

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

**MINUTES
May 8, 2012**

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

The Zoning Board of Adjustment met at the Chesterfield Town Office on May 8, 2012. Riendeau explained the process of the meeting.

It was noted that voting members for the Girroir appeal would be Riendeau, Cay, Fales, Perkowski and Evans.

1. Edward & Mary Anne Girroir appeal the Administrative Decision of the Code Enforcement Officer to require the travel trailer removed as it was in violation of Articles 203.6a, 203.6b and 408. The property is located on South Shore Rd, Spofford (Map 5A A57A & A56) Spofford Lake District.

Steve Bonnette was representing the Girroir family. He presented the Board with his “findings of fact”. Bonnette stated that these properties have been in the Girroir family since 1956 when Ed Girroir’s parents owned the lots. They were conveyed to Ed and Maryanne and Dennis and Diane Girroir in 1987. There has been tents and various recreational vehicles used since 1956 on the lots.

Bonnette advised that the zoning ordinance noted in Greenwood’s letter requiring that the recreational vehicle be removed was enacted on March 1, 1987. He states that Article 500 states that “.....All lawful non-conforming lots, buildings, structures and uses when this ordinance takes effect may continue indefinitely in their present use.” The Girroirs contend that the use is grandfathered as they have used these lots the same every year since 1956 at least once a year.

Bonnette stated that even if the Board does not accept the fact that the recreational vehicle use has been grandfathered; the Girroirs are not in violation of the zoning ordinance. The Girroirs accept the fact that their use of the lots is not defined as a permitted use but they are not in violation. The Girroirs do not agree with Greenwood’s interpretation of the ordinance as Article 203.6b states, “there shall be no buildings or structures...” Greenwood is implying that the recreational vehicles are buildings or structures. Bonnette read the definition of a structure as “any temporary or permanently constructed, erected or placed material or combination of materials in or upon the ground, including but not limited to buildings, manufactured housing units, radio towers, sheds and storage bins, storage tanks, portable carports, swimming pools, tennis courts, parking lots, driveways and on-site waste disposal systems.”

Bonnette stated it appears from the plain reading of the definition that structure is intended to mean any item that is not easily removed from the property. The definition does not include recreational vehicles and it could have easily included that if that was the intent. It is the Girroir’s position that recreational vehicles are not considered a structure as defined by the zoning ordinance.

The definition of recreational vehicle (motor home)/camper is defined as, “a movable or portable unit designed for seasonal living and built on a chassis so as to be used without a permanent foundation.” Based on the definition recreational vehicles are not intended to be considered as structures as they are easily movable and without permanent foundation.

Bonnette notes Article 408, the introductory portion states “Occupancy of camping trailers, construction trailers, recreational vehicles, automobiles, buses, trucks, vans, tents and similar vehicles or structures suited or converted for overnight occupancy shall be permitted in every zoning district, but only upon compliance with the following conditions:” The conditions noted were each vehicle or structure has adequate and readily accessible toilet, lavatory disposal facilities and kitchen facilities approved by the Town Health Officer and shall comply with all underlying requirements of the Zoning and Building Ordinances.

Bonnette stated, “The intent of the ordinance is not to limit or prohibit intermittent or casual use of mentioned vehicle, but it is intended to control longer term or permanent occupancy of mentioned vehicles. This section of the ordinance omits reference to structures.

Bonnette contends that the terms “vehicles or structures” makes a distinction between the two. Ed Girroir stated that the recreational vehicle has wheels and is registered in the town of its location. Bonnette stated that Camp Spofford has trailers; were they granted a variance and if so, he would like to see it.

Bill Tucker, abutter, stated he has been a neighbor for 13 years and has no objection to the recreational vehicles.

Jan Peterson, abutter, stated she has been a neighbor for 30 years. She has examined the file and noted a 1987 deed restriction that specifically says, “No trailers or Quonset huts shall be erecting on the premises conveyed.” Peterson stated she is opposed to the trailer use on the lot. She stated it was intermittent but recently a very large trailer and generator was put on the lot. She agrees there is recreational use but not the types of vehicles used now.

Bonnette stated if there is a deed restriction it should be challenged by the grantor and not this Board or abutters. He contends that a mobile home was different from trailers or Quonset huts. Tucker states that his deed also notes the restriction.

The 2 lots are 60 ft wide and 79.6 ft deep each. A 30 ft long camper was on the lake with slide outs it would be approximately 10 ft wide.

Bonnette passed out site plans for the lots. The plan shows RV primary placement and Secondary placement with a picnic pavilion and a third RV placement plus 2 tent placements.

Tim Girroir stated that the pop-up campers and tents have been placed on various locations. They have had 3 campers there at a time. The current trailer has a self-contained septic. They have also had port-a-potties on the lots.

Riendeau stated his interpretation is the ordinance was used to be all inclusive. It was noted that the definition of structure was' "...including but not limited to buildings", etc.

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

Riendeau read Article 601.1 Administrative Appeals. The Board reviewed the letter from Greenwood dated 6/28/11 and his memo to the Board of 4/18/12.

Evans stated he has seen pop-ups and this year the larger RV that was required to be moved by Greenwood. Fales stated that the intensity of use has changed from pop-up trailer to the RV. There is no power on the lot. Girroir advised they had gotten power from a neighbor previously and now they have a generator used to just run the lights; the power supply is very little. It was noted that the difference in sq ft between a pop-up and an RD is only about 4 or 5 sq ft.

Cay stated that it seems the trailer falls under the zoning setback requirements; so, it must be proved the trailer is grandfathered. There should be a burden to prove what was there. The Board agreed they would be looking at grandfathering alone.

Riendeau stated that lately the intensity has increased. What was the grandfathered use? It has to be demonstrated. He stated that having a trailer move between the 2 lots doesn't fly with him. It was noted that a grandfathered use cannot be expanded. The Girroirs must come back with proof.

The Board reviewed the Zoning Ordinances for 1964 – 1987.

Perkowski asked if they Board is looking at it with a camper on 1 lot. Cay stated it is to be proved. Riendeau asked if the applicant wanted to continue for another month to provide proof. The Board needs hard evidence/pictures.

Bonnette stated it seems they have convinced the Board of a grandfathering but the question is what is grandfathered. He noted Article 502.1 Non-Conforming Uses limited to 25% expansion. Fales stated that the RV would still be in the setbacks so could not be expanded as was ruled in the Cota application.

Perkowski moves to continue the hearing to June 12, 2012. Cay seconded the motion, which carried unanimously.

2. Alex Kwader variance application – See the letters from Kwader's attorney and the Town's representative John Ratigan regarding the court ordered granting of the variance.

It was noted that the Town has gone through litigation and the courts have found in favor of Kwader. The ZBA is ordered by the court to grant the variance.

Cay makes the motion that to be consistent with the Supreme Court order made February 23, 2012 that as a board we are acknowledging our requirement to grant the variance for Alex Kwader's application dating back to January 8, 2008 for relief from Article 204.4 Section B, Lot Frontage, to permit a residential lot with 55 ft of frontage where 400 ft of frontage is required.

Fales seconds the motion; which carried by majority vote. (3-Yes: Cay, Fales, Riendeau and 2-No: Evans, Perkowski)

3. Review April 10, 2012 Meeting Minutes

Fales moves to approve the meeting minutes as presented. McKeon seconds the motion, which carries.

4. Other

- Deed Restrictions – the question came up about deed restrictions and if they are pertinent to the Board. Cay stated the deed restrictions are limited to enforcement of the grantor and are irrelevant to the Board’s issue. Cay noted that the generator wouldn’t have been there before 1987.
- Alternate participation – Riendeau stated that alternates can participate during the public portion but during deliberation they should remain silent.
- Riendeau stated that Donahue had made mention at the Planning Board meeting that the change made to the Zoning Ordinance pertaining to Dwelling, Multiple Family would affect his Cluster Development application. He will get the date this was noted in the Planning Board minutes as it may come before the ZBA.
- Riendeau and Perkowski will not be present at the ZBA meeting in June.

5. Adjourn: The meeting adjourned at 9:30 pm.

Respectfully submitted,

Carol Ross
Secretary

Approved

Andy Cay
Vice Chairman, Zoning Board of Adjustment

Date_____