

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

**MINUTES
March 17, 2015**

Present: Chairman Burt Riendeau, Lucky Evans, Alternates Kristin McKeon and Roland Vollbehr.

Absent: Harriet Davenport, Renee Fales and John Perkowski
Also in attendance were Selectmen Jon McKeon and Jim Larkin.

The Zoning Board of Adjustment met at the Chesterfield Town Office on March 17, 2015. Riendeau opened the meeting at 7:37 p.m. and explained the process of the meeting.

1. **Robert J. Kasper, Jr., Attorney for Beach Revocable Trust** requests a Special Exception from Article II, Section 207.4c and RSA 674:41 I (d) shared driveway for Lots 8-A-4 and 8-A-6 off Forest Avenue. The property is located at Forest Avenue, Spofford, NH 03462 (Map 8 Lot A4 and Map 8 Lot A6) Rural/Agricultural District.

Present: Attorney Robert J. Kasper, Jr., David Mann, surveyor and Bruce Beach, property owner. Voting on this application will be Evans, McKeon, Riendeau and Vollbehr.

Riendeau noted that there are only four members present, out of five members required for a full board, and the applicant has the option of proceeding without a full board or continuing the application to the next meeting and the decision would take three affirmative votes to pass the application request. Kasper stated that he will move forward with four board members present on this application.

Kasper stated that he wanted a detailed report of how the decision for his application was reached at the January 13, 2015 ZBA meeting. Kasper received a decision approximately January 23 of a decision written on January 21 stating that it was for lack of frontage. He added that the draft minutes of the meeting had more information on RSA 674, which wasn't included on the decision and he felt that he didn't have much of a basis to appeal. Kasper has asked for a special exception for reconsideration under Chesterfield's Zoning section 207.4C and RSA 674:41.I (d). Riendeau stated that the application is asking for reconsideration of the Zoning board's decision made at the January 13, 2015 meeting. (The written decision was signed January 20, 2015.) Riendeau told Kasper that he had 30 days to file an appeal for the decision, which wasn't done within that 30 day period and the duration for that decision had passed.

Riendeau asked Kasper if he wanted to proceed on the reconsideration on the rehearing, based on the decision of the road agent. He added that it's the applicant's obligation to request a copy of draft meeting minutes. He added that the decision and draft meeting minutes were completed within five business days. The current application was received in the Town Office on February 17, 2015 and January 15, 2015 draft meeting minutes were available to the public on January 20, with the office being closed on Friday, January 17 and a holiday on January 19.

McKeon moved to deny the request for rehearing of the Zoning Board's decision being decided on January 13th and issued on January 20th based on the Town Office having received the application to be reheard after the thirty (30) day deadline. Vollbehr seconded the motion, which passed unanimously.

Riendeau stated that the second part of the request is for a Special Exception under 207.4C or RSA 674:41 I (D). Riendeau stated that the applicant had two options from the decision to either approach the Board of Selectmen or to get an Exception under RSA 674:41 and an Exception is different than a Special Exception. He added that 207.4C is not a Special Exception.

Kasper noted that he was applying for an Exception under RSA 674. He stated that the applicant has two lots that meet all the requirements, one property already has a house and a barn on it and the other lot is undeveloped. Forest Ave. is a town maintained road that gives access to the lot, with an existing road coming off Forest Ave. onto Lot 8-A-4, direct access over Route 9 is not allowed Lot 8-A-4 and if the applicant were to apply for a building permit for Lot 8-A-4, it has existing frontage on Forest Ave., which is a town maintained road and it has approximately 64 feet of road frontage on that road. He added that there would be a lot more frontage, but Glebe Road Extension was given up in 1983 and the applicant's property frontage was in excess of 400 feet and reduced to 64 feet. The applicant is requesting a shared driveway across at Lot 8-A-4 that will also access to Lot 8-A-6. He noted that these lots meet the criteria of 207.4C and the applicant will have deed access agreements on both lots. Kasper stated that the applicant is requesting that he be allowed to use the existing road as his driveway.

John Koopmann provided a copy of the Notice of Decision for a Motion of Reconsideration dated November 1, 2005 from the town of Chesterfield's decision of October 11, 2005 to deny the previous property owner. The owner had an access point onto Route 9. Koopmann suggested that the ZBA review the 2005 file before making any decisions on this application. He added that boundary lines and a direct access point were the issues in ZBA decision of 2005. Koopmann offered to bring his file to the ZBA of the 2005 Superior Court case. Kasper stated that the 2005 case was based on insufficient facts to determine the boundaries. This application provides the information by the survey completed in September 2014. David Mann stated that Fijol, the previous property owner, had access to Forest Ave. and that portion of Forest Ave. was never discontinued. He added that there was a discontinuance of Forest Ave. from Route 9 to Sugar Maple Lane at Town Meeting and somehow it was interpreted that Forest Ave. was discontinued all the way through. He continued to say that west of Enchanted Bakery is now Sugar Maple Lane and going in the opposite direction from the bakery is now Glebe Road. The Glebe Road Extension was discontinued up to the old Route 9.

Jon McKeon noted that RSA 674:41 may be a Planning Board issue.

Koopmann stated that the owners have access from Forest Ave. and the emergency access cannot be denied.

Kasper stated that the applicant wanted a driveway permit, which wasn't issued, so now we go to II which is the Special Exception, related to an existing or proposed street. The applicant is permanently applying for a permanent road, street or driveway. McKeon asked if a driveway

permit approved, is it expected that there would be plans for building a house. Riendeau replied that, even though the applicant says they are not, then why would a driveway permit be requested. McKeon noted that the road agent would need to give the driveway permit and he would need plans for the requested driveway. Kasper stated that it would bring the two lots more in conformance with the Zoning Ordinance, with one driveway shared by two lots and the other driveway shared by the other two lots. Riendeau stated that the applicant now has access to Route 9 for all four lots. Kasper replied that a road would need to be built for Lot 8-A-4. Riendeau added that the State left the required 400 feet of road frontage and they left an access point. Mann stated that the State did not take away the other access point and there was no limitation in any of the documentation that would limit them with respect to any other access that they might have to only coming in through that Route 9 access. Riendeau replied that with all the other regulations that are required and they don't have the 400 feet of road frontage on Forest Ave. Mann said that the owners did have enough road frontage until a couple years later, when the town discontinued Glebe Road Extension that they didn't have the frontage. Riendeau responded that the owners should have used the appeal process. Mann answered that no one tried to prevent them from using that access until 2004 when Fijol owned the property. McKeon stated that a point of access does not guarantee a driveway permit.

Kasper stated that the decision that was made in April of 2005 was that there wasn't enough evidence from this board to make a determination as to whether there was enough frontage. He added that that was what was appealed to the court. The court sustained the finding of the board because not enough evidence to establish as to whether there was enough frontage on Forest Ave. and new evidence cannot be presented when they go to court. The Fijols didn't have enough desire to move forward at that point. He added that that decision should have no bearing on the evidence that was presented to you over the past five months. Koopmann stated that the Fijols had surveys contracted by SVE Associates, had three sets of attorneys were used and he felt that the work was done professionally and thoroughly.

McKeon asked if there is a distance regulation for a driveway and the response was, "no". McKeon stated that the application wasn't asking for a side setback, but is asking for a drive through Lot 4 and connect with the old driveway to Lot 6. Kasper replied that the driveway would be used for his house entrance, put his mailbox at the Forest Ave. entrance and have his address as Forest Ave.

James Larkin asked if there was a request for the two upper lots to share the Forest Ave. as a means and cut off Route 9 entrance. Kasper answered that it is a common ownership by Mr. Beach and the land is undeveloped.

Vollbehr stated that Lot 4 has to have access to Route 9. Kasper noted that access goes onto Route 9 and the current owner has a shared driveway coming off four lots. He added that the application is looking to get a deeded driveway to Lots A-4 and A-6 to meet the Zoning Ordinance.

Evans moved to close the public portion. The motion was seconded by McKeon, which carried unanimously.

Discussion: Riendeau stated that this is a complicated case and situation. He added that, based upon what was presented and what the board knows, the board could not make a decision under RSA 674:41 and he feels that counsel is needed to make a motion that would be clear and concise. He feels that 207.4c doesn't apply, based on what the conclusion on Bart's decision to not approving the driveway permit and based on the town counsel's comments in that the applicant had two options. The applicant could either go to the Selectboard or come back to the ZBA under RSA 674:41 for an Exception.

McKeon stated that the issue is whether the ZBA would grant the application Exception to the access point for a driveway for one or more lots. She added that the State gave the owners one access to all four lots, which was done before the two lot driveway rule was in place, so that ruling still applies to all four lots as a grandfathered access to Route 9. The applicant is asking for a driveway and not an opening for access. Evans stated that it makes sense to consider the safer less traveled Forest Ave. for access, rather than the Route 9 access, set forth for the spirit and intent. Riendeau stated that the applicant doesn't have enough road frontage on Forest Ave. and there has not been a variance requested on the road frontage. Riendeau asked, if this were a variance request, what would be the hardship that Lot 6 needs to go down to Forest Ave. RSA 674:41 needs to be researched further. Riendeau stated that this becomes a private road and not a driveway, considering the length and how the applicant wants to utilize it. As soon as it becomes a driveway, it becomes totally different than an access.

Riendeau stated that the current buyer knew what he was buying when he bought it, with one access onto Route 9 for all of those lots. Variances aren't just handed out because someone asks for one. He added that he doesn't understand what RSA 674:41 gives the applicant and the board needs to evaluate this further.

McKeon stated that it appears that the applicant is requesting that they want to pass through one piece of property so that they can access their other through Forest Ave. She added could request a boundary line adjustment to be done.

Vollbehr stated that private roads are part of a plan and specifications would be required and a driveway would require 400 feet of road frontage. The entrance would have to be positioned to be sure that it was safe. The access has to be controlled with visibility to the entrance for a development and it has to be owned on both sides of the entrance.

McKeon stated she wasn't sure where the hardship comes in.

Vollbehr noted that it is apparent that safety issues do not apply to all four lots because two of the lots would be accessing Route 9.

McKeon wants to table this application and get information on how it pertains to the ZBA on the driveway issue and how this would be used as a private road and how does this relate as to what the ZBA is being asked to do. Riendeau stated that something needs to happen before getting to RSA 674:41 II. One option was for the applicant to go to the Board of Selectmen and that board could have made a decision which way to go. At that point the applicant could have appealed the decision and come back to the ZBA with number RSA 674:41 II.

McKeon moved to table this application to get an explanation from counsel and how this is a driveway on a discontinued road and how RSA 674:41 applies to the ZBA. The motion was seconded by Vollbehr, which pass unanimously.

Review December 9, 2014 and January 13, 2015 Meeting Minutes

Voting on the December 9 meeting minutes were Evans, McKeon and Riendeau.
McKeon moved to accept the meeting minutes of the December 9, 2014. The motion was seconded by Evans, which passed unanimously.

Voting on the January 13 meeting minutes were Evans, McKeon and Riendeau.
Evans moved to accept the meeting minutes, with noted spelling corrections to be made. The motion was seconded by McKeon, which passed unanimously.

Other Business

Riendeau stated that there were changes made in the Rules of Procedure at the January 13th meeting regarding seeking legal advice.

LGC will be contacted to ask how ZBA can obtain legal counsel advice to be distributed to the ZBA members without allowing it to be made public and can counsel's written advice be distributed to the board.

Jim Larkin reported that there will be a Right To Know Law seminar held by LGC Academy.

Copies will be available of the Beach driveway application drawings from the road agent for the next meeting, if there were drawings done.

The next meeting will be scheduled for April 14, 2015.

Adjourn: Evans made a motion to adjourn the meeting. Vollbehr seconded the motion, which carried unanimously. The meeting adjourned at 10:37 p.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date_____