

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

**MINUTES  
July 8, 2014**

**Present:** Chairman Burt Riendeau, Andy Cay, Harriet Davenport, John Perkowski  
Alternates Lucky Evans and Kristin McKeon

**Absent:** Renee Fales

The Zoning Board of Adjustment met at the Chesterfield Town Office on July 8, 2014. Riendeau opened the meeting at 7:34 p.m. and explained the process of the meeting. Riendeau stated that Evans will fill in for Fales as a voting member.

1. **Constantine M. Broutsas** requests a variance from Article V, Section 601.2, to permit customary professional office and business service use. The property is located at 762 Route 63, Spofford 03462 (Map 5A Lot 25) Residential/Spofford Lake District.

Present: Hal Wilkins and Neil Jenness

There was discussion as to what Article and Section that the applicant was requesting for a variance. It was determined that it was not a home occupation being requested. Wilkins gave a brief history of the building, which was built in 1831 and used as a residence, a tavern and a restaurant with six small apartments on the third floor. Wilkins explained that the building has been used commercially but is located in a residential district. Wilkins has been to the Planning Board to discuss the possible interest of the town for the continuation of use without placing the property into spot zoning. Wilkins stated that the original application request was for customary professional office and business service with restrictions.

Wilkins suggested that the resolve for his application may be a preservation easement. It is intended for the building to remain untouched inside with the major primary historical elements intact. Jenness has been assisting Wilkins for the preservation of easement which would be held by the Historical Society. Broutsas has been using the property for his antique and used book business. Wilkins stated that he would like a variance request for limited professional business service use in conjunction with a preservation easement. It is now nonconforming in a residential zone. He stated that Broutsas is requesting that the property have the same uses under Section 208a, c, and f with the mission to preserve the character of the stone house. Riendeau stated that the property is already nonconforming use. McKeon stated that the request would fall under Section 502.2 for change to another non-conforming use but the property is not in the ORS District. Wilkins stated that Broutsas doesn't have a particular use at this time, but a tenant will be sought. Cay stated that the applicant doesn't have a specific request, related to the preservation easement and the variance.

Jenness stated that the concern of the Historical Society is that if the applicant received a non-conforming use, would the building have changes were made to the interior of the main building. Jenness added that the Historical Society would support the owner, as long as there was a

preservation easement. Riendeau stated that the application needs to come to the board with a specific request for the use and what the specific changes are going to be. Cay stated that a preservation easement does not trump for approval. McKeon stated that the board could put some very specific criteria on a variance. Perkowski noted that the property is also in the Spofford Lake District. Wilkins stated that 1/10 acre of the .9 acre lot falls within the Spofford Lake District.

Wilkins stated that there would be no changes to the outside with the building. He added that the lighting, signage and parking would be restricted to the easement.

The approved variance for a bed and breakfast in 1991 was never fulfilled so the antique sales continued.

Wilkins stated that approximately 70% of the building is commercial. McKeon stated that there is one non-conforming use that is permitted, so the applicant would be asking to change from one non-conforming use to another. Jenness said she couldn't find any information stating that this property would not be put into a commercial district. Wilkins stated that the property was put on a warrant article at town meeting approximately two years ago.

The board asked Wilkins if he would like to regroup and come back to the board at the August 12 meeting. Wilkins stated that he will discuss the situation with Broutsas for some specific uses and a more specific variance request. Riendeau reminded Wilkins that the variances expire in one year, if they are not acted upon.

Riendeau questioned what percentage of the building is still in use and what is currently zoned residential.

*Davenport moved to continue the hearing to the August 12, 2014 meeting date. Evans seconded the motion, which passed.*

*Vote: Riendeau – yes; Cay – yes; Evans – yes; Davenport – yes; Perkowski – no)*

## **2. Review Meeting Minutes**

- **June 10, 2014** – *Perkowski moved to approve the meeting minutes as June 10. Davenport seconded the motion, which carried.*

*Vote: Cay, Evans, Davenport, Perkowski and Riendeau*

- **June 19, 2014** – *Cay moved to approve the meeting minutes of June 19. Davenport seconded the motion, which passed unanimously.*

*Vote: Cay, Evans, Davenport and Riendeau*

Perkowski asked for a copy of the sealed non-public meeting minutes of June 19, whereby he did not attend that meeting. Riendeau replied that he would consult with town council on handling the sealed non-public minutes.

Jon McKeon stated that all board members have access to the non-public meetings and the minutes are for the board's use and not for anyone else outside the board and all of the board is privileged to the meeting minutes.

Jim Larkin stated that when the selectboard decides whether the minutes will be sealed or not, they have to be drafted and approved. If one of the selectboard members was not at the meeting, that person still has the ability to review those minutes as a member of the selectboard and the absentee member is still allowed to sign the minutes. It acknowledges that the member has read the minutes. The minutes are sealed right after the meeting, the minutes are typed as draft minutes and they are available at the next meeting for review and signed and go back into records. To unseal those minutes, it is determined if the case is over and the board determines what was involved and what the case is. Larkin added that a motion should be made and the board votes on whether to unseal the minutes and the minutes are not discussed in public. John McKeon added that the minutes are sealed to the public but are not sealed to anyone that is on the board, for that board or future boards.

### **3. Rules of Procedure**

Riendeau stated that a recent applicant's attorney had requested a copy of the ZBA Rules of Procedure. As of 2010, there was an RSA that passed that local land use boards need to have rules of procedure documented, filed and in place. There were rules of procedure within the ordinance but it wasn't comprehensive enough for the 2010 RSA, which addresses regular members and especially alternate member participation. Riendeau had come across an article written in the July/August 2007 issue of New Hampshire Municipal Association which described more specific duties than what is covered in the ZBA Rules of Procedure for regular and alternate members. Copies of the article were available to all board members and alternates present. Riendeau stated that the article suggestions would bring the board more in compliance as to how the board should proceed.

Kristin McKeon stated that she has thoroughly read through the article that Riendeau is referring to and when looking up the RSA 673:6 that is mentioned in the article, that RSA explains that the board makes up their own rules and the article is making suggestions. McKeon felt that the newly adopted Rules of Procedure made a nice balance of participation without continuing to make it confusing and the alternates now step away when the public hearing portion is closed. She added that the public can tell who is voting and who is not, when the alternates step away from the table. McKeon felt that the article is written by an attorney and this is interpretations of the law and the RSAs state the law.

Riendeau stated that more and more cases are being presented by legal counsel and more of them are being challenged in court. Riendeau added that he felt the importance of adding more to the Rules of Procedure on alternates is because of the participation in the alternates that we have and the alternates dominate our meetings. Consequently, the main board members, who are going to be doing the deliberations and voting, have very little time to have the dialog because the alternates sitting at the table are dominating the time at the table. He added that the alternates are cross examining and attacking of the applicant, rather than finding the facts of the application and how it applies to the ordinance.

Davenport stated that she researches the information before the meeting and she allows the applicant to present their case. She added that she does not ask questions until the applicant has finished his presentation or she may not have significant questions, based on what they have

presented. She doesn't ask the same question that has already been asked. Davenport added that she will ask a question, based on what she feels is needed. She stated that she feels that the applicant needs to be able to present their case without being interrupted or questioned until they are finished presenting their case. There will be the opportunity for questions.

Perkowski felt that the local government center or the State should review the current Rules of Procedure for Chesterfield.

The process was discussed as to how the board should go into nonpublic. The topic will be announced before going into nonpublic and the RSA number for that topic will be given. Cay stated that only the permanent members that go into nonpublic. McKeon stated that she feels that the alternates may have to act, in regard to the information, and does not feel that it is legal to at least have them notified of a meeting.

Cay stated that Attorney Hoppock instructed Riendeau that only the five permanent members would be included in a non-public meeting unless there was an alternate who participated in the subject matter case. Riendeau added, that if an alternate hasn't been designated or appointed as a member by the chairman, then they will not have rights to sit at the table as a permanent member. Larkin added that the prior ZBA secretary had called him to fill in as a member, if she knew in advance that there would not be a full board available for a meeting. Davenport stated that the board members should be calling into the town office and to Riendeau, if they know that they will not be attending a meeting. Riendeau reminder the members that emails from board members cannot be sent to all the members and to avoid email discussions.

McKeon stated that she felt the public portion of the June 19 ZBA meeting was illegal because she wasn't allowed to attend. Riendeau responded that ordinarily through Rules of Procedure, it would only be the five members noticed on that because alternates do not participate in those kinds of deliberations or anything in that capacity. Riendeau added that the other issue that we have is a conflict of interest here with McKeon as a ZBA member and being married to the Selectboard chairman, who is the other side of the case and is driving the litigation. Riendeau felt that McKeon should recues herself from the current case and, may in the court's eyes have prejudice herself in a selectboard meeting with questions of the selectmen for litigation of the zoning board and that's what the attorneys are going to pick apart. Riendeau stated that this how he was instructed to run that meeting by having the five voting members participate in a non-public portion and then at the end of the non-public portion, there was going to be cause to have a public portion where motions were going to be made in a public forum. Hoppock gave the ZBA secretary information required for posting the agenda.

Jon McKeon stated that Riendeau should keep in mind that, at the time of the issue that was stated, the Rules of Procedure that was in place, did not address the issue being addressed at that time. Also, the Rules of Procedure don't address the issue where Riendeau or other members of the board can dictate whether another board member needs to recues themselves; it has to be that person. McKeon felt that Riendeau did recues a member. McKeon added that, during the June 19 ZBA meeting, where McKeon had attended, he asked Riendeau to relay the discussion that Riendeau and Cay had had in the hallway prior to the start of the meeting and the discussion should be in the meeting minutes to abide with the Rules of Procedure. Riendeau responded that,

if members are not talking about the merits of a case, board members can talk to each other. He added that the discussion he had with Cay are in the minutes of the meeting of that night.

Riendeau stated that he feels the Rules of Procedures will need additional work. He wants to be sure that the document is legal. He wants to be sure that the rolls are different between the board members and the alternate members. Perkowski stated that the ZBA has adopted the current Rules of Procedure and can amend them. He asked if counsel should review the Rules of Procedure. Riendeau replied that LGC is not always accurate or right and may be conflicting with town counsel.

Jon McKeon stated that there is no official town counsel. The Selectboard hires an attorney that would be applicable to the issues.

Larkin suggested that the board review the RSA 673:14 regarding a board member having a personal interest in case and interacting with that interest and may be disqualified because of a potential conflict or juror involvement. It is put into the hands of the chairperson to make a decision whether any board member has a personal interest in an application.

Riendeau stated that he suspects that Perkowski may have a right to read the minutes of the non-public meeting of June 19, as a member even though he wasn't sitting at the meeting, but he would like to get advice from legal counsel so that it doesn't become an issue, in that Evans has been the designated member in Perkowski's absence during the case.

Jon McKeon stated that Riendeau invited five people to the June 19 meeting, but did not invite the board. Riendeau replied that he invited five members that were voting on that case, with Evans being a full member as the designated replacement in the absence of Perkowski. Jon McKeon replied that that made six members being invited. Riendeau stated that Perkowski was invited because he is a permanent member and must be invited, even though he did not sit in on the hearings. He added that Perkowski could say that he has read the minutes and is up to speed and may want to take over from Evans. Jon McKeon stated that a public meeting needs to be called and everyone comes to the session and the chairman, at that point, decides who sits and who will be the alternate. He added that a public meeting is needed to go into a non-public meeting with having the public meeting first, you seat your members at your public meeting, then make a motion to go into nonpublic. Cay stated that the ZBA did what the attorney told them to do.

Riendeau stated that Kristin McKeon had confronted him indicating that he had conducted the meeting improperly. His response was that he would like to get it right this time. Riendeau added that she asked him if he is going to continue do things wrong and he replied that he will continue doing things wrong until he knows how to do them right. He also added that that was the Ex Parte communication that he had with Kristin McKeon in the hallway. Riendeau continued by saying that if the meetings have been noncompliant, he will make them compliant and that is why alternates are going to sit in the back row at every meeting until they are called up as a designated member, if that's the majority vote. Riendeau stated that statutes support the way that the Rules of Procedure are written. He wants the procedures to be in place and done properly.

Perkowski asked if their attorney is being paid. Riendeau answered he did not know. Cay stated that the board doesn't want to talk about the case at this meeting.

Cay stated that he would like to have the board implement the spirit and intent into the document (Rules of Procedure). Cay suggested that the Rules of Procedure, that have been signed, be presented to an attorney and to show the attorney the document written by Attorney Fillmore and inquire whether any of the Fillmore material should be incorporated into the current Rules of Procedure and whether this is valid law and the best advice in New Hampshire. If counsel feels the materials should be incorporated, Cay would like the counsel to give guidance on the process. When Riendeau asked who pays for the, Larkin replied that the ZBA budget pays because it is procedural and doesn't pertain to an application.

*Cay moved for Riendeau to contact counsel to present the Rules of Procedure and the document written by Attorney Christine Fillmore and tell them what the ZBA has discussed. Tell counsel that the board is looking at the document as a credible valid representation of what is required in New Hampshire legally that the board needs to comply with. If that is true, the ZBA would like to incorporate the substance of it into our Rules of Procedure. Would they validate it, if that's the case. Would they advise the board as to how to incorporate that into the Rules of Procedure by having counsel rewrite the Rules of Procedure by incorporating the document.*

The vote was called: Evans – No; Cay – Yes; Perkowski – Yes; Davenport – Yes, Riendeau – Yes

The motion passed by majority.

**Adjourn:** Perkowski made a motion to adjourn the meeting. Evans seconded the motion, which carried unanimously. The meeting adjourned at 10:55 p.m.

Respectfully submitted,  
Patricia Grace  
Secretary

Approved

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Burt Riendeau  
Chairman, Zoning Board of Adjustment

Date\_\_\_\_\_