

**Town of Epsom
Zoning Board of Adjustment
5/18/11**

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

Also in Attendance: Frank Morrison; Robert Murphy, Jr.; Claudia Morrison; Dorothy Dodge; Bill Dodge; Mike Daley; Nancy Dobbins; Catherine Blake; Richard Beurivage; Pauline Loso; Rita Cloutier; Agnes Stevenson; Charlene Noyes; Dave Noyes; Michael Desimone; Jay Hickey; Norm Yeaton; Tim Sult; Keith Cota

7:00 PM Glenn opened the meeting. He introduced the members of the board and explained the procedure for both Public Hearings tonight. The minutes of 4/20/11 were reviewed. Alan made a motion to approve the minutes as amended. John seconded the motion. All in favor.

Case 2011-03 (Desimone) Michael Desimone has applied for a variance to Article III, Section G [Residential Single and Multi-Family Residences Requirements], Subsection 1 [Single Family Residences], paragraph (c) [Setbacks from Property Lines] to permit the construction of a storage shed within 6 feet of the property sideline (15 feet required). The property is located on Windymere Drive within the Residential/Light Commercial Zoning District and is identified on Epsom Tax Map U-11 as Lot 23.

Glenn stated that the Public Hearing was properly posted in 2 public places as well as being published in the Concord Monitor. All receipts for certified abutter notices have been received with the exception of Michael Desimone & Roberta Avery. The members voting on this case tonight will be Glenn, Rick, John, George & Alan.

Michael would like to put up a shed to store tools, etc. on an 8' x 20' concrete slab that has been in place for a number of years. The concrete slab is about 6' from the abutter's property line. Michael said the slab sits pretty high on the property and water does not generally run over it. After a brief discussion about the location of the garage, Ricky stated that a variance had previously been granted for the garage, because it is located on an undersized lot.

Michael said the overhang will not be more than 1'.

Jay Hickey, Zoning Compliance Officer, said due to the brook being so close, he would prefer not to have gasoline stored in the shed. Glenn asked if that meant he should not store his lawnmower or similar equipment in it also. Jay replied that he means bulk storage; a lawn mower has a small enough capacity that it would not present a problem if it leaked.

Glenn asked if there are any abutters who would like to speak in favor or against this application and being none; Ricky made a motion to close the public hearing. George seconded the motion. All in favor.

The checklist was reviewed.

Question 1 – All answered yes

Question 2 – All answered yes

Question 3– All answered yes

Question 4– All answered yes

Question 5– All answered yes

Question 6– All answered yes

Question 7– All answered yes

Rick made a motion to approve with the following 3 conditions;

1. The 8' X 20' shed shall be used for storage only;
2. The shed shall not be used for bulk storage of hazardous materials;
3. The shed shall be located no closer than five (5) feet to the closest property line.

Alan seconded the motion. All in favor.

7:30 PM Case 2011-05 (Morrison) Attorney Robert E. Murphy, on behalf of Claudia Morrison, has applied for an Administrative Appeal to overturn the Zoning Compliance Officer's (ZCO) March 23rd, 2011 decision. The March 23rd, 2011 ZCO decision expressed the intent to fine the owner for continued year round occupation of the dwelling on the property which is classified per Article III.B.7 [Pre-existing non-conforming seasonal dwellings] and allows for seasonal use only. The property owner appeals the order on the basis that the dwelling is a single family residence having a vested right to year round occupation. The property is located at 217 Chestnut Pond Road (private road) within the Residential/Agricultural Zone and is identified by Epsom Tax Map U-19 as Lot 33.

Glenn stated that the Public Hearing was properly posted in 2 public places as well as being published in the Concord Monitor. All receipts for certified abutter notices have been received with the exception of Daniel & Nancy Dobbins; Randy Coutu & Chandra Leary-Coutu; Shawn Pelletier, and Domenic Pazzia. Domenic Pazzia does not have a mailbox, so the letter never reached him.

The members voting on this case tonight will be Glenn, Rick, John, George & Alan.

Attorney Robert Murphy is representing Claudia & Frank Morrison and passed out copies of property maps showing the properties in the neighborhood. Since 1994 this property has been used as a private home on a year round basis. He stated that from 1994-2009 this property was used by the Morrisons for 3 seasons and then was rented out during the winter months. Richard Beurivage was a tenant who rented the property during the winter months. Atty. Murphy presented a letter from Tim Sult stating that the Morrisons have consistently contributed to the road maintenance as there is not an organized Road Association.

Attorney Murphy said this property has been used on a year round basis for longer than the seasonal use zoning ordinance that now applies, which took effect in 2009. He said the Murphys have never received any notification that this property was going to be classified as seasonal use and have never had an opportunity to speak about it until tonight.

Glenn asked where he got the effective date of the seasonal zoning, as he believes it was 2007. Attorney Murphy stands corrected.

Claudia Morrison said this property was purchased by her father in 1951 and was rented to hunters during the winter for 35 years. Hunters would call in the summer to confirm their "reservation" to rent during the upcoming winter. Claudia's mother quit claim deeded this property to Claudia before she passed away. Her son-in-law has used the property during the winters for 16 years and did work to the property during that time. To her knowledge, this home has the longest period of year round use than any other property on Chestnut Pond Road (over 40 years). Glenn asked if there are any receipts to show that it was rented to hunters – she said no, but there is a hunter in attendance tonight.

Frank Morrison read a prepared statement indicating that he has been married to Claudia for 30 years and the home has always been used year round, has always had heat, plumbing and insulation. He stated that several homes around their property have been granted year-round rights, and have been built for far shorter period of time than their house. Frank said for many years the camp was rented during the winters to 8 men for \$100 for 3 months and then up to \$300 for 3 months. He said at that time rentals were done by handshake – not by rental agreement, and there are no receipts. The home is 712 square feet; they use a wood burning stove for heat with propane back up, and previously had electric baseboard heat. Their plan has always been to retire there, and it never occurred to them that it wouldn't be allowed. This property was purchased by Claudia's parents in 1951 for about \$150. He said they are retired and are not wealthy and this is their home. They do not have any other place to call home. If they are forced to leave, this will be a real hardship.

Glenn asked Frank if he was aware that there are seasonal camps on Chestnut Pond Road. Frank said he became aware of the "seasonal" issue when Don Severance began having a problem with full time use. When the court case came about and Frank asked what the problem was, Don told him that it was a road issue. After the Severance's won their court case, they eventually moved. He said his neighbor the Dennison's have lived on Chestnut Pond Road for 18 years year round. Frank said a lot of people on Chestnut Pond Road live there year round, and he wants to have that same right.

Glenn said the ordinance defines a seasonal dwelling as a summer lake house and a winter hunting cabin and that sounds exactly like what the use has been. Attorney Murphy noted that the ordinance also defines it as being used for less than 12 months a year.

Glenn asked for input from abutters in favor.

Richard Beurivage was one of the 8 hunters that used to rent the camp in the winter. He is the youngest of the group at 61 years old. He said they moved in at the first of October and moved out at the end of December from about 1965 until 2005. The rental amount was to cover the electricity. He said he bought property on Chestnut Pond Road 6 months ago & lives there full time. He's hoping he isn't incriminating himself

Mike Daley is the Morrison's son-in-law and stated that he & his family have been using the camp frequently during all times of the year from 2005 until 2009 when the Morrison's moved in full time.

Nancy Dobbins and her husband have owned the former Severance home on Chestnut Pond Road since 2008. During the ice storm of 2008 a tree fell on their house and

several neighbors came over to cut the tree off their roof, showing further proof that people are living on that road year round.

Tim Sult lives on the end of Chestnut Pond Road and has since 1990 and his wife has lived on Chestnut Pond Road since 1986. He said the Morrison home has always been occupied year round, either by the Morrison's or the hunters. He said along Chestnut Pond Road neighbors always watch out for each other, and he never worried about activity in the Morrison's home because someone was always there. He said they have an informal Road Association and he is the unofficial bookkeeper. He said they do not have a formal association because they do not want anyone to feel bad if they cannot afford to contribute. The people who have the ability to contribute, do so and they have a work day in August and have a pot luck dinner after. The person who plows the road is a resident on Chestnut Pond Road; they have sand barrels out for people to use. He gets UPS & Fed Ex deliveries year round – at the end of the road. Formerly Epsom & Northwood Police Officers have rented property that he owns on that road. He said the road is very well maintained – no one ever gets stuck. Glenn said he drove down Chestnut Pond Road the other day and it was very muddy, and Tim replied that they the road hasn't been improved yet since winter. Tim said there have been rescues by ambulance and there has not been a problem with the access.

Glenn said that the water quality has dropped and Tim said that is not true – they have their water regularly tested and there has been no decline in water quality. He said the people who have been allowed to live there full time have always improved the property by putting in new septic systems, doing road improvements, etc. The seasonal residences are not kept up as well as those who live there year round. Glenn asked for proof that the water quality has not declined over the past few years, and Tim said he will provide copies of the water tests. Tim said violent winter storms create additional runoff and the year round residents take care of cleaning up after those storms.

Rita Cloutier grew up with Claudia and has lived in that area for over 30 years. She said she walks the road a lot and there is traffic all year round. She remembers as a kid having to pick up rocks from the road – it has always been a community effort to maintain the road.

Dave Noyes owns property on Chestnut Pond Road since 2007. He knew a person who lived there year round from 1995-2007. Dave currently lives in Concord and comes to Epsom quite frequently. He said there are always vehicles in the Morrison's driveway and lights always on.

Glenn asked if there are any abutters opposed. There are none.

Glenn asked Jay for input. Jay said any property that is less than 2 acres and less than 200' frontage is considered non-conforming.

Jay said full time residency is established by receiving mail there, or listing it as a permanent residence address, being a registered voter, or registering your vehicles. He said he has seen a several applications for septic system upgrades and that is what has prompted the investigation of these seasonal homes.

He said he spoke to Mr. Morrison and advised him that before he would sign off on the septic system application, they would need to come to the ZBA for a variance to the seasonal use ordinance.

Jay said the property card for 2011 shows this as being assessed as a single family home. In 1991 it was listed as a cottage, at an earlier date it was listed as a camp. In reviewing the prior inventories, they are completed to show in 1996 Julianne Davis listed

as living there. In 1997 Julianne Davis again listed living there and the census was 0. In 1998 Claudia Morrison shows as owner and listed as summer use only. In 1999, 2001 & 2002 Claudia Morrison shows as owner and lists 0 residents, seasonal camp only. In 2010 & 2011 it lists Frank & Claudia living there.

Jay reviewed the conditions on the Septic Design Approval of 2009, which includes a condition that states this property can only be used for seasonal use.

Jay said when the Morrison's came in to register their vehicles, Dawn asked Jay if they are residents and Jay said no, and so their registrations were denied. Attorney Soltani then advised Jay that state law allows any property owner to register their vehicles and so that was done.

There was a brief discussion about the benefit of improved septic systems, which doesn't automatically give a homeowner the right to year round use.

Bill Dodge said the first subdivision was done in the late 1940's. At that time all of the lots were 1/3 acre, and they should all be grandfathered. Glenn explained that use is grandfathered only for the use that is being used at the time the zoning changes. If the use *changes*, then a variance is required. Bill said for the record, he is in favor of granting this variance.

Tim Sult said that even though it doesn't match Jay's definition of year round use, there has been irrefutable evidence that people have used the Morrison property all year long for years and has impacted the road and the neighborhood in the same way, and the abutters are all in favor of that. He reminded the board that in the Severance case a key point was that by allowing them year round use, it had no negative impact to the community.

8:55 PM – 9:03 PM Break

Glenn asked about what appears to be an outhouse on the property. Claudia said it is an outhouse, and has been there for years. They do use it when they have a lot of company and it is pumped out regularly. Glenn asked about a trailer with a lean-to. Claudia & Frank said it is overflow sleeping and has no kitchen facility.

Attorney Murphy said that in regard to Pre-Existing Non-Conforming Use, the size of the lot and whether there was a septic system doesn't matter, the only pertinent criteria is occupancy. He also stated that when looking at the inventories, whether the building is referred to as being a seasonal use shouldn't matter because at the time some of them were completed before seasonal use was part of zoning. Also Jay's point that year round use is only valid if the same person lives there, or if they vote or register their cars is not an accurate test, the only important piece of information is that the house was occupied year round.

He noted that our ordinances do not indicate the amount of time that a person can leave their residence during the year without losing residency; which is good because it may prevent people from taking vacation every year.

He has case law to share with the board and he will have that available to email to Glenn tomorrow.

9:15 PM John Made a motion to continue this Public Hearing until June 15th. George seconded the motion. All in favor.

9:20 PM Old/New Business

Ricky stated that he heard that Andrew Walton has made some inflammatory comments about the ZBA being corrupt and he feels that Andrew has gone too far. Keith noted that Andrew was told that he is incorrect and if he has proof to back up his claims then he can provide a written complaint to the Board of Selectmen. Keith advised the ZBA that the BOS has implemented a formal complaint policy which requires complaints to be put in writing and they cannot be submitted anonymously.

Rick nominated Glenn Horner as Chairman for the coming year. Alan seconded the motion. All in favor.

Alan nominated Ricky Belanger as Vice Chairman for the coming year. George seconded the motion. All in favor.

9:45 PM John made a motion to adjourn.