

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

**MEETING MINUTES
JUNE 13, 2017**

Present: Chairman Burt Riendeau, Harriet Davenport, Lucky Evans, Chris Oot, Alternates Roland Vollbehr and Lance Zinn and Selectboard Representative Norman VanCor

Absent: Kristin McKeon

The Zoning Board of Adjustment met at the Chesterfield Town Offices on June 13, 2017. Riendeau opened the meeting at 7:33 p.m. by welcoming everyone and explained the process of the meeting. He noted that there were only four board members present for this meeting. Riendeau appointed Roland Vollbehr in placement of McKeon for this meeting.

Hearings:

- **Tal and Darlene Rancourt, Revocable Trusts** request a Variance from Article II Section 203.6b of the zoning ordinance to permit new smaller replacement house to be uniformly 8 feet from side boundary line where corner of existing house is 2 feet from boundary line. The property is located at 7 Kenyon Road, Spofford, NH 03462 (Map 5D Lot B37) Spofford Lake District.

(Continued from meeting of April 11, 2017, site visit of April 30, 2017 and meeting of May 9, 2017)

SUPPLEMENT TO THE VARIANCE REQUEST ABOVE:

- **Tal and Darlene Rancourt, Revocable Trusts** request a Variance from Article II Section 203.6b and Article V, Section 503.1 of the zoning ordinance to permit new smaller replacement house to be uniformly 8 feet from side boundary line where corner of existing house is 2 feet from boundary line. The property is located at 7 Kenyon Road, Spofford, NH 03462 (Map 5D Lot B37) Spofford Lake District.

Present: Tal Rancourt and Attorney Thomas Hanna

It was noted at the April 30 site meeting that Section 503.1 was not included on the original application. Riendeau noted that he had a dialog with Hanna after the meeting on the procedural application in that 503.1 should be part of this application.

Hanna stated that there were no plans available for this application at the earlier meetings. The board members requested more detail documentation on the house. Hanna presented each board member with a set of four drawings done by an architect. The four drawings presented were dated June 2, 2017. The drawings included existing and proposed site plan with square footage, cubic footage coverage and proposed bulk encroachment figures of the house, foundation and deck/substructure. Hanna stated that the lot is 19,275 sq. ft. and the allotted building coverage is 1,927 and overall impermeable coverage is 20% which would be 3,854 sq. ft. He noted that the coverage of buildings is 2,913 and this project will reduce that to 1,927 and the impermeable coverage on the lot will not be more than 20%. He added that the total coverage now is 33% and the building coverage is 15% and the applicant will be bringing it down to 10%. Hanna noted that the existing square feet of footprint within the setback area is 307 and the proposed house will be 588. The cement patio and knee wall combination is 525 ft. of encroachments, some of it

encroaching into the front and some encroaching into the side and all of the patio is going to be removed. He noted that none of the deck is in the side setback and 125 ft. is in the side setback in the proposal. He added that the garage is 551 sq. ft. and the proposed is 0 because the garage is being removed and will eliminate violations of three side setbacks. The existing cubic feet in the setback for the house is 4,902 and the garage bulk is 6,825 cu. ft. which will be removed. The cement patio and the knee wall is 6,050 will be eliminated and the deck substructure is currently 0 and 1,140 added. The bulk for the subterranean basement is set separately. The existing house/foundation is 1,550 cu. ft. and the proposed is 5,814 cu. ft. Hanna stated that the foundation should not have anything to do with bulk or volume and that shouldn't create any drainage issues. Hanna added that the total existing setback is 14,327 cu. ft. and the proposed is 20,826 cu. ft. Riendeau stated that the bulk expansion is the living space and with the expansion on the second floor is where the increase bulk came into the conditional living space within the side setback that wasn't there. Hanna stated that a full basement is being requested under the house.

Hanna distributed copies of a one-page aerial view of the Rancourt property showing a buffer of trees between the North Shore beach and the Rancourt property. Rancourt stated that no trees will be removed from his property. Hanna noted that the property has a rain garden with catch basins. The applicant shall provide, to the code enforcement officer, a proposed drainage design by a certified professional with a design of adequacy of the drainage system in order to verify that it will handle runoff from the proposed house, including the roof from the west side of the house. Evans stated that he observed water runoff from the applicant's property on to the town beach. Rancourt stated that the house will have gutters and roof drains to collect roof water into a pipe system from the both north and south sides of the house that will go around the foundation to tie into the existing storm system that is already there. He noted that the current drain system handles the volume. Oot stated that the water runoff from the upper portion of the property wouldn't have the ability to use the 4,000 sq. ft. that is there now to absorb into the ground by infiltration because of the proposed new foundation basement design and suggested that a drainage study be done. Hanna stated that the new driveway and parking area will be considered impermeable and the existing driveway and parking area will be seeded over. Rancourt noted that the new access to the property will become Kenyon Way which goes onto Esty Cove and 200 ft. of existing driveway will be eliminated.

Oot stated that the height on the new structure is 32 ft. 5 inches. Riendeau noted that the second floor encroachment area is 459 sq. ft. He noted that the applicant is requesting a three-season single-story porch, one bedroom, utility room in the rear of the building with a bathroom in his proposal.

Oot stated that he had couldn't see a hardship on the application with the building not being set over more because they wanted to keep the yard area. Oot stated that the house should be shifted over more to mitigate against the setback encroachment volume. Rancourt stated that he wanted to set up for solar activity and that property line fit to allow for the best sun capture. Rancourt noted that the elevation on the north end of the house will be about the same as the town beach property. The creation of the swale between the house and the property line will be higher than the existing elevation. Rancourt stated that there will not be any gables on the roof facing the town beach and the chimney is 15 ft. from the property line and the proposed roof is 3 ft. above that chimney.

Hanna stated that the applicant is willing to move the house over to the East 10 ft. more feet from where it is now. Rancourt stated that that would make about 2,000 cu. ft. of volume for each foot that is moved, if the basement space is included.

Pam Walton stated that there will be increased amount of water onto the lot caused from the cutting of trees from across the road and another additional area has been opened up from the garage being built on the lot above this property. Walton has asked that conditions be placed on this variance, if the board approves it. She suggested that the garage be removed, as the applicant has stated that it would be. Norm VanCor stated that he felt that this is not a hardship application and reminded the board that the side setback ordinance is 20 ft. Barbara Girs also stated that there have been approvals on variances that have questionable hardships and that a denial of this application does not create hardship.

Evans moved to close the public portion. Davenport seconded the motion, which passed unanimously.

Discussion: The board acknowledged the receipt of a letter written by an abutter (Stephen Peterson) dated June 13. Riendeau noted that 503.1 pertains to expansion, both vertically and horizontally for the nonconforming expansion of the lot. Vollbehr stated that the new addition will allow more permeable coverage on the lot and that the applicant is willing to produce a positive drainage plan. Davenport stated that the applicant has acknowledged that they will follow the Shoreland Protection Act and building code regulations. Oot noted that the existing septic and drainage systems may need to be moved and he still has concerns with the volume of drainage runoff with a full basement foundation, even though the applicant has stated that he will get a drainage plan done by a professional. No plans have been presented to show how they will minimize the drainage into the lake. He noted that there is very little soil to absorb water on the lakeside of the building. Evans noted that the water table is highest close to the lake. Riendeau noted that there is already a building on a pie shaped lot. Zoning is trying to make the decision less non-conforming than they currently are through the decision process. Oot noted that it would be very expensive if the applicant was required to make the building totally in conformance and to make the drainage and septic system operable. He suggested that moving the building over 10-12 ft. from where it is now would make it more conforming. Evans stated that bringing the building more to the center of the lot and would improve the permeable coverage.

Oot made a motion to approve the applicant's request of moving the footprint of the subject two feet to the east and subject to getting a drainage plan done by a certified landscape planner to mitigate the impact of the drainage at Spofford Lake.

Criteria for approval:

1. The variance is not contrary to the public interest. **Yes.**
2. The spirit of the ordinance is observed. **Yes. The request will not alter the central care of the neighborhood, safety or welfare or otherwise injure public rights.**
3. Substantial justice is done. **Yes. The benefit to the town and the general public is a positive one and imposing stronger conditions on the applicant because of undue cost to them to meet the complete requirements of the ordinance.**
4. The values of surrounding properties are not diminished. **Yes. The building will be smaller and the overall property will be upgraded.**
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. **By enforcing the ordinance would impose a hardship on the applicant because of the conditions of the pie shaped layout of the land combined with the existing investment and infrastructure that exists would limit the ability of the applicant to come in full conformance without imposing an undue hardship.**
- (b) The proposed use is a reasonable one.

The motion was seconded by Davenport.

Riendeau moved to amend the motion to state that the motion is going to be ten (10) feet from the west side boundary to decrease the overall nonconformity of the lot. Vollbehr seconded the motion to the amendment.

The vote was called to the amendment. Davenport - Yes; Evans - Yes; Oot - Yes; Riendeau - Yes; Vollbehr - Yes

The motion to the amendment passed unanimously.

The vote was called to the original motion: Davenport - Yes; Evans - Yes; Oot - Yes; Riendeau - Yes; Vollbehr - Yes

The motion to the motion passed unanimously.

Rehearing Request:

- **Xpress Natural Gas LLC** – Special Exception at 19 Mill Road, W. Chesterfield, NH (Application denied on March 21, 2017)
Present: Aaron MacQueen and Attorney Michael Bentley

Riendeau explained that the board members have reviewed the materials that the applicant has submitted for a Motion for Rehearing and the material should be new information that was not considered at the previous application that can be considered or was not considered to cause the board to reconsider it. If the board feels that they need to have clarification the decision process, it will allow the board time to do it or if there is new evidence that needs to be considered.

Riendeau noted that there will be no hearing but that the board will deliberate to consider whether or not that they will grant a rehearing.

Riendeau appointed Lance Zinn to vote on this request in place of Kristin McKeon. Others voting on this request will be Davenport, Evans, Oot and Riendeau. Zinn had participated at the other meetings for the XNG Special Exception. Riendeau asked the board members if there was any new material or a reason to have a rehearing.

Oot stated that the applicant's Request for Rehearing, Section 8A, states that the property was never abandoned as a truck terminal and that they felt that they should not be required to apply for a special exception pursuant to Section 206.3 of the Ordinance. Oot stated that, since use as a truck terminal requires special exemption and conformance with Section 601.3, it doesn't make sense that the ZBA approval isn't required if the nature and type of traffic would change, in this case due to large tanker trucks at that location.

Oot moved to deny the request by Xpress Natural Gas (XNG) request for a rehearing of the Zoning Board of Adjustment's decision of March 21, 2017, which denied XNG's request for a

Special Exemption from Article II Section 206.3 and 206.1a of the zoning ordinance, for the following reasons:

1. *The applicant failed to demonstrate that the Board's decision was unlawful or unreasonable, nor did the applicant provide any relevant information or evidence that was not available to it at the time of the original application.*
2. *Regarding the applicant's specific assertion that "the historic use of the Property as a truck terminal was never abandoned, and therefore XNG was not required to apply for a special exemption pursuant to Section 206.3 of the Ordinance" (Item 8.A):*
 - a. *The applicant's request (Item 8.B) states that the Board relied on incorrect information regarding the "last use of the Property as a truck terminal being "over two years ago". First, the applicant had the opportunity to provide documentation on the property's use and the relevance of Section 502.4 of the ordinance in its original application but failed to do so. Second, since the Property's use as a truck terminal requires a Special Exemption which requires the Board to consider whether all of the requirements of 601.3 of the Ordinance are met, any change in use regarding the type and volume of traffic, the expected demand on municipal services, and other factors should require Board review and reconsideration.*
3. *Regarding the applicant's argument that "No reasonable person would argue that a potential traffic increase of 0.33% to 0.36% constitutes any impact at all" (Item 8.I):*
 - a. *First, the Board did not reference the volume of traffic in its decision but instead referenced the type of traffic at that particular location as a concern with respect to Section 601.3e and possibly with respect to Section 601.3d of the Ordinance. Second, the applicant had the opportunity to present the documentation on traffic volumes in its original application but failed to do so.*

Zinn seconded the motion.

The vote was called:

Evans - Yes; Oot - Yes; Zinn – Yes; Davenport – No; Riendeau – No

The motion passed by majority vote to deny the request.

Review Meeting Minutes

- **April 11, 2017**

Voting on the minutes: Davenport, Evans, Oot and Vollbehr

Vollbehr moved to approve the minutes of April 11, 2017 as presented. Oot seconded the motion, which passed unanimously.

- **May 9, 2017**

Voting on the minutes: Oot, Riendeau and Zinn

Oot moved to approve the May 9, 2017 meeting minutes as amended. Zinn seconded the motion, which passed unanimously.

Other Business

The next meeting is scheduled for July 11, 2017.

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

Respectfully submitted,
Patricia Grace
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date