

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

**MINUTES
July 14, 2015**

Present: Chairman Burt Riendeau, Harriet Davenport, John Perkowski and Alternates Kristin McKeon and Roland Vollbehrr

Absent: Lucky Evans and Renee Fales

Also in attendance was Jim Larkin, Selectboard representative and Chet Greenwood, Building Inspector and Code Enforcement Officer.

The Zoning Board of Adjustment met at the Chesterfield Town Office on July 14, 2015. Riendeau opened the meeting at 7:48 p.m. and explained the process of the meeting.

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.
(Continued from June 9, 2015)

Present: Attorney Robert J. Kasper, Jr. and Bruce Beach

There were no abutters present for this property.

Riendeau explained the history of this case by starting with an administrative appeal of the denial for a driveway permit. The applicant applied for this Special Exception in March of 2015.

Kasper presented a letter, dated July 13, 2015, to the board advising them that his clients, Bruce K. Beach and Dawn H. Beach, expressed their disappointment that the ZBA voted not to allow Kasper to contact the board's attorney, H. Bernard Waugh, to discuss this matter, despite their willingness to pay for any costs incurred. Kasper stated that the March meeting minutes noted that the application was filed on February 17 but did not note that the offices were closed on February 13 and 16.

Kasper noted that he feels that the ordinance authorizes an exception under Section 207.4c, in that shared driveways are allowed for a maximum of two conforming lots. Such access and maintenance agreements shall be deeded on both lots. Shared driveways may cross side setbacks. He added that Lots 8 A4 and 8 A6 are conforming lots and the driveway is being proposed to cross the side setback of Lot 8 A4 with the over 400 feet of frontage for this lot is on Route 9. Kasper noted that the existing access point off Forest Avenue used to have more than 400 feet when Glebe Road extension was there but Glebe Road extension was discontinued when the new Route 9 was put in. He added that there is now 64 feet on Forest Avenue that has been an existing access point off the old Route 9. Kasper stated, to his knowledge, there have been no objections filed by any of the abutters during the two previous zoning hearings on this matter. He added that there are presently four conforming lots, with two using an access point at Forest Avenue and two lots will continue to use the existing Route 9 access.

Kasper stated that the zoning ordinance does not indicate in the definition that driveways shall have to enter over the frontage. He added it is indicated that, in the case of shared driveways, the driveways may cross side setbacks and there is nothing in the ordinance that indicates that there couldn't be shared driveways for both lots.

Under 674:41 Kasper noted that both lots meet the requirements of frontage and coverage and have over 400 feet of frontage on Route 9. Lot 8 A6 has an existing house and barn and over 40 acres of land. Lot 8 A4 with over 7 acres has no existing buildings and no applications have been filed building permits. Kasper noted that Forest Avenue is a town maintained road and is a street giving access to the lot with an existing access point coming off Forest Avenue onto Lot 8 A4 and if a building permit was applied for, Kasper feels that a driveway permit would have to be accepted, with a street giving access.

John Koopmann stated that there is an existing file of 2004 & 2005 in the town offices of the access point for this property where the applicant wants to put in a driveway. The files were provided by the administrative assistant to Koopmann for his review at the town offices. He added that this access point was only considered as being an emergency access point. Koopmann noted that this access point is completely overgrown and there is no gate at that location. Koopmann also stated that an abutter did come to one of the prior Beach meetings with his concerns.

Perkowski asked if there would be a blockage of the road so that the two lots having access off Route 9 would not use the Forest Avenue exit. Riendeau noted that there is no intention of giving up the access off Route 9 that is currently for Lot 8 A6.

Bruce Beach noted that at no point in time, being tracked with a licensed surveyor was the owner's access to Forest Avenue occluded by any other ownership. Riendeau noted that the only dispute was the distance in the survey and not by any block of other properties.

Kasper noted that his applicant needs to have a shared driveway because the driveway is crossing two lots, where one driveway is currently serving four lots. Riendeau stated that Lot 8 A6 would not access Route 9, as it is currently and it would only be used through a shared driveway through Lot 8 A4. Kasper replied that this is what his applicant is trying to have done. He added that his mail can't be delivered in the winter on Route 9 because the snow buildup and the post office won't allow mailbox delivery on Forest Avenue without a driveway. Beach added that it is too much of a left turn off the Route 9 driveway for semi trucks and possibly fire trucks.

A motion was made by Perkowski to close the public portion. The motion was seconded by McKeon, which passed unanimously.

Discussion: Riendeau noted that this case has been a very complicated and detailed application and the board has received guidance from town counsel and has not just been board members opinions but is board members interpretation of the current zoning ordinances and to maintain the intent through the decision process. Riendeau stated that the application for a special exception for 207.4c for a shared driveway, where shared driveways are not allowed by special exception. There is no provision for a special exception for 207.4c. That is an ordinance

requirement applicable to all lots in the district. Riendeau noted that our ordinances are not specific to the fact that our driveway access has to come off of the road frontage. Board decisions are made by determinations based on the assumption of the spirit and intent of that ordinance is to have access coming off the frontage of a lot. The shared driveway ordinance came in as of two lots had the right amount of road frontage but the access to one lot wasn't contiguous for a driveway because of topography to be able to get to that lot off a lot beside it. A shared driveway could go into that driveway, cross that side setback and the side setback of the second lot. That is where the (plural) side setbacks come from. That was the Planning Board's solution for shared driveways. Riendeau noted that it is his belief that the shared driveway would come off an access point from another road, go the length of another lot and go into the other side setback of the other lot, basically crossing three side setbacks. Riendeau stated that the special exception does not apply. Riendeau instructed the board members to separate the decision of 207.4c and the second application referring to RSA 674:41 I (d).

Riendeau stated that when the limited access was put through on Route 9, the State allowed access for those four lots through that one access point on to Route 9. At that point, Glebe Road went out to Route 9 and the property had 400 ft of road frontage on the Glebe Road Extension at that time. There has been no documentation submitted to the ZBA indicating an appeal from the property owner of the road change. Riendeau noted that the applicant did not apply for a variance to have a shared driveway with an access point coming off Forest Avenue.

Perkowski moved to deny the application for a Special Exception for Article II Section 207.4c because Special Exceptions do not apply to 207.4c. The motion was seconded by McKeon, which passed unanimously.

McKeon asked the difference between a shared driveway and a right-of-way. Vollbehr stated that a right-of-way should be recorded into a deed. Vollbehr added that an agreement with the State should be recorded in an agreement for all four lots at the Registry of Deeds. Attorney Waugh replied that if it is a shared driveway that goes all the way across one lot into another lot, it is a right-of-way and qualifies as a shared driveway. Waugh noted that RSA 674:41 has a category of four requirements that the lot needs to have access which is: 1) is it a maintained road; 2) has the road been approved by the Planning Board in some manner; 3) is it a Class VI road, which needs to go before the selectmen for a policy of allowing a Class VI; 4) a private road with the same proviso. Thus, calling it a right-of-way doesn't help decide which category it goes in.

Riendeau stated that an application shouldn't come to the ZBA for a 674:41 unless the applicant should go to the select board and the select board, through counsel and the Planning Board would agree on how the town is going to handle private roads. The applicant hasn't gone to the select board to propose 674:41 to either be accepted or denied. If the select board or the Planning Board deny the access for a private road, then the applicant can come to the ZBA to ask for a special exception under 674:41, based on that decision. Riendeau noted that Lot 8 A6 already has access onto Route 9 and grandfathering access is causing confusion on the shared driveway issue.

Riendeau noted that the applicant needs to go for a Selectboard/Planning Board decision. They may decide to allow those private roads for access. It is only if those decisions are denied, at that

level, under an Exception is applied for with the ZBA. The applicant has not applied for a private road in this application.

Perkowski moved to deny the application as presented of RSA 674:41 I(d) without prejudice because it should first apply to the Select Board before coming to the Zoning Board of Adjustment. The motion was seconded by McKeon.

Discussion: Riendeau said that it's not just the Select Board. Davenport added that it should be reviewed by the Planning Board and comments. Riendeau noted that once that process has gone through and a decision is made and it is still not satisfactory to the applicant, then their recourse would be an Exception to the Zoning Board under 674:41. Riendeau stated that he wants this to be clear that this is a joint review for the town to decide on the private roadway.

Perkowski moved to amend his motion to deny the application as presented of RSA 674:41 I(d) without prejudice because it should first apply to the Select Board and be reviewed by the Planning Board for comments. The motion was seconded by McKeon.

The vote was called on the amendment.
The motion was approved by unanimous vote on the amendment.

The vote was called for the amended motion.
The amended motion was approved by unanimous vote.

Beach stated that he appreciates the time that the Zoning Board took to work on this application. He added that he would like some direction on moving forward because he has already been to the Select Board. Riendeau noted that this is a very unique case and the Select Board may not have understood the law and what was being asked. Attorney Waugh will contact the Select Board to inform them on what happened at this meeting. Riendeau stated that the original request did not apply to the Select Board and it did not pertain to RSA 674:41 I(d).

Jeff Foster and Lisa Sillanpaa request a Variance from Article II Section 203.4B to permit the building of a residential home. The property is located at 11 Maple Road, Spofford, NH 03462 (Map 11B Lot A17) Residential District.

Foster and Sillanpaa gave a brief history of the how they acquired the property in 2012 consisting of 8.7 acres. There are currently two sheds on the property. Prior to the applicants purchasing the property, Nina Foster received ZBA approval to install a driveway within the 20 feet side setback of the property line on April 10, 2012. The Fosters would like to get approval to build a single family home on the property. The frontage consists of 34.47 feet on Maple Road. The applicant applied for driveway permit on April 2, 2015 which has not been approved by the road agent or the building inspector, as of this date.

A letter of approval for the variance was received at the meeting from abutter Jean D. Sogno.

Mulligan Road runs through this property for about 380 feet and goes through a leach field owned by Chakolas. Riendeau noted that when the Planning Board did a subdivision in 1973 the

intent was 120 feet frontage requirement, which was on Mulligan Road at that time. Vollbehrr stated that Mulligan Road was discontinued when the subdivision was created and the town has been taxing this property as a building lot since the subdivision. Chet Greenwood, Code Enforcement Officer, did not see the property as a conforming lot due to the lack of 120 ft frontage requirement set in 1973.

Joan Cook, abutter on Route 9A, stated that her deed stated that she has deeded access right-of-way on Mulligan Road. Perkowski stated that a deeded right-of-way allows for individuals to pass through the property and it can't be blocked.

Riendeau noted that there was already an access point for the variance of 2012. Foster and Sillanpaa needed an access point to the land in order to purchase the land and there was no discussion of building a house. Greenwood stated that a driveway permit comes before a building permit can be approved. Riendeau stated that the ZBA gave the previous owner driveway permit to have access to the property to get onto the property.

Foster noted that the bank used the tax information to help them get the appraised value to determine the price for the land.

John Sexton, abutter, stated that the road agent had told him that a fire truck training took place on the property where the applicant is looking to build a home. He also feels that the current access point is the safest place to put in a driveway.

A motion was made by Davenport to close the public portion. The motion was seconded by Perkowski, which passed unanimously.

Discussion: Vollbehrr noted that this was an approved plan and the property has been taxed as a building lot since the approved plan. Perkowski added that the Mulligan Road was considered the frontage for this property at the time of the plan approval. Riendeau stated that, if the assumption was on Mulligan Road, wouldn't their access be coming off Mulligan Road. Perkowski replied that would not necessarily be the case. McKeon noted that four plots were created during the subdivision.

Riendeau advised that a motion be made clearly noting how a conclusion is reached by saying you can create building lots with 34 ft. of road frontage. Town rules and regulations state that we need 200 ft. in residential and 400 ft. in rural/agricultural. McKeon stated that a subdivision can be created without frontage. McKeon had asked if the applicant can access the lot from Nina Foster's driveway and the applicant stated that they would have to have the property resurveyed, (referencing ZBA meeting minutes of April 10, 2012.) There was no survey done to see what kind of frontage that they have. Perkowski stated that each lot is treated individually and this lot has been treated as a building lot, the bank considered it a building lot when the loan was approved and the town approved a driveway permit. McKeon asked if a construction loan was given or a bank mortgage to purchase the property.

Perkowski moved to reopen the meeting to the public. The motion was seconded by Vollbehrr, which carried.

Sillanpaa stated that the initial loan from the bank will be changed to a construction loan as soon as the building permit gets approved.

Vollbehr moved to close the public portion of the meeting. The motion was seconded by Davenport, which carried.

Perkowski moved to approve the variance for Jeff Foster and Lisa Sillanpaa from Article II Section 203.4B to permit the building of a residential home located at 11 Maple Road, Spofford, NH being in the Residential District and to waive the requirement for the frontage to allow for access through the frontage that has been granted as a driveway permit on Maple Lane, based on the review of the subdivision that was approved in 1973. It appears, from all outward purposes, that they had used the frontage that was considered the Mulligan Road and by removing that frontage, from the point of view of the Zoning Ordinance, creates a hardship in the land. It appears from information of our tax records, from the subdivision and other personnel testimony that the town has considered it a building lot since it was created in 1973. We have gone though the five points and we feel that substantial justice would be done by approving it.

Criteria for approval:

1. The variance is not contrary to the public interest. **Yes.**
2. The spirit of the ordinance is observed. **Yes.**
3. Substantial justice is done. **Yes.**
4. The values of surrounding properties are not diminished. **Yes.**
5. Literal enforcement of the ordinance would result in unnecessary hardship.
Because of 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.
The hardship is in the land with the frontage issue.
 - (b) The proposed use is a reasonable one. **This will not alter the character of the neighborhood.**

The motion was seconded by Davenport.

The vote was called. Yes – 4; No – 1
The motion carried by majority vote.

Rules of Procedure

The following motion was made at the meeting of January 13, 2015:

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.

The ZBA Rules of Procedure states under XVII Amendments:

These Rules of Procedure may be amended by a majority vote of the members of the Board provided that such amendment is read at two (2) consecutive meetings preceding the meeting at which the vote is to be taken.

McKeon moved to place the amendment under IV Officers and labeled item as "C". The motion was seconded by Perkowski, which carried.

Riendeau requested that the vote be taken at the next board meeting to amend the Rules of Procedure.

Update Application Fees

Grace noted that the U.S. postal service fees have increased as of May 31, 2015. The board discussed increasing the application and certified abutters fees. The board noted that they will use the Keene Sentinel only for their newspaper posting of the ZBA hearings.

Vollbehr moved to change the applicant's fee requirements of \$55.00 per application fee and \$9.00 fee for certified postage for each abutter. The applicant must also provide eight (8) copies of the application documents at the time of submitting the application. The motion was seconded by Davenport which passed unanimously.

Review Meeting Minutes

- **June 9, 2015** – *Davenport moved to approve the meeting minutes of the June 9th meeting as presented. Perkowski seconded the motion which passed unanimously.*

Other Business

The next meeting will be scheduled for August 11, 2015.

Adjourn: *Perkowski made a motion to adjourn the meeting. Vollbehr seconded the motion, which carried unanimously.* The meeting adjourned at 11:00 p.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date _____