

**Town of Epsom
Zoning Board of Adjustment
1/20/10**

In Attendance: Glenn Horner, Chairman; Rick Belanger, Vice Chairman; George Carlson; Alan Quimby; Mark Riedel (Alternate); Pam Hoyt-Denison (Alternate); Betsy Bosiak, Substitute Recording Secretary

Not in Attendance: John Dodge, Planning Board Liaison

Also in Attendance: Norma Fitts; Constance Riedel; Irene Angelone; Jackie Brown; Robert Sampson; Nancy Sampson; Jeffrey C. Eames; Rachel D. Eames; Priscilla Portras; Everett Jabour; Sue Jabour; Ronald D. Olson

7:05 PM Glenn opened the meeting and introduced the members of the Board. The minutes of 1/5/10 were reviewed. Alan made a motion to approve the minutes as written, George seconded the motion. All in favor.

Glenn explained the process to be followed for the cases to be presented. Glenn noted Mark would be sitting in on Case 2010-01 with Pam sitting in on Case 2010-02.

Case 2010-01 (Everett and Sue Jabour) Everett and Sue Jabour have applied for a variance to Article III, section B [Pre-Existing, Non-Conforming Uses], Subsection 4 [Change and Expansion of Use] to expand the use of a seasonal dwelling to year round residency on a lot containing .141 acres (2 acres required) on a private road (200' of public road frontage required). The property is located on Lake Road within the Agricultural/Residential Zoning District and is identified on Epsom Tax Map U-01 as Lot 33.

Glenn noted that this Public Hearing was properly published and posted and all abutters were notified by certified mail and all green cards have been received back. Glenn reviewed the details of the application.

Mr. Jabour noted they own a small lot. Things have changed due to the economy and they would like to change the property to year round use. He noted his wife's name is Sue, not Susan. No one had an issue with the issue and wanted to continue to with the Public Hearing.

Glenn noted the Jabours had a prior Case (2008-13) to expand the house beyond the 25% limit when it was rebuilt due to the tornado destruction. Mr. Jabour stated the reconstruction had been completed; a temporary occupancy permit has been issued. The merge of their lots (U-01, 33 and U-01, 44) was completed prior to the permit being issued. Glenn reviewed the previous decision noting the condition that the property remains seasonal use.

Rick asked if the road had been upgraded to a Class 5 road. Mr. Jabour reviewed the work he has completed on the road, adding gravel, removing boulders and trees, widening the travel way and correcting the drainage. Rick and Mr. Jabour drew a map of the area and clarified where the work was completed. Rick asked if Mr. Jabour had permission from the owners of the road to complete the road work, Mr. Jabour noted he had spoken with some abutters. Mr. Jabour noted there is no ditch on either side of the road and no wetlands were affected. Glenn noted he had driven on the road after a recent snow storm; there was 6 to 8 inches of snow on the road. This could be a hazard to emergency personnel. Mr. Jabour noted being seasonal he has never been involved in the winter maintenance. As a year round resident he would be more involved as he would want to get in/out also. Mrs. Jabour noted they had been there on a day after a

storm and the road was plowed. Glenn noted with this type of situation the Board likes to see a Homeowners Association.

Glenn noted there was a letter from the Zoning Compliance Officer indicating the home had 3 bedrooms vs. the 2 bedrooms approved in 2008. Mr. Jabour noted the Zoning Compliance

Officer had visited during the 4th of July time and they had had visitors. Glenn noted this was an issue with the septic system. Mr. Jabour noted they do have occasional weekend visitors.

Glenn opened the hearing to the public, reviewing the criteria for the variance from the application.

1. Glenn reiterated the Jabours owned very small lots, a concern with the additional bedroom. Mark asked if the septic design was for 2 or 3 bedrooms, Mr. Jabour noted it was for 2 bedrooms.

2. Regarding winter maintenance Mr. Jabour noted he has not been involved and would be if he lived there year round. Mark asked if they planned to set up an association, Mr. Jabour did not know if there was a formal association or just an agreement. Mark would like to see an association. Mr. Jabour would work with the neighbors for an association or written agreement. Glenn noted this should have been established prior to the Public Hearing.

3. Glenn was not sure how having two homes created a hardship per the regulations. The idea is it should be something special for the property, what makes the property unique for granting the variance. Mr. Jabour did not know if it was a special property. Rick asked about road frontage, Glen noted there is zero frontage on a public road. Rick noted it also did not have the required 2 acres.

4. Glenn noted abutters were present with public interest. Alan noted it was a public concern for access for police, fire, etc.

5. Glenn was not sure how the other houses in the area became year round, he did not know if this was in the spirit of the ordinance.

Jay Hickey, Zoning Compliance Officer, gave packets to the Board with information regarding the property, letters to the Jabours and information regarding the 2008 variance. Jay noted he did an additional inspection in October 2009, and found beds in 3 rooms. He noted the occupancy permit was issued for 90 days for seasonal use as not all the Planning Board and ZBA conditions had been met. The septic approvals for construction and operation were reviewed. It was noted not every private road had been made to do an association. The 2 vs. 3 bedrooms were discussed with it being noted a closet determined if it was a bedroom, Mr. Jabour noted the additional room was to be his office. George asked what happens when all the visitors are there; Mr. Jabour noted there has been no problem to date. Mark noted the house plans show closets in 3 rooms.

No one from the public spoke in favor of the change.

Ron Olson spoke against the variance. He noted the road is private, not managed except for the work completed by Mr. Jabour. It is not plowed unless someone has it plowed. There is no Homeowners Association, the house is oversized. Mr. Olson noted he had not been notified of the public hearing. Discussion ensued regarding how abutters were determined and that it was the responsibility of the applicant to obtain all abutters. Glenn noted Mr. Olson could request a rehearing, but he would be responsible for bearing the expense. Mr. Olson did not want to have a rehearing. He noted his biggest concern was that everything is done legally; he indicated he was never informed of the expansion. Glenn noted his wife attended the meeting for that. Mr. Olson was concerned the house was too large for the space, now being a basement and two

stories. The footprint was moved back from the lake. Mr. Olson noted they are unable to see the lake as they could prior to the house being rebuilt. Mr. Olson noted he had never been asked about the roadwork being done, but he did not care. Mr. Olson was concerned with Mr. Jabour having his business at the property. Mark asked if the Olson's quality of life was diminished, Mr. Olson noted not since the construction has been completed. He did not want to stop the Jabours from living there full time. Jackie Brown, a homeowner on Sleepy Hollow Road, noted they have an association, they maintain their road to allow emergency vehicle access at all times. She felt this road would not. Ms. Brown noted her lot was almost $\frac{3}{4}$ of an acre, the house is further from the lake, has a new well and septic system yet she was denied year round use. Glenn noted each case is determined on its own merits; however the board does take other cases into account.

Norma Fitts was concerned with the road being widened without abutters being notified. She did not mind the trees being cut, and discussed the new drainage as it is closer to the Zimmermans and goes through their woods. Glenn noted this makes a good case for an association. Mr. Olson noted Mr. Jabour did try to do things to not hurt anyone. Mr. Jabour noted the contractor poured the foundation higher than he was supposed to. He noted they still had work to be completed. Mr. Olson asked if the equipment was to remain, Mr. Jabour noted he is not looking to run his business there; it would only be a residence. The equipment would be moved once all the work is completed.

There were no further comments or questions from the Board.

Alan motioned to close the Public Hearing, Mark seconded the motion. All in favor.

The checklist was reviewed.

Question 1: All members answered no.

Question 2: All members answered no.

Question 3: All members answered no.

Question 4: All members answered yes.

Question 5: All members answered no.

Question 6: All members answered yes.

Glenn reviewed a suggested decision he had prepared.

Alan motioned to deny the Variance based upon the following reasons:

The variance was denied for the following reasons:

1. The granting of the variance would not be in public interest or spirit of the ordinance because:
 - (a) It would create increased traffic flows on a steep, narrow, curvy privately maintained road during out of season periods (winter) increasing the liability and risk to the Town of Epsom.
 - (b) The change of use would place an increased burden on public safety personnel including police, fire and ambulance accessing the property during out of season periods when upkeep and maintenance of the road is most critical but which is not assured due to the lot being located on a private road.
 - (c) The change of use would increase the potential for environmental damage to Northwood Lake due to the use of winter de-icing chemicals and added off season septic loading created by the limitations of this significantly undersized lot.

- (d) The conversion of the prior grandfathered seasonal use to a single-family residence on a lot of 0.141 acres with no public road frontage is not within the spirit of the Town's ordinances being only 7% of the 2 Acre requirement 0% of the public road frontage requirement.
 - (e) Conditions placed by the Epsom Zoning Board on the approval of Case 2008-13 for expansion of the existing dwelling on the this property provided assurances that the public interest and spirit of the ordinance would be maintained. No circumstance has been found or evidence submitted that these conditions are not still necessary to satisfy the zoning criteria of public interest and spirit of the ordinance for the prior approval and the subsequent expansion of the dwelling. This is particularly true with regard to condition 1 of the 2008-13 approval which restricted the property to seasonal use only.
2. Denial of the area variance does not result in unnecessary hardship to the owner because maintaining the residence as a seasonal dwelling is a reasonable use considering the close proximity to the lake. In addition, the vested grandfathered right for the seasonal use of the property remains consistent with neighboring seasonal uses in this densely settled location along Northwood Lake;
 3. By granting the variance no substantial justice will be done. The personal gains by the property owner would not balance the long-term impacts caused by the expanded use of this property in this densely settled lakefront location.

Mark seconded the motion. All in favor.

Glenn explained they had 30 days to appeal the decision and the information that would be necessary for an appeal.

Case 2010-02 (Jeffrey and Rachel Eames) Jeffrey and Rachel Eames have applied for a variance to Article III, section G [Residential Single and Multi-Family Residences requirements], Subsection 2 [Two family Residence] for the conversion of a single family residence to a two-family residence on a lot with 3.48 acres (4 acres required). The property is located on Deer Lane within the Agricultural/residential Zoning District and is identified on Epsom Tax Map U-10 as Lot 10-7.

Glenn noted for this case Mark is recusing himself and Pam would be sitting in Rick noted he is friendly with both people but feels he can be impartial. Glenn noted he has done business with them, but he could also be impartial. Glenn noted that this Public Hearing was properly published and posted and all abutters were notified by certified mail and all green cards have been received back. Glenn reviewed the details of the application.

Mrs. Eames noted they have no plans to change the structure, in April 2007 it was approved as a two-family unit. When they purchased the property it was relayed to them it had an approved apartment on April 1, 2007. She noted per Jay Hickey, Zoning Compliance Officer, after the apartment was vacant for 12 months the property reverts to a single family residence.

Rick noted when the approval was granted the in-law rules were not voted in by the Town, it was a pre-existing non-conforming apartment. One criteria of the approval was

the apartment is less than 900 square feet and has no kitchen. Mrs. Eames noted it has a kitchen. Rick noted the Record of Decision for 2007 was to be recorded. Mrs. Eames noted they had not seen it until today; the title company had portrayed the property as a two-family. She noted this property met all the requirements except it was ½ acre shy of the land requirement. Glenn noted when a property is short acreage the owners are asked if they have contacted abutters to purchase the required land. Mrs. Eames noted they had not done this, it was not required in 2007, they thought it would be similar. Glenn noted it was important to record a Record of Decision, if it was recorded it was important to complete thorough research when purchasing a property. It was discussed the property was in foreclosure for close to a year prior to the purchase.

Glenn opened the hearing to the public, with the criteria for the variance being reviewed.

1. There is not a change to the property, it is not hurting the abutters, and the renter is depending on it.
2. Mrs. Eames noted they have purchased a property that was overgrown and have cleaned it up, increasing its value.
3. Mrs. Eames noted the property is shy of the land; they are not the first ones coming before the Board due to this. Glenn noted others have come due to a relative living there.
4. Glenn noted the 2007 application was sanctioned with conditions on the application, one being no children in the apartment. Mrs. Eames noted the apartment was small and not good for more than a couple to live there.
5. Glenn noted Mrs. Eames had stated the property meets 87% of the requirements. Jay Hickey, Zoning Compliance Officer, gave packets to the Board with information regarding the property. He noted there is no septic system design in the file for a 4 bedroom unit as required in the 2007 decision. He noted the previous decision had expired and the Eames have to start from scratch. A copy of the recorded decision is not in the tax file.

Mark Riedel noted this property has been in foreclosure several times since 2004, the parents came to live there to assist in saving it. He did not believe the parents stayed longer than 6 months, later some younger people were living there. The variance went away approximately in 2005. The first realtor offering the property knew the apartment had to be removed. Mark noted a new septic system had to be designed; there is no record of this.

Nancy Sampson noted they seemed to be getting a variance for an in-law apartment and then other people are living there. Nancy asked what they were receiving for rent; Glenn noted this was not germane to the case. Nancy noted an in-law apartment is a hardship, a duplex is for income. Mrs. Eames noted the rent was affordable for the town. Nancy hoped the application would not be denied for the acreage alone, but due to the neighborhood.

Bob Sampson noted when they moved to the neighborhood it was single family homes on 2 acres with 200 feet of frontage on a public road, he noted the Board did not want to set a precedent. Other homes in the area have been foreclosed on and he did not want others to change to multi-family, he wanted to keep this property as a single family home.

Connie Riedel talked about the merits of the case, feeling it should not be approved for the following reasons:

1. The acreage is a little over ½ acre less than needed.
2. The lack of a septic system design. She was concerned with parents living there, for renters there is not a lot of control except for the owner regarding the number of people living there.
3. There is no guarantee as to who might live there in the future, this could affect the public. They purchased their home under stipulations; renters do not have

- pride of ownership or always take care of a property. They moved there as they wanted a quality of life.
4. There should not be a kitchen in the apartment, but there is one.
 5. Regarding foreclosures, it is 'buyers beware'. They should have checked the record as the apartment should have been turned back when the Blodgett's left.

Glenn noted one criteria to consider for decision is that 'the proposed use will not diminish the value of the property'. Mark noted he had called a realtor; it could diminish values of the surrounding properties if foreclosures become multi-family. Mrs. Eames noted this is subjective regarding the information for the realtor. She echoed the board in stating if this variance is granted it does not mean others would receive a variance. She noted every property deserves its own rights; they have a vested interest as they live in town. They don't want adverse effects, they will keep it well. Mark noted a variance goes with the property and the Eames may not keep the property. Connie was concerned stipulations were put in before and now they are back here.

Jay asked if the value of a single family property or a duplex is the same, Mrs. Eames noted a duplex would be slightly more. Jay noted his job is to present the facts, if it is denied or passed someone will be unhappy. He asked if they would agree to sell the property as a single family if the variance passed. Mrs. Eames noted then it would be sold as a 4 bedroom with an upgraded septic system.

Nancy noted the variance was to expire before. Connie suggested if the renter were to vacate the apartment then the apartment would be discontinued. It was discussed if the apartment does meet fire codes; the Fire Department has not inspected it.

Rick noted there was one abutter they could purchase property from or if they obtained a letter indicating the abutter will not sell any property. The septic system design needs to be found. Mrs. Eames noted they would pay to have a septic design completed if they can't find one.

Rick suggested Mark and Bob get something to backup their statements. Mrs. Eames noted she could get conflicting information with discussion it would become a moot point.

Discussion ensued to continue the public hearing to allow Mr. and Mrs. Eames to find the missing septic design and possibly obtain land from an abutter to have the property meet all zoning requirements.

Rick motioned to continue the Public Hearing until March 17th, Alan seconded the motion.

Alan motioned to adjourn, George seconded the motion.

Glenn adjourned the meeting at 10:15 P.M.

Respectfully submitted,

Betsy Bosiak
Substitute Recording Secretary