

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT MEETING
Epsom Central School, 282 Black Hall Road, Epsom, New Hampshire
December 20, 2023, 6:30 PM**

PRESENT

Glenn Horner, Chair
Alan Quimby, Member
Lisa Thorne, Member
Gary Kitson, Member
Prescott Towle, Alternate Member
Roger Rheume, Alternate Member
Gary Matteson, Alternate Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Virginia Drew, Board of Selectman Representative
Justin Guth, Zoning Compliance Officer
Bob McKechnie, resident
Geraldine Paquette, applicant
Donald Paquette, applicant
Ron Powers, resident
Rob Topik, resident
John Norton
Maria Norton
Kirsten Allen, Esq.

CALL TO ORDER

Chair Horner called the meeting to order at 6:32 PM.

Introductions were made of the Board members.

APPROVAL OF MINUTES

Meeting of November 29, 2023 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Mr. Kitson. Second by Ms. Thorne. Motion passed unanimously.**

Case 2023-15 (Paquette – AA) - *Geraldine and Donald Paquette have applied for an Administrative Appeal seeking to overturn the Zoning Compliance Officer's November 17, 2023 decision that Tax Map U-19, Lot 21 is currently a year round residence. 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 read the public notice into the record. It was confirmed the public notice was published in *The Concord Monitor*, posted at the Town Offices, the Town website, and the Post Office; certified letters were sent to abutters. Receipts were received from all abutters except

Frederick and Clara Anderson, Ronald and Elizabeth Blankenstein, Shant and Vilman Cimenian, Rita Cloutier, Michael and Moniak Muise, John Caplis, Ricky and Alison Catwin.

Chair Horner opened the public hearing at 6:35 PM.

Chair Horner stated Mr. Norton contacted the Town and asked what needed to be done to establish a short term rental on the property after the ordinance had been put into effect. He stated due to miscommunication, Mr. Norton believed a special exception was needed but due to the short term rental being in operation prior to the ordinance was enacted, the property was grandfathered. Chair Horner stated he reviewed the ordinances and believes a variance was also needed because it was on a private road; he stated there were more miscommunications and a public hearing was held with the variance being denied and the request for a special exception being moot. Chair Horner stated Mr. Norton had his attorney submitted a request for an administrative appeal and it was approved by the Board. He stated in the process of setting up conditions, the subject of the duration of the usability of the property seasonally, absent any evidence at that time, that the property had been used year-round, it was deemed that the property should be used seasonally. Chair Horner stated a discussion was had with the Zoning Compliance Officer and he found a land use inventory information which identified the property as being year-round. The Board felt that the limitation on seasonal use should be stricken from the decision, and it was revised.

Chair Horner stated this hearing tonight is to hear more evidence in regard to the seasonal use.

Gerladine Paquette, applicant, stated the property has not been used as a full time residence since 2016; she stated the previous owners owned the property for 6 years and only stayed there on weekends. Ms. Paquette stated when the Nortons purchased the property they started using it as a short term rental immediately, in 2022. She stated she doesn't understand where the Zoning Compliance Officer determined the property is year-round use. She stated the Morands used the house full time from 2000 to 2016 and it is her understanding that because it's a nonconforming lot, it reverts back to being a seasonal property.

Mr. Norton stated he talked to Chair Horner and they had a conversation about the seasonal use and he was clear that their intention in purchasing this property was for year-round use. Ms. Norton stated they pay taxes for year-round use and the taxes are not prorated for seasonal use.

Chair Horner referenced the related ordinances Article 3.b.II and explained the Town is not able to determine when year-round use ceases; he stated the Board will now look at the evidence which has been brought by a person with standing, an abutter. He stated the evidence previously presented was from the Zoning Compliance Officer regarding the year-round use with the land use inventory records. Chair Horner stated testimony from Ms. Paquette indicates that the owners prior to the Nortons reverted the property back to seasonal use.

Chair Horner stated written testimony was received from Rita Cloutier, an abutter, indicating to her knowledge the last time the property was used year-round was when the Morands owned the property.

Chair Horner stated written testimony was received from Mr. Dodge, stating the property has not been year-round use since 2016.

Chair Horner went through the evidence submitted by Ms. Paquette: 2001 land use inventory, tax bill showing ownership of the property; voting rolls showing the Lacerdas were permanent residents of Londonderry while owning the property at 4 Lakeview Drive; webpages were provided showing the Norton's short term rental periods starting in 2022.

Ms. Norton stated they were willing to comply with the seasonal use but that application was in error based on the wrong information they were provided by the Town, when in fact they were grandfathered in for the short term rental ordinance.

It was confirmed the Nortons are residents of Rochester.

Chair Horner asked Mr. Rheaume to sit on the Board as a full member to hear this case.

Chair Horner opened the hearing to the public in favor of the appeal.

Ron Powers, resident, asked for the definition of what a residence is. Chair Horner stated a full time resident pays taxes, votes and can send kids to the school. He stated a seasonal resident is permitted for a set period of time. Mr. Powers stated it could be a problem if people try to have two legal residences. Mr. Matteson stated domicile is what Mr. Powers is referring to and the Board is considering the land use; a residence and seasonal falls under land use; he explained one can have multiple residences but a single domicile.

Rob Topik, resident, the distinction made by Mr. Matteson, would indicate a non-owner can occupy a residence. Chair Horner stated there have been cases where leases were permitted as residents.

Chair Horner opened the hearing to the public in opposition of the appeal.

Kirsten Allen, Esq., representative for the Nortons, stated the administrative appeal in this case should have been made a motion for rehearing and there is an issue where a status of a residence versus a seasonal residence and there should be a standard for preexisting nonconforming uses in Article 3.b.3b.i. She stated a residence being used for full time use does not make it nonconforming; she stated the property was used as a short term rental prior to the ordinance and the Nortons did not apply for seasonal use, so the property doesn't automatically become a seasonal use. Ms. Allen stated the ordinance was put in place to address seasonal uses prior to 1969; she stated this property was built in 2001. Chair Horner stated grandfathering can be applied if there isn't a substantial change of use of a nonconforming property; he stated there was such a case in 2007 and the Board determined there was a significant change in use based on existing ordinance but the Supreme Court disagreed. Due to that case going to court, the ordinance was enacted. Ms. Allen stated she disagrees that a year-round use can revert automatically to seasonal use; she stated the Board accepted the property as year-round based on the tax records. She stated the wrong standard is being applied in saying that the cessation of year-round use for one year means abandonment of the use; it doesn't apply here and there needs to be an affirmative abandonment

of use. She referenced *Lawler vs. Town of Salem*; she stated there needs to be an overt act and there needs to be a clear intention to abandon the use. Ms. Allen stated the Nortons submitted evidence to the Town showing use of their property, specifically in 2022, showing their intent to rent the property from June to December; full time taxes and the Nortons have not abandoned the year-round use of the property. Chair Horner stated the end of the year-round usage was when the Lacerdas purchased the property from the Morands in 2016. Ms. Allen asked when they used the property. Ms. Paquette stated they used it mostly during the summer and doesn't think there was use in the winter. Ms. Allen stated that is not sufficient evidence to take a property owners' constitutional use to their property. Chair Horner stated he considers the use by the previous owners as being seasonal because there is evidence that they had their main residences in other towns. Chair Horner read the short term rental ordinance. Ms. Norton stated it has already been determined that they are grandfathered from that ordinance. She stated they have a series of tenants in the same way previously suggested by Mr. Matteson; she stated it is unreasonable for them to try and prove what the previous owners did. Chair Horner stated there is proof that the property was used seasonally. Mr. Norton stated they purchased the property as a year-round property. Ms. Allen reiterated that just because a property isn't used for a year, it doesn't automatically revert back to seasonal; she stated the ordinance clearly indicates this provision cannot be applied to the entire ordinance in Article 3. She stated the use of the property has been continuous.

Mr. Matteson asked for clarification by Chair Horner; under this reasoning, if someone doesn't live at a property for year, the house needs to be torn down and the use is discontinued. Ms. Allen stated the statute states unless the specific use ceases for any one year period; that would be for what the nonconforming use change and not the use as a residence. She stated the status of full time or seasonal does not apply. Mr. Matteson the fact that a home hasn't been occupied, doesn't change the use, regardless of the lot is nonconforming. Ms. Allen asked what ordinances make full time use of this home not permitted after the construction of the home and referenced Article 3.a.b. Chair Horner stated the specific use which is being discontinued is seasonal use. Ms. Allen stated at the last hearing, the use of this property as a short term rental was determined to be relevant as it began in June 2022; the short term ordinance was enacted in 2023 but the property was determined to be grandfathered; she stated when the property was built, it was used as a full time residence. She stated at some point it was conveyed to the predecessors prior to the Nortons and it was not a full time residence; she stated the Nortons have not used it as a full time residence but no ordinance was enacted which prohibits the use as a full time residence and it's a conforming use for this property. Ms. Allen stated the home remained a year-round home and the land use status has not changed because a subsequent ordinance was passed. Mr. Matteson stated the land use goes with the property and not the owners. He stated the permitted use did not change as the use goes with the property; once the use is established, it doesn't go away or become subject to other ordinances. Mr. Quimby stated the use doesn't change as a residence, just because it is vacant.

Mr. Topik asked if a further division applies and whether year-round is residential but the only way a seasonal use is permitted is if the owner lives there.

Chair Horner stated the ordinance still states that one year of non-use makes it revert back to seasonal use. Mr. Matteson stated he disagrees and there was no intentional change of use by the property owner; he stated taxes would be an example. Ms. Allen stated the seasonal ordinance

stands alone and indicates that it is for the purpose of that section only and cannot be applied to the other parts of the ordinance. Chair Horner stated because the lot is nonconforming it is applicable. Mr. Matteson stated the use was already established. Mr. Quimby stated he doesn't see how the seasonal ordinance would change the use; he stated he can't vote one way or another on this case. Ms. Thorne stated she would like legal counsel advice as to what defines abandonment. Mr. Quimby agreed.

Bob McKechnie stated the property was originally a full time dwelling and who is to say the property can't switch back between seasonal and full time use; he stated the change that should be of concern would be changing from seasonal to full time. He stated this property was established as a full time residence and he has never seen this property come before the Planning Board for a change of use. It was clarified this property was grandfathered with the short term rental ordinance; Mr. Matteson stated the use remains residential so there would be no change in use to go before the Planning Board. He stated the scope of use does not change.

Justin Guth, Zoning Compliance Officer, stated one of the reasons they are here is because the Zoning Board inferred at the last hearing that the property was seasonal; he stated that based on all his research, the evidence needs to be physically proof and not just vague testimony. He stated per the information provided to him, the property was used year-round and there were no complaints about the use over six years. Mr. Kitson stated per the evidence provided by Ms. Paquette, the previous owners were not-year round residents, and they used it for a seasonal use.

Ms. Drew stated there are a lot of folks in town who go to Florida; she asked what would cause a property to revert to seasonal use. Chair Horner stated the seasonal ordinance applies to properties such as lake houses. Mr. Matteson stated they can't remove the right to use a home if someone goes away for a period of time and reiterated there needs to be an affirmative action to change the use. Chair Horner stated the ordinance clearly indicates that if "a specific use ceases for one year", causes a specific change of use.

Ms. Allen pointed out the intent of the seasonal dwelling ordinance; she stated the property owners have rights and the "taking" requires a showing of abandonment and intent to abandon. She stated the way Chair Horner is interpreting the ordinance is taking rights from landowners which is not constitutional. Chair Horner stated Article 3.b does allow taking of rights in the event there is a cessation of use. He stated the seasonal use ordinance specifically addresses the properties on the lakes and ponds and seasonal use is always permitted, provided the use isn't expanded on. Ms. Allen reiterated the seasonal dwelling ordinance is not applicable; she stated this property was not seasonal and is not seasonal. She stated the house was built, used and maintained as a full time residence and it continues to be. Ms. Allen referenced the standard for abandonment, *Lawler vs. Town of Salem.*; she reiterated there must be an indication to abandonment. Mr. Kitson stated the previous owners changed the use by not using it full time. He stated the reason the ordinance was for a situation like this. Chair Horner stated the seasonal ordinance was put in place to make a distinction between seasonal and year-round use.

Mr. Norton stated if they want to use their property for eight months out of a year but under this interpretation, they can't use their property as they want to; he stated he doesn't see how not using it, changes the use. Chair Horner stated all the properties on this road are presumed

seasonal per the ordinance unless a variance was granted, or the property predated the seasonal ordinance in 2006. He stated he is looking at the cessation of the use in 2016 which means it reverts back to seasonal.

Mr. Topik stated there are different words to be considered including abandonment and discontinued use and suggested the most restrictive be followed.

Ms. Paquette stated she didn't count the days that the previous owners were using the property because it was used seasonally; she stated when the Nortons purchased it, it was used for a whole year as a short-term rental, and it was never used as a residence. Ms. Norton questioned what difference that makes if it's her or one of her tenants.

Mr. Paquette asked if it's a full time residence, they would have to register their vehicles and register to vote in Town. Mr. Matteson stated that would be "domicile" and the issue here is the land use.

MOTION: To continue the case to January 17, 2024, 6:30 PM in order for the Board to obtain advice from Town Counsel. Motion by Mr. Kitson. Second by Mr. Rheume. Motion passed unanimously.

ADJOURN: To adjourn. Motion by Ms. Thorne. Second by Mr. Quimby. Motion passed unanimously.

The meeting was adjourned at 8:16 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary