

EPSOM BOARD OF ADJUSTMENT
PO BOX 10, EPSOM, NEW HAMPSHIRE 03234
RECORD OF DECISION

Zoning Appeal: Case 2022-09 (Gush – Var.)
Applicant & Owner: Gregory & Kimberly Gush
Tax Map: U-01 Lot: 34
Zoning District: Residential/ Commercial Zone

Notice is hereby given that the appeal submitted by Gregory & Kimberly Gush for a **Variance** to Article III, Section B [Pre-Existing, Non-Conforming Uses], Paragraph 7 [Pre-Existing Non-Conforming Seasonal Dwellings], to permit the use of a lake front seasonal dwelling as a year round residence on a non-conforming lot was **denied** by unanimous vote of the Zoning Board of Adjustment at the Public Hearing held on Wednesday, December 21, 2022. The property is located at 24 Lake Road (private) within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U-01 as Lot 34.

The variance was denied for the following reasons:

1. The proposed substantial change of use from seasonal to year round is contrary to the public interest and inconsistent with the spirit of the ordinance for the following reasons:

a. The public has an interest in reliable access of residential property for the sake of the occupant as well as all others who have occasion to visit. For this reason, the Town ordinance requires 200' of public road frontage for all residential, as well as, commercial lots. There is no public road frontage on this lot. Instead the lot is accessed by a steep, curvy, one lane private dirt road in marginal condition.

b. In the interest of ensuring public health and safety, town ordinances require a minimum of 2 acres of land for all residential dwellings. This is the land area deemed suitable for onsite well and septic. The applicant's lots have a combined land area of less than 20% of the minimum required. Compounding this significant deficiency in acreage is that this lot is located in a neighborhood of similarly sized grandfathered lots all supporting on site wells and septic.

c. It would increase the potential for environmental damage to Northwood Lake due to the increased use of winter de-icing chemicals and added septic loading in this densely settled lakefront area. This is especially true considering the cumulative impact from the conversion of other non-conforming seasonal properties similarly seeking relief in this neighborhood.

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2. Granting the variance will not result in substantial justice. The personal gains of the property owner would not be reciprocal to the Town. Variance approval on this lot (Lot 34) would reverse established precedent for denial of similar appeals by owners of Lots 32, 33 and 36 as decided in Epsom ZBA Cases 2004-20, 2010-01 and 2015-07 respectively. It should be further noted that Lot 33 appealed the ZBA's decision in Case 2010-01 to Merrimack County Superior Court. The ZBA's decision was affirmed by the court in Doc. No. 217-2010-CV-213. Approval in this case would amount to a substantial injustice to all other seasonal to year round appeals on similar lots which were denied in both the cited cases and others elsewhere in town.
3. Denial of the variance does not result in unnecessary hardship to the owner because continuing to use the dwelling seasonally by grandfathered right is the reasonable use considering the lot's dimensional deficiencies described previously. In addition, no special conditions of the property were found that distinguish it from other properties in the area warranting consideration for a hardship.



Glenn A. Horner, Chairman
Zoning Board of Adjustment
Date: December 22, 2022

Note: Any person affected has the right to appeal this decision and/or conditions of the approval. If you wish to appeal the decision, or any conditions contained herein, you must act within a thirty (30) day period beginning with the next working day after the Zoning Board of Adjustment meeting when the decision was made. The first step in the appeal process is to apply to the board of adjustment for a rehearing. The motion for a rehearing must set forth all the grounds on which you will base your appeal.

cc: Gregory & Kimberly Gush, 50 Kienia Road, Hudson, NH 03051
Epsom Board of Selectmen
Epsom Planning Board Chair
Epsom Zoning Compliance Officer
Epsom Town Clerk
File Case 2022-09 (Gush - Var.)