

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

**MINUTES
January 14, 2014**

Present: Chairman Burt Riendeau, Andy Cay, Harriet Davenport, Renee Fales, Alternates Lucky Evans and Kristin McKeon

Absent: John Perkowski

The Zoning Board of Adjustment met at the Chesterfield Town Office on January 14, 2014. Riendeau explained the process of the meeting. Fales and Evans were sworn in with the Selectman James Larkin. Riendeau explained the process of the meeting.

1. Nine A LLC requested a Variance from Article 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 B2, B2, and B9) Residential/Spofford Lake District.

Riendeau announced that the board members to sit on this application will be Cay, Davenport, Evans, Fales and Riendeau. This application is a continuance from December 10, 2013.

Present: James Phippard of Brickstone Land Use Consultants and Attorney William Saturley

Phippard stated that he was asked to submit information to the town attorney and asked if the town attorney had responded to whether the land across the street could be considered contiguous for cluster housing. Riendeau stated that a response was received and the board will have further questions and deliberations. Cay added that the board will have a continuance of the hearing and open to the public. Then the board will close the meeting and go into deliberations after all evidence is presented. Riendeau stated that the hearing has been continued because the board needed more information. A copy of Attorney Tower's letter, dated January 2, 2014 was given to Attorney Saturley. Attorney Tower wrote that the properties can be contiguous for cluster housing purposes.

Phippard stated that there are two separate lots, in addition to the lots that were divided by the roadway and, as part of the process, will merge those lots and do a lot line adjustment to create 32 contiguous acres. Riendeau stated, in his discussion with the Tower, the attorney felt that applicant will need a variance from the applicant.

Saturley distributed copies to the board members of a follow up of evidence that has been submitted to the ZBA and what is being proposed to meet the variance requested for the cluster subdivision.

Phippard distributed copies of the lot coverage calculations of the locations of existing square footage coverage versus the proposed square footage coverage for the individual lot areas being proposed in the cluster. He stated the zoning ordinance in the Spofford Lake District limits the

maximum lot coverage allowed to 20%. It limits the building square footage on each of the lots to no more than 10% of lot coverage. It also falls within 250 feet from the lake, and each of these building areas would require a Shore Land Protection permit from the State of New Hampshire. It also limits maximum lot coverage to no more than 20% of lot coverage, including the impermeable, building, sheds and pavement but doesn't include the roadway. Phippard stated that the current existing site footprint is over 90,000 square feet, plus an onsite parking area consisting of 101,320 square feet. The existing parking area across Rt. 9A is 31,400 square feet and is within the Lake District. The proposed new road is 12,510 square feet and the proposed lot coverage is 47,479 square feet. The lot coverage on this property, which lies within the Lake District, will be reduced from 132,720 square feet to 59,989 square feet. That is a 55% lot reduction of what currently exists on this property. It will allow runoff and increases green space. Phippard added, because this falls under the Comprehensive Shore Line area, all of the runoff from this development and roadway area has to be captured and retained on site. Infiltration is a requirement from DES and discharge is not allowed into the lake. Riendeau asked how that would be handled. Phippard answered that it would be a site plan issue. During test pit testing, ledge has been found in certain areas. Where there is ledge, fill will need to be brought in to raise the pad elevation to create infiltration and different ways to create capture runoff. The permits and site plans will be the responsibility of the property owners and to work with the town building inspector to monitor the inspection.

Phippard stated more testing is needed on the amounts of ledge before he goes to the Planning Board with a final plan to address the drainage details. He added that three of these lots will be easy to build on for filtration. Phippard recommends a slab on grade, raise elevation to comply with State and Federal filtration requirements where ledge exists on the properties. A property owner can't get a building permit without a State permit.

Riendeau asked who would be responsible for taking down and removal of the existing building, and how is the time factor going to play into the lot layouts. Phippard responded that it would be up to Nine A LLC and, if the variance is granted, formal plans to go to the Planning Board with everything required for a site plan for approval. Upon approval from the Planning Board, State permits will be required for the Shore Line Protection area. The intent is to remove the existing building and remove the paving from the property and Nine A LLC would construct a new roadway into the property and install the sewer system that would collect from the properties to a pump station on site to an existing leach field. The existing leach field has already been inspected by a licensed septic system designer. Phippard has submitted a letter to the ZBA from the septic system designer stating that the system is capable of supporting five single family homes. Phippard added that Nine A LLC would remove the building and construct improvements necessary to be able to mark it for lots.

Riendeau inquired about potential further development across the property. When cluster is proposed, with just these five lots, will the property across the road be in common ownership with those five lots. Phippard responded that the lakeside property will be part of the 30.78 acres will be this cluster subdivision. All of the area, with the exception of the leach field area and the roadway to get to them, will be permanent open space and part of the common space with the five house owners. Riendeau asked if it is possible, at a later date, for additional housing across on the other lot. Phippard responded that the variance was for five lots and if anyone else

proposes in the future for more units, they would have to start over to seek another variance. Cay added that the existing 24 acres cannot have anything there, because of the deed restrictions.

McKeon inquired of the original long term plan for the existing building. Phippard responded the long term plan was the previous use that it was built for. Once that was abandoned, attempts were made to sell to other institutions or users for ten years. There had been no other uses proposed. Offers that were made were unfeasible. McKeon asked if there was any long term plan proposed to the Planning Board and does it make it a town problem because the applicant decision not to put more money into it. Phippard responded that he did not represent Mr. Chakalos when the building was being proposed, but a variance was obtained to construct what's there today, and additional variances to construct a gymnasium. Phippard added that it is not a hardship to the town but is a hardship to the property owner at a cost of \$1.3 million to eradicate the mold, remove the asbestos and tear the building down.

Riendeau stated that the condition of the building can be discussed in deliberation. Cay stated that the hearing will remain open.

Bob Brockman stated that 90% of the existing lake shore lots were created before the current zoning regulations. Mr. Chakalos had, at one time, asked \$7 million in 1995, when the property was assessed for \$3.3 million. The assessed value is now down to approximately \$2 million.

Cliff Emery asked if the sewer process plant will be torn down. Phippard replied that it will be removed. Emery asked about an additional 60 acres. Phippard responded that there is 95 acres total and a small portion of this will be subdivided to add to this land area to create the 30.78 acre cluster. The remaining acreage has 250 feet frontage on Route 9A.

Tom Duston stated that cluster housing is not allowed in the Lake District and rezoning would set the precedence.

Carol Pelczarski inquired as to why there may be problems with two of the lots. Riendeau responded that was because of ledge.

Jeff Scott stated that the town has zoning laws to protect the rest of the citizens of the town and to grant variances take away that protection is not fair to others. Who calls the shots on decision for case by case? Riendeau responded that three affirmative votes on a motion. The board looks at the facts on each individual case and every case stands on its own merits.

James Corliss stated that the applicant has stated that the building is a threat to the public now, which may have some urgency to it. I would have preferred that the five part test be addressed in the language that's in the Zoning Ordinance as opposed to bouncing between the state to the town because they are different points. Phippard responded that the original application filed in August followed the Town Ordinance and the summary follows the state statute.

Riendeau stated that the board is going to go on to deliberations and may need to get additional information, and make a decision, if possible. Cay stated that the board will continue the hearing during deliberation and not taking further public input. Riendeau added that the board is going

into deliberation and if additional questions are needed of the applicant, the board will exercise that right. He added that he didn't want to take any additional testimony from abutters.

Riendeau stated that once a decision is made, anyone being offended by the decision has 30 days to appeal the decision, otherwise it becomes law. He added that a decision is going to be made on a variance that will allow a use that is being changed in our ordinance. The ZBA are trying to make properties more compliant with the ordinances.

Cay made a motion that the public portion be closed. Fales seconded the motion, which passed unanimously.

Fales made a motion to accept the application for a variance of Nine A LLC for Article II of Section 203.6a of the Chesterfield Zoning Ordinance.

Criteria for approval:

- *The variance is not contrary to the public interest. **The immediate neighborhood is single family dwellings and these will be adding single family dwellings. They will be removing a large industrial or institutional use that's being used now and will turn it back into residential use in going from an institutional use.***
- *The spirit of the ordinance is observed. **These are still resident housing units. The lot size is been determined to be one continuous lot size between across from 9A, using six (6) acres per lot, rather than the two (2) that is required.***
- *Substantial justice is done. **Yes.***
- *The values of surrounding properties are not diminished. **They will be taking away a derelict institutional building that is no longer being used and putting in houses. They will also be having to comply with all the New Hampshire Shore Land Protection issues of requirements, such that the septics and storm water runoff will be captured, protecting the lake.***
- *Literal enforcement of the ordinance would result in unnecessary hardship.
(a) **Because of special conditions of the property that being a very large institutional use. Yes, 90,000 square feet and reducing the square footage down to 50,000, almost 40,000 square feet.**
(b) **The proposed use is a reasonable one. Yes, since it is residential housing that will be put in there. This is for five (5) houses, and five (5) houses only. That all requirements for the cluster zoning will be complied with the green space that has been proposed at this meeting to be established for perpetual preservation. This will be subject to Planning Board approval and Shore Land Protection approval.***

The motion was seconded by Davenport.

Evans stated that the town has the ability and the need to protect this unique source, the lake. Fourteen years ago the town voted thusly, saying it would not want any more cluster housing on the lake. It has to do with density of housing and we have to satisfy the spirit and intent of that. We're allowed to make a waiver without sacrificing the spirit and purpose.

Riendeau challenged the board to look at what has been proposed today. The request was to put cluster housing into that zone, where it is not allowed. It is a reasonable request; does it make sense that the board is going to be able to preserve additional 24 acres across the road, that otherwise doesn't need to be preserved? There's road frontage there. There's going to be plenty of opportunity there. Riendeau added that when the town voted to eliminate cluster housing in the Lake Zone, he is not sure what they might have been envisioning at the time. Is this a reasonable request for that property?

The vote was called.

The motion was seconded and carried by majority vote.

(4 Yes: Cay, Fales, Davenport & Riendeau – 1 No: Evans)

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 February 11, 2014.

Cay made a motion to continue the Rodden hearing until next months meeting. Davenport seconded the motion which passed unanimously.

3. First Universalist Church requests a variance from Article 203.4 Section A & C of the zoning ordinance to permit lot coverage in excess of 20% on an existing lot that is less than 2 acres. The property is located at Main Street, West Chesterfield, N.H 03466 (Map 13C Lot 4) Residential district

Present: Timothy Sampson

Voting members on this request were Andy Cay, Harriett Davenport, Renee Fales, Kristin McKeon and Burt Riendeau

Sampson stated that the intent is to not overdevelop the site. The Church is looking to put up a small structure of approximately 500 square feet as an annex to the church. He added that the church isn't used much in the winter. The construction trailer has been removed. Sampson stated that he had met with the Planning Board, being instructed that the church would need to meet the parking requirements in order to do this. The front grassed in lawn is being used to park and to treat the parking as impervious. Riendeau agreed in that it would be possible that the parking area could be paved.

Sampson is requesting 20% more than what is allowed. The current parking area has never been approved by any board and not looking to park any additional cars there, requiring about 20 parking spots, one spot per eight seats inside the church.

Sampson stated that the existing structure is 7% and, because there is no delineated parking, there is not parking coverage right now. The lot is 39,000 square feet. Cay stated that the parking will cover to 36%, with 2% of it is building and the parking is effectively there today.

James Corliss, Planning Board Member, stated that the church representatives came to the Planning Board for conceptual consultation, so there is no actual record. He added that the church plans had no parking delineated. The Planning Board felt that the church may or may not be able to show proof of historical use that provides those spaces or whether or not it is acceptable to be parking on grass were issues that the board could not figure out in the conceptual consultation. Given the lot size and the coverage, it appears that the church would need a variance to pass the five tests. Riendeau stated that the church would need it for the parking, not taking in the structure. Riendeau asked Corliss if the Planning Board has any ruling on the surface that parking has to be on. Corliss replied that if the ZBA accepts the variance of grass, it's still an impervious surface.

Sampson stated that the new building is going to be used by small group gatherings of 5 to 6 people. Riendeau stated that the building is under the 10% and the variance is for the parking. He added that the building is 9% and the parking is 10%.

Cay made a motion to close the public portion. Motion was seconded and passed unanimously.

Fales made a motion to accept the application for variance of the First Universalist Church for variance requested of Article 203.4 Section A & C for the lot coverage in excess of 20%. Building coverage is 9% and the parking area, which is currently in use, takes the impervious coverage up to 36%.

Criteria for approval:

- *The variance is not contrary to the public interest. The parking has been going on in the same spot for 150 years, so the use is not changing. The parking is only used when the church is in session or when there is a meeting going on at the church.*
- *The spirit of the ordinance is observed. The essential character of the neighborhood is not being changed and the use has been going on since the church has been constructed. It does not threaten public health, safety or welfare.*
- *Substantial justice is done. Yes. There is no harm to the public or any other individuals, since the abutters since the parking has been going on in the same spot.*
- *The values of surrounding properties are not diminished. The parking area is currently grass covered, basically a lawn and the parking has been going on for over 150 years.*
- *Literal enforcement of the ordinance would result in unnecessary hardship. There are special conditions on this property, where west side of the property line is a deep slope. It has been used as a church for over 100 years. The parking has been occurring since then and the proposed use is a reasonable one.*

The motion was seconded by Davenport.

The vote was called.

The motion carried unanimously.

4. Charles and Antje Hornbeck request a variance from Article 203.5 of the zoning ordinance to permit a front setback of less than 50 feet. This property is located at 376 Old Chesterfield Road, Chesterfield, N.H. 03443 (Map 12A Lot 3.2) Residential district

Riendeau announced that the Hornbecks have requested a continuance for their application until February 11, 2014.

Cay made a motion to continue the Hornbeck hearing until next months meeting. Davenport seconded the motion which passed unanimously.

5. Review December 10, 2013 Meeting Minutes

Cay moves to approve the December 10, 2013. Evans seconded the motion; which carried unanimously of the members present at that meeting.

6. Other

- March 11, 2014 – Town Meeting Day
The ZBA will change their meeting date to Tuesday, March 18, 2014
- ZBA Application
The application will change the requirement of (7) copies of the application and all other documents at the time of submitting applications. This change will be made on the application forms on the town website.
- Evans and Fales were sworn in to renew their terms to expire 2016
- The ZBA members requested the ordering of updated NH Planning and Land Use Regulations
- ZBA Meeting Procedures
Cay made a motion that the board goes through the public hearing, close the public portion and the hearing remains open. Then the board goes into deliberation, has a motion and, if there is a discussion and the decision is to reopen it, then, there is a motion to reopen the public portion, have the discussion and recluse it and deliberate. Riendeau added that the board will work with that one applicant, start to finish in an open meeting, close the public portion and go into deliberation and motion portion, with the meeting still open. Cay stated that no one in the audience has been lead to believe that the hearing is closed, whereby they walk out the door and it's a done deal. This process was the advice from the town attorney.

Cay stated that the way the ZBA will conduct the hearings is that cases will be heard from first to last with each case from start to finish. The public portion will be reviewed, the public input will then be closed, deliberation will begin. If, during the course of deliberation, there is a motion by a board member to open public input and that motion gets three affirmative votes, the public portion will be reopened. At the end of that public input it will

be reclosed, deliberation will reconvene and the final determination on that case will be made.

Riendeau stated that he will announce the procedure, so that there is clarification and to be aware that, if there is additional testimony needed to make a decision, the board may reopen, through a vote, the public portion to gather that information and go back into deliberation.

The motion was seconded by Fales, which passed unanimously.

Adjourn: The meeting adjourned at 10:42 p.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Andy Cay
Vice Chairman, Zoning Board of Adjustment

Date _____