

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

**MINUTES
November 12, 2013**

Present: Burt Riendeau, Andy Cay, Harriet Davenport, John Perkowski, Alternates Lucky Evans and Kristin McKeon
Renee Fales arrived at 6:45 p.m.

The Zoning Board of Adjustment met at the Chesterfield Town Office on November 12, 2013. Riendeau called the meeting to order at 7:30 p.m. Riendeau explained the process of the meeting. Riendeau announced that the Jeff and Karen Rodden hearing has been postponed until December 10, 2013.

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 September 10, 2013

The voting members for this hearing will be Cay, Davenport, Perkowski, Evans and Riendeau.

Present: James Phippard and William Saturley

Phippard gave a brief presentation and a review of the application for five single family house lots within the Spofford Lake District. The proposal is to designate just over 30 acres of land for the cluster. All the lots will be located on the lake side of Route 9A, varying in size from 0.88 acres to 1.37 acres. Everything on the other side of the road will be designated as open space, with the exception of the leach field area that will service the waste products from the lots. Phippard stated that they will build a private road with a cul-de-sac that will serve as access to the lots. Each house lot will dispose of their waste sewage by gravity system to a pump station adjacent to the private roadway and pumped to an existing leach field, located within the 30 acre area on the property. Phippard stated that the lots meet the dimensional requirements for cluster units in the residential district and he is asking a variance to allow cluster, partially within the Spofford Lake District.

Saturley, attorney for Nine A LLC, addressed the “spot zoning” concerns of the board. Saturley submitted a letter, dated November 4, 2013 along with copies of statutes, Supreme Court cases and summary from a local author on spot zoning issues. Saturley felt that “spot zoning” was not applied to the application. McKeon stated that when an applicant requests a change in variance for relief, she felt that it turns it to become a completely different zone, which is already in the zoning code. McKeon felt the applicant should ask to have the property be rezoned. Saturley stated that he isn’t asking for rezoning, thus not creating “spot zoning”.

Cay discussed “spot zoning” with Attorney Crocker and the ZBA ability to grant relief, based on the five criteria, which becomes a judgment call. Administrator Carrier contacted Attorney Tower to determine if the land needs to be contiguous and can there be a division by a highway between a

property, to be considered a lot. Riendeau stated that the applicable statute on merging lots is RSA 674:39-A stating that lots must be contiguous for the Planning Board to approve a voluntary merger. The Zoning board felt that the lots must be adjoining lots with a common boundary line, not separated by a public highway. For these reasons, the two lots divided by a road do not satisfy requirements of a voluntary merger statute. The applicant would have had to apply for the variance for the contiguous of the property. Phippard stated that the lots are labeled as separate tracts, for tax purposes. Phippard stated that the lots can be considered one piece of land for the purposes of the use that they are being used for and he added that the land area, where the Spofford Hall building is located, relied on the land across the street for the parking lot, the sewer treatment plant and leach field. It supported the single use of Spofford Hall.

Phippard stated that, his understanding, when a public right of way is abandoned, the land could revert back to the surrounding pieces. He added that, just because there is a public right-of-way over the land, doesn't necessarily mean that the town owns the land. The town took the land to construct a roadway. The land reverts back to the owner, if the road becomes abandoned or discontinues. Phippard feels that these are contiguous lots.

Tower's letter states that the two lots, divided by a state road, should not be considered one lot, with the purpose of cluster development and the applicant could seek a variance from the ZBA for approval of the two lots in question, in order to satisfy the 30 acre lot size requirement in cluster development regulation, even though the lots are separated by a public way.

Phippard stated that the building has been closed since the mid 90's. McKeon verified that the two parcels have not been used since the mid 90's, even though the sewer treatment plant and parking lot are still there. Phippard stated that the pump station still exists, with pumps and generator, but not functional because it hasn't been operating.

With the smallest lot being .88 acres, Perkowski verified that all the lots are above the 30,000 square foot minimum for cluster housing for individual residences.

McKeon stated that only the land is being taxed and the building is not being taxed, therefore, it has not been used for the same purpose.

Phippard requested the opportunity to submit information to the town attorney. Carrier stated that his request to the attorney for information was; can a 30 acre on one side of the road and approximately 6 acre lot on the other side of the road be considered a cluster development. Cay stated that a cluster development shall not be permitted on parcels less than 30 acres in size.

Phippard stated that they have to satisfy any one of the criteria in the Town Ordinance 301.3, and he believes they do comply with Section D in that at least half of the area to be preserved must consist of soils with either fair or poor development capabilities. At least two thirds of the area consists of 200 feet of wetlands (80%), which would make them eligible to fall under Section F as well. Perkowski asked if there were features on the 30 acre piece that would lend themselves to significant features. Phippard answered that the NRCS soils data, which was submitted, shows the area of poor development capabilities. The high ground water is ledge.

Riendeau stated that the issues for this application are the cluster housing and the Spofford Lake overlay and the contiguous definition.

Jeff Foster, property abutter of this applicant, asked how the zoning issues were put in place and how this will break the zoning issues down if this goes through. Perkowski replied that any property owner in town will be able to appeal the board decision within 30 days.

Cay stated that it is the board's wish to deliberate at this meeting and if the applicant disagrees with the finding, they have the ability to appeal, with a motion for reconsideration. Riendeau stated that the consideration for rehearing would only be on new facts. Saturley responded that he and his client did not know that the town attorney was contacted for legal advice, therefore, this is new information to he and his client did not have the opportunity to address the issues.

Riendeau stated that the issue on whether the property could be contiguous and the road issues had been discussed at the previous meeting, therefore, town council was contacted for clarity. Saturley asked for more time to discuss with the town attorney or an opportunity to come back to address the circumstances pertaining to the road issue.

Perkowski suggested that the town attorney attend the next board meeting for his thoughts on contiguous. Davenport would like the attorney to address the road issue. Perkowski replied that the question as to whether the board had a right to allow something that specifically is not allowed in that district and that the board may be overstepping their bounds as a zoning board, which is one of the questions that the board sent the applicant back with to get information. Cay stated that there is the issue of parcel versus parcel constituting cluster subdivision to be deliberating on. Riendeau added that the issue of whether or not the applicant should be seeking the variance from the ZBA of the two lots in question to satisfy the 30 acre lot and that it was Crocker's opinion that the two lots divided by a state road should not be considered one lot for the purpose of a cluster development. Riendeau continued that the application should also include the variance for the combination for those two lots.

Saturley will contact the town attorney to discuss whether or not lots on both sides of state highway can be treated as one for purposes of the cluster development and also whether a 30 acre commitment of more than one parcel qualifies under the town rules. If not, what is the mechanism to follow. When Saturley asked for a copy of the document from Crocker's office, Carrier stated that it is a non-public document. Carrier will contact Attorney Crocker for clarification. Carrier also stated that submittal of documents is for five copies to be provided by the applicant. Perkowski stated that the board is looking at this application as a new application, as stated back in September, without any of the previous history of documentation.

The board felt that they would like to give the applicant the opportunity to come back to avoid further delay.

Perkowski moved to continue this application to the next meeting. Davenport seconded the motion, which passed unanimously.

Cay or Riendeau will speak with Crocker or Tower before the next meeting.

2. Review 2014 Budget

Perkowski made a motion to accept the proposed budget as presented. Davenport seconded the motion, which passed.

3. Review October 8, 2013 Meeting Minutes

Fales moved to approve the minutes of October 8, 2013 meeting, with no changes. Perkowski seconded the motion, which passed with three affirmative votes.

4. Other

McKeon made a motion to have all new documentation of zoning board materials be scanned or mailed to the ZBA members before the meetings. Motion seconded by Fales, which carried with three affirmative votes.

Adjourn: The meeting adjourned at 9:10 p.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date_____