ZBA

#### Town of Epsom

**Zoning Board of Adjustment**

**7/18/18**

**In Attendance:** Glenn Horner, Chairman; George Carlson, Vice Chairman; Mike Hoisington, Planning Board Rep; Gary Kitson, Alternate; Andrew Ramsdell, Alternate, Mike Bussiere, Alternate, Leann Fuller, Recording Secretary

**Not In Attendance:** Ricky Belanger, Alan Quimby

**Also in Attendance:** Virginia Drew, Kerry Jackson, Cameron Lilley, Justin Rice, Dave Noyes and Sean Pelletier

**7:02 PM** Glenn called the meeting to order and introduced the members of the board. The minutes of 04/18/18 were reviewed.

***Gary made a motion to approve the 04/18/18 meeting minutes as amended. Mike H. seconded the motion. All in favor.***

Glenn reviewed the procedure for the meeting.

**7:06 PM Case 2018-06** (Jackson – Var) - Kerry Jackson, has 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 seasonal dwelling as a year round residence on a parcel without public road access. The property is located on Chestnut Pond Road (private road) within the Residential/Agricultural Zone and is identified by Epsom Tax Map U-19 as Lot 40.

The members voting on this case will be Glenn, Mike Hoisington, Andrew, George and Gary.

Glenn advised that this public hearing was published in the Concord Monitor, posted at the Town Office & the Post Office and all abutters were notified by Certified Mail. All certified receipts were received back with the exception of Claudia and Francis Morrison, 17 Chestnut Pond Road.

Glenn opened up the hearing to the public at 7:10pm.

Kerry Jackson, KW Realty, representing Francisca Pazzia, at 218 Chestnut Pond Road. Kerry stated that the property is under agreement and the buyer is here this evening, they are looking to occupy the property year round. Kerry’s client’s husband passed away and she needs to sell. There have been significant improvements to the property and a majority of the residents are year round. This is not a waterfront property and has 5 ½ acres of land. This would improve the neighborhood quality.

Glenn reiterated that the only hardship being cited for this variance is that the owner needs to sell.

Kerry Jackson stated that the current seasonal use is unsellable. The buyer is willing to purchase it as a year round property.

Glenn asked if there was any other interest in the property. Kerry answered there was not. Glenn asked if Kerry was familiar with Variances on this road. She stated that the buyers agent lives on the road and has done significant research. Kerry believed that variances have been granted making seasonal residence’s year round. Glenn stated that he has been on the Zoning Board since the 90’s and every case on Lakeview and Chestnut Pond extension have been denied. The ZBA has been to Supreme Court and lost. Due to that, a Seasonal Ordinance was put into place.

Kerry Jackson informed the board that there is an approved septic tank, electrical, water, dug well, electric heat source and a wood stove.

Cameron Lilley, Buyers agent and resident at 196 Chestnut Pond Road. He was aware that there are issues with granting variances for year round status on some properties. Cameron looked at the GIS system provided by the Town of Epsom and reviewed the uses of each property and which properties are marked as camp and which are marked as year round use. Everything on the east side of Chestnut Pond Road is year-round. Every property on the eastern side is conforming with a minimum lot size of 2 acres and 200 ft of road frontage, well and state approved septic’s and has year round status. Runs through all east side of the road.

Glenn mentioned that all of those properties do not conform because they do not have public road frontage. The Morrisons were denied on that road. It is not the variances that were approved on the properties mentioned, but that all lots were grandfathered. Again, we were challenged over this case in Supreme Court and lost because we did not have an ordinance. We made that ordinance and it was in effect in 2007. To clarify a previous statement, there have been no approvals for Chestnut Pond Road or Lakeview granted. Glenn asked if a road association had been developed.

Cameron Lilley stated that a road association has been developed along with a road maintenance agreement.

Glenn state that is important information and should have been provided to the Board as evidence.

Dave Noyes, 221 Chestnut Pond Road, spoke about the road association and that it was established last year. The road is very well taken care of. The association has bought a York rake and rake it every couple of weeks. Dave had a problem before with the Concord Monitor not delivering to him, now there is no problem.

Glenn stated that he still sees restrictions, the road is only about 18 feet wide.

Dave Noyes stated that some tree cutting was done and it got wider recently.

Mike Hoisington asked where the property is located on the road?

Glenn stated it was almost to the end.

Andrew asked what the status that the home is being used for now and Kerry Jackson stated that it was a second home for the current owner.

Cameron Lilley stated that the home has a full concrete block foundation, concrete piers, newer shingled roof, 2x4 construction, r19 insulation, r30 insulation in the roof, electric heat in every living area of property, supplemental heat as wood stove, drilled well in rear and a state improved septic. Everything regarding the property makes it suitable. The only thing restricting this property being used as a year round residence is the grant of this variance. Cameron understands there has been prior properties being denied but the concern is the property will fall into disrepair and be detrimental to the neighborhood, if the variance is not granted. This property does not have waterfront access, due to that, he can’t see someone purchasing it as a camp. Outside of his financial interest as the buyer agent, he would like to see a new owner come in and assist with the continued improvement of the road and the neighborhood.

Glenn stated that this is a common theme. This is the cart before the horse. Glenn recommended they make it a town road then seek full time residency otherwise any incentive to improve the road significantly goes away. Also, this would reset the precedence of past denials. Some people like the private status of the road.

Cameron understands how it may set a precedence, but each lot is a different case. He understands not wanting to open Pandoras box, but he believes this is a hardship for the current owner and respective purchaser who would like to participate in this community and the town stands to benefit by switching the property from seasonal to year round as it increases the tax base and there are no children so no additional burden to the school system. I want to see the neighborhood improve and not decline.

Glenn stated that if this is approved the people in the house turn into full time residence. The house could be sold to someone who has 6 kids. Public interest as far as taxes is the opposite. We have no school tax from that property right now.

Glenn mentioned that he has not seen any changes since the Morrisons on his site visit. The road may be well maintained but he sees it as a single lane curvy road with constrictions.

Cameron understands the position of accessing the road with emergency vehicles. However, Sean does a fantastic job allowing for heavy GVR trucks, linemen, septic companies and triaxle dump trucks delivering loam accessing properties with no issues. If there was a fire emergency, they would not have an issue. There are no hydrants because the municipality has not been able to make those infrastructure improvements yet. Furthermore, properties that are year-round are past that point, they are grandfathered but they face the same issues and this property is more readily accessible. I believe a fire truck would not have an issue to receive emergency services.

Andrew asked how long has it been on the market.

Kerry stated since April.

Glenn mentioned that the variance runs with the property forevermore. Who is going to say what is going to happen to the road. Sean may not do it anymore. There is no insurance on that.

Cameron stated that year-round residences is the incentive. In the spring, he was out there with hardpack, filling potholes and using the York rake. There are multiple people who attend to the road. Would be nice to have younger blood and have technical knowledge.

Justin Rice, potential buyer for the property stated that he drives a truck, trailer and is a heavy equipment operator. He is municipally employed and knows that even town roads are not maintained that well. He stated that he comes with the best interest to grow his family in Epsom.

Glenn stated that intentions are well meaning but between now and closing, someone else could buy the house. We can’t get into the personalities with this and your intentions are great but the condition of the owner and yourself personally have no bearing on what is going to happen 10-50 years from now.

Cameron asked if the board has the capability to grant the variance with conditions such as granted for this purchaser only.

Glenn stated that that is not an option. He mentioned that the board has to look at look at the property and where it is located and the access. The board puts all personalities aside.

Cameron asked about the variance granted on Sleepy Hollow and how that was different as it was a similar road and the home was within 200 square feet of another home. This home far exceeds what that home was.

Glenn stated that the difference was the access to that house was a 2 lane, fairly flat road.

Andrew stated that Sleepy Hollow did an engineering study and the road association has been there for a decade or more. Andrew would like to see the road association documents and how many people are participating, what are projects have been completed and what future projects are budgeted for.

Cameron said that year-round residents commit $100 biannually and seasonal is $50 per household biannually. There are maybe 2-3 points where two cars can’t pass. Culverts and swales were added in.

Glenn stated there should a 50 foot right of way as that is town spec.

Cameron had previously reviewed the subdivision plan and there is a 50 foot strip that is allocated to that roadway plan back in 1973. There are a substantial amount of seasonal people and those will need to be identified individually. There could be a potential protest of giving up 10 feet of that buffer. Legal action does not make for good neighbors.

Glenn stated that the board has to look at it from the Towns perspective. Ideally residents would bring the road up to town spec and petition the town to make that a public road.

**Abutters in favor:**

Sean Pelletier, moved in around 2007, someone was living there year-round. Emergency vehicles have been down there in the winter. Sean does plow so neighbors can get out to North Road. He is also in and out with a truck and chipper, stump grinder, excavator.

Glenn stated that the only guarantee is if it’s a town road or meeting town specs then the liability is more difficult to prove.

Cameron asked what seasonal use is defined as?

Glenn read the Seasonal Ordinance.

Kerry Jackson mentioned that the current owner used it quite often and utilized as much as possible throughout the year, hence the heating source.

Andrew stated it can be sporadic short use but it cannot become a primary home, which means you can’t register your vehicles to that address.

Justin- if I say its summer, I cant go there in the winter?

Glenn mentioned that there is no way to assure there is accessibility. Having a waiver signed if emergency personnel can’t make it.

Mike Bussiere asked about the listing as it seems like it was classified as year-round in the listing.

Kerry Jackson stated that it was previously listed as year-round, town said it was and further research listed it as seasonal.

Mike Bussiere also asked what was impeding the buyer to buy it as seasonal then improving the road and coming back to the ZBA.

Justin stated that he does not have the money to spend if this falls through.

Glenn stated that if notably improved, then maybe these cases need to be revisited. Glenn asked if there was anyone else that would like to speak in favor of this variance. None stood up.

Glenn asked if there any opposed abutters. None stood up.

Mike Bussiere asked what is the precedent to making sure the listing is accurate from the start?

Kerry Jackson stated that the buyer must do their own due diligence. The information she was lead to believe it was a year round property as it was previously listed that way.

Justin spoke with Jay Hickey regarding the wetlands on that property and asked about seasonal and residential. Jay could not give the answer. However, he continued to put an offer in. He has been looking for 2 years for a house. He would like to build a farm in NH.

***Mike H motioned to close the public hearing at 8:33pm, seconded by George. All in favor.***

The checklist was reviewed:

Question 1. All members answered no.

Question 2. All members answered no.

Question 3. All members answered no.

Question 4. All members answered yes.

Question 5. All members answered no.

Question 6. All members answered no.

Andrew mentioned that the size of the lot is different than all the others.

Mike Bussiere thought that the board may be appeased if we saw a stamped road proposal that could work. Proposal is a start. Given the amount of frontage and looking at the other camps, the board does not know where the 50 foot swale is.

***Gary motioned to deny the Variance application, seconded by Andrew. All in favor.***

The variance was denied for the following reasons:

1. The condition of the single lane private road providing access to this property is significantly below town standards. Additionally, travel distance over this substandard road to the property from the nearest public road is over 2000’. Due to these conditions, emergency access to the property cannot be ensured. As such, conversion of a seasonal dwelling to a year round single family residence on this private road is contrary to the public interest and is inconsistent with the spirit of the seasonal ordinance.
2. Since the sale of property is a universal condition for all properties and no special conditions can be found which might satisfy the hardship criteria, the pre-existing, nonconforming seasonal use ordinance is not an unnecessary hardship in this case.
3. This property is located at a greater distance from a town maintained road than other properties denied requests to convert their seasonal dwelling to year round. The primary objection the Zoning Board had with these prior appeals was with the condition of the private drive serving these lots. The prior applicants appealed the town’s decision to both the Superior and Supreme Court. Defending the Board’s decisions to restrict conversion of seasonal dwellings to year round residences on this private drive came at great expense to the town. Approval of this case then would result in a substantial injustice to the town and the prior applicants who were denied essentially the same request.

Discussion ensued regarding members and alternate status’.

Discussion regarding PA-28 (inventory) forms. Glenn Horner agreed to put it on the agenda to discuss the forms with the Selectmen.

**9:16 PM** George made a motion to adjourn, seconded by Gary. All in favor.