

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

**MEETING MINUTES
OCTOBER 10, 2017**

Present: Chairman Burt Riendeau, Harriet Davenport, Kristin McKeon, Chris Oot, Alternates Roland Vollbehr, John Zannotti and Lance Zinn and Selectboard Representative Norman VanCor

Absent: Lucky Evans

The Zoning Board of Adjustment met at the Chesterfield Town Offices on October 10, 2017. Riendeau opened the meeting at 7:30 p.m. by welcoming everyone and explained the process of the meeting. He noted that there were only three board members present for this meeting. Davenport withdrew from voting on the Mattingly continuance because she did not attend the site visit at 6:00 p.m. today or the September 12 meeting. Riendeau appointed Roland Vollbehr in placement of Lucky Evans and Lance Zinn to replace Harriet Davenport for this meeting.

Hearings:

- **Leslie & Jennifer Mattingly** request a Variance from Article II Section 203.6b of the zoning ordinance to permit construction within the front and side setback with a reduction of the nonconforming square foot and volume of the building within the setback areas

AND

Leslie & Jennifer Mattingly request a Variance from Article II Section 203.4c of the zoning ordinance to permit construction of a house that has a lot coverage of 14.3% where 10% is required. The property is located at 10 Silverdale Road, Spofford, NH 03462 (Map 5B Lot B22) Spofford Lake District.

(This hearing is a continuance from the September 12, 2017 meeting.)

Present: David Bergeron - Brickstone Land Use Consultant representative and Leslie & Jennifer Mattingly

Chris Oot asked for the total area and volume in the setbacks currently and what the total area and volume would be in the setbacks if the application is approved.

Bergeron stated that the current house is entirely within the front setback. The front setback line parallels the rear end of the house. All of the decks, sheds and house are in the setbacks totaling approximately 1,900 sq. ft. The volume of that house within the setbacks end up of approximately 15,000 sq. ft. The new house will be pushed back from the front setback will reduce the number to 1,100 sq. ft. and the volume becomes 1,000 cu. ft. with a reduction of about 800 sq. ft. and about 1,000 sq. ft. Bergeron stated that the existing house, deck and sheds, driveways has a current total lot coverage of about 28%, with the house being approximately 9-1/2% and the proposed lot coverage would be slightly less at 17.9% and the house portion goes up to 14.28%. The existing house is 1,200 sq. ft. and the new house would be 1,778 sq. ft. Bergeron noted that the new house would be two stories for the entire house, to include three bedrooms upstairs with a bedroom on the first floor. He stated that the elevation of the new roof would be approximately 33 ft. The porch will be an open porch.

McKeon noted that the sheds are not allowed in the setbacks so they are already in violation so they should not be included in subtracting out. If those are removed, the numbers will go up.

Bergeron provided an approval from the State for a new septic system for four bedrooms. The location of the new septic system will stay where the current system is located and the location has been approved. The new septic will be the clean solution system.

Bergeron provided letters of approval from neighbors Philip Lodewick (12 Silverdale Rd.) and Chas Street (8 Silverdale Rd.).

Zannotti asked if the 10% living space area include the porch and garage of building coverage. Bergeron replied that it is enclosed habitable space and the garage is included. Bergeron noted that the applicant is trying to reduce runoff on a small lot to reduce the numbers below of what they are today. The drainage was calculated at .95 CFS today from the current roof runoff. The applicant is trying to reduce those numbers to .69 CFS runoff putting in depressioning section in the lawn for settlement of water infiltration to prevent the runoff into the lake and using stone infiltration strips all around the house where there are roofs.

Riendeau stated that the town doesn't give any reduction in coverage for the permeable pavers because the installation is the crux of the issues. If they are not installed properly, they don't work as intended, even though it has been calculated into the total impervious coverage from Bergeron. Vollbehr noted that Bergeron had included the house and sheds under impervious coverage of 1,178 sq. ft. instead should be approximately 1,000 sq. ft.

Oot inquired as to the reasons for the expansion of the footprint. Bergeron noted that the bedroom on the first floor was added because Mr. Mattingly was in a car accident and has problems with his legs and has a problem getting up and down stairs because of it. A bathroom with a roll-in shower will be added with that square footage being 20x60 sq. ft. It was noted that a larger kitchen and adding a laundry room was being requested.

McKeon stated that the applicant could keep the same footprint of the existing house and removed the front decks to bring the house more in conformity with the other houses to add on to the rear side of the house, making that a tradeoff for impervious coverage. Leslie Mattingly stated that they had considered building closer to the water but felt that they would decrease the roof runoff to the lake. McKeon stated that the applicant can still be environmentally friendly and be good stewards, regardless of the decision of the application.

Jeff Scott suggested that, if the decision is to allow a new structure to be built, that the consideration of requirements be met to keep the building within the setbacks.

John Koopmann noted that almost every house on the lake has a hardship on the size of the lot. The board needs to set some rules for new building development on the size of lots. The proposed house being proposed is much larger than the current house on this very restrictive lot and the house should be tailored for that situation.

Norman VanCor noted that this application was discussed at the Selectmen's meeting but nothing was signed by them. He is speaking in opposition to this application as an individual. He spoke first to the setback request in that the application states that it's not contrary to the public interest to allow improvements to the property to make it more conforming to the ordinance. VanCor noted that it is the public interest to have a conforming lot; nothing within the setbacks and nothing within the Shoreland Protection zone. Because of the proximity, VanCor asked for Shoreland Protection to weigh in on this request to see what jurisdictional responsibilities that

they might have on the 50 ft. buffer where nothing is allowed. Contrary to the spirit and intent of the ordinance, the application indicated that it is to protect overcrowding to protect the Spofford Lake and to prevent the increase in occupancy on small nonconforming lots. VanCor noted that the applicant is violating that standard and they are not living up to the spirit and intent of the ordinance, which is to not have structures and things within the setback including all of the setbacks. They also say that it's an unnecessary hardship and state that if the house is set further back, it would restrict its view of the lake due to the location with the abutting lots on both sides. VanCor felt that a view is not a consideration for a hardship. VanCor noted that others at this meeting have said that the lot has not changed in size since they bought the lot. The requirement is to build the house to fit the lot. If the desire is to have a bigger house than what will fit on the lot, then a bigger lot should have been purchased. He added that this is not an appropriate use for the size of the lot. He also added that they have stated (on the application) that the request is making it more conforming. VanCor states that there is no "more conforming". It's either nonconforming or conforming and it's still a violation.

VanCor noted that the applicant's statement where the Master Plan talks about explore housing options for our senior citizens and amend ordinances and regulations to accommodate their needs. That is not pertinent to this particular location. The applicant is twisting the housing options for their own benefit to fit into this situation. The applicant talks about handicap requirements. ADA has only one handicap requirement and that is access to the house. If, for some reason, a ramp cannot be installed without being in the setback, then they get a pass. There are no requirements that need to be considered within a residential area regarding an ADA. It appears that the applicant is trying to jam a size 12 foot into a size 7 shoe.

Pam Walton provided dated photos of the applicant's property and the abutting properties of what was on that property.

Bergeron stated that he is trying to make this property more conforming and it is up to the ZBA to determine if that is what the applicant is trying to do. He stated that there is an ADA requirement section in the RSA's that says that you don't have to have to find prove hardship if you want to install an ADA ramp to an ADA structure.

Leslie Mattingly stated that the request will improve the property value and be environmentally better than what is currently there. He noted that the house was built in 1922 and they plan to keep the heritage and they plan to keep it very compatible to what is there. The purpose and intent is to make this property better than what is there now.

Zinn moved to close the public portion. Oot seconded the motion, which passed unanimously.

Discussion:

Riendeau noted that the board has heard what the applicant wants, including the proposed coverage and the existing coverage. Keep in mind the areas that are not affected, which are in the conforming parts of the lot, which is a portion of the proposed house. Some of that area increases in that location of the lot. The garage is going to be in the conforming part of the lot but it does add into the total square footage of lot coverage and still has to be considered because of the expansion in building of the lot coverage. The proposed garage size was 11x22 ft. It was noted that buildings are allowed 10% of the lot. McKeon noted that the impervious surface stays about the same when removing the sheds but the building goes up by 5% and the building comes out of conformance and there is a significant increase of nonconforming. She noted that the

applicant's current coverage is at 9.46% and they would be at 14.25% if their request was granted. Vollbehr stated that the two sheds shouldn't be there and he doesn't think that there is any decrease in impervious coverage. He felt that the decks are going to be replaced by half of a house. McKeon stated that she can't see anything different from this lot than any other lot. Oot stated that there seems to be more requests being made to make these lots more non-conforming. We need to be sure that we make sure that it's a reasonable request, given the hardship of the lot size and the applicant could do a lot better. It is a low impact on the design, landscape and drainage. McKeon noted that the applicant can take the front area off the house and add to the back and they won't have to increase their coverage. She added that this house is just not unique enough that a variance is warranted. Vollbehr stated that the existing porch is a mega porch. Riendeau stated that there are improvements in non-conforming and the garage would be allowed to put a 242 sq. ft. can be put in conforming area but would be increasing that lot coverage. This lot doesn't warrant a garage, if they want to have a house. Vollbehr noted that there would be an increase in the proposed impervious surface and it will drop considerable when the pavers are not included in this application. The 28.06% figure is wrong and that figure goes down to 27% if the sheds are taken out and it would go up from approx. 26.5% to 27.75%. McKeon stated that the building and the impervious area goes up. She added that rebuilding should be done to DES specifications within 50 ft. to include eliminating runoff and should be improved regardless of the ZBA decision because of a new structure. Oot noted that the building size goes to 50% conforming to nonconforming which goes against the spirit and intent of the ordinance. McKeon noted that we need to get away from the impervious coverage and building coverage near the lake.

McKeon moved to deny the variance request from Leslie & Jennifer Mattingly from Article II Section 203.6b of the zoning ordinance to permit construction within the front and side setback with a reduction of the nonconforming square foot and volume of the building within the setback areas.

Criteria for approval:

1. The variance is not contrary to the public interest. **No. The purpose of the ordinance is not to overdevelop properties, especially in the Lake District and infringing on the lake, adding more stress to the lake. It would continue to put stress on the lake and overdevelop the property. In addition, the character of the lake would tend to have the look of other cottages and whether they have been modified to become year round. This house would be a different style and it would be set off from the rest of the houses and would not necessarily fit in with the present character of Silverdale Road neighborhood.**
2. The spirit of the ordinance is observed. **No. The ordinance was put in to decrease overdevelopment of the lots by continuing to go into the setbacks. The proposal does not conform to the ordinance.**
3. Substantial justice is done. **No. The property is able to be used and it is being used now as a building lot and it can continue to be used without the variance.**
4. The values of surrounding properties are not diminished. **Yes. It would not be affected by the proposal.**
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. **All lots in the area are similar. There is no single attribute that makes this property distinct from other properties in the area. This property can be reasonably used in conformance with the ordinance.**
- (b) The proposed use is a reasonable one. **No. It can be done without affecting the setbacks, the way it does at present.**

Alternatively, unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance.

All of the other properties are approximately the same size and are under the same conditions; they are all narrow and long and therefore, there is no distinguishing characteristic that would keep this property from being used in conformance with the present ordinance.

The motion was seconded by Oot.

The vote was called. McKeon: Yes; Oot: Yes; Vollbehr – Yes; Zinn – Yes; Riendeau – Yes

The motion passed by unanimous vote.

Vollbehr moved to deny the variance request from Leslie & Jennifer Mattingly from Article II Section 203.4c of the zoning ordinance to permit construction of a house that has a lot coverage of 14.3% where 10% is required.

Criteria for approval:

1. The variance is not contrary to the public interest. **Yes. It increases the permeable percentage of percentage of impermeable coverage. The house is presently under 10% to the future planned dwelling which will be considerably over the 10% limit of our Zoning Ordinance.**
2. The spirit of the ordinance is observed. **No. It is contrary to the spirit and intent of the ordinance because it increases the percentage of impermeable coverage on the lot.**
3. Substantial justice is done. **No. It is going to be more noncompliant to the town's Zoning Ordinance with regard to impermeable coverage.**
4. The values of surrounding properties are not diminished. **Yes. It is going to be an improvement of the lot.**
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 literal enforcement would not result in unnecessary hardship because the special conditions of the property that distinguish from other properties in the area are none. All of the other properties seem to be the same and have

the same hardships. There is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of that provision to the property.

- b) The proposed use is a reasonable one. **No. It does increase the impervious coverage of the lot beyond what zoning does provide and what presently exists.**

Alternatively, unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance.

The property can be reasonably be used in strict conformance with the ordinance.

The motion was seconded by McKeon.

McKeon moved to amend that there is a huge negative impact on the living coverage. It went from below (at 9%) the requirement coverage of the ordinance to significantly above (at 14.3%) of the allowable building coverage and the ordinance requires no more than 10%.

Oot seconded the amendment to the motion.

The vote was called for the amendment. McKeon: Yes; Oot: Yes; Vollbehr – Yes; Zinn – Yes; Riendeau – Yes

The motion passed by unanimous vote.

The vote was called for the motion. McKeon: Yes; Oot: Yes; Vollbehr – Yes; Zinn – Yes; Riendeau – Yes

The motion passed by unanimous vote.

- **Bertrand & Beth LaChance** requested a Variance from Article II Section 204.5A of the zoning ordinance to allow construction of a 24x36 ft. garage and 10x12 ft. breezeway to within 11 ft. of the front property line. The property is located at 436 Streeter Hill Road, West Chesterfield, NH 03466 (Map 2B Lot A7) R/A District

Vollbehr recused himself from voting on this application because he is an abutter.

Riendeau placed Lance Zinn to vote in place of Lucky Evans, who is absent from this meeting. Others voting on this application are Harriet Davenport, Kristin McKeon, Chris Oot and Burt Riendeau.

Presentation given by David Mack for Bertrand & Beth LaChance

Mack stated that this house was built in 1988 or 1989. The entire 13 acre lot has severe slopes and the house could only be built where it is located. There are few areas around the dwelling that have been leveled off for walkways. The applicant would like to have the 24x36 ft. garage built in the paved area off to the right side of the house. The garage will be a single story with two end doors being 8 ft. high and the center door being 10 ft. high. The pitch of the roof will be a 6 pitch and the structure can't be seen from the road and won't interfere with the public view. The 10x12 ft. breezeway would be built to the right side of the house and on the left side of the new garage. The buildings cannot be built on the left side of the house because the septic system is in that area.

Mack noted that the slope on the road is 8-9% and the slope on the hill drops 13 ft. every 30 feet.

Mack provide a plot plan sketch of the area where the two new structures will be built. The plot plan was prepared by David A. Mann and dated August 18, 2017.

Abutter Steve Sabastian noted that this property is a very steep slope lot and this would be the only place on the property that the garage and breezeway could be built. He noted that the garage will not be seen from the road. Vollbehr stated that it would require an enormous amount of fill to bring in to build the garage in another location.

Oot moved to close the public portion of the meeting. McKeon seconded the motion which passed unanimously.

McKeon moved to approve the request of Bertrand & Beth LaChance for a Variance from Article II Section 204.5A of the zoning ordinance to allow construction of a 24x36 ft. garage with a height of 18 ft. and 10x12 ft. attached breezeway to within 11 ft. of the front property line.

Criteria for approval:

- 1. The variance is not contrary to the public interest.** Yes. There seems to be no alternative location to build the structures. It would be a hardship on the property if the board was to deny the request and not allow the property owners to have a garage.
- 2. The variance will not be contrary to the spirit and intent of the ordinance.** Yes.
- 3. Substantial justice is done.** Yes.
- 4. The variance will not diminish the values of surrounding properties.** Yes. It also doesn't encroach on any other properties and doesn't impact the crowding of property and seems to be a reasonable request and is not contrary to the spirit and intent of the ordinance. The variance will not diminish the values of the property, not knowing if it would increase or decrease the value and it is not felt that it would diminish the property values.
- 5. Literal enforcement of the ordinance would result in unnecessary hardship.**

(A) Because of the 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. Yes.

And

(b) The proposed use is a reasonable one. Yes.

We feel that it is a reasonable request to have the ability to be able to put a garage on this property and a denial would be an injustice to the property owner.

The hardship is within the property, so granting of the variance in this particular setback makes sense both from the land and the site view from the public way, being Streeter Hill, in that it seems to make the most reasonable sense on that particular lot.

Davenport seconded the motion.

The vote was called: Davenport – Yes; McKeon – Yes; Oot – Yes; Zinn – Yes; Riendeau – Yes
The board voted unanimously to grant the variance.

Review Meeting Minutes

- **September 12, 2017**

Voting on the minutes: Riendeau, McKeon, Oot, Vollbehr and Zinn

Vollbehr moved to accept the minutes of September 12, 2017 as presented. McKeon seconded the motion, which passed unanimously.

Re: Nonpublic meeting minutes of September 12, 2017

Riendeau stated that he doesn't feel that nonpublic minutes are taken. He stated that the regular minutes state that we go into nonpublic and we came out of it.

Other Business

Conceptual Consultation – Rodney Parsons, CEO – Map 5B Lot B19

No minutes were taken as conceptual consultations are non-binding on either party.

ZBA Budget

Riendeau made a motion to approve the budget as amended with the postage increase from \$750 to \$1050. McKeon seconded the motion, which passed unanimously.

Eric Barron met with the selectmen to discuss his interest in serving as an alternate to the ZBA. Barron was advised to attend another ZBA meeting.

Adjourn: *McKeon made a motion to adjourn the meeting. Zinn seconded the motion, which passed unanimously.* The meeting adjourned at 10:57 p.m.

The next meeting will be held in the Town Offices at 7:30 p.m. on November 14, 2017.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date