

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

**Wednesday January 6, 2010**

**PRESENT:** Dave Mylott, Bob Jordan, Mike Yergeau; Alternates Patrick Pagnani, Robert Silva; Secretary Phyllis McDonough.

**CALL TO ORDER:** Chairman Mylott called the meeting to order at 7:00 P.M., and appointed Silva & Pagnani to sit in Nowe's & Brown's seat.

**TYFLOT INC.** – Chairman Mylott read notice for a Variance concerning Article 2, Sections 7.3-7.9 of the Zoning Ordinance for a 15,000 square foot warehouse building to use as commercial storage. Parcel is located at 253 Prescott Road, as seen on (Tax Map 014 – Lot 013-1), in the Rural Residential Zone. Abutters present: Prescott Orchard Land Development, Dave and Judith Morgovnik, Thomas Dolan, Eric & Laurie Bentz, John & Sherry Arsenault.

Reggie Moreau and Daryl Moreau presented the proposal to the Board. R Moreau explained the facility is 15,000 square feet that was once used in the apple operations. He explained this is an agricultural area, although no longer used as an agricultural use. He explained the business for this area would be a small business and will not manufacture anything, basically purchase product and send it off through UPS, and from time to time will use larger vehicles.

R. Moreau explained the types of products are not hazardous or flammable. He explained the building is more than adequate for this type of business. He explained if allowed they can keep the building looking good and if the building doesn't get use it will eventually fall apart. Moreau explained he is looking for a Variance for the use and not to change the zone.

Chairman Mylott noted he had a question regarding the application where cited that the request is a Variance from Article Section 7.3-7.9 and asked what specifically he is looking for. Moreau explained he sat with the Planner and the building official and was told it was a sum of each of the articles. The Chairman explained the Board is looking at this is not a conforming use and not an extension of a non conforming use because the building as it stands is an agricultural use so the variance would be for Article 7.3 for permitted uses requesting a non permitted use.

Chairman Mylott read letters from Ann Bartlett and Karen Sott (included with the file).

Chairman Mylott opened the public hearing.

Resident of Prescott Road, Selectman Jim McGeough strongly encouraged the Board not accept this application. He stated if this was to be approved the use could be changed overnight and any commercial business could go in as a Variance stays with the land. He noted the product list that was handed out show one of the products does contain chemicals. McGeough explained the not only the roads or bridges can't handle this but the safety hazards that this would bring. He explained this proposal went before the Planning Board and they could not figure out what to do with it and sent it straight to the Zoning Board.

Moreau stated one product that is listed on the hand out does have chemicals but is not taken into the warehouse. He explained this did go to the Planning Board and they could not figure out what to do with the proposal as it is

not in their jurisdiction and then sent the applicant to the Zoning Board.

Resident of Prescott Road, Selectman Archambault addressed the Board and noted he is speaking as a resident. He explained the post cards that went out to the residents with the car into the tractor trailer is an adequate picture of what will occur if this is approved. He explained that he and members of his family and friends have gone off the road because of these trucks. Archambault read the meaning of spot zoning. He noted in order to obtain a variance the applicant has to meet the five criteria and suggested that the petitioner has been met with this application.

R. Moreau explained he has no problem if the Board wants to read the letter of the application. Chairman Mylott explained that is with the application and is public record.

Attorney Pelich representing McGovern presented his case to the Board (attached with the file).

Resident of Prescott Road, Cory McPhee explained he was seated on the Planning Board when this was approved and what was discussed at that time is not in the spirit of what is being proposed. He explained there are places on Route 27 that would accompany this type of business, and is also very concerned with traffic on the road and bridges

David Crowell read a letter from abutter John Falcone (attached with the file). Crowell added he sits as an alternate on the Planning Board and is opposed to this change.

Resident of Prescott Road, Tom Dolan concurred with the other speakers on the traffic on Prescott Road and asked if the applicant have explored other areas in Epping such as the building on the corner of Hedding Road and Route 125. Reggie Moreau responded they have not looked elsewhere.

R. Moreau addressed Dolan's question that they have not looked elsewhere.

Michael Voze, 75 Old Bridge Lane explained he walks every day from Old Bridge Lane along Prescott Road to Blake and has observed the traffic that passes, and when cars go over the hill they pick up speed and when they get to the driveway of the barn and trucks would be coming out there could be a very serious accident.

Resident of Prescott Road Eric Benz noted the hill on Prescott Road has a blind spot and adding commercial vehicles will complicate this more. He explained this is also a school bus route, and is concerned with this rezoning. He asked the board not to approve this application.

Abutter Virginia LaPierre explained her property abuts the entire orchards and explained if in a car going past a working truck you have to drive up onto the step of the residence. She explained the intersection of Dearborn is extremely bad and is very worried with the trucks and how fast they go. She mentioned there was \$50,000 that was supposed to come from the developer to fix the road. She asked the Board to please deny the application

Resident Harold LaPierre explained there is a precedence of denying commercial development on Prescott based on the health, safety and welfare of the people. He explained there was a proposal to allow a mining operation for sand and gravel and due to the width of Prescott Road it was denied. He explained nothing has been done to this road in years and stated he feels the whole orchard was premature development. He stated this commercial development and concurred the application does not meet the five criteria and the Board has no legal authority to approve this request.

Bob Goodrich explained he served on the Planning Board and sat as Chairman for most of the years. He agreed that this application does not meet any of the criteria. He explained the applicant mentioned no way to control

traffic and would send traffic heading west where most accidents have happened at the five corners. He stated the whole idea of this use being approved is impossible. Goodrich added the applicant stated he was here to hear what the residents have said and they have come across clear that they are not in favor of this proposal. Goodrich stated he feels the applicants should withdraw their application.

Craig Stevens asked the Board to please take into consideration the voice of the people.

Resident of Prescott Road, Sherry Arsenault agreed with the safety issues with so much traffic coming out of the Orchards. She informed the Board she has had problems with her property every since this subdivision came in. She concurred with the mention of money that was to be put aside to fix Dearborn.

R. Moreau explained the developer told them it would be a very hard for this request and has heard the people don't want any kind of commercial development, and if they don't want it he's okay with it.

Mark Valone asked when the Board makes their decision will each member explain why they voted the way they did. Chairman Mylott explained the Board has the right to speak if they want to. Valone added he would like an explanation from the Board if the vote is to allow this request.

The Board addressed the five criteria:

**The proposed use would not diminish surrounding property values because:**

Jordan explained this proposal would diminish surrounding property values by adding a commercial use would diminish the desirability as well, with the increase traffic flow.

Yergeau stated this is contradictory to low impact and does not see the use fitting in the zone.

Pagnani stated this request does not fit and would diminish property values especially with the traffic on the road.

**Granting the variance would be of benefit to the public interest because:**

Pagnani noted this would not be a benefit to the public interest.

**Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property that distinguish it from other properties similarly zoned:**

Jordan stated the property was spelled out that he would build a house on that property and would not give any hardship by not having this proposal going through.

Chairman Mylott explained Moreau is not the current legal owner who needs to prove the hardship, it goes to the applicant to prove that.

**Granting the variance would do substantial justice because:**

Yergeau stated he feels it is clear with what the people said.

**The use is not contrary to the spirit of the ordinance because:**

Jordan stated the original use was agricultural and is now residential use and would be contrary going to commercial use.

Jordan moved, Pagnani seconded the motion to deny the application based on the fact that the applicant has not met the five criteria. The motion carried unanimously.

Selectman McGeough stated the decision was right and just and thanked the residents for attending the hearing, and also thanked the Board.

**MINUTES OF DECEMBER 15, 2010 FOR APPROVAL** – Pagnani moved, Jordan seconded the motion to approve the minutes as submitted. The motion carried 4 – to – 1, with Silva abstaining.

**MINUTES OF SEPTEMBER 29, 2009 FOR SIGNATURE** – The minutes were duly signed.

**MINUTES OF NOVEMBER 18, 2009 FOR SIGNATURE** – The minutes were duly signed.

**ADJOURNMENT**: Jordan moved, Yergeau seconded the motion to adjourn at 8:15 pm. The motion carried unanimously.

**APPROVAL NOTIFICATION: January 6, 2010 - Minutes of December 15, 2009 were approved. Minutes of September 29, 2009 & November 18, 2009 were duly signed.**

Respectfully submitted,

Phyllis McDonough,  
Zoning Board of Adjustment Secretary

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**Dave Mylott**

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**Bob Jordan**

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**Mike Yergeau**

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**Patrick Pagnani**

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**Robert Silva**