

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT MEETING
Epsom Library, Epsom, New Hampshire
June 21, 2023, 7:00 PM**

PRESENT

Glenn Horner, Chair
Ryan Kehoe, Vice Chair
Gary Kitson, Member
Alan Quimby, Member
Lisa Thorne, Alternate Member
Jason Johnson, Alternate Member
Prescott Towle, Alternate Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Cheryl Gilpatrick, Board of Selectmen
Representative
Ron Powers, resident
Mariam Cahill-Yeaton, resident
Gerry Paquette, resident
John Salt, resident
Clara Anderson, resident
Joanne Breen, resident
Barry Arsenault, resident
Patrick Waller, resident
Frank Morrison, resident
Don Paquette, resident
Rita Cloutier, resident
Rob Topik, resident
Amber Lovell, resident

Norm Yeaton, resident
Mary Ann Donovan, resident
Harold Estabrook, resident
Tim Paquette, resident
Cynder Paquette, resident
Dan Dennison, resident
Jane Boisvert, resident
Bugs Beaurivage, resident
Nancy Dobbins, resident
Frederick Anderson, resident
Claudia Morrison, resident
Martha Chase, resident
Jeaney Maxwell, resident
Brian LeBlanc, resident
Patrick Waller, resident

CALL TO ORDER

Chair Horner called the meeting to order at 7:00 PM.

Introductions were made of the Board members present.

APPROVAL OF MINUTES

Meeting of May 3, 2023 – Edits were made.

MOTION: To approve the minutes as amended. Motion by Mr. Kitson. Second by Mr. Quimby. Motion passed, 7-0-0.

PUBLIC HEARING - John Norton has applied 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. Short-term rentals are required to be on public roads.

Additionally, the applicant is seeking a Special Exception to establish short-term rental use of this dwelling in accordance with Article III, Section U, paragraph 3. 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.

John Norton has applied for a Special Exception to establish short-term rental use of this dwelling in accordance with Article III, Section U, paragraph 3. 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.

Chair Horner confirmed abutters were notified and the public notice posted at the Town Offices, the Post Office and in *The Concord Monitor*. He stated certified mail receipts were not received from Richard Boucher, Rita Cloutier, John Atlas, John Caplis, Shant and Vilma Cimenian.

The public notice was read into the record.

Chair Horner opened the public hearing at 7:13 PM.

Chair Horner stated the applicant is not present. No representative was present. Chair Horner asked if the Board wants to proceed with the public hearing. He confirmed no notice was received from the applicant to indicate he could not attend the hearing. Chair Horner suggested they move forward as there are 30 members of the public present for this hearing.

Chair Horner stated a letter from Bill Dodge was received in opposition to the application; the letter was read into the record.

Chair Horner opened the hearing to input from abutters in support of the application. None was indicated.

Chair Horner opened the hearing to input from abutters in opposition of the application.

Clara Anderson, resident, stated they own about 600 feet on the opposite side of the road and the applicant has suggested he wants to do work to the road; she stated they have been on the road for 50 years and its never been unmaintained. She stated while they were in Florida, Mr. Norton removed trees along the road and dumped them on their property. Ms. Anderson stated this is a business and the area is not zoned for business.

Chair Horner stated he hasn't discussed the issue with legal counsel whether the use is in fact changing from residential to commercial use but there are other issues that will impact the neighborhood.

Tim Salt, resident, stated Chestnut Pond has a subdivision plan and association, he isn't sure if Lake View Drive is included; he stated the covenants of his property prohibit business activities. Chair Horner stated covenants don't necessarily have to be considered by the Board. Mr. Salt stated NH DES has numerous restrictions on waterfront property and he is concerned whether this lot meets those requirements. He stated he wants to see the Board protect the pond.

Ron Powers, resident, stated he owns the road of Lake View Road; he stated the residents on the road have right-of-way over his property. He stated per his warrantee deed, all 16 residents have a 20 foot deeded right of way to access their property; this is given to the homeowners and not the public. Mr. Powers stated this does not allow Mr. Norton to share his right-of-way privileges. He stated there is an active Lakeview Road maintenance association which was established in 2001 and the road is maintained by the association. Mr. Powers stated he objects to any short-term rentals on Lakeview Road and Chestnut Pond Road.

Joanne Breen, resident, stated Lake View Road is not a road; it is a right-of-way and those who use it, maintain it. She stated traffic comes down the road and uses her driveway as a turn-around; she stated short term renters don't have a vested interest and are reckless on the road and have disruptive parties.

Barry Arsenault, resident, stated a short term rental is being advertised at the property next to him; he explained the property is advertised as sleeping 8 while there are only two bedrooms and the access to the home is across his property. Chair Horner suggested concerned residents contact the Zoning Compliance Officer, Justin Guth and notify him of their concerns.

Ms. Anderson asked what stops someone from renting their property without a permit. Chair Horner stated there are fines for violations; he reiterated residents need to file complaints with the Zoning Compliance Officer.

Frederick Anderson, resident, stated Mr. Norton did not have adequate water for his property so a well was installed; he stated he believes the well was drilled on his property and doesn't believe it is compliant with the distances from the septic.

A resident asked if there is a difference between a commercial Air B&B and him renting his property to his cousin for two weeks. Chair Horner stated if a property is being rented as a short-term rental, the ordinance will apply.

Patrick Waller, resident, asked if there is a difference between short-term rentals in a home where the property owner resides. Vice Chair Kehoe referred Mr. Waller to review the short-term rental permit application on the Town website, noting it will outline various criteria that cause a property to fall under the ordinance.

Frank Morrison, resident, stated both Chestnut Pond and Lake View Road are private and Class VI so this use is prohibited.

Gerry Paquette, resident, stated she is opposed to a variance being granted; she stated the ordinance was recently established by voters in March 2023 and clearly indicates that short-term

rentals are permitted on Class V or better roads. She stated she is located between two short-term rentals; she stated it's very uncomfortable to have strangers in the short-term rentals next door, noting last year there were 53 people going thru between May and June. Ms. Paquette stated they also had problems with the renters trespassing on her property.

Rita Cloutier, resident, stated the neighborhood has always felt safe but she doesn't know her neighbors anymore and is uncomfortable.

Tim, resident, asked if anyone is vetting the renters and is concerned about the safety of his children in the neighborhood. Chair Horner stated per the ordinance, there is a list of criteria the property owner has to adhere to.

Don Paquette, resident, asked if all the requirements for the application were met. Chair Horner confirmed the application was properly submitted.

Chair Horner closed the public hearing at 8:17 PM.

Chair Horner asked Mr. Johnson to sit on the Board for the deliberations of this case.

Discussion - Variance to Article III, Section U

A. The variance will not be contrary to the public interest. NO

B. The variance is consistent with the spirit of the ordinance. NO

C. By granting the variance, substantial justice is done. NO

D. The proposed use will not diminish the value of surrounding properties. YES

E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For purposes of this criteria, "unnecessary hardship" means that, either: NO

Either: F.(1) Owing to special conditions of the property that distinguish it from other properties in the area: • No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and • The proposed use is a reasonable one. NO

Or: F.(2) Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. NO

MOTION: To deny the request for a variance 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. Short-term rentals are required to be on public roads. Denial is based on 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 the 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 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.

Motion by Mr. Quimby. Mr. Kehoe seconded the motion. Motion passed, 5-0-0.

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.

Other

MOTION: To have Glenn Horner continue as Chair of the Zoning Board of Adjustment. Motion by Mr. Quimby. Second by Mr. Kehoe. Motion passed 5-0-1.

MOTION: To have Ryan Kehoe continue as Vice Chair of the Zoning Board of Adjustment. Motion by Mr. Quimby. Second by Mr. Kehoe. Motion passed 5-0-1.

ADJOURN

Chair Horner adjourned the meeting at 8:49 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary