

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

**MINUTES  
October 9, 2012**

**Present:** Chairman Burt Riendeau, Andy Cay, Harriet Davenport, Renee Fales, John Perkowski, Alternates Kristin McKeon and Lucky Evans and Code Enforcement Officer Chet Greenwood

The Zoning Board of Adjustment met at the Chesterfield Town Office on October 9, 2012. Riendeau explained the process of the meeting. Voting members for this evening will be Cay, Davenport, Fales, Perkowski and Riendeau.

**1. Richard & Jeanny Aldrich** appeal the Administrative Decision of the Code Enforcement Officer's decision requiring a driveway permit under Building Code Article 16:03: Driveway Permits. The property is located at 89 Winchester Rd, Chesterfield (Map 16 Lot C19) Rural/Agricultural zone

Aldrich advised the Chesterfield's codes are in conflict with the statutes. This driveway has been there for at least 50 years; before the Zoning Ordinances. He stated that driveways in Agricultural zone are exempt. Aldrich cited Land Development Regulations Article 201.3C #4 "Farming and agricultural uses in the Rural Agricultural Zone shall be exempt". Riendeau noted that agricultural uses were exempt from site plan review. That ordinance also stated; "Nothing contained in the above paragraphs shall be construed to exempt farming and agricultural uses from the building ordinance and the applicable area, coverage, setback, and your requirements of the Zoning Ordinance."

Aldrich stated he has an existing paved driveway and that can be used to get to the farm stand. Evans asked where to they egress from the stand. Aldrich advised the driveway closer to the farm stand. That driveway connects to the house driveway. It was noted that the connection seems to be within the front setback.

Greenwood stated that per the Building regulations driveways need permits. He sees that this access had not been used regularly and Aldrich had dumped gravel and widened the area. Greenwood thinks he needs to apply for a driveway permit for safety reasons. Aldrich stated he widened the access 3 ft and there was practically no swale in this location. Greenwood asked that the Board review RSA 674:32 (b) to see if it applies in this instance.

Greenwood stated this is a new driveway with the intensity of use for the farm stand. The stand has been there for 2 years. Aldrich stated it is agricultural use to a farm stand and did exist, it is not new.

Riendeau stated that access is different from a driveway. Aldrich stated that if he can't have this driveway then there are hundreds in Town that are in violation. A farm stand is an agricultural use. This driveway is not new but existing. Fales asked how many cars per day use this entrance to the farm stand. Aldrich stated 3 – 4. He advised he has 6 access points; 3 are being used.

NH Statute 674:32-b, Existing Agricultural Uses (b) “Any new establishment, re-establishment after disuse, or significant expansion of a farm stand, retail operation, or other use involving on-site transactions with the public, may be made subject to applicable special exception building permit, or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety.”

It was asked under NH Statute 674:32-c II; “Nothing in this subdivision shall exempt new, re-established or expanded agricultural operations from generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulation...provided however, that in circumstances where their literal application would effectively prohibit and agricultural use allowed ...” It was asked does it limit agricultural use for Aldrich. The consensus was it does not.

Beth Zamore’s letter noting increased traffic, an unsafe location and parking on the road was reviewed. Aldrich stated that parking on the street only happened 3 times.

Riendeau asked if there were any comments from the public. Peter Mitchell stated that this access had existed as an access to the lot for a tractor but not a driveway access for cars. A portion of the rock wall was removed to widen the opening. He had observed cars needing to do a 3 corner turn to get into this access. Shelly Mitchell stated she has almost been hit and her concern is for safety. Peter Mitchell advised there were a lot of cars parked in the road and in his field across the road. He noted that in the past 2 weeks this has gotten better and appreciates Aldrich’s efforts with that.

Cay asked if there were any restrictions on the number of driveways. There had been an application in July appealing the Road Agent’s denial for a 3<sup>rd</sup> driveway. The Board reviewed the Statute 236:13 IV, “No Construction permit shall allow:” (b) “More than 2 driveways, entrances, or approaches from any one highway to any one parcel of land unless the frontage along that highway exceeds 500 ft.”

Aldrich asked where there is a place to access the farm stand. Riendeau stated that is not for the Board to decide. The issue before the Board this evening is did Greenwood make a mistake in requiring a driveway permit.

Ron Rzasa advised he has accessed the lot with his truck and has not had a problem.

Tim Butterworth stated he is concerned with the precedence this could set; and asked what the difference from access and a driveway is.

McKeon asked Mitchell when he had “pick your own strawberries” how did that impact the road. Mitchell stated they had come to the town and was advised that cars could not be on the road but must be 50 ft back. They didn’t have any cars on Winchester Road but more than 100 ft from the road.

*Perkowski moved to close the public portion. Fales seconded the motion, which carried unanimously.*

Board discussion

Perkowski asked if the Board could agree that there is a difference between an access and a driveway. He cited 674:32 (b). He noted that this access has been changed and expanded for public use and not just to access a field.

Fales stated that she had to apply for a driveway permit to enable parking at the bottom of their steep driveway in the winter. There was a flat spot that could be used but she was required to get a permit and they needed to construct it according to code for drainage.

Cay stated he agrees with Perkowski. He also advises that the rule that limits to 2 driveways is a Commissioner of Transportation regulation.

Riendeau asked how are we looking at this in R/A. Is this different from exemption for agricultural use? Perkowski stated Aldrich could use this to access the field, then ok, but by expanding for the public use it needs a permit.

McKeon stated she has an access to her barn; would she be told to stop using the access. Perkowski stated it is not denying use but making sure it is a safe access. Fales stated there is more intense use because of the Chesterfield's School participation.

Davenport stated there is no question that a farm stand is an agricultural use but RSA 674:32 (b) specifically includes farm stands may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety. McKeon asked who says it is not safe; just 2 abutters have mentioned it.

Riendeau asked who feels Greenwood has made an error in his interpretation of the ordinance. McKeon asked if that question was to voting members only. Riendeau stated it was.

It was noted that a bar-way for access to a field is different from one for public access.

*Perkowski moves to uphold the Code Enforcement Officer's interpretation that a driveway permit is needed according to RSA 674:32 (b). Fales seconded the motion which carried unanimously.*

McKeon stated the Board is setting a precedent.

**2. Denny & Betsey Immergut** request a rehearing of their Special Exception with respect to the limits placed on the main house. They agree there would be no expansion of the apartment.

The Immerguts advised when they got the decision letter they started considering the limit placed on their main house. They have taken it off the market and wanted to refinance. The bank looks at a 2-family house and a house with an "In-law" apartment differently. And they wanted to have the apartment designated as an "In-law" apartment and not a 2 family.

The Immerguts had contacted the neighbors and the neighbors agreed that limiting expansion on the main house was too restrictive; but agreed to limiting expansion on the apartment.

Cay advised there are two ways to request a change in the ordinance to have an in-law apartment in the ordinances. 1) They could petition the change with 25 registered voters' signatures or 2) they could go to the Planning Board and request that they pursue this change.

Fales reminded the Immerguts that she and Larkin had mentioned not limiting the main house at the public hearing. She stated that this lot is under the 5 acre requirement by a small amount and that could be brought up by the neighbors if the Board reheard the application. Cay stated that the Immerguts received a Special Exception with conditions addressing the neighbors' concerns. A rehearing could be held to consider the conditions placed on the Special Exception.

*Davenport moved to close the public portion. Evans seconded the motion, which carried unanimously. (Voting: Davenport, Fales, Evans and Cay)*

*Fales moved to grant the rehearing. Davenport seconded the motion, which carried unanimously. (Voting: Fales, Cay, Davenport, Perkowski and Evans)*

**3. Review September 11, 2012 Meeting Minutes**

*Fales moved to approve the September 11<sup>th</sup> meeting minutes. Perkowski seconded the motion which carried unanimously. (Voting: Fales, Cay, Davenport, Perkowski and Evans)*

**4. Adjourn:** The meeting adjourned at 9:35 pm.

Respectfully submitted,  
Carol Ross  
Secretary

Approved

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Burton Riendeau  
Chairman, Zoning Board of Adjustment  
Date\_\_\_\_\_