

EPSOM BOARD OF ADJUSTMENT

1598 DOVER ROAD, EPSOM, NEW HAMPSHIRE 03234

RECORD OF DECISION

Zoning Appeal: Case 2023-05 (Norton - Var. & SE)

Applicant & Owner: John & Marcia Norton

Tax Map: U-19 **Lot:** 21

Zoning District: Residential/Agricultural

Notice is hereby given that the appeal submitted by John Norton for a **Variance** to Article III, Section U (Short Term Rentals), paragraph 3.c to permit a seasonal dwelling to be used as a short term rental on a lot with no public road frontage was **denied** by unanimous vote of the Zoning Board of Adjustment at the Public Hearing held on Wednesday, June 21, 2023. The property is located on Lake View Road within the Residential/Agricultural Zone and is identified by Epsom Tax Map U-19 as Lot 21.

The variance was denied for the following reasons:

1. Allowing for a short term rental on this pre-existing, non-conforming lot with no public road frontage is contrary to the public interest and inconsistent with the spirit of the ordinance enacted by the Town in March of this year. The short term rental ordinance was approved specifically to exclude dwellings on non-public roads. The rationale for the exclusion is that Epsom has several locations where exceptionally small lots (<20% of minimum required acreage in this case) on non-public roads around bodies of water have resulted in homes in exceptionally close proximity to one another. These densely settled dwellings do not afford sufficient privacy from neighboring homes exposed to the inevitable disruptions caused by ongoing multiple, random, short term rental tenants. In fact, the genesis of the ordinance was the loss of privacy caused to the immediately adjoining lot from another recent short term rental, as entered into evidence.

With regard to public interest and consistency with ordinances:

Due to a lack of acreage and no public road frontage, this property is considered a pre-existing, non-conforming lot.

All pre-existing, non-conforming uses shall be permitted to continue indefinitely and be exempted from the restrictions imposed by these ordinances unless it has substantially changed. To determine if a use has been substantially changed, several factors are considered in Zoning Ordinance Article III.B.4. One of those factors asks whether the change is violative of any provision of these ordinances in effect at the time.

Since short term rental of a dwelling located on a lot with no public road frontage without a variance would be violative of the short term rental ordinance, this change must be considered a substantial change. Hence, variance approval in

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this case compounds the violation of zoning requirements by necessitating a de facto change of use of the lot thereby amplifying the short term rental zoning violation.

2. Granting of this variance appeal would result in substantial injustice to the Town. The financial benefit the property owner realizes from short term rental receipts would not be reciprocated by any gain to the Town. Instead, the Town would be setting a precedent for establishing short term rentals on other similarly located properties which could then legitimately argue unconstitutional and unequal treatment unless similarly approved in the future. In addition, an injustice would also occur for neighboring residents who stand to lose their privacy from lack of separation and the nature of random short term renter disruptions as was testified to.

3. Special conditions of the property, which distinguish it from other properties in the neighborhood, were not found which would make the zoning ordinance an unnecessary hardship. Nearly all lots in the Chestnut Pond community are on a nonpublic road with 100' of frontage and contain less than half an acre. As stated, this results in congested living conditions which do not provide for sufficient privacy in support of ongoing short term rentals. This is the general public purpose of the ordinance provision and the specific application of that provision to this property.

Also, with regard to hardship, denial of the variance does not result in unnecessary hardship as the property may continue to be used by the owner as a seasonal summer dwelling in all other regards.

Note: A Special Exception was included in this appeal. However, Variance denial supersedes the Special Exception portion of this case and renders it inexpedient to decide at this time.



Glenn A. Horner, Chairman
Zoning Board of Adjustment
Date: June 22, 2023

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: John & Maria Norton, 4 Lake View Road, Epsom, NH 03234
Epsom Board of Selectmen

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Epsom Planning Board Chair
Epsom Zoning Compliance Officer
Epsom Town Clerk
File Case 2023-05 (Norton - Var. & SE)