

**TOWN OF CHESTERFIELD, NH
ZONING BOARD OF ADJUSTMENT**

**MINUTES
December 10, 2013**

Present: Chairman Burt Riendeau, Vice Chairman Andy Cay, John Perkowski, Alternate Lucky Evans

Absent: Harriet Davenport, Renee Fales and Alternate Kristin McKeon

The Zoning Board of Adjustment met at the Chesterfield Town Office on December 10, 2013. Riendeau explained the process of the meeting. He stated that the full board consists of five members and noted that there are only four members present at this meeting. Riendeau announced that the Jeff and Karen Rodden hearing has been postponed until January 14, 2014.

1. Nine A LLC requested a variance from Article II, Section 203.6a, to allow a five (5) unit cluster subdivision in the Spofford Lake District. The property is located at Route 9A, Spofford (Map 5K Lot B3, Map 5N Lots B1, B2, and B9) Residential/Spofford Lake District. Continued from November 12, 2013

Present: James Phippard and William Saturley

Phippard requested that their application be continued until the January 14, 2014, when there will be a full five-member Zoning Board. Phippard asked if there will be any member changes to the Zoning Board at the January meeting. Perkowski responded that there were no changes, but the board would be looking for alternates. Riendeau stated that Fales and Alternate Evans were at the prior Zoning Board meetings for this application. Riendeau has granted the continuance of this application until the January 14, 2013 meeting.

2. Jeff & Karen Rodden requested a variance from Article II Section 203.4C Coverage 20% impermeable coverage to permit a pervious paving system and a variance from Article V Section 503.1 for expansion of a non-conforming part of the building to add a second story to the breezeway and a covered walkway. The property is located at 158 North Shore Road, Spofford, NH 03462

Riendeau announced that the Roddens have requested a continuance for their application until January 14, 2014.

3. Donald and Mary Mackey Living Trust requested a variance from Article 203 Section 4 & 6 to exceed the current square footage non-permeable percentage by an additional 121 square feet. The property is located at 96 North Shore Road, Spofford, NH 03462.

Present: Donald Mackey

Riendeau explained to Mackey that it takes three affirmative votes to carry a motion and explained his option to postpone their application to be heard before a full board to give them a better chance of three affirmative votes. Riendeau also explained to Mackey that if he chooses to have the application heard with four board members, he will not have the option to request a full board, if the vote is not in their favor.

Mackey requested to continue their application to January 14, 2014. Riendeau has granted the continuance of this application until the January 14, 2013 meeting.

Review of November 12, 2013 Meeting Minutes

Perkowski made a motion to accept the minutes of November 12, 2013. Cay seconded the motion, which carried unanimously.

4. Other

- **Permeable Paver Discussion**

Perkowski stated that the attorney didn't have time to review the information from the Nine A LLC representative because he just received it, via hand delivery, late Friday previous to this meeting. Cay stated that the board should contact Attorney Tower for a response to what was submitted by Nine A LLC. Discussion will include contiguous acreage and if it is a reasonable use of the property, with more than one parcel can it be considered one lot under the town rules, and if not, what is the mechanism to follow.

Cay stated that any information received from the attorney can be discussed in a public hearing, unless a lawsuit is being conducted. Riendeau added that Attorney Tower said that the information of guidance or counseling can be discussed in a public meeting and that information can become public record.

Bob Brockman asked how permeable and impermeable paving cases are determined by the board. Cay responded that impermeable paving requires a variance. Riendeau stated that the decisions are made on a case by case basis. Jon McKeon had been at a previous meeting to discuss an opinion of the ZBA that was given on the status of pavers, in which the Planning Board had an issue with the impermeable coverage definition. Cay stated that the Planning Board doesn't have the authority to accept pavers as permeable surface area and it's not in the Zoning Ordinance. These comments, however, were subsequently revised, as memories were refreshed in accordance with the discussion below.

The Planning Board can research the engineered permeable pavers, as what part that they can approve, because the town's zoning board regulations is the only thing that addresses any impermeable. Riendeau stated that if it's anything but natural, it's been manmade. He added that as soon as you alter it, in any fashion from what it is naturally, it becomes a natural man made surface.

Cay stated that in April, the Zoning Board offered an advisory opinion in that the definition of impermeable coverage allows for pavers to be interpreted as a man made alteration but, nevertheless, permeable. If, in your opinions, based on the evidence presented, you find that it's permeable under that definition, it's within your jurisdiction to allow it. Cay read the opinion issued from the April minutes as follows:

The Zoning Board's advisory opinion (From ZBA Meeting Minutes of April 9, 2013)

Cay stated the Zoning Board has discussed the possibility of permeable pavers being interpreted under the Zoning Ordinance as permeable coverage areas and not falling under the definition of impermeable coverage areas. Based on the presentation made to us by Dave Bergeron looking at soil perm rates and material perm rates, it appears that these pavers would qualify as a permeable surface (referring to the definition of Impermeable Coverage in the Zoning Ordinance). Evidence presented represented that pavers have an equal or better permeability rate value when compared to grass lawn areas. Mr. Bergeron discussed how hydrologic modeling with software such as Hydro CAD can quantify soil permeability rates with and without pavers thereby quantifying how the use of pavers will affect site permeability rates. It is also apparent to us that the use of pavers as a permeable coverage material needs to be looked at on a case by case basis to make sure that any given paver product being specified for a particular application meets the definition of permeability, that the nature of the site conditions, installation and specifications for the project all when considered together meet the definition of permeable surface. It is incumbent upon an applicant to present evidence in support of their claims regarding permeability. The Zoning Board believes it is within the Planning Board's jurisdiction to review an applicant's request to have permeable paver materials considered to be a permeable surface and we feel that is within their jurisdiction to make a final determination on a given project.

James Corliss, Planning Board member, stated that if someone comes before the Planning Board and permeable coverage is needed, if it can be demonstrated that it's well engineered, he doesn't see a basis to deny. Perkowski stated that we need help from the state on this. Riendeau stated that the code enforcement officer should send the applicant to the Zoning Board because of the ordinance. The Planning Board is looking at it on a site plan review, on a bigger scale project. Cay added that if the code enforcement officer is not comfortable with the applicant's request, then it's fine that he sends the applicant to the Zoning Board to decide the appropriateness of the pavers. Cay felt that the board ultimately needs a policy on pavers.

Perkowski stated that he would like to know if the state has done any studies on the issues. Cay reminded the board that the recent applicant, seeking approval of pavers, provided evidence that the state approved the engineering for the system that was presented to the Zoning Board. Riendeau requested a better definition to come out of the Planning Board, to address pavers specifically.

Perkowski made a motion to close the public portion of the meeting for 2013, seconded by Evans, which passed unanimously.

Adjourn: The meeting adjourned at 8:12 p.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date _____