

**TOWN OF EPSOM  
ZONING BOARD OF ADJUSTMENT  
Epsom Library, 1606 Dover Road, Epsom, New Hampshire  
January 31, 2024, 6:30 PM**

**PRESENT**

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

**ALSO PRESENT**

Jennifer Riel, Recording Secretary  
Justin Guth, Zoning Compliance Officer  
Virginia Drew, Board of Selectmen Representative  
Nicholas Terry, applicant  
Michael Terry  
Bob McKechnie, resident  
Martha Chase, resident  
Michele Cloutier, resident  
Janelle Judice, abutter

**CALL TO ORDER**

Chair Horner called the meeting to order at 6:35 PM.

Introductions were made of the Board members. Chair Horner asked Ms. Boyajian to sit on the Board as a voting member in Mr. Kitson's absence.

**APPROVAL OF MINUTES**

Meeting of January 17, 2024 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Mr. Quimby. Second by Mr. Johnson. Motion passed unanimously.**

**Case 2024-01 (Terry – Var.)** - *Nicholas Terry has applied for a variance to Article III, Section G [Residential Single and Multi-Family Residence Requirements], paragraph 1 [Single Family Requirements] b. [Building Lots] to build a single family residence on a pre-existing lot with no public road frontage (200 feet required). The property is located on Chestnut Pond Road (private) within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-19 as Lot 46. Public testimony will be considered in determining if sufficient evidence has been submitted to justify granting this zoning appeal.*

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 with the exception of Martha Chase and Michele Cloutier.

Chair Horner stated a variance was denied in 2000 for this property; he stated per the advice of Town Counsel, per the *Fisher v. Dover* case, once variances are decided and not appealed within 30 days are considered de- facto law. However, the hardship criteria changed in 2010 so the case must be heard.

Chair Horner opened the public hearing at 6:44 PM.

Nicholas Terry, applicant, stated if the variance is granted, he intends to build a single family home on the property. He stated a variance is needed as there is 199.6 feet of road frontage on a private road and is less than the required 200 feet on a public road.

Chair Horner stated he emailed additional evidence from the property owner to Board members for review prior to the hearing. He confirmed the property owner has authorized the application for a variance by Mr. Terry, a potential purchaser of the property.

Michael Terry stated when they looked at the property that is currently for sale, nothing was ever brought to their attention in regard to the need for a variance as well as a previous denial. He stated none of the history of the property was disclosed. He stated Mr. Terry is just looking to build a single family home and establish a family in Epsom.

Chair Horner explained the history of the property which has revolved around concerns about building and developing other lots on this private road. Mr. Matteson stated houses have to be built on a public road to ensure that the Town services can access the property.

Mr. Terry asked why this information isn't included in the listing. Mr. Ramsdell stated it is up to the realtor to disclose the information but also due diligence for the purchaser.

Mr. Johnson explained if the applicant wants to proceed, the Board will consider the variance criteria; he stated if the applicant presents their case and criteria is met, it could be approved. Chair Horner agreed that in unique circumstances a variance can be approved.

Chair Horner noted evidence was presented indicating construction of other homes on the private road and noted most were constructed prior to the ordinance change, with the exception of a single family home in 2015 which has significantly less road frontage and acreage than required. He expressed concern that this construction was done without the necessary town approvals.

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

Janelle Judice, abutter, stated she is in favor of the application. She stated large trucks go down the road frequently and doesn't see there being a problem with access. Mr. Johnson asked her opinion on the crowding in the area. Ms. Judice stated she doesn't see this single family home causing an issue on this lot. Ms. Boyajian noted the lot is 10 acres and questioned if crowding would be a problem with a lot that is double the minimum lot size. Mr. Johnson stated they also

have to consider the character of the neighborhood and wants to know how residents would feel about the development of the area.

Martha Chase, abutter, stated there is a large watershed issue which was the reason for the variance denial years ago. She stated she would love to have a house and family on this lot but wants to ensure the pond is protected through the development process. She stated multiple houses have been approved over the last few years and it will all have an impact on the pond. Ms. Chase stated she is working as a volunteer with a lake association to monitor the pond and reiterated they need to consider the impact of the watershed into the pond.

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

Chair Horner noted the reason for denial of the variance request in 2000 was due to the lot being on a private road and concerns for the health and safety of the neighborhood. Mr. Matteson stated it creates an extreme liability to the Town to grant a variance; he stated a private road can be legally gated or blocked by the road owner.

**MOTION: To close the public hearing. Motion by Ms. Thorne. Second by Mr. Johnson. Motion passed unanimously.**

The public hearing closed at 7:14 PM.

***Findings of Fact:***

1. This same variance appeal was previously denied in Case 2000-11 primarily due to inadequate access over a private road. It is being reheard due to the 2010 change in the variance hardship criteria.
2. No significant upgrades to the private road have been done since that denial.
3. Current road conditions consist of a narrow width with poor surface conditions including untreated ice.
4. This area contains a series of small camps on substandard lots which are seasonally used and do not require winter season access when road conditions are impacted by ice and snow.
5. The Town's position that year-round use of these seasonal camps should not be permitted was taken to the Supreme Court and was based primarily on the fact that there was inadequate access over the private portion of Chestnut Pond Road, especially in the winter.
6. Other similar variances requesting residences with no public road frontage have been denied by this Board, more recently in Case 2021-05 (Sunset Drive), and Case 2017-12 (Old Mtn Rd.) due to access concerns.

The Board went through the Variance Discussion worksheet.

*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. YES*

*D. The proposed use will not diminish the value of surrounding properties. NO*

*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*

**MOTION: To deny the request for a variance to Article III, Section G.1.b for the property located at Epsom Tax Map U-19 as Lot 46 for the following reasons:**

- 1. The variance unduly and in a marked degree conflicts with the ordinance requiring 200' of frontage on a public road. Not only does this property have no public road frontage, it is over 1000' from a public road. Further, the access/egress to the property has remained a narrow travel width, dead-end road with inferior surface conditions since the previous denial of the same variance for this property. Such a marked deviation from the expectations of the ordinance would unduly burden Town emergency services, as well as occupants/visitors with increased risk to safety and welfare.*
- 2. The variance is inconsistent with the spirit of the ordinance by creating premature and scattered development with inadequate access and would have a cumulative impact of encouraging similar development on the many other properties in town without public road frontage.*
- 3. No special conditions of the property are found which would make the denial an unnecessary hardship to the owner. On the contrary, land accessed by unimproved non-public roads is quite common in the residential/agricultural zone. For this reason, the expectation of the ordinance is that safe and adequately maintained access is provided prior to allowing new residential habitation.*
- 4. Hardship is also mitigated by the fact that this property was denied a similar variance in 2000 and, based on no change to access for which it was denied, the expectation of "reasonable use" of this property should have been established 24 years ago.*

**Motion by Mr. Quimby. Second by Ms. Thorne. Motion passed unanimously.**

**Other**

Ms. Drew stated the Board of Selectmen have a public posted meeting at the nursing home property to look at the public space that is being offered for use by the Town boards and committees.

The meeting was adjourned at 7:43 PM.

Respectfully Submitted,

*Jennifer Riel*

Jennifer Riel, Recording Secretary

APPROVED