

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT
Epsom Town Offices Meeting Room
December 21, 2022, 7:00PM**

PRESENT

Glenn Horner, Zoning Board of Adjustment Chair
Ryan Kehoe, Zoning Board of Adjustment Vice Chair
Alan Quimby, Zoning Board of Adjustment Member
Andrew Ramsdell, Zoning Board of Adjustment Member
Prescott Towle, Zoning Board of Adjustment Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Gregory Gush, applicant
Kimberly Gush, applicant
Virginia Drew, Board of Selectman representative
Ron Olson, resident
Clark Couse, abutter
Leslie Couse, abutter
Laura Swanson, abutter
Cheryl Gilpatrick, resident
John Martin, resident

CALL TO ORDER

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

Chair Horner appointed Mr. Prescott to sit on the Board in Mr. Kitson's absence.

Introductions were made of the Board members present.

APPROVAL OF MINUTES

Meeting of November 23, 2022 – Edits were made. **Mr. Towle motioned to approve. Mr. Ramsdell seconded. Motion passed unanimously.**

Case 2022-09 (Gush – Var.) - *Gregory and Kimberly Gush have applied for a variance to Article III, Section B [Pre-Existing, Non-Conforming Uses], Paragraph 7 [Pre-Existing Non-Conforming Seasonal Dwellings], to permit the use of a lake front seasonal dwelling as a year round residence on a non-conforming lot containing .172 acres with no public road frontage. The property is located at 24 Lake Road (private) within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U-01 as Lot 34.*

Chair Horner confirmed abutters were notified and the public notice posted at the Town Offices, Post Office and in *The Concord Monitor*. He stated certified mail receipts were not received back

from Laura Swanson, Charles and Susan Hillman, Mitchell Richardson, Ronald and Irene Verville, Kurt and Sandra. The public notice was read into the record.

Chair Horner opened the public hearing at 7:07PM.

Mr. Gush stated they bought the property in 2020 and have visited there the last couple years and would like to spend more time there in the future, possibly year-round. He stated there is a drilled well on the property and a septic system. Mr. Gush stated 6 of the 15 abutters are year-round residences; he stated they also own lot 34 and lot 42, 41 and 43 across the road and there is plenty of room for parking. Mr. Gush stated they looked at other cases and this doesn't seem to be an unprecedented requested, noting a case on Sleepy Hollow Road, which is also private and a tear-down and rebuild was permitted. He stated they would like to do some improvements to the property including raising the height of the foundation from 6'. He stated they would not expand the footprint; he stated the house is 420 feet from Route 4; they pay \$150 a year as a property owner on a private road for keeping the road cleared and maintained year-round.

Ms. Gush stated a letter was received from New Hampshire Department of Environmental Services requesting a test for their well water but they had already closed up the cottage for the winter; she is concerned about having missed out on that opportunity and what issues there may be with the well water. Ms. Gush stated in the three year's they have been here, they have met great people in the area and developed relationships with their neighbors. She stated they would like to become a more permanent part of the neighborhood.

Chair Horner asked if the footprint would be maintained. Mr. Gush confirmed the footprint would not be expanded. Chair Horner noted there is a place in the ordinance which allows expansion up to 25%. Mr. Gush asked if that increase would include upward expansion or just the footprint. Chair Horner explained there are various factors which have to be considered. Mr. Gush stated they don't want to make any changes which will impact anyone else or change the character of the neighborhood. He confirmed they did purchase the property being listed as a seasonal use property.

Mr. Quimby asked if they intend to make it a permanent residence. Mr. Gush stated they want to have the option to stay there whenever they want to; he stated he wants it to stay in his family and have no intentions of doing short term rentals.

Mr. Kehoe referenced a 2015 case for a couple lots down the road, but it was denied at that time.

Chair Horner stated in regard to public interest and spirit of the ordinance, the application indicates there are year-round properties in the area; however cases for surrounding lots were denied in recent years. He stated variances have also been denied on Chestnut Pond Road.

Chair Horner stated in regard to substantial justice, approval is not needed to make improvements, including up to 25% expansion.

Chair Horner stated in regard to the unnecessary hardship, this property is similar to others in the area and most of seasonal with denial of requests to be year-round. He stated if there are properties, they may have been grandfathered or being done without approval.

Chair Horner stated this lot is not different than other lots in the area; he stated there are not distinguishing characteristics. He explained a variance runs with the land and while the applicants don't have kids, the property won't be restricted in the future, and it creates a financial burden to the Town.

Chair Horner stated he drove down Lake Road, it is narrow and dirt, in marginal condition; he stated there is a precedent set for this lot, beginning in the early 2000s.

Chair Horner opened the hearing to input from the public in favor of the application.

Ron Olson, abutter, stated the Gushs are great neighbors; he stated they are all close abutters and get along well and he would like to see them be able to enjoy their property full time.

Clark Couse, resident, stated they live in their home seasonally but the Gushs have been great neighbors the last few years and would to see them able to use their property full time.

Leslie Couse, abutter, stated she supports this request for a variance as a taxpayer, both from an ethical stance as well as considering the land use; she stated the expanded lots should be considered as part of the property and it would be an important aspect to consider. Ms. Couse stated the contributions to the neighborhood would be part of maintaining a seasonal dwelling.

Chair Horner stated if everyone in the area came back with a community action plan with upgrades to the road and some sort of sewer system, it would be a significant change to the denials and cases going forward; he stated all lots have their own septic systems and many of the lots already have waivers, which is undesirable.

Mr. Gush asked for explanation of the "spirit of the ordinance". Chair Horner stated the frontage requirement means guaranteed access for residents; he also explained the seasonal ordinance and the time frames. He stated a lakeside property was for summer usage and the grandfathered use would be assumed for that. Mr. Gush stated the ordinance doesn't seem clear and noted there are two different seasons defined; he stated a lake house could be used for ice fishing. He asked if they could define which season they want to use it. Chair Horner stated its defined in the ordinance and its grandfathered for summer use; he advised they discuss it with the Zoning Compliance Officer.

Laura Swanson, abutter, stated she is in favor of the application if it meets the environmental requirements.

Ms. Gush stated their septic system is across the street on another lot and asked that to be considered.

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

Chair Horner closed the public hearing at 7:53PM.

Discussion - Variance to Article III, Section B.7

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

Mr. Prescott motioned to deny the request for a variance for Case 2022-09 for the following reasons:

1. The proposed substantial change of use from seasonal to year round is contrary to the public interest and inconsistent with the spirit of the ordinance for the following reasons:

a. The public has an interest in reliable access of residential property for the sake of the occupant as well as all others who have occasion to visit. For this reason, the Town ordinance requires 200' of public road frontage for all residential, as well as, commercial lots. There is no public road frontage on this lot. Instead the lot is accessed by a steep, curvy, one lane private dirt road in marginal condition.

b. In the interest of ensuring public health and safety, town ordinances require a minimum of 2 acres of land for all residential dwellings. This is the land area deemed suitable for onsite well and septic. The applicant's lots have a combined land area of less than 20% of the minimum required. Compounding this significant deficiency in acreage is that this lot is located

in a neighborhood of similarly sized grandfathered lots all supporting on site wells and septic.

c. It would increase the potential for environmental damage to Northwood Lake due to the increased use of winter de-icing chemicals and added septic loading in this densely settled lakefront area. This is especially true considering the cumulative impact from the conversion of other non-conforming seasonal properties similarly seeking relief in this neighborhood.

2. Granting the variance will not result in substantial justice. The personal gains of the property owner would not be reciprocal to the Town. Variance approval on this lot (Lot 34) would reverse established precedent for denial of similar appeals by owners of Lots 32, 33 and 36 as decided in Epsom ZBA Cases 2004-20, 2010-01 and 2015-07 respectively. It should be further noted that Lot 33 appealed the ZBA's decision in Case 2010-01 to Merrimack County Superior Court. The ZBA's decision was affirmed by the court in Doc. No. 217-2010-CV-213. Approval in this case would amount to a substantial injustice to all other seasonal to year round appeals on similar lots which were denied in both the cited cases and others elsewhere in town.

3. Denial of the variance does not result in unnecessary hardship to the owner because continuing to use the dwelling seasonally by grandfathered right is the reasonable use considering the lot's dimensional deficiencies described previously. In addition, no special conditions of the property were found that distinguish it from other properties in the area warranting consideration for a hardship.

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

Other

The Board discussed having the Zoning Compliance Officer attend meetings in the future. It was agreed it would be beneficial to have the Deputy Zoning Compliance Officer attend as well.

ADJOURN

Chair Horner adjourned the meeting at 8:30PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary