

**TOWN OF EPPING, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING
Epping Town Hall
MINUTES August 16, 2023**

PRESENT: Brian Reed, Kevin Martin, Cassie Hojaboom, John Horne, John Scully; Alternate Max Miller and Don MacLaren; Planner Casey Wolfe; Secretary Phyllis McDonough.

CALL TO ORDER: Chairman Reed called the meeting to order at 6:00pm., and appointed Maclaren to sit in for Horne.

I. PLEDGE OF ALLEGIANCE TO THE FLAG

II. HEARING OF CASES

ROURKE DESIGN-BUILD, LLC – Chairman Reed announced this hearing is continued to the September meeting.

Hojaboom moved Martin seconded the motion to continue the hearing to September 20. The motion carried unanimously.

JACOB ELLIS – Chairman Reed read notice of a request for a Special Exception under Article 6 Section 6.6 Alteration/expansion of a non-conforming structure to add a 24x15 addition to the left side of the existing dwelling, and to add a 24x24 garage off the right of the existing dwelling. The parcel is located at 7 Depot Road, Map 027, Lot 187 in the West Epping Business District.

Jacob Ellis came before the Board with the request. He explained this is an existing dwelling where he's looking to add a 24x24 off the right of the dwelling and a 24x15 addition to the left of the existing dwelling.

Martin questioned what the reason is for the Special Exception. Wolfe explained this is an existing non-conforming use, and the way the ordinance reads is if someone is looking to expand on a structure that is outside of what the current setbacks are today the application has to come before the board.

Chairman Reed opened the public hearing.

Abutter Cliff Cray stated he is happy with the request, and has no issues at all.

The Chairman closed the public hearing.

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

The Board deliberated on the Special Exception request before taking a vote:

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

Miller noted it appears that the buildable area is five feet across.

Martin stated it doesn't go beyond the existing footprint.

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

Chairman Reed noted there were no abutter concerns.

Hojaboom noted there will not be any changes to the back of the building.

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

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

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

Chairman Reed and Hojaboom agreed where the additions are there would be no impact with traffic.

6. A special exception under this subsection may be granted only as to expansions or alterations into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance. No comment

Hojaboom moved Martin seconded the motion to approve the Special Exception. The motion carried unanimously.

THE HOUSING PARTNERSHIP – Chairman Reed read notice of a request for a Variance under Article 3 Section 3.8.A.7.d to permit the development of a 60-unit, 100% workforce housing project served by a private on-site septic system. The parcel is located at 35 Exeter Road, Map 030, Lot 077 in the Industrial Commercial Zone.

Attorney Baum, Marty Chapman Executive Director of the Housing Partnership and Paige Libbey from Jones & Beach came before the board with the proposal for a non-profit workforce housing project.

Attorney Baum explained they have received variances for two building, 60- units 100% workforce housing. This project had received state funding, because of the moratorium on sewer by DES they lost the state funding.

Attorney Baum added the he got online and the only map he could find was published by RPC but was not available. He explained he called Wolfe provided the new map and he realized they were in the aquifer protection district, and didn't want to mislead the Board.

Martin asked Wolfe, when the previous variances were approved the Board wasn't aware it was in the aquifer protection district. Wolfe stated she was not employed by the town at that time.

Attorney Baum explained it was not relative at the time of those variances because they thought they were going to forward with sewer.

Scully asked if there is there a reason for placement of the leach field. Attorney Baum noted the final location could change; they are not sure of the placement it needs to be kept away from any well radiuses.

Scully noted when Coronati was before the Conservation Commission he assured the town there there would be no intrusion on the wetlands and agreed to put a row of trees or fencing to make sure no one could access the wetlands. Scully asked if there was any way they could move the well or where the septic would be. Attorney Baum explained they did attempt to put it far away from the well, although that is still pending. Attorney Baum explained their expectation is any impact will be temporary to the wetlands. Libbey explained for a small community water system, the location is the best placement on the site, it just hasn't been designed yet. Attorney Baum explained he can't say at this time if they can move it to a new spot. He stated they've already received approval for the water, received a variance to allow for a private well and received site plan approval; other options are being worked out.

MacLaren is there any chance to hook up to sewer once the moratorium is lifted. Attorney Baum explained the concern is the cost and the additional cost makes it difficult, and for this type of project it doesn't work in the scope for cost, just doesn't make economic sense to make the project work.

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

Abutter Willis Myott brought up a couple concerns, one being landscaping. The Chairman explained his concerns will be addressed at the planning board and he will be notified of that meeting.

Paul Gatchell spoke highly of this project, it's the right size, fits in and is neat and clean.

Attorney Baum explained to Myott they did agree that there will be landscaping along the property boundary, which is part of the conditions and shown on the site plan.

Scully referred to the applicant's responses to the five criteria, and asked how is this consistent with past approvals. Attorney Baum explained it's consistent with approvals from zoning and planning boards.

The Board deliberated on the variance request before taking a vote:

1. Public Interest – Martin referred to Article 7.1 Aquifer Protection Zone, voted on at Town meeting - 1984, 2013 and 2015, and if this is a reason for concern:

AUTHORITY AND PURPOSE - Pursuant to RSA 674:16, the Town of Epping adopts an Aquifer Protection District and Wellhead Protection Area and accompanying regulations in order to protect, preserve and maintain potential groundwater supplies and related groundwater recharge areas within a known aquifer identified by the Town. The objectives of the aquifer protection district and wellhead protection area are: - to protect the public health and general welfare of the citizens of Epping; - to preserve, maintain, and protect from contamination existing and potential groundwater supply areas - to promote future growth and development of the Town, in accordance with the Master Plan, by insuring the future availability of public and private water supplies; - to encourage uses that can appropriately and safely be located in the aquifer recharge areas.

Scully asked if there is any documentation from a professional, saying this would not be a problem to build on this site.

In response to Scully's comments on "Public Interest," Attorney Baum explained with this proposal being a non-profit they have to receive approvals then go on to the permitting because of costs. They have had ongoing discussion with DES, although that permitting hasn't been completed. This district without other uses is permitted without any restrictions to utilize sewer, an industrial use wouldn't need a variance is only because it's in the multifamily ordinance.

Libbey explained some of the requirements from the state they will have to design the systems as advance treatment systems.

2. Spirit of the Ordinance – No comment.
3. Substantial Justice – No comment.
4. Diminishes Property – Chairman Reed stated the board did approve the septic for this project. Martin stated that can't be looked at with this application.
5. Hardship – Scully noted with the water & sewer situation has been known for quite some time and potentially not having access to it, which should have been on the minds of the people with this project.

Scully questioned if anyone has any idea on the moratorium. MacLaren stated he spoke with an individual from water & sewer, who are more optimistic that the moratorium will be lifted sooner than they thought.

Hojaboom stated she feels that the members are not on the same page at the moment and that a discussion should happen before making a justified motion.

Chairman Reed moved Hojaboom seconded the motion for discussion.

MacLaren stated he feels it would be prudent to add a condition to the motion: The Petitioner shall be required to perform on-site down-gradient well monitoring annually for four years. The results shall be shared with the Town.

MacLaren explained his reason for the condition, is because it's multifamily there's a greater amount that will be discharged into that area.

Attorney Baum agreed with the condition, although his concern about the offsite monitoring there's no way to guarantee to get access to abutter's who are upgradient, but can control what's onsite.

MacLaren questioned if the planning board can't force the abutters to allow them to monitor the wells. He stated he would be satisfied to allow a testing well on the property tested once a year for four years. Attorney Baum stated they are fine with that but would like Libbey to address this.

Libbey this will be part of the DES approval because it's so large it requires a groundwater discharge permit. Attorney Baum stated they will be happy to work with the planning board on this issue.

Scully asked how long it will take to build a septic system for the whole project. Attorney Baum stated they need to have the ability. Chapman said they anticipate 12 – 14 months.

MacLaren asked what Phase it would be built. Chapman responded in the first phase. MacLaren asked if moratorium is lifted before the septic is in, will you tie in. Chapman responded, absolutely.

Chairman Reed moved Hojaboom seconded the motion to approve Variance under Article 3 Section 3.8.A.7.d to permit the development of a 60-unit, 100% workforce housing project served by a private on-site septic system with the condition, the Petitioner shall be required to perform on-site down-gradient well monitoring annually for four years. The results shall be shared with the Town. The motion carried to approve the Variance 3 – 2; Martin and Scully voting nay.

POLKA DOT HOUSING, LLC – Chairman Reed read notice of a request for a Variance under Article 6 Section 6.10.3.b Maximum Density, and Article 6 Section 6.10.3.f Minimum Off-Street Parking 2.5 spaces per unit. The parcel is located at 242 Main Street, Map 022, Lot 060 in the High-Density Residential Zone.

Paige Libbey from Jones & Beach and Paul Gatchell came before with the request. She explained this property is an existing multi family home, an older house that was converted, two multifamily building and a multi-family building in the back with a total of 19 units, which are a mix of one to two bedrooms.

Libbey explained this property has received variances from the board in 2015, 2021 and 2023 for the same reasons the application is before the board again, which include density and parking.

Libbey explained the proposal is to add one more duplex to the property, making the total of multi-family units 21, with 42 parking spaces, two per unit not the two-and-a-half that is required. The green space and recreational area requirements on this property are met. She stated he already didn't have enough parking out back.

Chairman Reed opened the public hearing.

Abutter Grace Lavoie addressed the parking questioning the applicant stating there is enough parking. She informed the board these units haven't even been rented out yet, so how do they know there's no problem if they're not even rented out.

Lavoie stated she didn't understand how the Board has no issue with the density on this property, being so congested but had issues with a property on 125 being less congested.

Chairman Reed closed the public hearing.

Martin asked if the green space is already maxed out without this building. Libbey stated they had a little extra before so now with this proposal they're over 10% more than what is required.

Miller asked on the previous application where the paved area that is going to be used for parking was going to be used for equipment, snow removal, etc., and now it's going to have a duplex on it, and the parking spaces were already exceeding the limit, which isn't what was told at the previous meeting. This is additional on top of the existing variance. Gatchell stated he purportedly did not label it as parking because he knew there would be future development.

Miller asked why this can't be for parking if a variance is being requested. Gatchell responded to be continuous of the two spots that were asked for prior.

MacLaren stated his opinion is this site is overdeveloped, and the density has been reduced across too many pieces of complexes on this entire property, and doesn't feel the board should keep doing this, in this are to such an extreme.

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

The Board deliberated on the variance request before taking a vote on the density and parking:

1. **Public Interest** – Martin stated the density keeps going lower. Scully concurred with MacLaren with the site being over developed, and it's clearly affecting abutters.
2. **Spirit of the Ordinance** – Scully stated the ordinance is there to prevent over developing in the area
3. **Substantial Justice** – No comment
4. **Diminishes Property** – Martin stated he does not think it diminishes the surrounding properties. Hojaboom concurred with Martin, although can understand the concerns from the surrounding properties with the space being used. MacLaren stated he believes it has potential to diminish the surrounding properties, although he's not a professional in that regards.
5. **Hardship** – Chairman Reed and Miller agreed they see no hardship.

Chairman Reed moved Hojaboom seconded the motion to approve the variance under Article 6 Section 6.10.3.b Maximum Density, and Article 6 Section 6.10.3.f Minimum Off-Street Parking 2.5 spaces per unit. The motion failed 4-1; Horne voting in favor of the variance.

POLKA DOT HOUSING, LLC – Chairman Reed read notice of a request for a Variance under Article 6 Section 6.10.2.C (*Maximum Height in the Multi-Family Housing Ordinance*) & a Variance under Article 2 Section 7.2 (*Maximum Building Height in the Rural Residential Zone*) to permit the construction of a 48-foot-tall apartment building whereas 35 feet is the maximum height. The parcel is located at 232 Main Street, Map 022, Lot 058 in the High-Density Residential Zone.

Paige Libbey from Jones & Beach came before the board with the proposal. Libbey explained this is an existing house with a proposed apartment behind that's already been approved, with an access through the 242 Main Street property. She explained the building that received variances is a 24-unit building which is three stories where only two stories are allowed. The reason for the additional height is to allow more of a roof pitch to hide some of the mechanicals that will be on the roof as well as allow a roof pitch that will fit into the neighborhood, more of a New England style.

MacLaren questioned the last time this was before the board the attorney stated there was no intention of going higher than the three stories at 35 feet, did the applicant know then this would be back for the height variance. Libbey responded no, they had no plans for the building yet and that's the reason the height variance was not asked for at that time. 37% higher now coming.

MacLaren questioned why this wasn't asked for when they were previously before the board and suggested this was done to get the Board to approve the height. Martin and the Chairman disagreed. MacLaren stayed with his reasoning that this variance was not requested prior so that the previous variance would be approved.

Libbey 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 stated she feels suspicious with this request after the board approved the height previously after the applicant stated the building wouldn't be any higher. She stated the land has been increased immensely in height already and diminishing her property and will block off her view. Lavoie noted there are five criteria the board has to look at.

Hojaboom stated one of the five criteria is, would it diminish the value of surrounding properties the board takes into consideration when approving or denying a variance. Hojaboom explained to Lavoie that her property is a concern on whether or not it will be affected.

Joe Lombardo from the fire department stated when this goes before the planning board, they will address the fire codes.

Chairman Reed closed the public hearing.

The Board deliberated on the variance request before taking a vote:

1. **Public Interest** – Martin stated he feels 48 feet is too high and would be contrary to the public interest. Scully asked the applicant if he has any permits showing the

Scully asked the applicant if he has any that shows how high it is at the top compared to the surrounding buildings. Gatchell responded he does not, he increased the height just so he's covered, he believes it will be a little lower.

MacLaren asked the height of the 12-unit building. Gatchell responded 35 feet. Gatchell explained the goal is to make the buildings look the same and with a flat roof it will look like two different buildings.

2. **Spirit of the Ordinance is observed**– MacLaren stated he does not agree with that height in that area.

Hojaboom stated she can understand covering the mechanicals on the roof, which can be an eyesore, shows they care taking into consideration the neighbors, and by asking to add the height they would be taking care of the problem.

Scully noted the abutter does not seem to be happy about the entire project.

3. **Substantial Justice** – not addressed.
4. **Diminishes Property** – Chairman Reed noted the board did hear the comments from the abutter, if granted, it would diminish her property value. Hojaboom stated she has no information on whether or not the neighbor's property would be diminished.
5. **Hardship** – Chairman Reed stated he does not see any hardships with this request as the board already approved the 35-foot height. Miller added the applicant can still build the two stories with a roof, therefore no hardship.

MacLaren asked the Wolfe if the board had the right to change the height, as an example, 48 feet to 47 feet as part of the approval for the variance. Wolfe stated the Board could do that and that's what the height would have to be.

Maclaren suggested a motion if one is made that the motion have a condition that whatever is decided for the height, it is only for a three-story building.

Hojaboom moved Martin seconded the motion to approve the three habitable stories with the condition that it stays three stories. The motion to failed 4 – 1; Hojaboom voting in favor of the variance.

MINUTES OF JULY 19, 2023 FOR APPROVAL & SIGNATURE – Hojaboom moved Scully seconded the motion to approve and sign the minutes. The minutes were duly signed and the motion to approve the minutes carried unanimously.

ADJOURNMENT – Martin moved Scully seconded the motion to adjourn at 7:50 pm. The motion carried unanimously.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary

Brian Reed

Kevin Martin

Casandra Hojaboom

John Horne

John Scully