

**Town of Epsom  
Zoning Board of Adjustment  
8/31/11**

**In Attendance:** Glenn Horner, Chairman; Rick Belanger, Vice Chairman; George Carlson; Alan Quimby; Mike Hoisington, Alternate; Mark Riedel; John Dodge, Planning Board Liaison; Darlene Phelps Recording Secretary

**Also in Attendance:** Andrew Ramsdell; Keith Cota; Bill & Dotty Dodge; JoAnn Breen; Sharon Tower; Richard Boucher; Pauline Loso; Agnes Stevenson; Barry Arseneau; Ron Powers;

**7:05 PM**

Glenn opened the meeting and introduced the members of the board. Glenn reviewed the procedure for the meeting. The members sitting in for this meeting tonight are Glenn, Rick, George, Alan & John. The minutes of 8/22 were reviewed. Alan made a motion to approve the minutes as presented. John seconded the motion. All in favor.

**Lawrence and Diane Grayshan have applied for a variance to Article III, Section B [Pre-Existing, Non Conforming Uses], Subsection 7 [Pre-Existing Non-Conforming Seasonal Dwellings] to expand the use of a seasonal dwelling to year round residency on a non-conforming parcel of 0.34 acres with 100 feet of private road frontage. The property is located on Lake View Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-19 as Lot 12.**

Glenn explained that the applicant was unable to make tonight's hearing. The applicant sent a letter explaining that he was unable to make tonight's meeting due to a family illness. The applicant enclosed a \$40 continuance fee and asked for a continuance. Glenn said that since the last meeting, two additional certified return receipts have been received from the Grayshans and also Bill & Dorothy Dodge.

Glenn said that he spoke to legal counsel and was advised that the hearing could be held in the absence of the applicant.

Glenn asked Jay Hickey, Zoning Compliance Officer for input. Jay said the 2009 septic system approval is for a 2 bedroom seasonal house. Jay indicated that the size of the home is 34' x 30' and is only approved for 24' x 24' and there are no permits on file for any additions.

Jay said the septic system approval indicates that use must continue as seasonal use only.

Jay reviewed past inventories show that in

1983 – a camper was on site, 1984 – built the camp, 1985-86 no occupants, 1987 – Lawrence & Diane + 3 children, 1988 - not applicable, 1989-92 no occupants, 1993-94 no occupants, 1995 – Lawrence & Diane +3 children, 1996 – built an enclosed 3 season porch with no permit, 1997 no inventory, 1998-99 – no occupants, 2000-2004 – no occupants, 2005 – tenants Carlos & Jackie Muniz +4 children, 2006-08 - no occupants, 2009 – tenants Muniz (system failed) 2010 -2011- no occupants.

Glenn asked for input from Keith Cota, Selectman – he has no comment at this time.

Glenn reviewed the checklist with the audience so they would know how to frame their comments – whether in favor or not of the variance. Glenn asked for input from attendees that are in favor. There are none. Glenn asked for input from attendees who are not in favor of the variance.

Sharon Tower indicated that the tenants who occupy that home have lived there for several years and there are a lot of people occupying the home (parents, 4 kids, plus girlfriends). She said the Grayshans are not members of the Lake View Road Association, which helps to maintain the roads. She said the Grayshans have been asked to contribute and they have declined. She said if the Grayshans wished to occupy the home as their retirement home, she may be in favor, but that is not the case.

Bill Dodge is an immediate abutter and in general has no objection to a homeowner living on their own property, however he is opposed because there is a Road Association that members pay into, and physically work on to keep the road kept up all year. He said the Association is registered with the Secretary of State and the town receives a copy of the minutes of their annual meeting every year. Bill pays his annual dues every year and Mr. Grayshan does not contribute and will not contribute, and has expressed to Bill in 2001 that he is an absentee landlord and will not be part of the Road Association. Therefore, Bill objects to an approval of this variance. Bill also noted Mr. Grayshan's lack of attendance at two hearings.

Glenn noted that there is a sign at the beginning of the road that says "Pass at your own risk". Bill said yes, the sign is there for a purpose. Glenn said that this type of sign does propose a concern to the ZBA about expanding use on a private road. Bill said in the winter the road is plowed only to the Estabrooks, and the Muniz's snowblow from the Estabrooks to their house. The year round residents contribute to the snowplowing.

Dorothy Dodge noted that the Muniz family (tenants) have lived in that house for 12 years, and she wondered why there are so many zeros listed on their inventory.

JoAnn Breen asked Jay to confirm that he stated that the Muniz family sent their kids to Epsom School and received services from the Town of Epsom. She also asked if Jay stated that the status of the home is a seasonal home and Jay confirmed both of these statements. She also noted that the size of the home is larger than what he is permitted for. She stated that this variance is not in the spirit of the community; the other homes on that road are owner occupied and the Grayshans are absentee landlords / running a business. Joanne provided pictures of the property which shows unregistered vehicles on the property (which have been there for years), which forces the residents to park along the road.

Richard Boucher owns 16 Lake View Road said the tenants have been in the Grayshan home for many years. Richard indicated his frustration that he is not able to occupy his property year round, yet this home is being used as year round rental property. In addition, their refusal to contribute to the Road Association is unfair. He stated there are year round residents that live all around the pond, and in other areas of Epsom as well. Glenn said the Town does address these non-compliance issues when it becomes aware of them. Richard also said he wouldn't be so opposed if the Grayshans were the occupants. It was also discussed again that the annual inventory has not been filled out truthfully over the years.

Bill Dodge said the Road Association was established in 2001 because it was not passable. Bill said that Mr. Grayshan contributed that year, and told Bill not to ask for money again. The Muniz's told Bill that Mr. Grayshan raised their rent \$50 a month because of the Road Association, yet he has never paid the \$50 annual contribution. Bill submitted a photo of the front of the property showing several cars parked in the driveway on July 20, 2011.

Glenn read a letter from Margaret & Brian Perrot stating that they have owned their property since 1998 and there have always been tenants in the Grayshan home. The Perrots also suggested that the Town standardize the rules for homes that are being used as year round residences, instead of dealing with them on a case by case basis in order to save the town money. Glenn responded by saying that a district approach to the area would be more beneficial but until that happens the town addresses these on a case by case basis as they are brought to the attention of the town. The ZBA is a volunteer board and works at minimal expense to the town.

Glenn asked if the Road Association is a seasonal association and Bill said no, they have their yearly meeting and set goals for maintenance to be done to ensure year round accessibility for the residents.

Barry Arseneau owns a seasonal home on the other side of the lake. He said they are in association with the DES Lake Monitoring Program and the homes around the lake contribute for testing of the lake and the weeds around the lake all summer. The lake is a Class II lake – about 20' deep. On occasion the lake has tested positive for blue/green algae. He has been forwarding the minutes of their meetings to Alison Parodi of the Conservation Commission. Barry is concerned about the over-use of the septic system which is only approved for 2 bedrooms. Barry said the plant growth in the pond is increasing, but the phosphorous level has declined. Previously the pond was about 33' deep, but the weed growth has caused the depth to decline to approximately 20' deep. Mark Riedel noted that the new septic systems in that area over the past 10 years have helped to improve the lake quality.

Jay suggested that a variance only be issued for owner occupation. The board wondered about the legality of that.

Bill Dodge said in 2003 he purchased a Zoning Ordinance book from the town and he asked at the town office recently for a new one and was told that there are none available. Glenn advised that the Zoning Ordinances are available on the Town website, and he thought there was a good supply of printed copies available. Keith said he thought there were plenty, and he will ask this question at the town office tomorrow. Jay said there have been so many requests over the past few years for access online that the office stopped printing them because they had so many left over.

Keith noted that there are significant items to consider and a lot of the testimony tonight shows a history of non-compliance by this homeowner. Expanded use, additions, unregistered vehicles, etc. are all things to consider. Keith also stated that emergency access – in summer and in winter is an important factor. Bill Dodge said the Road Association has responded to Keith's concerns in prior years when he has expressed concern about the road (during the Estabrook application time).

JoAnn Breen asked if the ZBA has a concern about the width of the road. Glenn said that it does, but because this is a private right of way it is beyond the ability of the Board to control. JoAnn stated that even seasonal homes would face the same access issue if the road is too narrow. Glenn said the concern is always safe access at all times especially during the winter months when the road could narrow.

Glenn asked the ZBA members if they would like to grant a continuance to Mr. Grayshan. Glenn stated that the members of the public in attendance tonight have had their opportunity to testify on this case because so many of them are seasonal residents who will not be in town should this case be continued. Some board members are not in favor of a continuance; Glenn would like to give the applicant a third opportunity to come to a meeting. Rick expressed his frustration with the applicant, and his unwillingness to attend the public hearing. Jay also noted that he advised the applicant several times that he could send a representative in his place.

Mark Riedel asked Keith if the town will be addressing the issue of the fraudulent inventories, and illegally renting his home for the past several years. Keith said he is not sure on the inventory issue, and he suggests seeking a legal opinion; the issue of the renting is a zoning compliance issue.

John made a motion to close the public hearing. George seconded the motion. John, Alan, George, Rick voted in favor. Glenn voted no.

Alan said for the sake of the abutters he feels we should vote on this tonight.

#### **8:45 – 8:52 PM Break**

After a brief discussion the board members indicated that they'd like to vote on this case tonight. The checklist was reviewed.

Question A. All members answered no.

Question B. All members answered no.

Question C. All members answered no.

Question D. Rick, George, John, Glenn answered yes. Alan answered no.

Question E. All members answered no.

Question F1. All members answered no.

Question F2. All members answered no.

Alan made a motion to deny the variance request for the following reasons:

1. Approval of the variance would be contrary to the public interest and not consistent with the spirit of the ordinance due to the fact that the property has no public road frontage and is significantly smaller in size (.34 acres) than the minimum 2 acres required for a single family residency.
2. The septic system design is approved for seasonal use only. Expanding the use of the system year round would be contrary to the public interest due to the deterioration of the water quality of the adjacent pond caused by the additional septic loading.
3. The variance would be contrary to the public interest due to the significant liability to the town in providing emergency services on the narrow private access road. Further, based on testimony, the applicant has not been interested in contributing to the maintenance of Lake View Road to ensure proper access by emergency vehicles might be provided.

4. The denial of the variance does not constitute an unnecessary hardship as the applicant can continue to use the property on a seasonal basis.

John seconded the motion. All in favor.

Glenn noted that any interested parties can appeal this decision within 30 days.

**9:10 PM Old/New Business**

Glenn asked all board members to review the Board Procedures for Public Hearing and they will be discussed at our September 7 meeting.

Andrew Ramsdell would like to serve as an Alternate to the ZBA. Keith advised Glenn that the ZBA has to request the BOS to appoint Andrew as an alternate and if that appointment is approved, then he can be sworn in. Glenn will make that formal request to the BOS.

9:20 PM Alan made a motion to adjourn. John seconded the motion. All in favor.