

TOWN OF EPPING, NEW HAMPSHIRE**ZONING BOARD OF ADJUSTMENT****Wednesday August 11, 2010**

PRESENT: Dave Mylott, Mark Vallone, Philip Gamache, Robert Silva, Alternate Kim Sullivan; Planner Brittany Howard; Secretary Phyllis McDonough.

CALL TO ORDER: Chairman Mylott called the meeting to order at 7:00 P.M., and appointed Sullivan to sit in for Yergeau.

HERB CUMMINGS, KENDALL AUTO AND TRUCK – Chairman Mylott read notice for two Variances concerning Article 2, Section 2.3 (Permitted Uses) for an Auto Service & Repair Shop, and Article 7, Section 7.4.3(9) (Prohibited Uses) Auto Service & Repair Shop in the Aquifer Protection District “D”. Parcel is located on 429 Calef Highway as seen on (Tax Map 016 – Lot 046) in the Residential Commercial Zone. Abutters present: Dean Nash and Joseph Chase.

Wayne Morrill Jones & Beach were in front of the Board for CVS on property owned by Kendall Auto Sales who has been in business in Town for 14 years. Kendall would like to relocate in Town on 429 Calef Highway approximately 1.1 miles from the closest auto business. Morrill explained they will have to go for a new state approved septic system. He explained the proposal is to construct a new garage with a repair shop, driveway and parking spaces, and informed that the cars being repaired will be parked behind the garage. Morrill explained there will be a 25 foot buffer around the entire site and the existing house will be used for an office/residence. Morrill explained it is a 2,500 square foot building with a store front that will face Route 125 and will have sales office, and garage door. Morrill explained the traffic study done at Kendall’s site will be the same with the new site. Morrill explained there is a 400 foot site distance with no curves in the road. Morrill stated the parcel is in Aquifer Zone D which is a very small aquifer. He explained the proposed parking lot will sheet flow the runoff into an infiltration pond and recharge the aquifer in the back of the site and is a great distance from the Lamprey. Morrill explained the structure will be built with the latest building codes. Morrill informed the Board the plan has been before water & sewer.

Morrill addressed the 5 criteria regarding Article 2, Section 2.3 (attached to file).

Chairman Mylott stated the variance on Article 7 is the same information supporting both variances.

Vallone asked what the traffic count is at the current business. Morrill explained they did testing at peak hours. There was one done on a weekday from 4:00pm - 5:00pm with a count of two cars in and one car out and another on Saturday 11:30am - 12:30pm with a traffic count of two cars in and two cars out.

Sullivan noted the application states this is for an auto and service repair shop and asked if there is going to be auto sales also. Morrill stated sales are allowed in this zone repair and service is not. There was a permit issued back in 2008 to construct a 48’ x 24’ garage on this lot that was never built and are looking to increase that a bit for the business.

Chairman Mylott noted the application talks about both landscape buffers and fence. Morrill showed on the plan a buffer around the entire site and stated there will be fencing or screening to enhance the site. Chairman Mylott asked if the driveway will go right to Route 125. Morrill stated it will.

Chairman Mylott questioned Morrill that he indicated there would be no more traffic on Route 125. Morrill explained the current operation on Route 125 will have the same volume of traffic coming in and off the site. Chairman Mylott noted this is a substantially different site different part of the town compared to right off of Route 101 and Route 125 in terms of what the traffic impact might be compared to where it would be in the new location. Morrill stated the traffic volume even at the peak hour is negligible one to two cars.

Vallone asked where the nearest residence is. Morrill showed the nearest residence at Railroad Ave., right next to Goodrich. Vallone questioned how far the driveway is on the proposed site to No. River Road. Morrill stated approximately 75 feet.

Chairman Mylott read letters for the record from Dianne Dean (attached with the file.)

Joseph Chase, representing the Burley Trust asked that the Board not grant the variance. He stated if this is granted it would do the town a disservice. Chase he has a concern about Rum Brook to the north of the site is a main route to the Lamprey River and is concerned with this type of business being close to the river. He explained there is a culvert on Route 125 and is heavily protected for the turtles. Chase also commented on the traffic flow and the many accidents at Route 87 has had many accidents and also at No. River Road.

Chairman Mylott submitted a letter from Chase for the record (attached with the file.)

Dean Nash stated his concerns are with the wells that are shallow. He explained everything flows away from the proposed property and drain back toward his property. He stated the pond to be put in on the back side of where he lives. He stated another concern is the traffic. Nash informed the Board the garage that was mentioned was going to be for residential use. Nash explained there was a proposal for a detail business at one time that came before the town and was not allowed to even wash cars on the site. Nash stated he also has a 15 foot bank easement along that site.

Gamache asked Nash what his concerns are with the traffic on 125. Nash explained when he tries to get out of his road and head toward town on a Friday night is extremely hard now and with this business would make it worse.

Greg Tillman stated he is neither for nor against the variance. He advised that once a variance is granted it is permanent and this type of use would be allowed forever in that zone, and the granting of a use variance is serious and the board needs to pay attention to the spirit and intent of the ordinance. Tillman suggested in this case he would like more information on how this application meets that spirit and intent of the ordinance. He reminded the Board this ordinance is voted on by all of Epping's voters. Tillman also stated he did not think sales were allowed in this zone.

Chairman Mylott read a letter for the record from Richard Straw, Jr. (attached to file.)

Morrill addressed the abutters concerns regarding wells explaining they will take surface runoff and direct it into the pond into the rear pond which is all sand, and with all regulations they will have to direct offsite infiltration pond that will suck up water into the ground and one of the reasons why they are recharging the ground water in this aquifer zone and will keep any runoff onto any house lots.

Morrill addressed the concern with fuel spills and informed the Board the owner saves any oil stores it to burn for his heat during the winter. Morrill spoke about the traffic, showing where the driveway location is in a straight area and is an existing driveway of record and will need to apply for a DOT driveway permit. Morrill stated it currently meets over 400 feet of distance. Morrill explained this is a thriving business in Epping and the owner would like to keep it in Epping.

Morrill explained the slope easement from the original plan that runs along the side and that site will not be touched. Morrill addressed Tillman's concern with the use variance and stated it does allow retail sales in that zone although does not specifically say auto or no auto sales allowed.

Vallone asked if car in parking lot that is parked in the parking lot leaking gas tank what happens to the gas. Morrill explained it would hit pavement and go into the ground. Vallone asked what is to prevent it from going into Nash's well. Morrill explained they will be infiltrating the water at the rear of the lot and if anything happened it would go into that area and would be cleaned up.

Chairman Mylott stated looking at Article 2 Section 2.3 he does not see retail but does see it as a Special Exception and would have to be addressed if this is granted as it is not a permitted use.

Sullivan commented on what is deceptive is the highway traffic is to say the site distance of 400 feet of straight road is all true, but if coming off the easterly side of 125 or North River Road and wanted to go south the traffic is horrendous and there is no traffic light is a very difficult task.

Sullivan stated in his opinion to grant a variance the applicant has to meet all five criteria and he does not feel this application meets at least three of them. He noted **#1 The proposed would not diminish the values** - with a commercial business next to residential homes will have a negative effect on the residential value; **#3 Denial of a variance would result in unnecessary hardship to the owner** - the owner would not be effected by this therefore there is no hardship to owner only to the business; **#4 Would do substantial justice** - does not do substantial justice to say commercial use where there are other properties along 125.

Silva explained he drove by the business where it is now and also the proposed site and commented on how good it is maintained. He stated after the concerns on shallow wells he sees this business as a disaster as what happened in another part of town.

Gamache explained his concern is with the traffic and stated if only one or two going in and out at peak there wouldn't be any money generated for the business. Gamache stated any business would generate more traffic.

Vallone stated looking at the five criteria and the issue around the public interest is traffic safety and quality and safety of the wells.

Chairman Mylott stated his concerns are the use variance as it changes what the purpose for the particular area and in this case, particularly with Article 7 aquifer protection district and the purpose of the ordinance is to make rules that apply to areas that could effect the water and for businesses being there that could affect long term effects. He explained the hardship to the owner and does not see what part of the property provides the hardship that would justify changing the rules to authorize the business.

Vallone noted the Town needs to have these types of businesses, although advised because of safety reasons there may be other opportunities on Route 125 that are zoned for this type of business.

Gamache stated he was a bit confused by the letter from Clay Mitchell on the aquifer zone and that "the site is a great distance from the Lamprey River and several other similar uses are located in the district and closer to the river....." Gamache questioned if Section 7 does not cover wells in the area?

Howard explained Section 7 talks about the aquifer district which effects the Lamprey and other tributaries and the ground water but doesn't necessarily speak to the wells.

Sullivan moved, Vallone seconded the motion to deny both Variances regarding Article 2, Section 2.3 and Article

7, Section 7.4.3. The motion carried unanimously.

REQUEST FOR REHEARING BY WILFRED CLOUTIER RE: JOEL SHRUT

Chairman Mylott stated this is in regards to an amendment to a Variance that the board authorized on 6/30/10. The Chairman explained anytime there is a hearing and someone believes an error was made or that evidence wasn't heard by the Board because it wasn't available at the time then they have the right to request a rehearing. Chairman Mylott explained when the request for rehearing comes forward it is submitted in writing and not a noticed meeting and don't hear additional evidence on the application. The Chairman explained it is then up to the Board to decide if an error was made the board would start over then it would be noticed and everything would be conducted like a normal hearing or deny which would then allow whatever action was approved to continue. The Chairman explained another option would allow the board to suspend the decision pending further information and the board would review that documentation. The Chairman explained if request claimed something the board didn't have could look at the documents that were missing.

Sullivan stated if the information that was brought up subsequent to the June 30th meeting had been brought up at that meeting because the information was available but it wasn't and looking at the amount of money that's been spent and the resources expended by the Town, it shows from the information in 2005 would find this to be a real injustice to shut off anyone for the variance as it will be continually challenged. He stated his feeling is to suspend/repeal the decision made on the 30th and Shrut would have to bring back a new application.

Chairman Mylott addressed the information the board received for the request and explained back in 2005 where the then Zoning Board approved a variance 3 – to – 2 on that property. He explained what the Board did on the 30th was to amend the language as there was something brought by the Code Enforcement Officer when looking at the application. He explained what has been brought to the attention of the Board has to do with missing documentation from the file. Chairman Mylott stated when the request for a rehearing in 2005 was brought up, Graham stated he wished to withdraw the application for the variance. He explained, in essence, that variance no longer in effect, however when the new application came up the Board didn't have all the information necessary to make the decision properly on June 30th.

When asked questions on LaPointe's letter to the Board by Vallone, Chairman Mylott explained his understanding of the letter was LaPointe was not questioning this Board he was questioning the wording of the motion that was made by the Board in 2005. Chairman Mylott explained he understood LaPointe's comment if the board approved the request for a rehearing there is no variance and the applicant would have to come back to the Board with an entire request for a variance.

Gamache noted the Board did not change anything on June 30th of what happened in 2005 other than the wording. Chairman Mylott explained what the Board did, inadvertently, was to reactivate a variance that was not alive and by doing that have said that variance is valid.

Chairman Mylott went on to explain the intent of a suspension is when there is enough information to review. He stated in this case the Board could suspend the decision and the Board could determine what is required to be provided for that suspension and could stipulate that the requirement is a new application. Chairman Mylott stated a request for a rehearing would require a noticed hearing.

Sullivan moved, Gamache seconded the motion to approve the request for a rehearing. The motion carried unanimously.

Chairman Mylott explained the reason for the motion for the request for the rehearing is because the previous

decision was based on the fact that the original variance was abandoned by the applicant's representative and therefore it is non-existent.

Mary Cloutier asked the Chairman to explain the decision and what will occur next. The Chairman went over his explanation.

MINUTES OF JUNE 30, 2010 FOR APPROVAL – Sullivan moved, Vallone seconded the motion to approve the minutes. The motion carried unanimously.

MINUTES OF APRIL 28, 2010 FOR SIGNATURE – The minutes of April 28, 2010 were duly signed.

Sullivan asked to make a statement involving an accusation that was made about the Board changing previous minutes from 2005 and noted the minutes were not changed only amended the error. He noted at a subsequent meeting a Selectman who has political affiliation with the Cloutier's, chastise the Zoning Board and not having all the facts gives the Board a black eye to grandstand with another member of the Board is not right and should stop.

ADJOURNMENT: Vallone moved, Gamache seconded the motion to adjourn at 8:35 pm. The motion carried unanimously.

APPROVAL NOTIFICATION: August 11, 2010 - Minutes of June 30, 2010 were approved. Minutes of April 28, 2010 were duly signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary

Dave Mylott

Kim Sullivan

Robert Silva

Mark Vallone

Philip Gamache