receiving municipal department comments related to the project.

Martin asked how the project only increased 2% with the addition of a new building

Turner said the footprint increase only being 2% is due to the building being placed where parking was prior.

Martin asked if the lot coverage includes the wetland.

Turner said the wetlands are allowed to be included as part of the open space per the zoning ordinance.

Chairman Reed asked for a motion on the applications.

- 1. Variance under Article 6, Section 6.10(2)(d) – To permit three habitable stories whereas a maximum of two habitable stories are permitted.**

The Board voted 2-3 to deny the variance, on a motion made by Kevin Martin and Seconded by John Horne. Hojaboom, Reed, and Sullivan voted in opposition.

- 2. Variance under Article 3, Section 3.6.12 – To permit building height excluding architectural details of 60 feet and including architectural details of 64 feet whereas 35 feet and 40 feet are the maximum permitted.**

The Board voted 3-2 to grant the variance, on a motion made by Martin and seconded by Horne. Hojaboom and Sullivan voted in opposition.

- 3. Variance under Article 7, Section 7.4.2 – To permit 25% lot coverage whereas 10% maximum lot coverage is permitted.**

The Board voted 4-1 to grant the variance on a motion made by Sullivan and seconded by Martin. Hojaboom voted in opposition.

FINDINGS OF FACT

The findings of fact for these requests were covered at the March 30, 2022 hearing. Refer to the meeting minutes for detail.

- 1. The variance will not be contrary to the public interest*
- 2. The spirit of the ordinance is observed*
- 3. Substantial justice is done*
- 4. The values surrounding properties are not diminished because:*
- 5. Literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship*

4. Special Exception under Article 7, Section 7.4.6(2) – To permit multifamily in the Aquifer Protection District.

Manzelli provided handouts related to the aquifer protection district request.

Manzelli said the aquifer on this property is not from which the town withdraws water and the applicant has submitted several letters showing all the standards for receiving the special exception are met.

Dave McLane, Verdantas reviewed the aquifer map for Epping. He said the aquifer on this property is not used by the town to withdraw water for municipal water supply. He reviewed a USGS map with the aquifer delineated on the 46 Martin Road property. He said although the aquifer is small, it is over 60-70 feet deep.

McLane said the process of installing a community well system is highly regulated by NHDES. He said the well cannot adversely impact other water users in the area, not influence wetlands and not impact natural resources in the area.

FINDINGS OF FACT

The applicant provided a summarized response to the criteria. A full detailed response can be found in the file in the Planning Department.

1. the proposed use will not detrimentally affect the quality of the groundwater by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;

McLane said the project is residential. There will be no industries storing any hazardous materials on the site. In his opinion it is unlikely the residential project will be a threat to the groundwater quality.

2. the proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;

McLane said the applicant does not want to rob its own aquifer of water. He said he has reviewed where stormwater will be. The stormwater is contained onsite which recharges the groundwater supply.

3. the proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined;

McLane said this is a residential development. A typical threat example in this type of instance is a community septic system which is not being proposed here. The project will have municipal sewer.

Chairman Reed opened the public hearing.

Michelle Curtis spoke in opposition raising concern about gallons per unit are being used and the ability of the town to use a third party to review the study provided.

McLane said NHDES has design rules for how much water is required for types of development which is how the 72,000 gallons per day was determined.

Turner said the formula is based on the number of expected units and bedrooms multiplied by a fixed rate that the state supplies in terms of expected demand per bedroom for this type of development. This yielded 72,000 gallons per day total.

Carl Frederickson, 43 Brown Brook Crossing Fremont NH spoke in opposition raising concerns about the impacts to the water quality and quantity.

Roland Red Oak Hill spoke in opposition raising concerns about the replenishment rate.

Diane MacPherson 22 Sawmill Fremont NH spoke in opposition raising concern about the water

Mary Housel 1 Fremont Road spoke in opposition raising concern about the water quality and quantity.

Jeremy Robosa (59 Pleasant Street) spoke in favor saying he is confident in the Board's abilities to review and approve this application.

Attorney Ratigan referenced a large application in Stratham NH that required a community well. He said the state of NH requires testing and additional monitoring wells to assure if the well withdrawals have any impact to the abutting properties the applicant would be responsible for decreasing their water usage or provide new wells/free water to the effected properties. He said there is a stringent state process to review these types of private wells and to protect nearby properties.

Manzelli referenced the right to farm statute. Which gives certain agricultural operations immunity from the aquifer requirements.

McLane said there is a sanitary protection radius that is required. He said the reason the property is being developed in the manor proposed is due to this radius, which is a state requirement. Within this radius there cannot be anything other than the well and its supplies.

McLane said the state requires he review any potential impacts to the town and surrounding properties. He said test wells will be drilled and that is when pump tests are conducted. That is when it is verified whether the proposed withdrawal is sustainable.

Chairman Reed closed the public hearing.

Sullivan said based on the fact the petition needs site plan approval and review by the planning board and state, he thinks the board should proceed with an approval.

Special Exception under Article 7, Section 7.4.6(2) – To permit multifamily in the Aquifer Protection District.

The Board voted 5-0 to grant the variance with condition, on a motion made by Sullivan and seconded by Hojaboom.

Sullivan noted the time and that the board adjourns at 9PM. The board agreed to continue hearing the applications.

5. Request for Rehearing in which the Board denied a variance under Article 6, Section 6.10(2)(d) to permit four habitable stories whereas a maximum of two habitable stories are permitted.

Manzelli raised a point of order asking the board to confer with legal counsel in a non-public session regarding their vote to deny three habitable stories earlier.

The board decided to continue with the vote on request for rehearing.

The Board voted 4-1 to grant the request for rehearing, on a motion made by Sullivan and seconded by Martin. Hojaboom voted in opposition.

The rehearing is scheduled for May 25, 2022.

DAB TAMARACK ENTERPRISES, LLC – Chairman Reed read notice for Variances from Article 6, Section 6.10.3.b maximum density; Article 6, Section 6.10.3.c minimum frontage; Article 6, Section 6.10.2.d maximum number of stories containing habitable space; Article 7, Section 7.2 minimum lot size and minimum frontage. Parcel is located at 80 Hedding Road Tax Map 017 – Lot 010 located in the Rural Residential Zone.

Joe Coronati and Mike Fecteau came before the Board with the proposal. Fecteau gave a brief overview of the property. He explained years ago there was a barn on the property owned by Dorothy Hall, who turned it into six apartments. The property was sold, and in 2014 an applicant came to the planning board with a site plan to build three condos out back and approved as a separate lot.

Fecteau explained when he just went to sell the property, the title company saw that the site plan was approved but the actual subdivision was not approved.

Fecteau explained to the board they are not proposing any changes, everything will stay as existing. They are only looking for approval so the owner can sell the six family as shown on the plan with no changes.

Fecteau informed the Board in the past they were granted a variance for a right-of-way off Hedding Road to have access to the property.

Sullivan asked which part of the property is being sold. Coronati responded, the six family.

The Board and applicant addressed the five criteria:

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

There are no proposed changes to the property and this modification does not affect the public interest. If anything, the creation of the lot lines will clear up the assessing records and title which is beneficial.

2. The spirit of the ordinance is observed because:
The spirit of the ordinance is observed by correcting a poorly crafted condominium and no additional development is proposed as this project was approved years ago.
3. Substantial justice is done because:
Substantial justice would be obtained because each of these buildings A (3 units) & B (6 units) have separate utilities, barely share an entrance and are almost entirely separate developments. By granting this variance, you would be allowing them to each be on separate lots so they could be more independent of each other.
4. The values surrounding properties are not diminished because:
There is no proposed work on the property and therefore no change to the abutting property values. The addition of a lot line will not negatively affect abutters.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:
The condominium established on plan by RSL referred to the land around the condominiums as expandable land instead of limited common area. These terms have legal implications and this minor error has led to title issues. The owner had believed that they were separate lots as the Town was previously taxing him on 1.69 acres of land similar to a parcel. That land area is the same area as the expandable land on the plan D-34717. Recently the tax card was changed to show no land, more typical of a condominium.

By not granting this variance, the owner would continue to have this title issue and it is an unnecessary hardship since it could be corrected with the addition of these lot lines.

Sullivan asked what the easement was for. Coronati explained it's an access to get onto the back property.

The Chairman opened the public hearing.

Comment was made by a gentleman joining the meeting who has no issues with the request.

The Chairman closed the public hearing.

As there were no questions or comments by the board a motion was called for.

Article 6, Section 6.10.3.b – maximum density – Sullivan moved Martin seconded the motion to approve the variance. The motion carried.

Article 6, Section 6.10.3.c – minimum frontage – Martin moved Hojaboom seconded the motion to approve the variance. The motion carried.

Article 6, Section 6.10.2.d – maximum number of stories containing habitable space - Martin moved Horne seconded the motion to approve the variance. The motion carried.

Article 7, Section 7.2 – minimum lot size - Sullivan moved Martin seconded the motion to approve the variance. The motion carried.

Article 7, Section 7.2 – minimum frontage - Hojaboom moved Horne seconded the motion to approve the variance. The motion carried.

MINUTES OF MARCH 30, 2022 FOR APPROVAL & SIGNATURE – Martin moved Horne seconded the motion to approve and sign the minutes of March 30, 2022. The motion carried 4-0.

ADJOURNMENT – Martin moved Horne seconded the motion to adjourn at 9:30 pm. The motion carried unanimously.

APPROVAL NOTIFICATION: April 19, 2022 - Minutes of March 30, 2022 were approved and signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary
& Kellie Walsh, Planner

Brian Reed

Kevin Martin

Kim Sullivan

Cassandra Hojaboom

John Horne, Jr.