

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

**MINUTES  
October 8, 2013**

**Present:** Vice Chairman Andy Cay, Harriet Davenport, Renee Fales, John Perkowski, Alternate Lucky Evans

**Absent:** Burt Riendeau

The Zoning Board of Adjustment met at the Chesterfield Town Office on October 8, 2013. Cay called the meeting to order at 7:35 p.m. Cay explained the process of the meeting.

**1. Eric and Diane Powers** request an Equitable Waiver of dimensional Requirement from the 4 acre requirement for 2 family dwellings based on Code Enforcement Officer providing a building permit in 2006. The property is located at 47 Norcross Landing, W. Chesterfield, NH (Map 13D, A3) Residential district. This is a continuation from last month.

Present: Eric and Diane Powers

Eric and Diane Powers submitted a Motion for Rehearing today. Cay stated that a Motion for Rehearing comes after a decision and a decision hasn't been made yet. Diane Powers replied that a Notice of Decision was received after the September 10 meeting. Cay explained that the Notice was a continuance. Rick Carrier explained that the Notice of Decision was sent to the Powers because a decision was made for the Powers to provide documentation to the ZBA. Cay stated that it was a decision on matters that needed to be addressed for the continuance. The Powers felt that they needed to file a Motion for Rehearing to protect their rights and Diane Powers stated that they were not able to address the concerns of water issues and well concerns. Diane also stated the board requested that she had to prove that there is no well interference.

Cay stated that the meeting minutes of September 10 will be approved and will be posted on the website. Cay read the motion made at the September 10 on meeting of the action taken indicating that the board will continue the Powers matter to next month meeting and the Powers would investigate and address the issue of the impact of the well water at the DiSilva's.

Cay stated that the board needs to address the hearing first and the Powers could hold in abeyance, the Motion for Rehearing, based on the decision made at the meeting and a Motion for Rehearing wouldn't be taken up at this meeting.

*Question 1: Cay to the Powers: Are you prepared to address the issues to be heard tonight?*

Eric Powers stated that they would like to submit, for the record, some of the issues that were not able to be submitted regarding water in the past. Diane Powers also wanted to clarify items, with respect to the requirements of the equitable waiver. Diane Powers had submitted a packet regarding the DiSilva's well issues. Diane requested clarification on the equitable waiver, requiring additional water testing. The Powers felt that the additional well testing is beyond the requirements of the

dimensional requirement waiver. Diane also stated that Mrs. DiSilva had an issue with their two-family home, and that she would like to restrict the number of people who can occupy the rental unit. The Powers received emails today, from Chet Greenwood's office, in which he agrees that the only violation was that the Powers did not have the lot size and the frontage. Greenwood has advised the Powers that, in order to have a two family dwelling, they would need to have a separate kitchen, separate living, sleeping and sanitary conditions. The Powers are not requesting any changes to the zoning ordinance at this time. A memo from Carol Ross was attached to the Planning Board minutes of June 17, 2013 stating that she and Greenwood has made a mistake and missed the dimensional requirements. The structure is finished now. Greenwood had told the Powers that they should be ready for final inspection for a certificate of occupancy. Greenwood also indicated that no further water tests would be required. Powers received a letter from real estate agent, Christina Edangal, showing four properties on the same street, selling at 93% of their asking price. Edangal inspected both units at the Powers and felt that there would be a substantial loss of their market value, if the Powers were not granted the ability to use it as it was intended.

The Powers had built a firewall between the two units, compliant with a two family unit, having two separate kitchens, two separate entrances, separate living spaces, operating independently and have separate bathrooms.

Cay stated that the board has addressed the Powers that there was not diminution in value of other properties and how your water usage is impacting your neighbor's water use.

Eric Powers stated that M & W Soils Engineering were hired to do investigation on the wells at the Powers and DiSilva property. Eric provided documentation to the board from M & W Soils report, dated October 2, 2013, with confirmation of the data from Green Mountain Well Company. An email, from Steven Brackett of Brackett Geosciences, indicated that the demand on two residential units made on a well will not cause interference with a neighbors well. Eric indicated that DiSilva did not submit a written copy of their well drilling, done by Cushing & Sons in 2011, as stated by David DiSilva on October 7 for the pump level of 680 feet. Diane indicated that there have not been any water issues at their property in the past 20 years, with the exception of the lightning strike.

Annie DiSilva stated that eight people were living at 47 Norcross Landing in 2011, and there were water issues at that time and decreased as people moved out. More water problems arose last winter, as family of 4 or 5 people rented the Powers unit. There have been no issues this summer, with no one living at the rental unit. DiSilva suggested that a limit be placed on the number of people living at the 47 Norcross address. Eric Powers stated that he felt that that could be a violation of fair housing laws by limiting the number of people who could rent.

Shawn Dean at 54 Norcross inquired about RSA 403.5 ordinance requiring a buffer. Cay stated that 47 Norcross Landing not a multi family dwelling and it is a two family dwelling. Dean also stated that the reduction in property value in the area is due to the market value. He also has had an issue with his well and he had given a reduced price on his property because of the water pressure issues.

Eva Wilson, of 62 Norcross Landing, stated that they have never had water issues at her residence with four people in their residence.

*A motion was made by Perkowski to close the public portion, seconded by Evans.  
Motion passed unanimously.*

### Board Discussion

Evans stated that a physical dimensional violation does not constitute a private nuisance. Fales felt that the use of the property was going to cause a problem. Fales also stated that the Powers made a good faith effort with the reports that they have presented, as far as addressing the water. There was no proof otherwise. Evans added that the water issue is accidental and not intentional. Fales also felt that the DiSilva well is in a bad location, outside the aquifer system. Cay stated that the DiSilva well has 350 foot static level, at a depth of 680 foot well, is poor. Cay also stated that it was an honest mistake that didn't come to light until later on in the process. The honest mistake was that they made inquiry and were advised by two town officials that they could do what they wanted to do and followed through with the requirements of the building inspector. They proceeded along with no knowledge of the mistake and they made adequate inquiry. Perkowski added that the water problem is not an issue that the board can solve, with each well being an individual. Perkowski also stated that the town gave permits and occupancy permits.

*Fales made a motion to approve the equitable waiver of dimensional requirements for the Powers to allow a two family home at their residence, where a zoning ordinance requires four acres and 300 feet of frontage; they have two acres and 200 feet of frontage. This is what we are giving the equitable waiver for. There was a lack of discovery. It was not noticed or discovered until after the structure was substantially completed. It was an honest mistake. It was not a result of ignorance or failure to inquire. The Powers went to the town officials and they were given instruction on how to construct a two family. There is no diminish in value. They have provided water reports, stating that their use is not affecting their neighbors wells. The balancing tests, due to costs of degree in correcting the mistake, outweighs any public benefit that be gained would be inequitable to require that violation to be corrected. Davenport seconded the motion. The motion passed unanimously.*

2. **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

**Nine A LLC** has requested that a continuance be granted. Request granted for rescheduling on Tuesday, November 12, 2013.

3. **Chris & Sara Oot** requested a variance from Article 203.4C Coverage 20% impermeable coverage to permit a pervious paving system. The property is located at 10 Namaschaug Landing, Spofford, NH 03462. (Map & Lo0t #5G Lot B4)

Present: Sara Oot, represented by Donald Scott

Scott stated that a building permit has been submitted for an addition of the garage and reconstructing the driveway location and to install pervious paving in front of that garage. The pervious paving system was required, in order to get the shoreline permit, which has now been approved by the State, but also needed is to meet the 20% impermeable cover for the entire lot, not

just the 250 foot portion of the lot. Since pervious paving systems is not normally listed in the zoning ordinance as an allowed system, Scott was asked to come to the Zoning Board to present it, in order to allow them to show the board how they can meet the 20% impermeable cover with this paving system. It was presented to the State, as a way of removing a portion of the driveway from the impervious cover, per the Shoreline Act and town requirement. The State has agreed to this. The Oots have an approved permit from the State for the entire site and all the improvements that were proposed.

Scott presented flyers to the board of the paving system being proposed for the project. This is a paving block system, rather than pervious block or pervious concrete. There are gaps between the blocks, with the blocks being ¼ inch wide with a sand land between the gaps. There is about 12 inches of stone bed, with a setting bed of pavers. The whole system works as a water storage system for storage runoff.

Question 1 – Is there a maximum pitch that is needed to make this system work?

This design is going to be level, except for a slight up ramping in front of the garage. This system creates a patio effect in front of the property. The existing condition is packed gravel. There are no plans of paving the remaining driveway. A catch basin, in the corner, will be added for water coming off the roofs and will infiltrate into the stone. It will have a 4” relief drain pipe into the foundation pipe to drain water into a natural vegetation wooded area. The neighbor has a pipe draining across the Oot property, as a existing condition and that water will get trapped into the vegetation area and should improve that situation as well.

Question 2 – What’s the coverage?

The cover now, with this system, is at 19.1%. Capturing roof water, as well as some of the water coming down the driveway, will get infiltrated. That area should be taken off the surface runoff calculation. If adding all that area up, that pushes the number down to 15.2% for the lot.

Question 3 – How much soil is being removed?

Approximately 12-14 inches. Cay stated that he felt that this system would be a better situation than what is there now by delivering water into the basin and giving the water some to percolate further into the ground.

Question 4 – What did the State require and what did they say?

They recognized the pervious system and found that profile an industry standard profile.

Question 5 – Was the catch basin presented to the State?

The project was approved without the catch basin and the vegetation was part of the permit.

Cay asked if the pavers were to be interpreted as being pervious, thereby allowing the project to get under the 20% mark. That was answered yes.

John Koopmann, Planning Board member, had concerns and recognized the success of the system as presented, based solely on the design and engineering of the system and the installation. Koopmann had questions on the short and long mid-term issues of the system and maintenance requirement to insure the success of the system. Scott’s response was that silts and finds find their way into the

system and eventually not as impervious as once was installed. Vacuuming helps with course masonry sand to be placed between the gaps.

*Fales made a motion to close the public portion. Seconded by Evans. The motion passed unanimously.*

### Board Discussion

Perkowski felt that the ground below is everything by creating a bathtub to absorb water, pipes will be required to run off. The purpose is to be able to get under 20% to enlarge your buildings. Cay felt that at 22% to 19%.

*Perkowski made a motion to allow the 750 square foot proposed permeable portion of the driveway to not be included within the 20% total impermeable coverage of the lot on the basis of the five variance criteria.*

- 1. The variance is not contrary to the public interest. Yes*
- 2. The variance will not be contrary to the spirit and intent of the ordinance. Yes*
- 3. Substantial justice is done because there is no injustice is created. It's a benefit to the landowner – it allows for more building coverage by taking away some of the impermeable*
- 4. The variance will not diminish the value of surrounding properties. Yes*
- 5. Literal enforcement of the ordinance would result in unnecessary hardship. Yes*  
*The garage could not be constructed.*

*The motion was seconded by Fales. The motion passed unanimously.*

### **Review of September 10, 2013 Meeting Minutes**

*Davenport moves to approve the September 10, 2013 Meeting Minutes. Fales seconded the motion; which carried unanimously.*

**Adjourn:** The meeting adjourned at 9:35 p.m.

Respectfully submitted,  
Patricia Grace  
Secretary

Approved

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Andy Cay  
Vice Chairman, Zoning Board of Adjustment

Date \_\_\_\_\_