

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

**MINUTES
January 13, 2015**

Present: Chairman Burt Riendeau, Harriet Davenport, Renee Fales, John Perkowski, Lucky Evans, Alternates Kristin McKeon and Roland Vollbeh

Jon McKeon swore in Harriet Davenport
Jon McKeon swore in Lucky Evans

The Zoning Board of Adjustment met at the Chesterfield Town Office on January 13, 2015. Riendeau opened the meeting at 7:40 p.m. and explained the process of the meeting.

Robert J. Kasper, Jr., Attorney for Beach Revocable Trust requests an appeal from an Administrative Decision of the Zoning Board of Adjustment of two previous decisions rendered on December 14, 2004 and April 12, 2005 to stay the issuance of a driveway permit. The property is located at Forest Avenue, Spofford 03462 (Map 8 Lot A4) Rural/Agricultural District. This is a continuation from the December 9, 2014 meeting.

Present: Attorney Robert J. Kasper, Jr., and Bruce Beach, property owner.
Voting on this application will be Evans, Fales, McKeon, Perkowski and Riendeau. Davenport and Vollbeh will be alternates for this meeting.

Riendeau noted that this is a continuation of the December 9, 2014 meeting. The board continued the meeting to seek advice of counsel on the application. Riendeau noted that the board has received email correspondence from the attorney.

Kasper noted that he has not seen the email Riendeau mentioned. Riendeau noted that he is not sure if the email is or will be a public document. Riendeau noted that the email was intended to be advisory to the board only. Riendeau noted that he has inquired as to the legality of the document remaining confidential and did not receive an answer prior to the meeting.

Kasper noted that he believes the document would be public record. Kasper stated if the board was going to rely on information provided in the correspondence to make their decision, then he should be able to read the correspondence and respond.

McKeon noted that she believes that if the board does not discuss the content of the letter, then it does not have to be public information. Only when the content of the letter is discussed does it become public.

Riendeau noted that because he was not able to confer with counsel regarding making the email public, prior to the meeting, there are a couple options for tonight's meeting. He noted that the application could go forward with the hearing, or we can continue the hearing until next month. Riendeau noted that the board should remember what is in front of them. The application before the board is an Administrative Appeal. The only decision before the board is if Bart Bevis, Road Agent for the Town, made the right decision when he denied the driveway application.

Riendeau noted that this is an ongoing issue that began with the applicant going to the Selectboard who sent them to the Road Agent. The Road agent suggested going to the zoning board based on

lack of frontage on Forest Ave. The applicant then came to the Zoning Board, and this board noted that we do not issue driveway permits, and sent them back to the Road Agent where the application was denied due to lack of frontage. The applicant has filed an Administrative Appeal indicating that the Road Agent erred in his decision to deny the permit.

Riendeau noted that if this board believes that the Road Agent made the right decision, then the driveway permit is denied. If the board believes that the Road Agent was mistaken, then the driveway permit is granted. Perkowski noted that in a letter from the Road Agent, it states that if the Zoning Board decides to allow the driveway, it is suggested that the Route 9 access be restricted or eliminated. Kasper noted that he believes that request is beyond the authority of the Zoning Board. Beach noted that if the driveway permit is granted, Forest Ave would be the main access to the property, however the Route 9 access would still be utilized.

McKeon noted that if they were going to continue to use the Route 9 access, this was a request for a second driveway to the property. Perkowski noted that if you do not eliminate the Route 9 access to the property, you are creating a throughway from Route 9 to Forest Avenue. Beech noted that Bevis stated the access on Route 9 is dangerous. Beach noted that it is not his position that the access on Route 9 is safe or not. Beach noted that he would use the Forest Ave access primarily, but would absolutely need access to Route 9.

Riendeau noted that he believes that Bevis made the right decision as he did not have the authority to grant the driveway permit. Riendeau noted that Bevis made his decision based upon the normal criteria he uses for every driveway permit. Riendeau noted that this is a complicated case, but Bevis was correct in denying the application for a driveway.

Kasper stated that he believes the lot does have the required 400 feet of frontage, on Route 9 and does not believe the Town regulations specify that the frontage needs to be on the same road that the driveway is located. Kasper noted that there are no safety issues, there is a culvert in place and the lot originally had the frontage when Glebe Road went to Route 9. He noted that under NH State statute, a landowner cannot lose his access without written permission.

Riendeau noted that access to property and access to a dwelling are two different things. Once you begin talking about building, RSA 674:41 is the governing statute.

Riendeau noted that the discussion for this hearing is, based upon what the Road Agent, Bart Bevis was given for information, did he make the right decision in denying the application for a driveway permit on Forest Ave. Kasper noted that he does not understand where Bevis is getting the criteria he is using to deny the application. Kasper noted that the regulations do not state that the frontage needs to be on the same road as the driveway. Riendeau noted that the intent of the shared driveway ordinance was to allow crossing of a side setback when it is necessary. The intent of the ordinance was not to have a shared driveway off another access point that did not have adequate frontage. Riendeau noted that there are alternatives if the board agrees with the decision made by the Road Agent. Riendeau noted that the applicant can go to the Selectboard and ask them to come up with a policy along with the Planning Board allowing private roads to have access, or they can come back to the Zoning Board with an application for an exception under 674:41 D. Riendeau noted that 674:41 gives some criteria that would need to be met. Riendeau noted that the board is not making a decision on the "rightness" of the driveway, simply if the Road Agent made the right decision.

Fales moves to close the public portion of the hearing. The motion was seconded by Perkowski and passed unanimously.

Perkowski moves that the Road Agent, Bart Bevis acted correctly in denying the driveway permit based on lack of frontage on Forest Ave. Fales seconded the motion which passed unanimously.

Perkowski noted that he believes there is a viable way for the applicant to get what they want, and believes that Bevis acted in accordance with our Zoning Regulations.

Fales noted that if this does come before the board again, she would like to have the Town attorney present at the meeting. It was noted that previously, the chairman and/or vice chairman could authorize spending the money to have an attorney at a meeting or for legal advice without a board vote.

Fales moves to amend the Town of Chesterfield Zoning Board of Adjustment's Rules of Procedure to allow the Chairman and/or Vice-chairman to seek legal advice without prior authorization from the Zoning Board of Adjustment or any other board. The motion was seconded by Perkowski and passed.

Review December 9, 2014 Meeting Minutes

The board tabled discussion on review of the December 9, 2014 minutes to the next meeting.

Filling Vice Chair Position

Perkowski nominates Davenport for Vice-chair. The motion was seconded by McKeon and passed unanimously.

Perkowski nominates Riendeau for Chair. Fales seconds the motion which passed unanimously

Next meeting Schedule – February 10, 2015

Adjourn: *McKeon made a motion to adjourn the meeting. Evan seconded the motion, which carried unanimously. The meeting adjourned at 9:25 p.m.*

Respectfully submitted,
Tricia Lachenal
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date_____