

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT
Epsom Central School, 282 Black Hall Road, Epsom, New Hampshire
January 17, 2024, 6:30 PM**

PRESENT

Glenn Horner, Chair
Gary Kitson, Member
Jason Johnson, Member
Alan Quimby, Member
Andrew Ramsdell, Alternate Member
Roger Rheume, Alternate Member
Lyla Boyajian, Alternate Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Virginia Drew, Board of Selectmen Representative
Laura Spector-Morgan, Esq., Town Counsel
Justin Guth, Zoning Compliance Officer
Geraldine Paquette, applicant
Donald Paquette, applicant
Rob Topik, resident
John Norton
Maria Norton
Kirsten Allen, Esq.
Ron Powers, resident
Rita Cloutier, resident

CALL TO ORDER

Chair Horner called the meeting to order at 6:34 PM.

Introductions were made of the Board members. Chair Horner asked Mr. Rheume to sit on the Board as a voting member.

APPROVAL OF MINUTES

Meeting of January 3, 2024 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Mr. Kitson. Second by Mr. Johnson. Motion passed unanimously.**

Case 2023-15 (Paquette – AA) [Continuance]- *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 reopened the public hearing at 6:38 PM. He stated the case was established at the December 23, 2023 meeting and it was continued to tonight's meeting. Additional return receipts were received from abutters: Rita Cloutier and John Caplis. , Michael and Monika Muise,

Chair Horner stated at the previous hearing there was discussion about the zoning ordinance and determined at that time that legal counsel would be needed from Town Counsel. He stated an additional memorandum of law was received from the Norton's attorney regarding State statute and constitutional law.

Chair Horner asked the applicant if there was any additional information they want to provide to the Board.

Geraldine Paquette, applicant, stated at the December 20 meeting Chair Horner made a reference to multiple chairs being setup, as they were expecting more turnout for the public hearing. She stated a previous hearing for this property was standing room only at the Library; at the last meeting, many property owners are away from the winter. Ms. Paquette stated comments made by the Norton's attorney at the last meeting indicated the property is not seasonal use; Ms. Paquette stated she did research in town records and the property file indicates the house was built in 1945 and the road was not in place at that time; in 1985 there were improvements to the cottage including insulation and new plumbing and the owner claimed the property as full time residence. The property was sold to the Morands in 2005 until 2016 and used it seasonally. Ms. Paquette stated at a previous case, the Norton's were found to be grandfathered for the short term rental ordinance but asked what the difference is between grandfathering and pre-existing. Ms. Spector-Morgan stated it is the same thing. Ms. Paquette stated at the last meeting, it was indicated that if the Norton's sold the property, the property would remain grandfathered. Chair Horner confirmed that the rights which are grandfathered, run with the land.

Chair Horner stated it used to be a standard for the Zoning Board to have the Code Enforcement Officer to provide property cards to Board members prior to hearings; he would like to see that continued.

Chair Horner opened the hearing to the property owner.

Kirsten Allen, Esq., representative for the property owners, stated in the Town records the property was considered a full time residence since being built and this was the understanding of the Norton's when they purchased it. From 1945, when the property was built through 2016, there are records indicating the property was full time use; it was never recorded or updated in the property records as being seasonal use only. Ms. Allen stated the property has been full time and the status is not a prior nonconforming use under the statute. She stated the Article referenced by Ms. Paquette regarding one-year secession is for non-conforming properties, which this is not. Ms. Allen stated the property was marketed to the Norton's predecessors as being year-round use. Chair Horner stated that is somewhat irrelevant.

Ms. Spector-Morgan stated she has reviewed the appeal, and it is her understanding that the allegation is that since the property was not used full time after 2016 that it somehow lapsed to seasonal use. She stated lapsing only applies to nonconforming uses; nonconforming use has to

be established. She stated in 2007 the Town added to the zoning ordinances that if a property is changed from a seasonal use to a year-round use, it is a substantial change of use. Ms. Spector-Morgan stated the relevant time period to look at is 2007 and it is undisputed that this property was being used year-round; it is legal then and legal now; she stated there is nothing nonconforming. She stated just because a property isn't used to its full use, that doesn't mean the right to the use is lost. Ms. Spector-Morgan stated it is her opinion that this is a legal year-round use because that is what the property was in 2007 when the ordinance was changed. Chair Horner stated the Paquette's were denied a variance to living in their house in 2006 and only got to live there year-round by way of the Severance Case and the Supreme Court decision; he stated now that there have been some changes in the neighborhood, they are concerned about the impact to the neighborhood. He stated it has been made clear at this point That the property may be used year-round.

Chair Horner opened the hearing to input from the public in opposition of the appeal. None was indicated.

Chair Horner opened the hearing to input from the public in support of the appeal.

Ron Powers, resident, stated per the ordinance, a property has to be on a Class V road for short term rentals; he asked what happens of the Nortons sell the property and if that is grandfathered. Chair Horner confirmed that use is grandfathered, and it runs with the property; all future short term rentals that are established on Chestnut Pond Road would fall under the new ordinance or request a variance.

Ms. Boyajian confirmed the Norton's use of the property as a short-term rental is a preexisting nonconforming use and if the short term rental use were to lapse, it would no longer be grandfathered. Ms. Spector-Morgan confirmed that is correct.

Chair Horner opened the hearing to input from the public.

Rob Topik, resident, asked about the ordinance establishing 2 acres and 200 foot frontage minimum requirements relevant to a lot being conforming. Mr. Johnson stated the use of the house is separate from the lot. He stated it is differentiated in the ordinance. Chair Horner stated the requirements for a single family residence is for establishing new lots whenever the ordinance was adopted. There is a distinction between nonconforming lot use.

Mr. Topik stated if the change from seasonal to year-round is substantial, it should be substantial to change from year-round to seasonal. Chair Horner stated the language within the ordinance specifies only the change from seasonal to year-round.

Ms. Paquette asked for clarification on if the Nortons sell the property, whether they will be grandfathered for the short-term ordinance. Chair Horner stated if the new owners rent it within a year, there would not be a change of use.

Chair Horner asked Mr. Guth if he has any comments. Mr. Guth stated he does not.

Chair Horner asked about property inventory records retention. Ms. Spector-Morgan stated property records must be retained for at least five years.

MOTION: To close the public hearing. Motion by Mr. Quimby. Second by Mr. Johnson. Motion passed unanimously.

The public hearing was closed at 7:05 PM.

Findings of Fact

All evidence provided confirms that the property was used as a year round residence as of 2001 which was prior to the enactment of the Town's seasonal use ordinance (Art. III.B.7) in 2007. Therefore the establishment of year round residence at that point in time was a conforming use and exempted from the seasonal use ordinance. The property was sold in 2016 and the new owner used the property seasonally before it was then transferred to the current owners in 2022. However, since the right to use the property as year round residence had been vested in 2001, it was and remains a conforming use not impacted by the Town's non-conforming use ordinance (Art. III.B.3.i) for cessation of use for any one-year (1) period as administratively appealed in this case.

Conclusion: The Zoning Compliance Officer's November 17, 2023 decision that Tax Map U-19, Lot 21 is a year round residence is upheld.

MOTION: To deny the request for an Administrative Appeal and uphold the Zoning Compliance Officer's decision that the property is a year-round residence. Motion by Mr. Johnson. Second by Mr. Quimby. Motion passed unanimously.

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

The meeting was adjourned at 7:14 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary