

EPSOM BOARD OF ADJUSTMENT
1598 Dover Road, Epsom, NH
RECORD OF DECISION

Zoning Appeal: Case 2024-01 (Terry – Var.)
Applicant: Nicholas Terry
Owner: NVK Land Trust
Tax Map: U19 **Lot:** 46
Zoning District: Residential/ Agricultural Zone

Notice is hereby given that the appeal submitted by Nicholas Terry for a **Variance** to Article III, Section G [Residential Single and Multi-Family Residence Requirements], paragraph 1 [Single Family Requirements] b. [Building Lots] to build a single family residence on a pre-existing lot with no public road frontage (200 feet required) was **denied** by unanimous vote of the Zoning Board of Adjustment at the Public Hearing held on Wednesday, January 31, 2024. The property is located on Chestnut Pond Road (private) within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-19 as Lot 46.

Findings of Fact:

1. This same variance appeal was previously denied in Case 2000-11 primarily due to inadequate access over a private road. It is being reheard due to the 2010 change in the variance hardship criteria.
2. No significant upgrades to the private road have been done since that denial.
3. Current road conditions consist of a narrow width with poor surface conditions including untreated ice.
4. This area contains a series of small camps on substandard lots which are seasonally used and do not require winter season access when road conditions are impacted by ice and snow.
5. The Town's position that year-round use of these seasonal camps should not be permitted was taken to the Supreme Court and was based primarily on the fact that there was inadequate access over the private portion of Chestnut Pond Road, especially in the winter.
6. Other similar variances requesting residences with no public road frontage have been denied by this Board, more recently in Case 2021-05 (Sunset Drive), and Case 2017-12 (Old Mtn Rd.) due to access concerns.

The variance is denied for the following reasons:

1. The variance unduly and in a marked degree conflicts with the ordinance requiring 200' of frontage on a public road. Not only does this property have no public road frontage, it is over 1000' from a public road. Further, the access/egress to the property has remained a narrow travel width, dead-end road with inferior surface conditions since the previous denial of the

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same variance for this property. Such a marked deviation from the expectations of the ordinance would unduly burden Town emergency services, as well as occupants/visitors with increased risk to safety and welfare.

2. The variance is inconsistent with the spirit of the ordinance by creating premature and scattered development with inadequate access and would have a cumulative impact of encouraging similar development on the many other properties in town without public road frontage.
3. No special conditions of the property are found which would make the denial an unnecessary hardship to the owner. On the contrary, land accessed by unimproved non-public roads is quite common in the residential/agricultural zone. For this reason, the expectation of the ordinance is that safe and adequately maintained access is provided prior to allowing new residential habitation.
4. Hardship is also mitigated by the fact that this property was denied a similar variance in 2000 and, based on no change to access for which it was denied, the expectation of “reasonable use” of this property should have been established 24 years ago.



Glenn A. Horner, Chairman
Zoning Board of Adjustment
Date: February 1, 2024

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: Michael Novak, Trustee NVK Land Trust, 67 Dale Street, Ludlow, MA 01056
Nicholas Terry, 1308 Old Mammoth Road, Manchester, NH 03104
Epsom Board of Selectmen
Epsom Planning Board Chair
Epsom Zoning Compliance Officer
Epsom Town Clerk
File Case 2024-01 (Terry - Var.)