

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

**MINUTES
September 11, 2012**

Present: Vice Chairman Andy Cay, Harriet Davenport, Renee Fales, John Perkowski, Alternate Lucky Evans and Alternate/Selectmen's representative Jim Larkin

The Zoning Board of Adjustment met at the Chesterfield Town Office on September 11, 2012. Cay explained the process of the meeting.

1. 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% and 503.1 Expansion of Non-Conforming Building. The property is located at 1011 Route 9, Chesterfield (Map 4B Lot A26) Residential zone. Continued from August 14th meeting

The voting members for this application will be Cay, Davenport, Perkowski, Evans and Larkin.

Cota presented an engineered site plan drawn by Ron Bell. Cota stated the existing parking in the States ROW is 5,100 sq ft and the new proposed parking is 1,296 sq ft for a 74% reduction. The cubic footage increased for the building is 27%. Cay calculated the increase in cubic feet to be 37.1%.

Cay asked how Cota had calculated the parking. Cota stated he used the entire paved area. Cay noted that those calculations included the driving path. Cota stated is the area were striped it would still be well over 50% loss in parking.

Cota stated the new septic system is in and the driveway will be graveled tomorrow. Fales asked what the distance was from the driveway to the side property line. Cota advised it is 22 ft.

The Board asked what the proposed total impermeable coverage is. Cota stated there would be 3 parking spaces on the east side of the building and 4 on the west side. There is now a 5 bedroom septic. He would be putting in an ADA bathroom/sink into the building. He would tie that into the new septic or install another system depending upon what the State would require. There are no facilities in the existing building.

Bob Del Sesto asked about the total impermeable coverage figure. Cota stated that was not done but if the Board wanted he could come back next month with those figures. The lot is 1.54 acres and a total of 13,000 sq ft of impermeable is allowed. Cay advised him to wait and the Board will discuss it.

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

Board discussion

It was noted that the dry goods use increases by 37% in cubic feet expansion. The entire building is in the front setback. Cay noted that the impermeable coverage may be close.

Larkin stated he looks at it as a trade off. Cota is gaining sq footage in the building but he is pushing the building back 12 ft. He would be creating a better overall package. The parking would be delineated. It would be a safer situation. He likes the positives v. negatives. Davenport stated that by Cota doing what he proposes he gives up the encroachment agreement with the State. It would be a greater safety hazard if it were to remain as it stands now.

Perkowski stated he could push it back the size that it is but would it suit his business. It was noted that the garage, deck and part of the apartment is within the 50 ft setback. Perkowski asked if there could be a trade off with other structures. Are there other alternatives?

Perkowski and Larkin agreed they would rather see it pushed back than what it is now. Larkin stated there are advantages to the Town: there would be a new building; it would be pushed back from Route 9; the encroachment area for parking would be removed. This is an opportunity to make it a safer situation. Davenport agreed.

Cota stated he understands the Board's concerns. He could use what is there but he'd rather push it back and build a more efficient and aesthetically pleasing building. He stated this will not be a tourist trap but a high end gallery. There won't be a lot of traffic.

Bob Del Sesto stated if the Board was to approve the proposal Cota would still have to go before the Planning Board for their site plan review and approval.

Larkin moves to grant the requested variances for Article 203.5 Section A & D, Front and Route 9 Setbacks, Article 502.1, Expansion of Non-Conforming Use to increase the cubic feet by 37% and Article 503.1, Expansion of Non-Conforming Building.

Criteria for approval:

- *The variance is not contrary to the public interest. Yes, he is improving the site, making it safer by pushing the building further from Route 9, identifying parking and creating a better environment for public safety.*
- *The variance will not be contrary to the spirit and intent of the ordinance. Yes, granting relief will improve the area and safety.*
- *Substantial justice is done. Yes, as a citizen of Chesterfield who wants to improve an old building in town and make it a better place to shop and look at in passing.*
- *The variance will not diminish the values of surrounding properties. Yes, if anything it will improve surrounding property values. You have a new septic and a new structure pushed back from the road.*
- *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, his hardship would be he would have to conduct his business with the existing structure and its limitations. Literal

enforcement would present a safety hazard. It would create a hardship but more to the citizens of Chesterfield.

And

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

The Board also notes that Cota will need to apply to the Planning Board for Site Plan review.

The motion was seconded and carried by majority vote. (Yes: Davenport, Perkowski, Larkin, Evans No: Cay)

2. Denny & Betsy Immergut request a Special Exception under Article 204.3 Section E to permit an attached apartment. The property is located at 384 Streeter Hill Rd, W Chesterfield (Map 2B Lot A4) Rural/Agricultural zone

Voting on this application are Cay, Davenport, Perkowski, Fales and Evans.

Betsy Immergut advised they have had the house on the market and if it does not sell they would need the apartment for a caretaker to help with the property. They propose converting the 600 sq ft workshop to a 1 bedroom apartment. Each living area would have 1 bedroom for a total of 2 bedrooms for the entire building. There is a 2 bedroom State approved system.

Immergut stated there is a 2 car garage separate from the house. The apartment parking would be next to the garage.

Joe Brodbind, abutter, stated if the Board granted this proposal it would be creating a 2 family dwelling. His concern would be that if the bedrooms were to increase with a new septic and the building would be expanded making it a larger 2 family dwelling. His concern is not what is happening now but what could happen in the future. He thinks this could affect the value of his property.

Cay explained the difference in a Variance and a Special Exception. This application is for a Special Exception and if the applicant meets the 6 criteria it would pass. Brodbind stated he understood and has a problem with #2; “the proposed use will not be injurious or detrimental to the neighbors”. He believes it would because it would affect the value of his property. Brodbind stated that by granting the Special Exception the Board opens the door to their doing what they want on the property and that would be detrimental to neighbors; the characteristic of the neighborhood would change. He lives directly across the street and sees the house.

Cay asked what Brodbine is looking at now. He noted that this application does not change the outside configuration of the house.

Steve Sebastian, abutter, asked if someone needs a caretaker it is required by the town to have an apartment. Cay stated not but if you want to have independent living space it would need the special exception.

Harley Wiemers, abutter, ask if the property were sold could it be sold as a 2 family. The Board answered yes.

Roland Volbehr, abutter, stated he has no objections to their plans and sees no detriment to the neighborhood.

Immergut stated they are keeping the house on the market for 1 more month. If it sells, nothing would be done to the property.

Broadbine asked if it had to be an independent living space. Many houses have 2 kitchens without have independent living spaces. Del Sesto asked if it would require a separate entrance. Immergut stated that it has a separate entrance. Sebastian stated that building codes require a fire wall separation. Cay stated they would have to meet building codes.

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

Board discussion

Fales noted that the lot is under the 5 acres that is required for that zone. The deck is within the front setback. Perkowski asked if the Board could put restrictions on future expansion. That would allay some of the abutters' fears. Fales stated that would set a precedent. Davenport stated that each case needs to be looked at individually.

Perkowski suggested the condition that if they give up the right to have a 2 family unit then the building could be expanded. Fales thinks that would be restrictive. Fales noted that the Building Code #13.05 requires 750 sq ft of living space per unit for a 2 family dwelling. The proposal is for 600 sq ft.

Fales and Larkin agreed that by restricting the expansion would reduce the value of the house with an unreasonable restriction. Larkin stated the Board could restrict the expansion of the apartment to 1 bedroom but don't limit expansion of the main house. It was noted that restricting expansion of the apartment does not address the abutters' concerns. Perkowski stated the next owner may want to expand to a 5 bedroom single family.

The lot is 4.92 acres. That is less than 1.6% under the required 5 acres.

Perkowski asked the Immerguts if they could get the 750 sq ft for the caretaker unit without adding to the building. Immergut advised that would not be a problem.

Cay stated he agrees with Perkowski's assessment of the abutters' concerns. It makes sense to allow it but not to allow expansion of the building. The 4.92 acres concerns him. The Board could look at this as a rule is a rule or Perkowski suggested round to the nearest acre. Cay stated we can't give relief on the 6 criteria. The neighbors may have a cause to appeal and they could prevail.

Perkowski moves to approve the application for Special Exception based on the criteria for Special Exception as follows:

In evaluating this Special Exception we find that it is authorized under Article 2 of Section 601.3.

- A. The special exception is specifically authorized by Article II of this ordinance. Yes
- B. The proposed use will not be injurious or detrimental to the neighborhood. Yes
- C. Any special conditions required by Article II, Article III or Article V will be complied with. Yes
- D. The proposed use will not make an excessive demand on municipal services. Yes

- E. The proposed use will not generate traffic volumes that will overburden existing roads and streets. Yes
- F. The proposed use will not have an adverse impact on the natural environment. Yes

Davenport seconded the motion.

Cay stated for clarification the Board that this would be a condition of approval for the Special Exception. That condition is if there is an expansion beyond bedrooms, square footage, cubic footage then the dwelling would revert back to a single family dwelling. There is no permit required other than a building permit. They would not have to come back to the Board for the conversion back to a single family dwelling. Perkowski stated he is trying to craft the decision to satisfy the applicants and address the abutters' concerns.

Amendment:

Perkowski further states there will be 2 independent living spaces with 1 bedroom each in the existing footprint and within the existing cubic space of the building as it is today. The Board conditionally approves the application in such that if there is expansion beyond the current 2 bedrooms, current square footage or current cubic footage then the dwelling will revert back to a single family dwelling. There will be no permit required in that event; the reversion will occur automatically converting the property back to a single family dwelling.

Davenport seconded the amendment to the motion. A vote was taken and the amended motion carried unanimously.

3. Review July 10, 2012 and August 14, 2012 Meeting Minutes

- *Fales moved to approve the July 10, 2012 meeting minutes. Perkowski seconded the motion, which carried. (3 yes: Fales, Perkowski & Davenport)*
- *Larkin moves to approve the August 14, 2012 meeting minutes. Evans seconded the motion which carried unanimously.*

4. Other

Richard Aldrich's letter of August 20, 2012 to Chet Greenwood - Aldrich cc'd this letter to the ZBA.

5. Adjourn: The meeting adjourned at 9:35 pm.

Respectfully submitted,
Carol Ross
Secretary

Approved

Andy Cay
Vice Chairman, Zoning Board of Adjustment
Date_____