October 7, 2021

Dear Members of the Board,

This letter is in reference to the application of Isaac Frye Holdings and Kenneth Lehtonen to allow a gravel excavation, Lot F-3-2. I am Chris Owen, 634 Isaac Frye.

You have a letter on file from me, dated July 9, which outlines the reasons that this application fails. I stand by that letter (points 2-5 are pertinent), and trust that you will have reviewed it prior to the next hearing on Tuesday, October 12.

What I am offering today is in addition to, and different from, my July 9 letter. I focus here on fresh discussions on the spirit of the ordinance, and hardship.

Spirit of the Ordinance

Given the unanimity of opposition to this application by abutters and neighbors, and given the unanimity of opposition, by many of those same people, to previous applications, it seems fair to ask: would any scenario in which material were removed, be satisfactory? In other words, would it EVER be possible to conceive a situation where the removal of gravel would be okay with the neighbors? (I realize that satisfying the neighbors is not one of the 5 criteria for approval, but the scenario I outline below is pertinent to "spirit of the ordinance.")

I can't speak for my neighbors, but for myself, the answer is yes: I can conceive a situation where removing material from that property would be okay. And it would look like this:

The applicant would be well aware of the sensitivity of this particular lot. He (I will use that pronoun for simplicity's sake) would be aware of its history, and therefore read any and all documentation carefully; he would be aware of the historic nature of the neighborhood, and therefore tread lightly until his plan was approved; AND he would be aware of the plain text of the ordinance and its meaning: that gravelling is forbidden outside the gravel district.

The applicant, then, would make every good-faith effort to create a plan that did NOT require a variance for removing material from the site, because the applicant's intent would be to obey the plain text of the ordinance, which is to have no—zero—material removed. The applicant would consider different options for siting the house, in order to minimize or eliminate the need to remove material; the applicant would prioritize using excavated material on-site, to ease grades or create as low-an-impact build site as possible; the applicant would consider various options for routing the driveway—again, out of respect for the ordinance, and in good faith.

THEN, and only then—after this good-faith effort to follow the town's regulations—would an application for a variance be well within the spirit of the ordinance. I can imagine this fictional applicant saying something like: "We tried several options and scenarios, to try to come up with

a plan that is in compliance with the ordinance prohibiting gravel operations in this part of town. After all our very best efforts, we need to come before the board to apply for a variance to remove 100 cubic yards, as incidental to the construction of a house on this lot. I would ask you to trust that we have done the best we can to follow the plain text of the ordinance, so we come before you, the board, to seek this minimal relief."

In contrast, what is before the board, in the "house-in-a-hole" plan, is a bad-faith effort that begins with the question: What is the most material we can excavate from this site, and still try to cover it with the veneer of "incidental."

That is NOT in the spirit of the ordinance.

Hardship

First, there are no special conditions of the applicant's property that distinguish it from other properties in the area.

Lot C-68 on Scott Road (which my wife and I own) contains similar grades as the applicant's property for its entire length, north to south. That it is more difficult to site a house on such a property, than it is to site a house on a flat piece of land, is true. But relative difficulty does not rise to the level of legal hardship. I can site a house on lot C-68, even on the steeper part, without removing 30,000 cubic yards of material. So can the applicant do the same, on his property.

In other words, his property is not burdened by the zoning restriction any more, nor less, than mine is.

The denial of this variance application does not prevent the applicant from using his property for its zoned purpose. There is no hardship.

This application fails for these reasons, and for the reasons outlined in my July 9 letter.

Respectfully submitted, and in thanks for your time and attention to these matters,

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