

**TOWN OF EPPING, NEW HAMPSHIRE**  
**ZONING BOARD OF ADJUSTMENT MEETING**  
**Epping Town Hall**  
**MINUTES May 17, 2023**

**PRESENT:** Brian Reed, Kevin Martin, Cassandra Hojaboom, John Horne; John Scully; Alternate Don MacLaren; Planner Casey Wolfe; Secretary Phyllis McDonough.

**CALL TO ORDER:** Chairman Reed called the meeting to order at 6:00pm.

Hojaboom recused herself from sitting in on the Martin Road hearing. The Board appointed MacLaren to sit in for Hojaboom.

**46 MARTIN ROAD, LLC** – Chairman Reed read notice for a Variance under Article 3 Section 3.8.A.7.d of the Zoning Ordinance to permit the installation and use of a septic system for a multi-family development. The parcel is located on 46 Martin Road in the Industrial Commercial Zone. Tax Map 036, Lot 023.

Attorney John Sokul from Hinkley Allen came before the Board to explained the request for the variance. He introduced John Sokul – project counsel Partner and Executive Committee Member Hinkley Allen, Alexa Carpenter Communications Manager 603 Forward, Austin Turner – project civil engineer and land development consultant Principal Bohler, William Evans Former Head and Administrator of the New Hampshire Department of Environmental Services (NHDES) Subsurface Systems Bureau who served in that capacity for nearly 30 years and was the primary author of regulations which NHDES uses in the design, permitting, and operations of septic systems, as well as the Groundwater Discharge Permit regulations and David Maclean – project hydrogeologist Senior Hydrogeologist Verdantas.

Attorney Sokul explained this hearing if for 46 Martin Road, 315 multifamily units, 20% workforce housing under state statutes. He stated zoning relief was in place for this project, one of the criteria that was needed was the site will have public sewer which was negotiated and executed a memorandum with Water & Sewer Commission in an agreement from December 2021. Attorney Sokul explained in September 2022 the department of DES issued a moratorium preventing further connections to the Town's waste water treatment plant which brings the applicant before the board for the variance.

Attorney Sokul explained the applicant is before the Board to ask for an onsite, private septic system which is only for 140 units of the 315 to control the amount of septic which is only temporary, and will be replaced with sewer once that comes into place.

Attorney Sokul introduced Alexa Carpenter Communications Manager 603 Forward who spoke on important issues that effect families on why workforce housing is needed, and how towns are required to meet their fair share. Referring to New Hampshire Work Force Housing Law summary document. This document was prepared by the New Hampshire Housing Finance

Authority, Alexa summarized same as part of her statements to the Board. She spoke to a number of topics related to work force housing in New Hampshire, and housing in general.

Martin asked a question to Carpenter what the “fair share” is there a state mandated number we are required to meet. Carpenter responded between 188 and 309 units. Martin questioned the statement by Carpenter “young people are leaving are leaving the state,” what state are they going to. Carpenter stated they’re just leaving to where there is affordable housing.

Austin Turner from Bohler Engineering, along with David Maclean, a hydrogeologist, came before the board to talk about the standards to which of how this is reviewed with DES. Turner explained Evans ran subsurface at DES and the regulations that will be explained were written by Maclean.

Turner explained the applicant is before the board to ask permission to pursue the process for permit through DES. Turner explained with the moratorium in town they are looking to go through the state process, use the septic temporarily for approximately 140 units.

MacLaren asked out of the 140 units what percentage of those will be the 20 percent of workforce housing.

Turner explained the state process will be talked about from both Turner and Evans. Turner provided a high-level summary of the standards and the general process as part of my statements. He explained the first is the temporary septic for 140 units and referred to NHDES Env-Wq 1000 – New Hampshire subsurface individual sewage disposal system design standards. Turner explained the other part is called a ground water discharge permit. ENBWQ1000 starts with DES at an early level of the process, in fact there’s an optional process that the towns have the ability to enter into with DES to be part of the process and the first to review. Then go to the state waste water and setbacks are considered, then the design process begins. Once DES approves the design to get through the construction operation DES needs to approve the design and construction and they issue the operation permit. This document is attached with the applicant’s file.

Dave Maclean explained NHDES Env-Wq 402 – New Hampshire Groundwater Discharge Permit requirements. Maclean provided a general summary of this document and the process through which projects are permitted under these regulations.

Maclean explained once that is done there is a list that has to be looked at, and summarize. There’s a notice to the department of resources and economic development, and in tur they give a list of endangered species if there are any.

Maclean explained the domestic waste water the primary risks from domestic waste water are nitrates which can cause problems in very young infants.

Maclean went on with a somewhat brief explanation of all the testing that needs to be completed to receive permits, this permit has to be renewed every five years.

Maclean explained there has to be a licensed waste water treatment monitoring operator who will be providing monthly reports

Martin explained his concern is that this is in the aquifer protective district, which was placed there to protect the town's aquifers, and the proposal is for a very large septic going on top of that aquifer. Martin stated this is marked the aquifer protection for a reason and want zero contaminants in it. He stated the whole reasoning why that was put into protection and why bother having it there if it's allowed to have a septic over it.

Bill Evans explained the entire states aquifers are meant to be drinking water. There are onsite monitoring wells, regular testing.

Martin asked them why did the town put it in a protective district. Evens stated he did not know what that is. Turner explained the customarily the regulations are put into place and an acknowledgement in that part of the community there may be a groundwater resource more prominent and productive than others in the community, so the idea of protecting it to strongly require that groundwater be charged that the volume of water going into that aquifer is not altered.

Attorney Sokul referred to the town's regulations to answer Martin's questions, is in Article 7 aquifer overlay district. There's nothing in that overlay protective ordinance that prohibits septic systems in aquifer overlay districts; he referred to 7.4.7.1 in the towns ordinance and 7.4.7.2. Martin stated he understood. Martin stated there is a difference between the size and a few houses compared to a huge septic with 20,000 gallons a day.

**Attorney Sokul addressed the criteria and applicant's comments for the Variance. The responses for the five criteria are attached with the file.**

Chairman Reed opened the public hearing and read, for the record, letters from individuals not in favor and those in favor. These letters are attached to the applicant's file.

Susan McGeough 119 Prescott Road Epping applauded Martin's concerns on the aquifer over the last six years the town has spent an innumerable amount of money. McGeough explained she has been a town resident all her life and stated wells have been drilled well that have gone bad so the aquifer protection something in the future to count on. It's not an individual house it's a huge system and believes it will impact it. She questioned if this is only tested a couple times a year. She tests her tiny business once a year. McGeough questioned the one of the reasons why they should be able to do this because there is no impact on the area. She stated this is a big impact on St. Laurent Street and Railroad Avenue, tiny roads built in the 1800's paved after WWII is a horrible impact and will effect quality of life and the value of their property. She would prefer they go to the state to get access from 101.

Michelle Curtis 10 Fremont Road Epping question that all letters are the same from those in favor. She stated if something fails it on this site, it doesn't only affect that property it effects Fremont. She asked how quick it could be rectified. She informed the board this site was originally to put a distribution center and now workforce housing.

Jonathan ?? stated he moved here recently from another state to live with his partner who is a live long resident of New Hampshire. He explained prior to moving to this state he had been working stress free and coming into the housing market is difficult. Affordable housing isn't just for young it's for the elderly also. He is in favor of this project.

Resident Mike Sudak questioned the housing audit that cited Epping's workforce housing deficiency being in the 188 – 309-unit range – what is this audit based off of? Is it based in some way on the existing population of Epping? If so, does the construction of 252 market-rate apartments as part of this development somewhat undercut the perceived and advertised benefit of the 63 workforce housing units?"

Sudak stated he understands that this Variance being granted will allow the Developer to procure additional information to determine if the design of on-site septic is feasible, but with the information already in hand from soils explorations and on-site water design does the Applicant have confidence that a groundwater discharge zone for a septic system of this size is realistic? 22,000gpd is a large nitrate plume, containing that within the property line and away from the on-site water supply seems like a challenge.

Sudak questioned applicant this evening discussed the different intervals for the post-construction monitoring of the septic system – quantity monitoring each month to ensure the system's average flow does not exceed 22,000gpd, and quality monitoring twice a year to ensure that nitrate levels meet drinking water standards leaving the groundwater discharge zone and exiting the property. Given the temporary nature of this on-site septic system, would the Applicant be willing to increase the frequency of quality testing to have more frequent data points? Also, in the event of an exceedance in nitrate levels how do abutters (whose wells would be at risk due to this exceedance) get notified?

Mr. Patey, resident of Epping from Blake Road and a realtor in town stated he is in favor of the project. He brought up the concern of others mentioning 20,000 gallons a day so the residents' concerns of excessive use. He spoke of the entire state of NH being in a crisis for housing. He stated last year there were approximately 40 houses sold in Epping at a price of \$435,000. He explained as of today there are 13 active listings, one under \$400,000, the rest are in excess of \$550,000. People are moving out of town because they can't afford to live here. Starbucks closes at 4:00pm because they can't get help. This is affecting every business in this town. He stated the town needs to work with the applicant instead of fighting them every inch of the way.

Susan McGeough agrees the town needs affordable housing and is very excited about the units that were approved on Route 27 where 100 percent of the units are affordable housing, this proposal is just the states minimum requirements, the rest of the units will be at full price which she'd like to know what they will be charged.

MacLaren commented on Mr. Patey's comment about the town working with the developer, that this board is looking at the previous variances that were granted. MacLaren stated he feels the statement was disingenuous toward the Board about fighting versus working. Mr. Patey apologized.

Julia Bead an organizer of this project, who goes into the community to speak with the residents, workers and employers about the lack of housing in town. She mentioned a store manager at AT&T, a distributor who will live out of his car, an employee at Wrap City can not move out of his parent's home, the business owners of Brickyard Nutrition stated this would help their business survive as it would be in walking distance, manager at O'Neal cinemas state they can't keep workers due to the lack of affordable housing and other business owners explained how this project would help their businesses and retain employees.

McGeough stated she understands the workforce housing to be affordable and was very happy for the workforce housing proposal that came in on Route 27; 60 units, 100% workforce housing. The rest of the units will be at full price.

Chairman Reed closed the public hearing

Attorney Sokul responded to some of the questions by speakers. He the comment applauding to Martin's concerns with the aquifer, everyone shares those concerns and the reason the experts are at the meeting to explain the concerns.

Attorney Sokul referred to the concern on traffic impacts, this has no relevance to the variance request; this is for the Planning Board to discuss.

Attorney Sokul explained the fact that this property when bought was talked about being a distribution center, which is true but that didn't work out for this property.

Attorney Sokul addressed the fact that this project is only 20 percent workforce housing, this project has had twists and turns and unexpected costs and expenses.

Maclean addressed questions around the groundwater permit, with regards to private drinking water supply wells. He explained the wells locations are inventoried within 1,000 feet of the groundwater discharge zone and there will be a map provided. He spoke of any problems first thing DES would look at samples of the drinking water and regards to the monitoring, there are two different types. Monthly will be managed by a certified waste water operator who will provide monthly operational reports to DES. The sampling of groundwater is provided by a hydrologist firm and twice a year is a hypothetical. If Planning Board wants more sampling that could be negotiated.

Chairman Reed asked if abutters will be notified of any problems. Maclean stated any well owners would be notified.

Scully questioned one of the comments made was what the cost of one of these units. Carpenter explained the workforce housing units will be priced at 60 percent at an area medium income which fluctuates year to year and decided by HUD, not by the developer.

Attorney Sokul explained with respect of the quality of testing, the applicant has agreed to do more frequent testing to whatever the board would determine. Also, to the question on who notifies the abutters with private wells, the applicant will commit to doing that.

Mike Sudak referred to the testimony that was given he's curious whether or not that guarantee can be given if it's the function of the DES. Maclean responded that typically with these issues, it is normally done at the planning board meeting

MacLaren stated the board is not here tonight to talk about workforce housing, but to talk about the aquifer. He stated he notice that the majority of the discussions were emotional pleas for people not being able to get jobs. He reminded the board needs to focus on the aquifer and how it impacts the area.

Martin fighting to get these protected town spent a lot of money it does affect the Applicant stated w & S stated the town did have an issue don't think the sewer situation. MacLaren disagrees closing of the lagoons he was shocked to hear the Water & Sewer and, in his opinion, it is contrary to the public interest.

**The Board deliberated on the variance request:**

1. Public Interest – Martin stated he feels this is contrary to public interest, he spoke of the times the town fought to get these areas protected because of all the well issues the town was having.  
Scully referred to the applicant stating that the Water & Sewer Commission guaranteed access to the public sewer, and it was also stated at those meetings that the town did have issues with the sewer infrastructure. He added that he does not feel that the sewer situation that exists is that shocking to anyone paying attention. MacLaren stated he was shocked that the Water & Sewer would grant this. MacLaren agrees this is contrary to public interest. He stated there are many towns that will be impacted.
2. Spirit of the Ordinance – No Comment.
3. Substantial Justice – MacLaren reiterated his statement in the Public Interest comment. He stated the town's water and sewer lines are so outdated and in need of constant repair.
4. Diminishes Property – Does not think they would be.
5. Hardship – MacLaren stated everything he said previously relates to this criteria.

Martin moved Reed seconded the motion to approve the variance for under Article 3 Section 3.8.A.7.d of the Zoning Ordinance to permit the installation and use of a septic system for a multi-family development, for discussion.

MacLaren amended the motion to approve the variance with the conditions subject to the DES approval of the temporary 140-unit septic system, and condition of approval subject to DES and Town would both do an inspection of the septic system, and that the Phase I would be the only user of the septic and that they have to be the first ones to connect to the water & sewer when it becomes available. Subject to the Planning Boards requirement for water testing shall be no less than quarterly.

Martin accepted the amendment and moved to approve the Variance with the conditions stated. Chairman Reed seconded the motion. The motion failed 1-4-0; Chairman Reed in favor of the request for the Variance, the remaining board members denying the request for the Variance.

MacLaren gave his reason he didn't feel it satisfied number one, but if it did pass, he didn't find the Boards propose motion would satisfy the needs on the variance. He doesn't feel it's in the public interest for a system that large in that area.

**POLKA DOT HOUSING, LLC (PETITIONER/OWNER)** – Chairman Reed read notice for a Variance under Article 6 Section 6.10.2.d to permit three habitable stories where only two are permitted. The parcel is located at 232 Main Street in the Rural Residential Zone. Tax Map 022, Lot 058.

The Chairman welcomed Hojaboom back to sit for the remainder of the hearings. MacLaren sat as an alternate.

Scully explained he was approached prior to the meeting that some members of this board may have a conflict of interest with this applicant and feels if this statement is correct the member(s) should recuse themselves. MacLaren asked who these members are. Scully responded, Casey Hojaboom and Kevin Martin. Scully went on to say he also feels that every member should publicly announce if they have any sort of conflict.

Chairman Reed addressed Scully's comment and stated he leaves it up to the board members have the right to recuse themselves and thanked Scully for bringing that to the board.

Attorney Baum explained this property is currently developed with a four-unit building and a garage. He stated the applicant received variances to remove the garage to construct a 24-unit multifamily building, the request is for a variance for three habitable dwellings, where two are permitted.

Attorney Baum reminded the Board there are a number of multifamily in this neighborhood and adjacent to this property along with single family dwellings that are all at least three stories.



Paul Gatchell showed a picture of a site off of Railroad Ave. adjacent to the shoe factory where there are seven buildings going on that are near completion or just being started that are three stories.

Attorney Baum stated there was concern for fire safety at the previous meeting, stating they don't feel fire safety is issue. He noted the next step will be to go to the Planning Board where they will address the life safety.

Martin asked this is a 24-unit apartment building with eight units per floor. Gatchell responded that is correct.

**Attorney Baum addressed the criteria and applicant's comments for the Variance. The responses for the five criteria are attached with the file.**

Chairman Reed opened the public hearing.

Abutter Grace Lavoie spoke against the variance request, stating it is right behind her house and her concerns with water flow affecting her property.

Chairman Reed closed the public hearing.

**The Board deliberated on the variance request:**

1. Public Interest – MacLaren stated it does not fit in the area.
2. Spirit of the Ordinance - No comment.
3. Substantial Justice – Hojaboom stated even though buildings that Gatchell showed, they are not in this location but have done substantial justice for the Town.
4. Diminishes Property – MacLaren stated yes, this building will be noticeable.
5. Hardship – MacLaren stated he does not see any hardship.

Martin moved Horne seconded the motion to approve the variance request. The carried 4-1-0, Scully voting against.

**SOUTH EAST LAND TRUST OF NH (SELT)** – Chairman Reed read notice for Variances under Article 6 Section 10.3b to permit the creation of a lot that does not meet the density requirement, and Article 2 Section 2, to create a lot that has frontage on a town road designated as a Class A Trail (Range Road) (aka French Hill Road). The parcel is located at Violette Estates, 299 North River Road, Map 011, Lot 009 in the Residential Commercial Zone.

Barry Gier from Jones & Beach and Dwayne Hyde from SELT came before the board with the proposal Gier explained this is a 20-acre parcel in the Residential Commercial Zone. Gier explained this property was approved for 18-unit residential project in 2022 by the Planning Board. He stated as part of the approval NH Fish & Game has required the developer to place a portion of the parcel into conservation.



Gier explained SELT owns Burley Farms which abuts this property approached the developer to obtain the eastern undeveloped portion of the subject parcel. Gier explained the intent is to create two lots with the eastern lot being conveyed to SELT, and the western lot to be developed with the 18-unit residential development.

Martin asked if Fish & Game recommended or told them they had to place a portion of the parcel into conservation. Gier explained the project required an AOT permit, and Fish & Game comments on all AOT's and their comment was that SELT had to place a portion of the eastern part of the property into conservation.

MacLaren asked if that would be in perpetuity. Gier responded the conservation land, yes.

**Gier addressed the criteria and applicant's comments for the Variances. The responses for the five criteria are attached with the file.**

Martin asked if this a gift, applicant. Gier responded, yes.

Scully asked the property is getting developed, it's whether or not it's the HOA or SELT that controls it. Gier stated that is correct. There are 18 units that are approved with that they are trying to meet the conditions of the AOT by transferring the property to SELT.

MacLaren if this isn't in a land trust do they have the ability to add additional. Wolfe stated it wasn't quite maxed out.

Chairman Reed opened the public hearing. As there was no public comment, the Chairman closed the public hearing.

**The Board deliberated on the variance request:**

1. Public Interest – MacLaren stated it's a win-win.
2. Spirit of the Ordinance - No comment.
3. Substantial Justice – No comment.
4. Diminishes Property – No comment.
5. Hardship – No comment.

Hojaboom moved Martin seconded the motion to approve both variances with the planner's comments attached and that the land is in perpetuity. The motion carried.

**MINUTES OF APRIL 19, 2023 FOR APPROVAL & SIGNATURE** – Hojaboom moved Martin seconded the motion to approve and sign the minutes. The motion carried 4-1 Scully abstained.

**ADJOURNMENT** – Martin moved Scully seconded the motion to adjourn at 9:00 pm. The motion carried unanimously.

**APPROVAL NOTIFICATION: May 17, 2023** - Minutes of April 19, 2023 were approved & signed.

Respectfully submitted,

Phyllis McDonough,  
Zoning Board of Adjustment Secretary

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Brian Reed

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Kevin Martin

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John Horne

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Cassandra Hojaboom

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John Scully

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Don MacLaren