

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

**MINUTES
June 12, 2012**

Present: Vice Chairman Andy Cay, Renee Fales, Alternates Kristin McKeon and Lucky Evans, Selectmen's representative and Alternate Jim Larkin and Code Enforcement Officer Chet Greenwood.

The Zoning Board of Adjustment met at the Chesterfield Town Office on June 12, 2012. Cay explained the process of the meeting.

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. Continued from May 8, 2012 meeting

Steve Bonnette was present representing Edward and Tim Girroir. Bonnette advised that at the last meeting the Board stated the Board had discussed Article 408, Restrictions on Intermittent and Casual Use and though they did not vote on this, they agreed their interpretation that the recreational vehicles would be considered structures. The Girroirs do not agree with this interpretation. Bonnette further stated that the Board had requested pictures to prove grandfathering but the Girroirs do not have any pictures with the vehicles, just pictures of people with the lake in the background. He presented signed statements from the Girroir family and a former abutting property owner advising the campers/tents have been used since the 1950's.

Bonnette also submitted two court cases; New London v Edward Leskiewicz 12/1/70, with regard to limiting the extension and enlargement of nonconforming uses; and Town of Hampton v Donald Brust May 21, 1982, with regard to protection of nonconforming uses.

McKeon asked, you don't have any pictures of vehicles on the site? Girroir responded, no. He advised that on average campers would be on the site on weekends, long weekends and a couple of weeks a year. They do camp other places. There was a permanent structure in the 1950's closer to the lake. McKeon stated she has tented and has a travel trailer and they are very different. She stated that with the better accommodations the use would be greater.

Bonnette stated that 2 members of the Board have remembered that there were recreational vehicles since at least the 1970's. It was noted that the lot is level but there are 3 steps down to the beach area. They typically use the primary location to keep the pavilion and center of the lot clear. Girroir advised that all the trailers are gone in September or at the latest Columbus Day.

There were no abutters present.

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

Discussion: The question is, are the uses grandfathered and the intensity of the use. Larkin stated that the wear and tear would show the areas that have been used. McKeon noted that Article 408 notes that camper trailers etc must comply with zoning. Cay stated if you had all 3 placements used plus the pavilion, plus tents it would be quite an intense use on the lot. They are within the setbacks.

McKeon noted that State Statute 674:19 notes change in use. Cay stated it is not a change in the use but intensity of use. Evans stated the intensity of use has changed over the years. McKeon stated that the burden of proof is on the applicants. Cay asked how the Board reacts to the letters of testimony. Fales stated she would have felt better if more neighbors had testified. McKeon noted that at the last meeting there were two abutters, one for and one against.

Larkin moved to continue the meeting to a site visit on Tuesday, June 19th at 6:00 pm. McKeon seconded the motion, which carried by majority vote. (Yes: Cay, Larkin, McKeon and Evans No: Fales)

Ross advised she will be away next week. Fales stated she would handle the site visit minutes.

2. Michael & Florence Grumm request a Variance for Article 203.5 Section A, Front Setback to permit rebuilding the house within the front setback. The property is located at 10 Lone Pine, Spofford (Map 5E Lot D7) Residential district

Grumm presented a picture of the previous house that was removed in 2008. The proposed house is moved closer to the road due to the drainage structures and the septic. The topography also limits positioning the house on the property.

The original house was 1 ½ stories, part crawl space and full basement approximately 26 ft from the road. The proposed house is 2 stories with part crawl space and part full basement. The footings would be attached to the ledge. The house would be 20 ft from the road.

The elevations didn't give the dimensions on the plans. The proposed house is 28 x 32 ft and that included the porch. The height would increase approximately 7 ft from the original house. The bump out is approximately 7 x 18 ft with the roof line extension.

Grumm advised they do have a State approved septic system. He advised there is a holding pond to catch runoff diverting the water to a sluiceway. Larkin asked if the building could be staked out. Grumm stated it could.

McKeon asked what would happen if they had to stay back from the same distance as the previous building. Grumm stated they would lose the bump-out that holds the bathroom and shower. There would be a 2nd bathroom on the 2nd floor. Grumm stated they enlarged the house to put in more closet space and make it more comfortable. The proposed house would be 1,700 sq ft. The previous house was approximately 850 sq ft. The new assessment card did not have the former building on it.

Grumm advised there are only camping lots behind their house.

Sandy Cormier, abutter, stated that the Grumms have stated they hope to use the existing septic. He had also stated the new septic design was approved with exceptions from the State because of the ledge, topography and water runoff. Grumm stated they had wanted to put in a holding tank but the State required a leach field.

Larkin moves to close the public portion. McKeon seconds the motion, which carried unanimously.

Fales stated she would like a site visit. She would also like to see better plans with dimensions. Larkin stated the house location should be staked off to get an idea where the old structure was and where the new one would be. He sees the expansion as minimal. They also need drawings with actual height measurements. Cay asked is that was material. There is a 5% increase in the footprint. It was noted that house had been removed over a year ago so they have lost the grandfathering. The Board agreed to have a site visit and asked the applicant to have better plans. Grumm stated he would get the plans to the Board.

McKeon moves to continue the meeting to a site visit on June 19th at 6:45 pm. Larkin seconded the motion, which carried unanimously.

3. Gary & Ellen Cota request a variance from Article 203.5 Section A & D, Front and Route 9 Setbacks, to permit moving the existing commercial use structure back 12 ft from Route 9 and Article 502.1, Expansion of Non-Conforming Use to increase the square footage by 25%. The property is located at 1011 Route 9, Chesterfield (Map 4B Lot A26) Residential zone.

Cota advised he proposes tearing down the existing building and move it back 12 ft. The building would be 20 x 56 ft. This proposal would be much safer with the increased parking and pulling the building back. There would be a 6 ft retaining wall in the back. It would have an approved septic.

Cota advised he would still be in the front setback by 6 ft. The old structure was 850 sq ft and the proposed structure is 1,100 sq ft. The roof would be less than the previous proposal because the building is 20 ft deep. Cota advised this has been operating as a commercial use for over 50 years.

There were no abutters present.

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

Cay stated that the Board has never approved a variance to build a new structure in the State's ROW. McKeon stated it does change making is less nonconforming. Cay stated we are trying to move things to conformity. If it is moved back and improved it would be keeping an egregious non-conformity. We should be encouraging disuse.

Cay stated this is an unsafe retail location. Our job is to encourage him to make it conforming. Larkin stated we could continue the application so that Cota would find out from the State where the actual property line is. Cay stated it should be turned down on the basis of Cota's testimony. Cay suggests giving him 60 days to get documentation to establish the property lines. If he comes back to the Board within that time, the board could waive the filing fees. Evans noted that the deed states, "Also, as encumbered by an Encroachment Agreement between Walter & Phyllis Wall and the State

of NH dated 10/27/83 and recorded at Volume 1051, Page 519 of the Cheshire County Registry of Deeds.”

Cay moved to deny the application as presented; we do so, on the basis that it doesn't meet the test of hardship. The building appears to be in the State Right of Way (ROW). To be clear not in the setback but actually in the ROW; therefore, with a negative setback based on the evidence presented. We find that while moving the building back further into the lot would be an improvement it would still be in the State ROW with the negative setback. That is not a reasonable course of action for this very non-compliant structure. We deny this variance request feeling it is contrary to the required criteria.

Criteria for approval:

- *The variance is not contrary to the public interest. **No***
- *The variance will not be contrary to the spirit and intent of the ordinance. **No***
- *Substantial justice is done. **Yes***
- *The variance will not diminish the values of surrounding properties. **No, surrounding property values could be diminished.***
- *Literal enforcement of the ordinance would result in unnecessary hardship.*
 - (A) Because of the special conditions of the property that distinguish it from other properties in the area:*

*(a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. **No, it does not warrant relief on the basis of hardship in the property.***

And

*(b) The proposed use is a reasonable one. **No.***

The Board suggests to the applicant, if the applicant were to reapply within 60 days with new firm evidence regarding the documentation of the State ROW i.e. the property line then we would waive the application and abutter notice fees so the applicant won't incur further costs to come back before the Board with better evidence regarding exactly where his proposed structure would be relative to that State ROW.

Fales seconded the motion, which carried unanimously.

The Board noted that the State should have been noticed as an abutter and due to encroachment into the ROW.

4. Donald & Rosemarie San Souci request a variance from Article 503.1, Expansion of a non-conforming building, to permit reconfiguring the roof to a 2x10 pitch from a 2x6 pitch. The property is located at 15 Lake Dr, Spofford (Map 5E C1) Spofford Lake District.

Don San Souci stated they are here after the fact because their roof was failing last winter there was 30 inches of snow on the roof and they were concerned that it would collapse. Their son is a contractor and found leaks in the roof. It had a low pitch, the roof joists were cracking and there were only a couple of collar ties. Their son made the decision to repair the roof and change the pitch

to help with the snow. The roof was raised 5 ft above the previous ridge line. The roof is now up to code.

San Souci presented pictures of the previous roof and the new roof. The sq footage is the same. The knee walls are the same. There was an increase of 763 cu ft of usable space.

The structure is entirely in the setbacks. Rosemarie stated this was a maintenance job and the purpose was to repair the roof.

Rosemarie presented a letter from the Plantes as abutters. The letter was read for the record. The Plantes were in favor of the change and advised that the San Souci's have improved the appearance of the property.

San Souci advised there is a contractor's statement with the application explaining in detail what was done and why.

San Souci stated that previously their bedroom and a play room were upstairs. This remains the same. It was noted that in 2008 they had requested a variance to have a 2nd story by raising the knee walls. This request was denied. With the new roof, the knee wall stayed the same.

Jonathan Powers, abutter, advised he has been here for 17 – 18 years. He had seen the cracked beams and the leaks. They have done a great job in repairing the roof.

Larkin moved to close the public portion. McKeon seconded the motion, which carried unanimously.

Larkin stated the Board had denied the expansion for the 8 ft walls for the 2nd story. This is more of repairing the roof. He thinks it is a very reasonable request.

Larkin moved to accept the application as presented. The criteria were reviewed.

Criteria for approval:

➤ *The variance is not contrary to the public interest. **Yes, it was an overall improvement from the previous structure. It now meets code and is a more appealing structure.***

➤ *The variance will not be contrary to the spirit and intent of the ordinance. **Yes, it is an improvement.***

➤ *Substantial justice is done. **Yes, the structure is now safe.***

➤ *The variance will not diminish the values of surrounding properties. **Yes, it could increase the values of surrounding properties.***

➤ *Literal enforcement of the ordinance would result in unnecessary hardship.*

(A) Because of the special conditions of the property that distinguish it from other properties in the area:

*(a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. **Yes, they could have lost the house if the repairs had not been done.***

And

(b) The proposed use is a reasonable one. Yes.

Evans seconded the motion, which carried unanimously.

5. Review May 8, 2012 Meeting Minutes

Cay moved to approve the May 8, 2012 meeting minutes. Fales seconded the motion, which carried.

6. Adjourn: The meeting adjourned at 10:35 pm.

Respectfully submitted,

Carol Ross
Secretary

Approved

Burt Riendeau
Chairman
Zoning Board of Adjustment

Date_____