

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

**MINUTES
July 12, 2016**

Present: Chairman Burt Riendeau, Harriet Davenport, Lucky Evans, Renee Fales, Kristin McKeon, Alternates Christopher Oot and Roland Vollbehre and Selectboard Representative Norman VanCor.

The Zoning Board of Adjustment met at the Chesterfield Town Office on July 12, 2016. Riendeau opened the meeting at 7:08 p.m. and explained the process of the meeting. Riendeau stated that this is a public meeting and not a public hearing and that no testimony is taken. The board will consider whether the petitioner(s) has/have legal standing for consideration of rehearing.

Evans stated that he feels it is a disservice to the public that the ZBA draft meeting minutes are not posted on the town's website following a decision made at their meetings. It was noted that draft meeting minutes are available to the public if they are requested but the minutes don't get posted to the website until after the board has approved them.

Davenport noted that this hearing should be based on the requests to rehear that have been received, as of this date, will be what the board will review and decide as to whether or not there will be a rehearing (for Lanoue).

The following four applications for rehearing were received at the Chesterfield Selectmen's Office within the 30 days of the decision made at the June 14, 2016 Chesterfield Zoning Board of Adjustment meeting:

- **Norman W. VanCor and John Koopmann** request to rehear the Mark Lanoue Variance from Article II Section 208.2 of the zoning ordinance to permit commercial use to allow for the sales and servicing of vehicles with outside display of the vehicles. The property is located at 1763 Route 9, Spofford, NH 03462 (Map 10A Lot A5) Office/Retail Space/Service District. This application was approved at the June 14, 2016 meeting.
This is not a hearing but deliberation on the request to rehear.

Riendeau noted that this request to rehear appears to have been submitted by citizens of the town and not as representatives of a board decision. Fales stated that the two applicants are not representing a governing body as stated in RSA 677:2. Riendeau stated that the application does not indicate that they are personally affected by the decision made on June 14, thus there seems to be no standing for this request.

Fales moved that the application of Norman VanCor and John Koopmann does not qualify as they do not fulfill the definition for being allowed for the rehearing. They are not abutters and they didn't vote as a governing body and there was no testimony showing standing, in terms of being personally injured by the decision. The motion was seconded by Evans.

Discussion: Riendeau stated that McKeon can't vote on who can vote on whether the applicant has standing when she is one of the applicants. McKeon stated that she may not be able to vote

on her own application but she feels that she can vote on the others. Riendeau stated that McKeon can't vote on the case. McKeon stated that she will step down, if she has to, but feels that an individual has to have submitted an application.

McKeon stated that she will recuse herself because she is one of the applicants that is requesting a rehearing. Riendeau stated that he will replace McKeon with Vollbehr, an alternate to the ZBA, who attended the meeting of June 14.

The vote was called on the motion: *The motion passed unanimously.*

- **Gordon and Jeanne Fuller** request to rehear the Mark Lanoue Variance from Article II Section 208.2 of the zoning ordinance to permit commercial use to allow for the sales and servicing of vehicles with outside display of the vehicles. The property is located at 1763 Route 9, Spofford, NH 03462 (Map 10A Lot A5) Office/Retail Space/Service District. This application was approved at the June 14, 2016 meeting.
This is not a hearing but deliberation on the request to rehear.

Fales noted that the property values were not considered as presented in the original application. It was noted that the Fullers are abutters to the Lanoue property. Evans read the letter dated March 10, 2016 that was sent by Gordon & Jeanne Fuller and received in the Selectmen's Office on March 14, 2016. Copies of the ZBA meeting minutes of March 15, April 12, May 10 (continuance) and draft minutes of June 14 were provided to the board members to determine whether their issues had been addressed.

Riendeau stated that there were no conditions added in the motion on June 14. Fales noted that a limit on the number of cars was not addressed in the decision. Fales also noted that the school bus stop was not discussed and the affect on the diminishing values of the homes was not covered. The intensity of the use will probably increase, Fales noted. Riendeau stated that professional advice and opinions can be presented to the board on studies, i.e. traffic studies or evaluations on properties. He noted that only one of the five points receiving a negative vote will disqualify passing the variance.

Fales stated that when she made the motion (on June 14) she felt that the board was not voting on a variance but that the initial variance of 1992 still stood. Evans noted that there was no initial variance for sales in 1992 but was for a variance for outside storage.

Evans questioned how a car dealership would affect the local residents and what would happen to property values.

Evans moved to accept the application of Gordon and Jeanne Fuller for a rehearing for virtue of the fact that they are abutters. Davenport seconded the motion.

Vote was called: *The motion passed unanimously.*

McKeon stated that she is going to unrecuse herself for this meeting. Everyone that made the decision at the last meeting and she felt that she has as much right to be in the discussion as everyone else. She notes that she is not making any monetary gain by this and is not making any gain for herself. She felt that she was pressured into recusing herself earlier.

Riendeau stated that any reconsideration is based from any new information that was not considered during the original hearing and if the board decides that they weren't clear in their decision and they want to clean up their record for the court, then you can also grant the rehearing, based on that. He stated that you can't be an applicant and sit on the board to vote. McKeon noted that she is not applying for anything but is asking for a rehearing. Riendeau stated that McKeon has a right to recuse or not recuse herself and she choose not to and now she chooses not to recuse herself. McKeon stated that she felt that the board made some incredible incorrect legal decisions at the June 12 meeting and has asked for a rehearing and she's asking for a rehearing on the application. Riendeau asked Vollbehr if he would be willing to step down and Vollbehr answered that he would.

Riendeau moved that the board asked that McKeon recuse herself from the decision, based on the fact that she has also applied as an applicant on a rehearing on this case. Fales seconded the motion.

Discussion: Burt noted that he would not allow McKeon for further discussion. Evans stated that Riendeau has noted that, by having a rehearing, the board may be able to tidy up things that were done at the last meeting. Evans added that McKeon's thought was, to have a rehearing would require that it be in writing and that should tidy up the previous decision. Riendeau noted that McKeon could have said that as a board member and not as an applicant for a request for a rehearing. McKeon stated that she said that at the last meeting and she thought that they were going to vote no (on the motion) and start over. At that meeting McKeon spoke of the five criteria needing rework and the discussion indicated that she could put all the pieces in or the board could just vote no and start over. As it turned out, three people voted yes and it passed. She noted that the motion shouldn't stand up to anything and hope that Riendeau had read it. Riendeau stated that it hasn't been discussed as a board. Riendeau noted that there is a motion on the table and it is for the record but the vote can't force her to recuse herself.

Vote was called: Evans – No; McKeon – No; Fales – Yes; Davenport – Yes; Riendeau – Yes
The motion passed by majority vote. McKeon made the decision to not recuse herself.

- **Jeffrey Scott** request to rehear the Mark Lanoue Variance from Article II Section 208.2 of the zoning ordinance to permit commercial use to allow for the sales and servicing of vehicles with outside display of the vehicles. The property is located at 1763 Route 9, Spofford, NH 03462 (Map 10A Lot A5) Office/Retail Space/Service District. This application was approved at the June 14, 2016 meeting.
This is not a hearing but deliberation on the request to rehear.

Riendeau noted that Scott's application was submitted as a citizen and not an abutter. He stated that Scott letter appears that he is not personally affected by the decision of the ZBA. Riendeau read aloud RSA 676:5 explaining how it affects standing for a rehearing and Riendeau stated that Scott is not a party to the action, thus should not have standing to appeal.

Fales moved that the application of Jeffrey Scott does not have standing to appeal the Mark Lanoue variance, due to the fact that he is not an abutter and he has not been personally injured by this decision. The motion was seconded by McKeon.

Discussion: McKeon noted that Scott may have been questioning whether the decision was procedurally done correctly and whether the board followed law with its procedure. Riendeau asked if Scott has the standing to request reconsideration of the ZBA decision.

The vote was called: The motion passed unanimously.

- **Kristin McKeon** request to rehear the Mark Lanoue Variance from Article II Section 208.2 of the zoning ordinance to permit commercial use to allow for the sales and servicing of vehicles with outside display of the vehicles. The property is located at 1763 Route 9, Spofford, NH 03462 (Map 10A Lot A5) Office/Retail Space/Service District. This application was approved at the June 14, 2016 meeting.
This is not a hearing but deliberation on the request to rehear.

Fales moved that McKeon is an action to the party, therefore her application should give her standing as a petitioner for her request to rehear the variance. Davenport seconded the motion.

Discussion: Riendeau asked McKeon not to speak during the discussion as to whether she has standing for the rehearing. Fales stated that McKeon's request covers hardship and under RSA 677:2 stated that McKeon should have standing. Riendeau noted that when she (McKeon) voted on the variance that she prejudiced herself on sitting on the board to vote, as opposed to sitting on the board as an applicant. Riendeau will contact legal counsel for the procedure. Riendeau stated that he felt McKeon should have stepped down from the original hearing. McKeon noted that she is a party to the application for a request for appeal because of mistakes that were made. Riendeau stated that if there were no abutters asking for reconsideration and a board member does, then we'd have to go down that road.

Under **Grounds for a Rehearing**, in Procedural Basics for Planning and Zoning Boards, of 2012 Municipal Law Lecture Series, Riendeau read to the board, "The purpose of a request for rehearing is to afford the ZBA the opportunity to correct its own mistakes. Thus, a ZBA can bring a matter forward for reconsideration upon the request of a member of the board during the thirty day period to accept motions for rehearing."

The vote was called: Fales – Yes; Davenport – Yes; Evans – Yes; McKeon – Yes; Riendeau – did not vote.

The motion passed by majority vote.

Evans asked that, if there is a rehearing, will there be public testimony. The board members felt that the hearing should start all over again from the beginning.

Davenport moved to grant the request for the rehearing of the Mark Lanoue's variance. Evans seconded the motion. The motion passed unanimously.

Discussion:

Evans requested to have the ZBA decisions posted on the town's website for the purpose of residents to be aware of a 30-day timeframe to appeal a decision. Riendeau requested that Evans put his request in writing to be discussed during a regular ZBA meeting for a board to vote to change the ZBA Rules of Procedure.

Code Enforcement Officer Frank Richter left a note to request that the ZBA familiarize themselves with RSA 677:3 and RSA 676:6.

Riendeau stated that he will get assistance from legal counsel on how the board should proceed with McKeon for not recusing herself for the rehearing. Riendeau will provide the questions and answers in writing for the ZBA members.

Fales moved to allow Riendeau to seek legal counsel on whether Kristin (McKeon) should sit on the decision for a rehearing on Lanoue, a rehearing that she is part of the request for a rehearing. Vollbehr seconded the motion. The motion passed unanimously.

Review Meeting Minutes

- **June 14, 2016**

McKeon stated that Attorney Bonnett did speak several times during the closed session to the public. Davenport noted that she didn't give him permission or authority to speak but he did speak. She felt that she was not firm enough in shutting him down. McKeon noted that he (Bonnett) took it upon himself to speak and provide information to the board during the closed session of the public and at one time he interrupted the board during their discussion. Davenport noted that he (Bonnett) rudely interrupted several times but he was not given permission, from the chair, to speak. Riendeau requested that the secretary go back to the recorded tape and insert when Bonnett spoke without permission.

Riendeau requested to change the "closed session" to "closed to the public session" on page one in the first paragraph. Davenport explained that the board reviewed materials from legal counsel that was not discussed during the meeting. Davenport noted that she asked the secretary to research materials from the archives during the meeting to answer a question that was asked during the meeting. Fales stated that if that request wasn't made, the hearing would have had to be postponed for the applicant to get that information. McKeon stated that that was what the applicant should have had to do. Riendeau added that the ZBA is only supposed to take the testimony that is given to the ZBA by the applicant.

Jeff Scott noted that Attorney Bonnett spoke several times, giving testimony and correcting a date during closed to the public session and spoke, at one point for over three minutes and 40 seconds and spoke another minute and a half another time. Scott stated that perception is a lot and the audience could hear evidence that Bonnett was giving.

Next Meeting Schedule – August 9, 2016

Adjourn: *Fales made a motion to adjourn the meeting. McKeon seconded the motion, which passed unanimously. The meeting adjourned at 9:10 p.m.*

Respectfully submitted,
Patricia Grace, Secretary

Approved

Burt Riendeau , Chairman

Date