

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

**Epping Town Hall
OR**

**Join Zoom Meeting
MINUTES**

May 25, 2022

Time: May 25, 2022 06:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/86888330950?pwd=emZLWDRjVnhIN2M4S05GY1d3Z2xjd309>

Meeting ID: 868 8833 0950

Passcode: 407174

One tap mobile

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Dial by your location

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Meeting ID: 868 8833 0950

Passcode: 407174

PRESENT: Brian Reed, Kevin Martin, Kim Sullivan, Cassandra Hojaboom, John Horne; 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

JOHN M. SIMONELLI – Chairman Reed read notice for a Variance from Article 2, Section 7.2 (Lot Dimensions and Setback Requirements) to build a shed 5 feet closer to the abutting conservation land. Parcel is located at 49 Apple Way, Tax Map 008 – Lot 014-092 located in the Rural Residential Zone.

John Simonelli came before the board with his proposal to build a shed closer to the abutting conservation land. He explained the house was built on a hill on a back lot stated he has very little flat ground and only one spot to do this shed

Sullivan questioned if anyone having to do with the conservation land that abuts this property has any issues with this. Simonelli explained he is not encroaching the conservation land. Welsh explained the town has no ownership with the conservation land.

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

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

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

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

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

Chairman Reed opened the meeting to the public. As there were no questions or comments, the Chairman closed the public hearing.

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

KENNETH ROY – Chairman Reed read notice for a Special Exception from Article 6, Section 6.6 (Non-Conforming Uses and Structures). Parcel is located at 24 Jacobs Well Road, Tax Map 024 – Lot 018 located in the Rural Residential Zone.

Roy explained his proposal there's an existing home configured to the road where it doesn't meet the existing setbacks that will be torn down. He stated the proposal for the new house needs a special exception as the footprint will be reconfigured.

Martin questioned if the applicant will be moving the proposed house back from the road. Roy responded yes; he'll be squaring it off to meet the 30 feet.

Walsh explained the reason the applicant is before the board is because the lot is considered a legal, non-conforming lot with an existing structure on it. She explained the ordinance reads if there is a structure on the lot and an applicant wants to take it down and rebuild, it requires a special exception if the new structure is outside of the existing footprint.

Walsh explained the applicant is actually more compliant with the wetland setback, and more compliant with the side setback.

Sullivan explained this is a sister lot of another non-conforming lot which goes around this non-conforming lot, if he's infringing at all he'd be infringing on his own lot.

The Board and the applicant addressed the criteria and applicant's comments for the Special Exception:

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:** See file for applicant's responses.
No questions or comments by the Board members.

2. That the use will be compatible with adjoining development and the proposed character of the zone where it is to be located: See file for applicant's responses.

No questions or comments by the Board members.

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: See file for applicant's responses.

No questions or comments by the Board members.

4. That the use conforms with all applicable regulations governing the zone where located, except as may otherwise be determined for large-scale developments: See file for applicant's responses.

No questions or comments by the Board members.

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: See file for applicant's responses.

No questions or comments by the Board members.

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 Nonconforming Use is not hazardous by its nature: See file for applicant's responses.

No questions or comments by the Board members.

7. For any Dual Use related special exception, an added use must be a Permitted Use in the zone:

See file for applicant's responses.

No questions or comments by the Board members.

Abutter Linda Pizz asked if the existing house going to be torn down. Roy responded it will be torn down. Pizz asked if there is going to be a new septic, Roy responded yes, a new system will be put in. Pizz asked the placement of the new system. Roy responded out toward the back would it be abutting her property. Pizz stated her concern this is abutting where her well. Roy there's a 50-foot piece of land between his back lot and Pizz's property, and meets all required state regulations.

Walsh explained the state regulates the setback requirements for septic's and if there were an issue, the stated would not approve the plan.

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

KEVIN & KHRISTYNA WUNDERLY – Chairman Reed read notice for a Variance from Article 2, Section 7.2 (Lot Dimensions and Setback Requirements) to construct a garage. Parcel is located at 8 Treys Way, Tax Map 009 – Lot 022-005 located in the Rural Residential Zone.

Kevin Wunderly came before the board and explained this lot is in a cluster development, the lot size is 1.8 acres, before the board for a side setback reduction from the 25 feet that's required to reduce it to 15 feet. He explained there's a detention pond that services the development and reduces this lot.

Wunderly explained there's a high clay content on the back of his property that is not conducive for building.

Wunderly explained he's looking to construct a detached garage Lawn equipment, vehicles, and children's toys. He stated they want to construct the garage that fits in with the characteristic of the neighborhood. He explained the original application the size shown was 16' x 24', depending on costs he would like to increase the size to 24' x 30'.

Sullivan asked if the size of the garage went to 24' x 30' what would happen to the requested setback. Wunderly explained the setback request would state at 15 feet.

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

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

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

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

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

Chairman Reed opened the meeting to the public. As there were no questions or comments, the Chairman closed the public hearing.

Sullivan moved Horne seconded the motion to approve the variance. The motion carried 4 – 1 Sullivan voting nay. He stated the reason for voting against is he would like to have had a letter from the abutter on how he feels about the proposal in the file.

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

1. Rehearing for variance under Article 6, Section 6.10(2)(d) to permit four 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. Request for Rehearing in which the Board denied a variance under Article 6, Section 6.10(2)(d) to permit three habitable stories whereas a maximum of two habitable stories are permitted.
4. Re-notice for Variance under Article 3, Section 3.8.7 (d) of the Zoning Ordinance to permit the construction of a residential development incorporating workforce housing without municipal water whereas municipal water is required.
5. Re-notice for Variance under Article 6, Section 6.10(3)(b) – To permit 9.3 units per 40,000 square feet whereas a maximum of 1 unit per 40,000 is permitted.

Attorney Manzelli provided an overview of the variance requests and referenced at previous board meetings, 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. (all information and criteria for the project are available in the ZBA file at town hall).

Manzelli emphasized the applicant has heard and understood the Board's primary concerns related to public safety and fitting with the area. She stated the four-story project design addresses both of these concerns.

Manzelli said if the Board grants the first two requests, variance for building height and variance for habitable stories, this will complete the board of adjustment phase of the project. The applicant would withdraw the request for rehearing for three habitable stories as it would be unnecessary with the granting of the first two requests. The next step will be site plan review with the planning board.

Manzelli said she is planning to address three reasons why the applicant is here tonight with the four-story proposal. Procedure, additional information about why the project fits within the area, and new evidence that the 4-story project is the best design for public interest and substantial justice for safety. She said if there is anything additional the Board wishes to discuss she is happy to do so.

Sullivan said he doesn't recall the board having objection to the aesthetics to the four-story facility. Hojaboom said she recalls public safety and the height visibility to surrounding properties.

Manzelli proceeded with the overview of the application. She recapped the actions of the board at previous hearings.

The applicant provided visual examples showing the four-story building height and various vantage points.

Manzelli represented the four-story buildings will not be very visible from the vantage points shown. She said the property is lower than surrounding properties and the design maintains the existing mature trees. The trees provide buffer year-round as they are deciduous and evergreen. The borders of the property are the rail trail and brickyard square which also provide buffer. A large portion of the property (75%) will be undeveloped.

The applicant provided examples of other projects in near by communities that are comparable.

Manzelli read the letter dated May 6, 2022 from the Epping Fire Department. She highlighted the fire department states the 5-building layout (four story design) provides a better scenario from a public safety standpoint.

Sullivan said he was not aware of the letter until today even though it was dated May 6 and received date of May 17.

The letter also mentioned a monetary contribution toward the purchase of ladder truck being discussed as part of the four-story design given the town does not currently have one.

Manzelli said the specifics of the contribution will be discussed with the planning board.

Manzelli said getting a ladder truck is in the public's interest and does substantial justice to the entire Epping community. Maximizing the applicant's contribution toward the ladder truck, maximizes public interest and substantial justice.

Manzelli reminded the Board the applicant tried to move forward with a three-story project at previous hearings but the Board did not approve those requests.

She said the three-story building design requires 6 buildings, which is more expensive and will reduce the overall contribution the applicant can feasibly make toward the ladder truck.

Four story design maximizes the applicant's economic viability; with maximum economic viability the equitable share towards the ladder truck increases.

She said Epping already has three-story buildings that may need a ladder truck and that the Board approved a three-story application last month for another project without any opinion from the fire department.

The quicker the applicant can complete the required approval from this board, the quicker they can proceed to the planning board to sort through the specifics on the contributions to a ladder truck.

Manzelli thanked the board for their time and attention. She stated she would like this project to be treated fairly just as the other projects that have been before the board and approved.

She respectfully requested the board approve the first two variances.

She asked the board read all public comment into record in their entirety.

Hojaboom said the three-story building approved last month was a pre-existing building with far less units than 64 units.

Sullivan commented on the economic viability with a four-story vs. three story proposal

Manzelli said part of the economic viability is related to the requirements for receiving financing for the project. Those details are not fully ironed out.

Turner said the intent of the economic viability comments is to show the effects of amount of contribution the applicant can make toward a ladder truck based on a 3 story vs. 4 story design.

Sullivan said he did not support the project due to fire department sign off. Now that the chief supports the project, he is against the contribution for a ladder truck. He thinks the money should be toward something else.

Sullivan said the Chief has no response and did not correct him when he stated the comments about fire department support of 4 stories.

Chairman Reed opened the public hearing.

He read the written comments from:

David Knowles, 51 Leddy Drive – against

Michele Shore, 41 Ladd's Lane – in favor

Chris Horton, 22 Chandler Lane – in favor

Hunter Phelps – comment related to regional impact

Jeremy Barbosa, 59 Pleasant Street – in favor

Kevin Wunderly, 8 Treys Way spoke about the ladder truck being a positive. He questioned the water supply in the area.

Mary Hosel, Fremont Road raised concerns about impacts to the abutting trails.

Michele Curtis, 10 Fremont raised concerns about the four-story buildings fitting the character of neighborhood, public safety

John Hartman, 91 Brown Drive raised concern about the four stories fitting in the character of the area, ladder truck, crime.

Carl Fergusson, Brown Brook Crossing Fremont spoke about Fremont's restrictions on Shirking Road Roland Trombley, Epping, spoke about the number of units, population

22 Chandler, spoke in favor of the project

Megan Mission, Newmarket, spoke in favor of the project, commented on wanting to live in Epping but cannot find housing and therefore workforce housing is needed to provide everyone an opportunity for housing.

Rachel Stone, Londonderry, former Epping resident. She spoke in favor noting the limited housing options and the need for workforce housing.

Mike Sudak, 12 Bridle Lane, asked about the workforce housing law and the term reasonable flexibility, he asked the town's legal counsel to speak to the definition of reasonable flexibility

Diane McPherson, Fremont, spoke about impacts to Fremont and other communities

Chris Horton, 22 Chandler Lane, spoke about the benefit of the ladder truck to the town

Bobby, Epping Resident, spoke about the need for more housing but he doesn't see a need for 3-4 story buildings. Concerned about impacts to police, fire and schools.

Manzelli said a lot of comments are related to the planning board and will be addressed at the planning board process. She noted the fiscal impact study.

She said the Epping master plan is in line with this application. The master plan mentions housing diversity, affordable workforce housing, diverse development, variety of housing stock and opportunity.

She said the variance for lot coverage was for 3 story design and the applicant will not need to take advantage of the full 25% if granted the 4-story design. This is a public interest benefit if 4 stories are approved and less lot coverage is required.

Chairman Reed closed the public hearing.

Chairman Reed adjourned the meeting at 7:55PM to confer with legal counsel. The applicant did not object.

Town Legal Counsel was consulted during a non-meeting.

Chairman Reed reconvened the meeting at 8:09PM.

Chairman Reed opened the discussion to the Board regarding the four habitable stories and 64 feet in building height.

Martin asked about the 5 criteria being read.

Walsh said the Board decided at the beginning of the hearing the preference of was for the applicant to provide a brief overview given the criteria was covered in great detail at previous hearings. If the board would like the applicant to review the five criteria again, that is the Board's decision. The full detail of the five criteria is in the file and public record.

Martin said the first criteria of public interest is not met because it is double the story requirement of the ordinance.

Sullivan said he has no objection to the five criteria.

Hojaboom said the public interest is not met and although the Fire Department made positive comments on safety, she does not feel it is in the best interest of the town or public to have four stories.

Reed said he doesn't see why the board should deny the four stories. The planning board will address a majority of concerns raised.

Rehearing for variance under Article 6, Section 6.10(2)(d) to permit four habitable stories whereas a maximum of two habitable stories are permitted.

Reed made a motion to grant the variance, Sullivan seconded. Motion failed 2-3 with Hojaboom, Martin, and Horne voting in opposition.

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.

Martin said he doesn't think public interest or spirit of the ordinance criteria are met. Sullivan asked Chief DeAngelis for input on whether the fire department supports the height and stories. Hojaboom said if it is not going to be four habitable stories, there is not a need for 64 feet height. Reed asked if the board preferred to have the fire department comment.

Reed asked Walsh what they should do procedurally to allow the fire department to speak. Walsh said open the public hearing again.

Reed re-opened the public hearing.

Sullivan asked if the fire department is recommending four stories and 64-foot building height. Chief DeAngelis said the fire department does not support anything. The fire department comments state the four-story plan provides better access for the emergency vehicles. Sullivan questioned if the fire department is approving anything. DeAngelis said it is up to the Board to approve or deny applications. The fire department is advising the board on how four stories impact access. Hojaboom asked if three stories are not a safe option for fire safety purposes. DeAngelis said the four story is a safe option if all items required are built. He noted communities he has worked in where 8 story buildings are. He said he has also worked with 3 story buildings. The same is true in that if built properly, the building can be safe. Sullivan said the Chief is copping out by giving this response.

Manzelli said the plan provided to fire was the 64 feet in height.

Reed closed the public hearing.

Reed said it does not make sense to approve the height of 64 feet given the board denied the four habitable stories.

Martin made a motion to grant the variance, Hojaboom seconded. Motion failed 0-5.

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

Sullivan made a motion to grant the request for rehearing, Martin seconded. Motion passed 3-2 with Hojaboom and Horne voting in opposition.

- 6. Re-notice for Variance under Article 3, Section 3.8.7 (d) of the Zoning Ordinance to permit the construction of a residential development incorporating workforce housing without municipal water whereas municipal water is required.**
- 7. Re-notice for Variance under Article 6, Section 6.10(3)(b) – To permit 9.3 units per 40,000 square feet whereas a maximum of 1 unit per 40,000 is permitted.**

Martin asked why these are re-noticed.

Walsh said the re-notice for water and density is due to concern about all abutters being properly notified. Notices were sent again to assure all abutters are properly notified.

She recommended the Board open the public hearing to provide the public opportunity to speak to those two items only. Once the public hearing is complete, the board should take a vote on the two variances.

Reed opened the public hearing.

Diane McPherson, Fremont, spoke about the aquifer and concerns about the water quality and availability. Mary Hosel, Fremont Road, asked about the number of units running out of water.

Manzelli said nothing has changed since the first submittal of these applications and therefore the expectation is that the board will re-approve the water and density variances.

Dave McLane described the aquifer on the site. He said there is a small amount of the aquifer that goes into Fremont. The effects of this water withdrawal on Fremont residents are that it is probably very minimal. He discussed the state permitting process and requirements.

He said facts do not support that the well would go dry provided all the required permitting and testing is met.

Private drinking water supplies surrounding the well have opportunity to be monitored if decided by the state.

Diane McPherson said the aquifer in the photo isn't shown on the map and she knows the water dries up. Roland Trombley, Epping, asked about replenishment rates.

Reed closed the public hearing.

The board discussed.

Walsh said at the previous hearing the board approved both requests – density and water.

Variance under Article 3, Section 3.8.7 (d) of the Zoning Ordinance to permit the construction of a residential development incorporating workforce housing without municipal water whereas municipal water is required.

Martin made a motion to grant the variance, Hojaboom seconded. Motion passed 4-1 with Horne voting in opposition.

Variance under Article 6, Section 6.10(3)(b) – To permit 9.3 units per 40,000 square feet whereas a maximum of 1 unit per 40,000 is permitted.

Sullivan made a motion to grant the variance, Marin seconded. Motion passed 3-2 with Hojaboom and Horne voting in opposition.

MINUTES OF APRIL 19, 2022 FOR APPROVAL & SIGNATURE – Martin moved Hojaboom seconded the motion to approve and sign the April 19, 2022 minutes. The motion carried.

ADJOURNMENT – Hojaboom moved Martin seconded the motion to adjourn at 8:55 pm. The motion carried unanimously.

APPROVAL NOTIFICATION: May 25, 2022 - Minutes of April 19, 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.