

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

**MINUTES  
July 10, 2012**

**Present:** Chairman Burt Riendeau, Harriet Davenport, Renee Fales, John Perkowski and Alternate Kristin McKeon. Selectman Jon McKeon, Bob Del Sesto and James Corliss were present from the Planning Board.

The Zoning Board of Adjustment met at the Chesterfield Town Office on July 10, 2012. Riendeau called the meeting to order at 7:37 pm explained the process of the meeting.

**1. PJB Real Estate LLC dba Perkins Home Center** requests a Variance from Article 401.2, Sign Area, to permit a 48.56 sq ft free standing sign, to replace the existing 32 sq ft free standing sign. The property is located at 99A Route 9, W Chesterfield (Map 14A Lot A7) Commercial zone

Gary Kinyon was present representing PJB Real Estate LLC with Peter Brady. Kinyon advised that relative to the 2 sided sign Perkins is conforming at 32 sq ft. The Brattleboro Savings and Loan sign is with the Perkins sign and is conforming. They propose the Home Center portion of the sign be replaced with a 48.56 sq ft internally lit sign with electronic lettering. The sign would allow them to have messages regarding sales etc. This would not be a scrolling sign. The sign designer recommends this size as it would be appropriate to the size of the business.

Kinyon reviewed the criteria for a variance. 1) The larger sign would not change the character of the neighborhood as it is predominantly commercial and is consistent with this area. It is a commercial area with commercial development. 2) The variance is not inconsistent with the intent of the ordinance to promote health, safety and welfare and preserve the values and character of the Town. 3) Substantial justice is done as the variance would pose no threat to safety or harm abutters; the general public would realize no appreciable gain from denying this variance. 4) The small increase in square footage would not diminish surrounding property values. 5a) The square footage limit for signs applies to virtually all properties large or small and regardless of location. The Home Center property contains a large building on the major and busiest road in Chesterfield. To remain competitive the business needs as much visibility as possible; consistent with modern signs and marketing as reasonably possible. It was noted that Big Deal had a variance granted for the sign on the canopy; they have larger signs than the applicant. 5b) The size of the proposed sign is of an appropriate scale. It is reasonable to have a sign that is of an appropriate scale given the nature of the business on the property and the location of the property on Route 9.

It was noted that the Bank sign would remain the same below the Perkins sign. The proposed sign is 3' 8" by 10' increasing the stand alone sign by 16 sq ft. The sign on the building is 80 sq ft and had been granted by a variance in 2003. The total signage on the site is 112 sq ft.

Fales asked if they could get a sign at the current size. Brady stated you wouldn't be able to see the lettering very well. McKeon stated the signage is already of the allowed amount. Kinyon noted Howards Leather, Big Deal the Shell station have larger signs.

Riendeau stated that Howards Leather and some of Big Deal signage are grandfathered. The Board had granted a variance to increase signage; he would like to hear the argument why to allow another variance. Kinyon stated the Shell station would not have been grandfathered and with their canopy and free standing sign, the Perkins 2-sided sign is comparable to what they are requesting. He stated there isn't too much clutter along the road with this free standing sign. The sign is in PJB property and not in the State's ROW. It is about 60 ft from the ROW.

Mike Beardsley asked if the new construction for Pete's Tire Barn and the State Liquor Store would comply. Bob Del Sesto stated they would be conforming. James Corliss stated the Planning Board's concern would be if the illuminated sign would also be shining up. Brady advised it would not. The Perkins portion would be fixed and the message could be changed. Del Sesto asked if the electronic portion could be smaller if he chose to reduce the message length.

Perkowski stated it looks like the 2 x 8 ft Perkins sign is what puts them over. He asked what if that was removed. Brady stated he had thought of that but what business would be advertising. He thought it safer to have the 2 sided sign rather than having people rubber necking to look at the building.

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

Board discussion: Fales stated that Riendeau had made a good point that there are many window signs that are not counted in the total signage calculation. McKeon stated there is 80 sq ft on the building and a total of 112 sq ft was allowed in 2003. They want to add another 16 sq ft.

Riendeau stated that the existing sign is now conforming and he doesn't think the Board should make it non-conforming. He suggested that they could pursue changing the ordinance if the sign size is not appropriate to the building. It makes sense though, in his opinion, to keep it conforming.

McKeon stated that the sign designer said in comparison to the building the increased signage is appropriate. That is his opinion.

*Fales moved to deny the application from PJB Real Estate LLC for a variance. The criteria were reviewed.*

*Criteria for approval:*

- *The variance is not contrary to the public interest. **No, the stand alone signage is conforming and we do not want to make it more non-conforming.***
- *The variance will not be contrary to the spirit and intent of the ordinance. **No, by increasing the signage by 50% of what is allowed is not observing the spirit of the ordinance.***
- *Substantial justice is done. **No, he has the signage there; the 32 sq ft is what the other businesses are conforming to along the Route 9 corridor.***
- *The variance will not diminish the values of surrounding properties. **Yes, by increasing the signage there it would not diminish 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. **No, the request is not a reasonable one as he does have signage that is conforming and visible to passing traffic.***

*And*

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

*McKeon seconded the motion.*

Riendeau disagreed that the other businesses conform to the signage ordinance. The new businesses in construction will be complying per the Planning Board.

Perkowski stated that if there were another business on the property another sign could be done. Riendeau stated Brady could swap the sq footage on the building if he wanted to.

*Vote: The motion carried unanimously.*

**2. Norcross Group – Ann Marie DiSilva** appeals the Administrative Decision of the Planning Board to accept the development on Farr Road of Timothy Hanson/Gerhard Isleb/Eleanor Fink. The property is located on Farr Road, (Map 13 Lot A-6).

Annie DiSilva was present representing the group. Riendeau stated the board should check with the Town Attorney or LGC to see if this application is actually a ZBA issue. The Board reviewed the RSA's. DiSilva also noted RSA 677:2, 677:4 and 676:3. The Board reviewed the PB minutes and decision of June 4, 2012.

Del Sesto stated that under the Land Development Regulations, 611 Premature Land Development #1 Section D & E, "In making the determination of whether a proposed subdivision is premature, the Planning Board's considerations may include (but are not limited by) the following: D.) Adequacy of water supply for domestic and fire fighting purposes and E.) Potential health problems due to on-site sewage systems and for water supply.

Del Sesto stated the PB cannot approve a subdivision with health and safety issues. He advised that the ZBA heard the appeal of the proposed Methadone Clinic. It was noted that the reason the ZBA heard the appeal because it was a change of use and not Land Development Regulation issues.

Riendeau stated the ZBA looks at the zoning ordinances that have been voted in by the Town. The problem is the Board is not convinced this appeal would apply to zoning issues. Water isn't in our zoning ordinance to protect. It is for the PB to address. In our perspective if we hear this and make a motion; what could we base our decision on when it is not zoning.

DiSilva stated they were advised by the PB to appeal to the ZBA. Ross stated that when the application was received on June 21, 2012 by Rick Carrier, he advised DiSilva this appeal may need to go to the superior court and not to the ZBA. He told her that some applicants choose to go with both the ZBA and the court to make sure that all their bases are covered.

Riendeau allowed DiSilva to speak with the understanding that he is not convinced this is the board to appeal the Planning Board's decision. DiSilva summarized the letter she submitted with the appeal application. She advised that the PB relied on the hydrology report that was done in January. The PB failed in the approval to address the abutters' concerns regarding the potential impact of the development on the quality and quantity of water in nearby residential water supply wells. The geologist claimed that wells in the area range from ½ to 30 gallons per minute. There is no one in the neighborhood that gets 30 gallons per minute. However, there are a number of houses in the surrounding neighborhood that have run out of water within the past 5 years, showing proof that the quantity of water supply is an issue in this area. The geologist could say that he cannot prove that the development will affect the water supply. DiSilva stated he also cannot prove that it won't. Adding 9 houses would affect the water supply. She had to dig another well and even that affected some of the neighbors' wells.

The abutters were also concerned that the PB had not adequately considered the potential traffic impact of a subdivision that enters into a narrow, winding, steep road with poor visibility.

DiSilva advised that during the week of Jun 18, 2012 the US Dept of Interior Geologic Survey conducted a water level survey for their region. They have not received the report yet but when it comes in they will get a copy to the ZBA.

DiSilva stated that the road has a bond and the ravine has a bond; why can't they have a bond on their water. She advised there is suggested to have a note on the plans with regard to water supply for the new property owners but that doesn't address the existing wells.

Dave Lewis advised he is by the ravine on the river side and has a shallow well. He would have to drill a well to protect them from the future septic systems going in. He doesn't see how it won't affect his health; he is struggling with lymphoma. It was noted they pay taxes like everyone else why can't they have water like everyone else.

Riendeau stated that the property owner of the subdivided lot has rights to use his property in a reasonable way. If he meets the LDR for subdivision he meets requirements under the Planning Board.

Colleen Gurnee stated that when DiSilva was digging her new well it affected the Gurnee well. She was also concerned with the traffic as it is a very big issue. Marilyn Lewis commended the ZBA and the PB members present for listening to the abutters.

*Perkowski moves to close the public portion. McKeon seconded the motion, which carried unanimously.*

Board discussion: Perkowski stated it is his understanding that this appeal stops the development. The Board reviewed RSA 676:5 III noting that a Planning Board decision could be appealed to the ZBA if the Planning Board makes a decision which is based on the terms of the zoning ordinance. RSA 677:15 notes, "Any persons aggrieved by any decision of the planning board concerning a plat or subdivision may present to the superior court a petition, duly verified, setting forth that such

decision is illegal or unreasonable in whole or in part and specifying the grounds upon which the same is claimed to be illegal or unreasonable.”

*Riendeau moves to continue the meeting until next month, August 14, 2012, to give time to contact the Town Attorney for legal counsel.*

*Perkowski seconded the motion, which carried unanimously.*

Tim Hanson and Annie DiSilva asked to be notified with the response from the attorney. The Board will also be notified; however, they were advised not to reply to the notification.

**3. Donald and Susan Drew** appeal the Administrative Decision of the Road Agent to deny the request to have 3 entrances to the property. The property is located on 40 Wellington Drive in Spofford (Map 10A Lot C24)

Susan Drew was present and gave 2 letters to the Board; one from Andrea Milchick, abutter, in favor of the proposal and one from Home Healthcare Physical Therapist Linda Cook. Cook advised that Donald is no longer able to walk safely and she strongly recommends the ZBA allow the driveway to give access to the home without the necessity of stairs.

Drew stated that when they moved into the home in 1974 they used the driveway they would like to reactivate. They have a circular driveway that does not give access to the home without needing to use the stairs. They request temporary relief to use the old driveway. It was noted that the land slopes. Drew stated they would close off one end of the circular driveway.

Ross advised that Bevis had wanted to give the driveway permit because of the circumstances; however, was prohibited due to the ordinances.

Bob Lester, abutter, stated this proposal makes perfect sense. He stated there should be a culvert installed. Drew stated that is what they planned to do. The Board asked if the proposed drive was within the 20 ft side setback. Roger Cooper stated it would be 20 ft away from his property line.

*Perkowski moved to close the public portion. Davenport seconded the motion; which carried unanimously.*

*Perkowski moved to grant an administrative appeal to allow the second driveway on the lot with an existing entrance blocked off so that it would remain 2 entrances; the new one being above the grade on the side of the property as designated. Also, a culvert will be put in to avoid any water issues and Bevis would go up and make sure that the driveway was put in properly.*

*McKeon seconded the motion, which carried unanimously.*

**4. Review June 12, 2012 Meeting Minutes and June 19, 2012 Site Visit Minutes.**

- Fales moved to approve the June 12, 2012 meeting minutes. McKeon seconded the motion which carried. (voting: Fales, McKeon and Ross)

- The June 19, 2012 minutes will wait to the next meeting for approval as there are only 2 members who were present at that meeting.

**5. Adjourn:** The meeting adjourned at 10:07 pm.

Respectfully submitted,  
Carol Ross  
Secretary

Approved

\_\_\_\_\_  
Andy Cay  
Vice Chairman, Zoning Board of Adjustment  
Date\_\_\_\_\_