ZBA

#### Town of Epsom

**Zoning Board of Adjustment**

**02/20/19**

**In Attendance:** Glenn Horner, Chairman; George Carlson, Vice Chairman; Mike Hoisington, Planning Board Rep; Alan Quimby, Member; Leann Fuller, Recording Secretary

**Not In Attendance:** Mike Bussiere, Alternate; Andrew Ramsdell, Member; Gary Kitson, Alternate

**Also in Attendance:** Jay Hickey, Zoning Compliance Officer

**7:00 PM** Glenn called the meeting to order and introduced the members of the board.

The minutes of 02/06/2019 were reviewed.

***Mike Hoisington made a motion to approve the 02/06/19 meeting minutes as presented, Alan Quimby seconded the motion. Motion passed.***

The minutes of the 02/16/2019 site walk were reviewed.

***Mike Hoisington made a motion to approve the 02/16/19 site walk minutes as amended, Alan Quimby seconded the motion. Motion passed.***

Glenn reviewed the procedures of the meeting.

**Case 2018-13 (Jabour)** – Attorney David Carney, on behalf of Everett Jabour, has requested the Board of Adjustment reconsider its’ January 2nd, 2019 decision to deny a variance to Article III, Section B [Pre-Existing, Non-Conforming Uses], Paragraph 4 [Change and Expansion of Use] and Paragraph 7 [Pre-Existing Non-Conforming Seasonal Dwellings] to the expand the use of a seasonal dwelling to year round residency on a non-conforming lot with no public road frontage (200’ of public road frontage required). The property is located on Lake Road within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U-01 as Lot 33.

Glenn Horner asked the board if they feel there is any new evidence that warrants a rehearing. All members agreed that Case 2018-13 rehearing request should be denied. Glenn read a proposed motion for denial which is attached to these minutes as enclosure (1).

***Alan Quimby made a motion to deny the request for rehearing for Case 2018-13 as stated in enclosure (1), seconded by Mike Hoisington. All in favor. Motion passed.***

Mike Hoisington asked if there are any year round residences in that area that were approved by the Epsom Zoning Board or if they were grandfathered? He stated that area is unique as it includes Northwood, Epsom and Deerfield. If there are year round residences that were approved by a board, it was not in the Town of Epsom.

Glenn Horner reiterated that the Epsom Zoning Board has not approved any year round residences in that neighborhood. Some may have been grandfathered.

Mike Hoisington stated that they have no control over what other towns allow. The Attorney is generalizing the neighborhood even though it is unique because it consists of three towns. He also mentioned that there are not only town lines in that neighborhood but county lines as well. There is also a historical lack of winter maintenance, including plowing, on the easterly end of Lake Road.

Glenn Horner discussed # 8 of Attorney Carney’s grounds for a rehearing. A seasonal use to a year round use is a change of use. A change of use has to get a variance or abide by the ordinance.

***Other business:***

***Mike Hoisington made a motion to adjourn at 7:46pm, seconded by Alan Quimby. Motion passed.***

**EPSOM BOARD OF ADJUSTMENT**

**PO BOX 10**

**EPSOM, NEW HAMPSHIRE 03234**

ENCLOSURE (1)

Decision on Motion for Rehearing in Case 2018-13

Tax Map U-01, Lot 33

On January 31, 2019, Attorney Carney, on behalf of Everett Jabour, motioned for a rehearing of the Epsom Zoning Board’s decision to deny the variance in Case 2018-13 which sought to convert the seasonal dwelling located on Lake Road (a private road) to a year round residence. The decision to deny the variance was made on January 2, 2019 at the conclusion of the formal Public Hearing held to decide the case.

As stated in the Board’s Record of Decision, any person affected by the decision has the right to request reconsideration and motion for a rehearing within a thirty (30) day period from the time of the decision. The motion for a rehearing must set forth all the grounds on which the request is made. Attorney Carney’s motion for rehearing was received within the 30 day period and consisted of multiple grounds in support of his request for reconsideration. The Board will evaluate any new evidence that may be available which could lead the Board to change its’ decision or any proof that the Board made a technical error in its decision or process. If, in its’ evaluation, it is found that a change is warranted or an error has been made, the Board should grant the request for rehearing.

The following “Background” is provided summarizing the relevant history preceding its decision in this case for reference. A “Deliberation” follows which address each of the grounds contained in the motion for rehearing as submitted by Attorney Carney and concludes with a “Decision” on his motion.

BACKGROUND:

 The Town of Epsom approved its original zoning ordinances in 1969. Notably in 1978, the Town’s Legislative Body amended the ordinance to restrict single-family residences to the requirements imposed by today’s zoning standards for a minimum two (2) acre lot size and 200 feet of frontage on a public road. With the adoption of zoning, the creation of any new seasonal dwellings was, for all practical purposes, “zoned out” through not being listed in the Table of Principal Use (Article II, Section C).

 This restrictive approach toward seasonal dwellings is also acknowledged in the Town’s 2001 Master Plan. As written in the Master Plan, the Town views lake front properties as having a distinct use; different than single-family residence. The properties along the lake fronts are recognized to be limited to a “seasonal/recreational” use that has existed prior to the adoption of zoning. As referenced in Chapter III, (Existing and Future Land Uses [Page III-24]) and Chapter IX, (Conservation, Preservation and Open Space [Page IX-12]), the Master Plan describes the six lakes and ponds within the Town, including Northwood Lake. It points out that for the better part of the last fifty (50) years, the lakes water quality has been greatly impacted by the seasonal, recreational uses that have existed prior to zoning. Due to the small lot sizes and high density of the seasonal properties around the lake/pond(s), there is a concern for the conversion of “seasonal cottages” to year round use. It is felt that this change would cause an increased strain on the limited onsite septic system capabilities and further threaten the Town’s natural resource. For these reasons, the Town has long held that “seasonal dwelling” use is distinctly different than “single-family residence” use.

 In 2005, an Administrative Appeal (Case 2005-03) was filed by the owner of Tax Map U-19, Lot 34, located on Chestnut Pond Road, seeking to overturn the Zoning Compliance Officer’s interpretation of the Zoning Ordinances in ruling that prior property use as a seasonal dwelling is a pre-existing, nonconforming use and that an expansion of its seasonal use to single family residency requires a zoning appeal in accordance with Article III, Section B (Pre-Existing, Non-Conforming Uses), Paragraph 6 (Relief) of the Epsom Zoning Ordinances. The applicant in Case 2005-03 argued that a change in dwelling use, which had been previously occupied only on a seasonal basis, to year round occupancy for single family residence is not a change of a pre-existing use unless the Zoning Ordinances specifically distinguish between seasonal use and year round use. The applicant reasoned that because the Epsom Zoning Ordinance’s Article II, Section C (List of Principal Uses Table) did not differentiate seasonal use, then the conversion or change of a seasonal dwelling use to year round residential use was permitted within the Residential and Agricultural Zone.

 The Board of Adjustment upheld the Zoning Compliance Officer’s findings and denied the appeal in Case 2005-03 based on its historical differentiation between seasonal and year round use and its interpretation of its non-conforming use ordinance in place at that time. The Board also denied the rehearing request and the applicant went on to appeal the Board’s decision in Superior Court. The Petitioner’s motion was granted in Superior Court and the Zoning Board’s decision reversed due in large part to the fact that the Town’s Zoning Ordinances drew no distinction between seasonal and year round occupancy of single family residences. The Town unsuccessfully appealed the lower court’s decision to the Supreme Court [Severance v. Town of Epsom, 155 NH 359 (2007)].

 In 2007, the Town of Epsom amended its Ordinances to acknowledge it’s long held distinction in property use by including Article III, Section B (Pre-Existing, Non-Conforming Uses), Subsection 7 (Pre-existing non-conforming seasonal dwellings) in its Ordinances. This Ordinance remains in effect today

 In 2008, Mr. Jabour submitted a variance in Case 2008-13 to expand the size of his dwelling as required by Article III, Section B [Pre-Existing, Non-Conforming Uses], Subsection 4 [Change and Expansion of Use] and Subsection 5 [Continued Use], paragraph (b) [Enlargement] to permit the enlargement of a dwelling on a pre-existing, non-conforming lot by greater than 25%. This variance was approved and allowed for the expansion of the dwelling from 765 ft2 to 2000 ft2; a 260% increase. A condition was attached to this decision which stated that “The new building shall continue to be used as a seasonal dwelling only (lake house)”. This variance decision was not appealed.

In 2010, Mr. Jabour submitted a variance in Case 2010-01 to expand the use of his seasonal dwelling to year round residency. This variance was denied. The Zoning Board’s decision is available as a part of the Public Record in this case. Attorney Steven G. Shadallah, on behalf of Mr. Jabour, submitted a motion for a rehearing in Case 2010-01 within the appeal period. The Zoning Board denied the motion for a rehearing. The case was appealed to Superior Court which upheld the Zoning Board’s decision. The Court’s decision was not appealed and is available as a part of the Public Record in this case.

In 2018, Attorney Carney, on behalf of Mr. Jabour, submitted a variance in Case 2018-13 to expand the use of Mr. Jabour’s seasonal dwelling to year round residency. The Zoning Board initially questioned the viability of the variance request as it was the same as that previously denied by the Board and upheld in Superior Court in 2010. The Zoning Board sought legal advice and it was determined that the Case 2010-01 variance had been decided using criteria established by the 2004 Supreme Court decision in Boccia vs. Portsmouth for an “Area Variance”. Since this criteria was superseded by Senate Bill 147 and the prior Use and Area criteria for a hardship combined into a single test, it was advised that the 2009 decision in Brandt Development v. City of Somersworth, 162 NH 553 (“Brandt”) should be followed and the new variance request heard.

Noteworthy in Brandt, the hardship criteria had been changed from the more restrictive Governor's Island Club v. Gilford test used by the Somersworth Zoning Board in its original 1994 decision denying the variance to the lesser test of “Use” and an even lesser test of “Area” variances created in Boccia vs. Portsmouth. This is summed up a line in from the Supreme Court’s decision: “Boccia, in particular, relaxed the unnecessary hardship standard for area variances, thereby creating a higher likelihood that an applicant will prevail under the new test.” It was also found in Brandt, that although other criteria besides hardship had been used to deny the variance, all criteria are interdependent. As such the change of the hardship criteria could potentially impact the decision on the other criteria ultimately changing the original decision. As noted, the hardship test had been made less restrictive after the original Brandt decision. However in Case 2010-01, The Epsom Zoning Board used the least restrictive “Area” hardship criteria, as well as other criteria when denying the variance, which had arguably been become more restrictive following the enactment of Senate Bill 147; the exact opposite of the logic used by the Supreme Court in granting Brandt Development Company a do over despite precedent. Nonetheless, on the advice of counsel, the Board voted to proceed with the hearing the variance as requested.

In 2019, the ZBA held a public hearing in Case 2018-13 and unanimously voted to deny the variance. Attorney Carney submitted a motion to appeal the denial leading to the present day.

DELIBERATION:

Grounds for a rehearing are restated and underlined followed by the Board’s response:

1. The Board is engaged in an arbitrary regulatory taking by depriving the petitioner of the best use and economical beneficial use of his land without compensation.

 The Board is applying the Epsom Zoning Ordinances as written with respect to seasonal dwellings and variance requests to convert to full time residency. It’s findings on the merits of such requests is anything but arbitrary having been applied consistently since the inception of zoning as outlined in the Background section of this response. Consistency in application of these ordinances is further demonstrated by prior denials, not only for the petitioner’s lot in 2010, but also for essentially the same variance in Case 2013-06 and Case 2015-07 involving lots ~360 ft. east and ~125 ft. west of the applicant’s lot on Lake Road, respectively.

 Contrary to the claim that the petitioner is being deprived the best and economical beneficial use of his land, the Board has previously approved a substantial enlargement of the original dwelling on the lot by variance attempting to satisfy the needs of this petitioner on this lot. The stipulation that the dwelling shall remain seasonal contained in the approved variance for enlargement was not challenged by the petitioner prior to investing in the enlargement.

1. The Board relied too heavily on history of the property, much of which was irrelevant to the petition in regards to the present situation and in regards to the fulfillment of the required criteria.

 The history of the property is entirely relevant to the petitioner’s current variance request specifically with regard to the hardship criteria. If, as the Board has witnessed in other cases, a new owner unaware of the Town’s seasonal ordinance had applied for this variance, a case for personal hardship might have been plausible. However, in the case at hand, the petitioner was fully aware of the ordinance and agreed to the condition that it remain seasonal prior to committing to his investment.

1. The Board seemed concerned about setting, what it regarded as a dangerous precedent and slippery slope for future decisions rather than limiting the scope of its decision making to the facts and circumstances of the case in hand.
2. The Board used a recent prior precedent to support the claim that substantial justice will not be done. All variance petitions are unique as are the Boards that change members over the years and although precedents can be authoritative they should not be controlling.

 The validity of precedent in cases similar to that being appealed by the petitioner is substantial when reviewing the Board’s public record. Notably the Board’s decision in Case 2005-18 to deny a variance for conversion of a seasonal dwelling to year round residency was reversed by the Board on the same lot in Case 2013-01. The reversal occurred, in part, due to the argument made by the applicant’s attorney that a neighbor had received a variance approval for the conversion in Case 2012-04. A portion of the legal brief made in support of Case 2013-01 is included here for review:

 *Constitutional Requirements: The Case 2013-01 applicants (Applicants) are entitled to the relief requested as a matter of New Hampshire constitutional law. Under the New Hampshire Constitution, all persons have the right to “acquire, possess, and protect property, and the “equality of these rights under the law shall not be denied or abridged…” NH Const. Pt. 1, arts, 2, 12. As such, a successful equal protection claim can be brought when, in applying a zoning ordinance, a ZBA “impermissibly establishes a classifications and therefore treats similarly situated individuals in a different manner”. Taylor v Town of Plaistow, 152 N.H. 142, 146, (2005). If the ZBA should deny the herein requested relief, it would result in a different treatment of the Applicants than the Case 2012-04 applicant and other similarly situated year round residents in violation of the Applicants equal protection rights. See Community Resources for Justice, Inc. v. City of Manchester 157 NH 152, 155 (2008) (affirming the trial courts ruling that the City’s zoning ordinance, as applied by the ZBA, violates the plaintiff’s equal protection rights as guaranteed by the State Constitution). Given that the Case 2012-04 were granted the same variance now requested by the Applicants, the denial of the Applicant’s variance would indicated selective enforcement of the ordinance and impermissibly single out the Applicants without any rational basis for doing so. See Anderson v. Motorsports Holdings, LLC 155 NH 491, 499 (2007). Such a denial will therefore result in the unconstitutional violation of the Applicants’ fundamental right to acquire, possess and protect property.*

The legal brief is not only compelling for its recitation of established law but how it meshes with the common sense understanding of equal protection under the law as it should apply to all property owners coming before this Board. Although the boiler plate assumption for zoning cases going in is that they may be unique in some way, coming to a different conclusion in cases where the majority of consequential circumstances are the same clearly violates the concept of equal protection and should be deemed prejudicial as well as unlawful to those whose property rights are unjustly denied.

This concept qualifies the lack of substantial justice aspect for the petitioner’s neighbor as well as the town as cited in the Board’s decision. The lack of substantial justice aspect for the town is compounded by prior town expense to uphold the original denial in Superior Court in 2010 where the consequential circumstances of that case have not been significantly altered over the preceding 9 years.

1. The Board never asked about road conditions during the open forum but made their decision based on the road during its deliberations based on their visual findings. There were improvements made over the past ten years. There was the removal of a large rock, the placement of a trench, the road was graveled and dry well was installed to capture rain runoff for drainage purposes. This evidences improvement of road conditions not deterioration.

The Zoning Board is a quasi-Judicial Board which makes decisions based on evidence presented to it during the course of a public hearing. As such, it is incumbent upon the petitioner or his attorney to present all evidence in support of their case without elicitation or prompting by the Board. A review of the Jan 2,2019 minutes finds that, although it was stated by the petitioner’s attorney that “the neighborhood roadway is improving and has changed” no further evidence was presented to substantiate or qualify the improvements. This was countered later by the Chairman’s recent site visit of the neighborhood which he described as “narrow roads and seasonal camps … very little has changed.” Later during the testimony the road was further discussed by the Chairman as “a very important factor in this area because of the deficiency in the road itself. None of it is designed anywhere near what a town road would be today. Currently, it is a single lane narrow dirt road with ruts”. This characterization was not disputed by the petitioner or his attorney during the public hearing.

The road improvement evidence now being cited for a rehearing is considered to be minimal improvements made to maintain it passable and insufficient to merit a new hearing. Rather, evidence provided by similar petitioners including establishment of a formal road association, engineering studies comparing the existing private road specifications favorably with current town road requirements and/or significant changes such as widening and regrading would be acceptable grounds to rehear this case. Based on prior case history in the petitioner’s neighborhood, the likelihood that such evidence would be forthcoming is remote.

1. There is no attributable evidence that there would be increased traffic or increased burden on public safety and arbitrarily dismissed the solution of a proposed waiver which has been an accepted method of resolution by the Board in prior decisions especially in light of the fact that there are neighboring properties on this road that are year round residences.

 The conversion of a seasonal use dwelling, or a summer camp as in this case, to a year round residency would naturally involve the creation of additional traffic to provide access during the additional 6 month period of usage. This increase in traffic is absolutely expected, if not by the current occupant some future occupant of the dwelling as a variance approval is eternal. Increased traffic would potentially include the owner and immediate family, visitors, postal deliveries, home and appliance maintenance services, town emergency services and so on. Considering this usage would occur during the winter months when road conditions are compromised and beyond the town’s ability to affect, passage is uncertain. Although emergency services will do what it takes to alleviate any emergency, there is a greater risk of personnel injury and damage to emergency vehicles. This so called “increased burden” has been mitigated, to some extent, in prior cases by including a condition to waive the town of responsibility for the private road as a part of the conversion of seasonal dwelling to full time residence. Paramount is that this occurred in a different neighborhood with a private road approaching town specifications and being maintained by an established formal road association. The waiver is considered a subordinate risk mitigation factor since it has not been tested and therefore provides uncertain liability protection. The application of a waiver to the petitioner’s lot was not considered based on the known and observed inadequacies of petitioner’s private road.

1. There is no strict adherence to the Town Ordinances in regards to size and frontage in these types of petitions so reciting the petition (para 1.c) is not within spirit of the town ordinances is arbitrary and discretionary.
2. The spirit of the ordinance reciting the 2 acres, 200 feet of public road frontage is unduly burdensome and its intent should not apply strictly to conversions from seasonal to year round zoning classification changes.

 The spirit of the town ordinance’s, as cited in the Board’s decision and it’s direct relevancy to the petition at hand, is contained in the text of the ordinances being appealed: It is the “…explicit policy…” of the seasonal ordinance, Art.III(B)(7), to regard this variance request as a substantial change as defined in Art.III(B)(4). Art.III(B)(4), in turn, references Art.III(B)(3)(b) which provides relief for uses which preexisted zoning and do not meet today’s zoning requirements. Such pre-existing uses are allowed to continue so long as they are not substantially changed. As noted in Art.III(B)(3)(b), should a substantial change occur, “…all restrictions of these ordinances would become applicable and the pre-existing use must conform to all applicable provisions of these ordinances to include frontage, acreage, setback; side, front and rear, height and density”. Since the change from seasonal to year round is a substantial change in use it must therefore either conform to the ordinances as stated or obtain relief through the customary variance process in accordance with Art.III(B)(6). Based on these words it is necessary to evaluate the full extent of the deviation of the petitioner’s lot from the existing zoning ordinances with emphasis on the foremost criteria referenced in Art.III(B)(3)(b) of frontage and acreage. Only by determining the full extent of the zoning violation being created can the degree by which it conflicts with spirit of the ordinance criteria of a variance be established.

 As stated in the paragraph of the Board’s decision as cited, the deviations are considered significant. Instead of 200 ft. of public road frontage, there is 50 ft. of significantly substandard private road access for each of the 2 lots. Instead of 2 Acres of land, there is roughly ¼ Acre divided in half by the private road creating the 2 lots. It must be concluded then that this property deviates markedly with the Town ordinances for which the petitioner is seeking a variance and would be a blatant violation of the spirit contained therein.

1. Using conditions from 10 years ago (Denial para 1.d) as a reason for denial is contrary to public interest as it would discourage development of one’s property in a way that reflects a natural expansion and beneficial improvement.

This point is contradicted by the facts in this case undercutting it’s applicability to the natural expansion argument. As outlined in the Background section, the petitioner initially sought and received approval in Case 2008-13 to enlarge his dwelling thereby developing his property in the process. As a part of that decision, it was agreed, by condition, that the dwelling would remain seasonal. The petitioner proceeded to improve his dwelling to his benefit and maximum enjoyment, despite the restriction, contradicting the complaint that such a restriction would discourage such an endeavor. Public interest sustained.

Also the Board reflected on another condition associated with Case 2008-13 and intended to ensure the public interest criteria of that decision was not contradicted. Specifically Condition 5 which reads:

*Lot U1-33 (house, septic tank) and Lot U1-44 (water supply, leach field) shall be considered a “single lot” such that title for both lots remains with the same owner(s). In addition, the “Record of Hearing Decision” for Case 2008-13 shall be recorded at the Merrimack County Registry of Deeds in Concord, NH with reference to both deeds (i.e. Lot U1-33 and Lot U1-44). A copy of the recorded document shall be provided with application for Zoning Compliance (Occupancy) Permit.*

During the public hearing the petitioner offered to merge the two lots as a condition of approval of his most recent variance appeal indicating the lots may presently be considered unencumbered by one another. It is hoped that the petitioner’s re-acquaintance with this condition will prompt him to take the necessary steps to merge the two lots, as the Board had anticipated, or otherwise ensure Condition 5 is adhered to regardless of the outcome of this case.

1. Petitioner proved that the denial of the variance poses an unnecessary hardship not based on market value of subject property but based on personal situation of applicant.

 The petitioner did identify personnel circumstances which he considered a hardship including recent retirement and the desire to enjoy his lake view year round. He also suggested the market based aspect was not a part of the hardship considerations although there could and would be nothing to prevent such a sale in the future. But all such points are deemed temporary and subjective when considering the eternal nature of a variance. Indeed the question posed by the hardship criteria when deciding on a variance appeal addresses the eternal nature of the property itself when it states “Owing to special conditions of the property that distinguish it from other properties in the area:”. The one aspect presented in support of special conditions of the property was the petitioner’s ownership of 2 lots on Lake Road which differentiate it from other lot owners in the area. However, even when combining the two lots, the property remains considerably non-conforming as discussed in the response to paragraphs 7 and 8. Further, a similar 2 lot variance appeal was denied to a neighbor in Case 2013-06 due to similar factors including significant deficiencies in dimensional requirements and substandard road access.

1. The Epsom Zoning Board of Adjustment made finding upon questions of fact when there is enough evidence whereby an alternative finding on each criteria could have been reasonably based.

 Over the years, the Board has been tasked with addressing multiple requests for conversion of seasonal dwellings to year round residences including in the petitioner’s neighborhood. As such, it has become intimately familiar with the factors involved with this conversion. In nearly all instances it has found that the original design for a neighborhood of camps on small congested lots with individual septic systems bordering a recreational lake and accessed by a significantly substandard road does not support this conversion. These facts were established for the petitioner’s lot in 2010 which resulted in the denial at that time. Substantive facts to reverse that decision were not presented in this case resulting in a subsequent denial.

1. There was no substantive discussion by the Board in regards to whether approval of a year round status would change the character and quality of the neighborhood. It is the contention of the applicant that it would not. The petition is consistent with the makeup of the neighborhood as currently exists.

The Board recognizes that the petitioner’s neighborhood is a mix of seasonal dwellings and year round residences on non-conforming lots with the latter having been grandfathered prior to the enactment of the seasonal ordinance. The discussion by the Board on the change of character and quality of the neighborhood was summed up in one line in the Jan 2, 2019 Public Hearing minutes: “Glenn stated that if this was approved, the board is throwing out the seasonal ordinance.” Contrary to the petitioner’s claim in those same minutes that “Since there are a dozen properties that have year round capacity that have been approved in the last 9 years…”, this Board is aware of only 3 seasonal to year round approvals given during that time all of which occurred in a different neighborhood under significantly different circumstances. No approvals have been given in the petitioner’s neighborhood or other similar neighborhoods. Should approval be somehow deemed acceptable in this case, despite the degree of violations of the zoning ordinances as detailed in the response to paragraphs 7 and 8, the Board could well expect a complete change in the character and quality of the neighborhood due to the application of the equal protection under the law principal for those previously denied, or yet to be heard, as was discussed in the response to paragraphs 3 and 4.

DECISION:

The Board finds the new evidence presented by the petitioner is insufficient and does not warrant a rehearing. In addition, the Board concludes that it did not make a technical error in its process or decision justifying a rehearing. As such, the Board of Adjustment hereby finds against the January 31, 2019 motion for rehearing. The Epsom Board of Adjustment hands down this decision on Wednesday, February 20, 2019 by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ vote.

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 Glenn Horner, Chairman

 Epsom Board of Adjustment

 Date: February\_\_\_, 2019