

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

**MINUTES
August 14, 2012**

Present: Chairman Burt Riendeau, Andy Cay, Harriet Davenport, Alternates Lucky Evans and Jim Larkin also the Selectmen's representative

The Zoning Board of Adjustment met at the Chesterfield Town Office on August 14, 2012. Riendeau explained the process of the meeting.

1. 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). This is continued from the July 10th meeting.

Riendeau stated that last month he had allowed some of the issues to be heard because of the large turnout and also to give the ZBA time to get legal counsel. The appeal should have gone to the Superior Court because no zoning ordinances were being appealed.

DiSilva stated that because the ZBA said it needed to go to court they are being ignored. Riendeau stated that the ZBA does not have the legal jurisdiction to hear an appeal of the Planning Board's decision unless the decision violated zoning ordinances. It was noted they were advised to go to court when she submitted the appeal to the ZBA but they chose not to go to the court.

DiSilva asked Bob Del Sesto (Planning Board member who was present) if the Planning Board can do anything and he stated they could not do anything unless the conditions the Planning Board placed on the approval were not met. There was argument from the audience and Riendeau stated they needed to address the Board.

Riendeau stated if this was so important to them they should have at least consulted an attorney. There was argument from the audience and Riendeau stated the Board would not hear anything further.

2. 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 had gotten the information from the State and they were glad to have the parking moved out of the State ROW. The encroachment agreement allows him to park in front of the existing building. Moving the building back 12 ft brings it all out of the ROW. Cota stated he would be making a building that is in disrepair a more attractive, efficient and safer situation. He could renovate the building as it is or rebuild it making it a safer and more aesthetically pleasing structure. If granted the variance, the encroachment agreement would become void and parking would never be allowed in the State ROW.

Cota advised there would be a 6 ft retaining wall behind the building and all expansion would be entirely in the rear of the property. It may even look smaller than it does now being set back into the hillside.

Currently the height of the building is 12 ft but a variance had been granted to reconstruct the roof. This proposal is 500 sq ft less than the initial proposal. The existing building has no water but if he were to build a new structure it would have to be ADA compliant.

The building will be a gallery with local artisans, Cota's wood carving. The products would be unique, handmade and hand crafted. It will not be a knick-knack shop. It was a collectables shop with merchandise purchased at yard sales and resold. The Board asked when the collectables shop closed. Cota stated in September 2011.

Presently the shop is 852 sq ft and it would go to 1,120 sq ft. Moving the parking would make it safer than it is now. The building is single story at this time.

Cota stated he is putting in a 5 bedroom septic system for the house and apartment because the existing septic is non-compliant. He would put in a separate septic for the gallery.

Del Sesto asked how far back the building would be from the ROW. Cota advised 13 ½ ft. The building will still be in the setback. It was noted that the only way to avoid parking in the ROW is to somehow block the area with fencing etc. Cota stated he would police it as much as he could. This is also an issue with Big Deal.

Riendeau stated the Board needs to decide when it would need a site plan review with the Planning Board. Cota stated if he has to leave the building where it is he could but that's not the ideal situation.

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

Evans stated this proposal makes the building more compliant but how would the cars be kept from parking in the ROW. Cay stated he thinks it is subject to site plan review because it is commercial and above 12 ft. It is about the encroachment and setbacks. Ordinances allow for a non-conforming use to expand 25% total.

Larkin stated it would be good to tear it down. Rebuilding it and moving it back makes the situation better. Larkin advised that Cota is a craftsman and would make a unique store.

Davenport stated it seems he is trying to stay within the confines not expanding more than 25%. It would be safer. The State is in favor of the proposal to take it out of the ROW.

Cay asked who thinks this is a good commercial use. If you thought the commercial use shouldn't be there then deny and keep it as is so the building would get phased out. If you think it's a good commercial use, grant the variance.

Larkin stated there is no doubt this would remain commercial. You have pluses and negatives but the pluses outweigh the negatives. Riendeau stated that once it is approved like Big Deal, it could change to be zoned commercial.

Cay asked why you would grant something that is 100% in the front setback. You can't do anything with what is there now but you could prevent the longevity of the 100% non-conforming structure and use. Riendeau asked what if the business doesn't work. The building would be sold and another use could come in. Larkin stated Cota would improve the building to new. If he is expanding his business in the poor economy, he is doing pretty well. Larkin believes Cota will make a go of it. Approving the variance would send the proposal to the Planning Board.

Larkin moves to approve the requested variance under Section 203.5 A & D and 502.1 of the Zoning Ordinance proposed by Gary Cota that the building is to be expanded not to exceed 25% of the existing sq footage of the footprint and that the building would be pushed back approximately 12 ft from its original position making it approximately 13 ft from the existing State ROW. It would be the recommendation of the Board to defer this to the Planning Board for site review in regards to the additional parking spaces and the vertical expansion of the structure because of its proposed use.

Criteria for approval:

➤ The variance is not contrary to the public interest. **Yes, the existing structure is clearly unsafe. The area that is now traveled, if there were an operation of a business within the structure similar to what Cota proposes you would have traffic going through and congestion and the potential for accidents would be much greater. It would be safer if the building was pushed back and there was restricted parking in that ROW.**

➤ The variance will not be contrary to the spirit and intent of the ordinance. **Yes, as stated in his application he is improving the structure that is currently an eyesore. Rebuilding would be better for the Town and for the area.**

➤ Substantial justice is done. **Yes, we are trying to encourage the business and the economy is hard on all of us and Cota is going forward and would give a nice shop for the Town's people to enjoy. It would be a positive move to have him operate out of a better and more positive compliance of this building.**

➤ The variance will not diminish the values of surrounding properties. **Yes, he is building a new structure that will be up to code and would be valued more than the existing structure. It would only increase the property values in the area.**

➤ 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. **Cota has stated that he would use the building regardless and allowing him to move the building back and the minimal expansion, he could achieve what he wants to achieve with the existing structure but the advantage to the Town is restricting the parking in that ROW and gaining an additional 12 ft.**

And

(b) The proposed use is a reasonable one. **Yes, this is a fair and reasonable approach.**

Davenport seconded the motion.

Riendeau asked with this motion, are we approving the proposed parking as well or will that be taken up by the Planning Board. Larkin stated it would have to be on the site plan review. Larkin stated Cota hasn't applied to this Board for the appropriate parking but Cay had noted that what was on the plan was an adequate number of spaces. Riendeau stated that Cay had mentioned that based on the proposal that is where the parking is currently drawn. If we approved the proposal basically we are approving the parking on a non-conforming part of the lot. Larkin stated that we would have to put a condition on the approval that the Planning Board approves of the location and parking would be subject to site plan review.

Riendeau stated that technically all we are approving is the building itself and nothing to do with the location or number of parking spaces. Riendeau asked do we want to be clear now on it or tell the Planning Board we are just addressing the building. Larkin stated he didn't know if we could approve a plan until it is drawn and presented to the Planning Board. Larkin stated we could make the presumption based on the plan he is asking for parking spaces as is delineated in the plan but could still be under the conditions of the site plan review.

Riendeau stated he has come to us 3 times. If we send it to the Planning Board they would kick it back to the ZBA for a variance for the parking in the front setback. Cay stated it could be approved in concept subject to the approval of the Planning Board and it would be up to them to decide the number and location of the required parking spaces in the interest of minimizing the impact. The Board could grant relief for parking in the front setback as seems prudent by the Planning Board. Riendeau stated that if we have the opportunity to get the parking in the conforming parts of the lot, why wouldn't we. Larkin advised that Cota had said the septic was going in behind the building. Riendeau stated that he may have more parking than he needs. Larkin stated without a precise plan with depths and accurate measurements; he may find out he only has room for 2 or 3 spaces but Larkin wouldn't want to restrict him if he needs spaces in the front of the building and going through the site plan review with the Planning Board he would have to come back to the ZBA for a variance for additional spaces.

Riendeau asked if the current spaces are grandfathered. It was noted that previous parking was not delineated on the plan. Larkin stated if we allow the plan as it stands and it goes through site plan review and we are not imposing restrictions on what could happen with the parking that would force him to come back for parking relief. Larkin noted that all the parking spaces are in the front setback. Riendeau stated it may even have trouble with the side setback with the driveway.

Riendeau asked Del Sesto if the Planning Board would kick it back to the ZBA. Del Sesto stated that if Cota had come to the Planning Board he would need a detailed site plan stamped by an engineer. The Board would look at the 25% and the non-conformity; if there was something within a setback that was not addressed by the ZBA some members of the Planning Board would send it back to the ZBA to address those issues. Del Sesto said Cota would definitely need to go to the Planning Board for site plan review. Del Sesto asked what the Board was going to do with Article 503.1, expansion of a non-conforming building. It was noted that the ZBA would have to address this.

The Board reviewed the recording of the motion. It was noted that there needs to be more clarity. The 25% expansion of a non-conforming use applies to land area development, coverage and land use and would include the building footprint, parking and any cubic expansion of the building.

Motion amendment:

In the interest of getting proper review of the site plan to review parking and building expansion as drawn complies to 25% the ZBA asks the Planning Board to review parking and its location so that setback i.e. parking be made as favorable as can be made.

The Board also grants relief from Article 503.1 for expansion of a non-conforming building as to what the final expansion would be once the 25% allocation is applied.

Cay moves to amend the motion. Larkin seconds the amended motion.

The Board discussed that if this were sent to the Planning Board it could be returned to the ZBA. The Board could dispense with the motion and move to continue the meeting to next month to have all issues clarified.

The vote was called on the amended motion: 5 – No: Larkin voted no so that the 25% expansion could be clarified.

The Board discussed what needed to be addressed and/or clarified. Article 503.1 expansion of a non-conforming building, 25% expansion encompasses the building area, parking and land use. In his presentation we need to know what he has currently and what he is going to have. It appears the proposal exceeds 25%. He would also be required to go to the Planning Board for a site plan review.

Del Sesto stated the Planning Board would need engineered plans of the existing conditions and then the proposed conditions. It could help him in the long run.

Riendeau moves to continue the hearing to the next meeting. Cay seconded the motion; which carried unanimously.

3. Review June 19, 2012 Site Meeting Minutes and July 10, 2012

- *Larkin moves to approve the June 19, 2012 site meeting minutes. Evans seconded the motion which carried. Voting were Cay, Evans and Larkin)*
- The July 10th minutes were tabled until there was a quorum present to review them.

4. Other

- Aldrich code violation letter from Greenwood and Aldrich responses – The Board will review information. Aldrich was present but no discussion occurred.
- 2012 Municipal Law Lecture Series
- 2013 ZBA Budget
Riendeau moves to accept the 2013 Budget as proposed. Cay seconded the motion; which carried unanimously.

5. Adjourn: The meeting adjourned at 10:08 pm.

Respectfully submitted,
Carol Ross
Secretary

Approved

Andy Cay
Vice Chairman, Zoning Board of Adjustment

Date _____