

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

**MEETING MINUTES
JANUARY 9, 2018**

Present: Kristin McKeon, Lucky Evans, John Zannotti, Lance Zinn and Alternate Eric Barron. Also in attendance was Selectboard Representative Norman VanCor

The Zoning Board of Adjustment met at the Chesterfield Town Offices on January 9, 2018. Kristin McKeon called the meeting to order at 7:10 p.m.

Nomination and Election of Chairperson and Vice Chairperson

Evans nominated McKeon as Chairman to the ZBA. Zannotti seconded the nomination, which passed unanimously.

McKeon nominated Evans as Vice Chairman to the ZBA. Zannotti seconded the nomination, which passed unanimously.

McKeon noted that Barron will be brought onto the board as the fifth member for this meeting. McKeon welcomed all in attendance and gave an overview of the process of the meeting.

Hearings:

1. Hearing:

- **Cornelia Jenness for the Chesterfield Historical Society** requests a Variance from Article II Section 203.2 of the zoning ordinance to allow a museum. The property is located at 762 Route 63, Spofford, NH 03462 (Map 5A Lot A25) Residential District.
Request by applicant to reschedule for January 9, 2018

Jenness stated that the Historical Society would like to pursue the purchase of the Stone House property located at 762 Route 63 in Spofford and to preserve the property. The stone portion was built in 1831 and has only added an indoor bathroom and added electricity and heat. The ballroom on the second floor still has the fiddler's bench and the cubbies still remain on the third floor. The Historical Society would like to use the building as a house museum. Jenness stated that the State took over some of the property along Route 9 and 63 in 1974, which left the house with very little setback on both roads. The property has been an antique and book store and is situated next to two commercial properties and it is in the process of being listed on the New Hampshire Registers of historic properties. The property now has less than one acre from the original 200 acres, when the house was built in 1790.

Jenness noted that the property would be used as an educational use and would not change the neighborhood in any way, or threaten public health, safety or public welfare. The Chesterfield School uses the building as part of their historic curriculum.

Zannotti inquired as to whether there would be adequate space for parking. Rolland Vollbehr replied that there is enough room for 22 parking spaces. He noted that two spaces are required for each of the two apartments, six spaces are required for the 2,700 sq. ft. for each floor space for the museum. He noted that a school requires one parking space for every 500 sq. ft. of floor space, which will require six spaces for the Stone House if it becomes a museum. Once space is required for each person showing the Stone House, with a minimum of two people for that. The

minimum requirement will be a total of twelve spaces. The parking area is currently gravel. Vollbehr noted that the access to the property would be from Route 63. He stated that the access to the property from Route 9 will not be used.

McKeon opened the session to the public.

Pam Walton, Chesterfield Historical Society V.P. stated that they would like to preserve the building by keeping it historical and to preserve the history of the town.

McKeon noted that the Board will be looking at whether this variance meets the criteria of a hardship. Walton noted that the property is unique in that the State has taken much of the land from this property from both Route 9 and 63 since the expansion of the highway in the late 1940. Jenness stated that there will be no expansion to the building. McKeon noted that the Board can't use the hardship for being a historical building but can look at how this property is unique to the other properties around it. She added that the property was used for other purposes, which took place more than two years ago that are non-conforming status. Vollbehr stated that schools are permitted in this residential area, that museums are not listed in the town's Zoning Ordinance and that museums are also educational. McKeon asked how the State defines "museum". Jenness referenced an email from NHMA that the land must be owned or proposed to be owned or occupied by a town can be used for the same purpose that a library does.

Howard Lane, of Route 9A, stated that this building has limited practical use and unless it's put to some use, overtime it will deteriorate if it's not maintained. He added that this is a very good use for this building and he feels that it fits all the criteria for the variance. He notes that it is akin to a school and is close to being a governmental agency and this would be beneficial to the Town. The building can't be used as other similar properties. Jenness stated that a variance was denied to add a third apartment in this building.

Joe Parisi noted that the Planning Board recommended a petition to modify the zoning in a residential area to include museums. That will go to the Town vote with a recommendation from the Planning Board in March.

Zannotti noted that there may be an increase in traffic at this intersection of Route 9. He also noted that a map provided at this meeting shows an existing driveway coming off Route 9 onto this property. Vollbehr replied that the driveway has been closed off and won't be used. McKeon noted that the Master Plan should be reviewed for the goals in this particular area. Vollbehr noted that no changes will be made to the character of the building. Nancy Evans of Farr Road stated that this will preserve the history of the town. Rodney Parsons is in favor of the Planning Board to add the word "museum" in taking the variance approach and he is in favor of the special exception for the control it offers. He noted that the word "museum" is quite broad. He feels that the zoning process is the way to go.

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

Discussion: McKeon noted that a decision is not required to be made at this hearing tonight. She noted that the Board can ask for guidance from legal counsel to help with the decision. Zinn noted that the parking spaces should meet the required legal size. He felt that there is nothing else that can be done with the building and approval would be a benefit to the town. McKeon noted that the board will need to justify the request and the board needs to go through all five

criteria. She also noted that traffic must be considered of the application request and the number, size and location of the parking spaces needs to be addressed. Barron would like to have more history on the property to help the Board understand the reason for any denials of prior applications. McKeon requested more history of the “chopping up” of the property. Barron’s concern was whether a precedent is being set if approval is given and someday the museum has a gift shop. McKeon replied that those issues need to be addressed in the ZBA decision.

Zannotti moved that the ZBA receive general guidance from NHMA to obtain application history on the property and get guidance to write the five criteria before the February 13 meeting and to have legal counsel at the next meeting. Zinn seconded the motion, which passed unanimously.

McKeon noted that this hearing is being continued until February 13, 2018. The Board will receive legal counsel guidance for the five criteria on this application and will get information on applications on this property over the years so that the Board can review it before the next meeting.

2. Review :

October 10, 2017 Site Visit Minutes

Zinn moved to approve the October 10, 2017 site visit minutes as presented. Evans seconded the motion, which passed unanimously.

October 10, 2017 Meeting Minutes

Zinn moved to approve the October 10, 2017 meeting minutes as amended. McKeon seconded the motion, which passed unanimously.

December 12, 2017 Meeting Minutes

Barron moved to approve the December 12, 2017 meeting minutes as presented. Evans seconded the motion, which passed unanimously.

3. Other Business

Xpress Natural Gas – Discussion for the limited purpose of deciding, as a matter of fact, whether or not any pre-existing use was continuous or abandoned.

Present: Michael Bentley, Attorney for Xpress Natural Gas

Also present: William and Cheryl Fletcher, Property Owners of 19 Mill Road, West Chesterfield, NH

McKeon provided history on the Special Exception that was submitted by Xpress Natural Gas for a truck loading, unloading and parking off Route 9 in West Chesterfield. The application was denied by the ZBA. Under certain conditions, a Special Exception would be allowed for that use under that zoning district. The applicant came back to the ZBA requesting a rehearing and it was denied by the ZBA. McKeon noted that there was some additional information that came in, at that point, based on how long the activity had ceased. The use had been considered abandoned after a certain amount of time. Had that activity not been abandoned, the applicant would not have had to come to the ZBA for a Special Exception. If there was that lapse of time, the applicant did need to come to the ZBA. When the ZBA made the decision not to rehear it, the applicant took it to court. The court upheld the ZBA decision, however, the court looked at information brought to them by the applicant, although they had not brought that information to the ZBA when asked at the beginning as far as how long the site had been abandoned. McKeon

noted that the court is asking the ZBA to obtain information on the use of the property. The court had noted they would agree that the ZBA did not need to take that information into account because the applicant needed to supply all that information in the beginning. However, because this information pointed to the possibility that the ZBA incorrectly heard application in the first place and the court allowed the information and sent it back to the Board to get information as to when the last activity was there. One item that was given to the ZBA at the appeal by the applicant was the lease that did not expire until after a certain date, so that would have made it less than the time, however, there was also a case that the court concluded that just because you hold a lease does not mean that it's not been abandoned. The ZBA will be looking at the time for which the application was filed and when the last user ceased using the property as a truck terminal. There will be no other discussion on the case other than that information. McKeon noted that if the ZBA determines that the property was not being used within the allotted time, the ZBA decision stands and will be upheld. If the court finds that the property was used as a terminal within the allotted time, then it is a moot point. The appeal request was heard in February of 2017 and was filed on January 18, 2017. The site visit was held on March 4, 2017 and the hearing was held on March 21 at which time the Board voted to deny the Special Exception. Xpress filed for a rehearing where the information on the lease was brought in indicating that it had not been abandoned within the allotted time on June 13, 2017, where the ZBA denied the request for a rehearing. There also was no discussion about the documented priorities of the truck terminal or whether the ZBA had subject matter jurisdiction. There was no discussion of 502.4 Abandonment Discontinuance or 502.1.

Bentley stated that the court noted that purpose of the hearing with the ZBA tonight was made from the decision made by the ZBA for the limited purpose to determine, as a matter of fact whether or not any preexisting use was continued or abandoned. If the use was continuous or otherwise permitted under Article V, Section 502 of the Zoning Ordinance, Xpress Natural Gas was never required to appear before the ZBA. If abandoned, as defined in 503.2, then the ZBA denial of the application will stand. It will be determined by the Board, if the property had been abandoned, for how long. Bentley stated that the trucking terminal was never abandoned and he would like the Board to make that determination at this hearing.

Bentley handed out several documents to all board members pertaining to transfers of prior property owners on that property. One document was on a subdivision performed in 1982 entitled "The Mill" owned by Stubb, Inc. Bentley noted that the property on this plan is Lot #4 showing 3.708 acres, which was owned by "Stubb" Thomas, who is present at this meeting. The Plan noted that it was leased by Weeks Dairy in 1982. Bentley stated that from 1982 through March 15, 2016 this property had continuously uninterrupted use as a trucking company by various components of Weeks Dairy to Garelic Farms, which was the last lease and being consistent with the Zoning Ordinance.

Other documents included a transfer from Stubb Inc. to Weeks Concord Inc., deed recorded September 22, 1983; Weeks Concord Inc., became Weeks Foods Inc. in 1992, changing the name of the entity; then Weeks Foods became Crowley Foods Inc.; Crowley Foods Inc. by deed dated March 20, 1992 sold it to Lawrence E. Thomas, who is "Stubb" Thomas; on March 27, 1992 "Stubb" sold it on August 18, 1994 to Scangus Realty Assoc.; Scangus sold it William & Cheryl Fletcher, Trustees of the C&W Trust in May of 2005, who have owned the property since that time. When they purchased the property Garelic Farms was there and Garelic Farms

continued to be there until March of 2016. Bentley noted that he found a building permit in the Town Office files that in 1984 Westlund Creamery received approval for a permit for a trailer to be used as an office and the trailer is on the property today. There was also a Certificate of Occupancy in 1984 to use the deck between the office and the dock; all given to Westlund Dairy for commercial use as a trucking terminal.

Bentley stated that the ZBA was informed that Garelic Farms had given the Fletchers a 30-day notice that they will vacate the property at 19 Mill Road in West Chesterfield dated February 17, 2016. Garelic left the property on March 15, 2016. Bentley noted that the Xpress Natural Gas application was filed January 18, 2017 with Ricky Carrier at 12:30 p.m. Bentley stated that from March 15, 2016 to January 18, 2017 a year did not lapse between those two dates. You'll hear from Bill Fletcher as to the use of the property after Garelic Farms left on March 15, 2016. Bentley noted that, along the way, the Fletchers had signed a sales agreement with Xpress Natural Gas and there was an addenda to that sales agreement dated December 15, 2016. Bentley noted that on Page 2, Paragraph 5, where the Fletchers leased the property to Xpress Natural Gas for two months, pursuant to the Purchase and Sales Agreement. When Xpress Natural Gas didn't fare so well with this Board, they decided not to continue with the Lease Agreement. Bentley noted that he and his client are trying to resurrect what they feel should have happened, that Xpress Natural Gas should have been advised by the Town of Chesterfield that they didn't have to be here because this was a continuation of the preexisting use that Xpress Natural Gas wanted to make on the property. Bentley produced a copy of the assessing card for 19 Mill Road property, print date of January 11, 2017 with the use description of a trucking terminal. As of January 8, 2018 the assessing card description was listed as a trucking terminal (for 19 Mill Road). Bentley noted that there are other commercial properties along Mill Road, one of which is Twin State Truck Service.

McKeon noted that all the documents that Bentley handed out at this meeting are only property transfers and have nothing to do with the trucks on the property, even though they are interesting, they are not relevant. Bentley stated that they are the landlords of companies that have used the property and show that the Fletchers have rented this property since 2005. McKeon noted that renting the property doesn't determine if the property has been abandoned or not for truck use.

William Fletcher stated that trucks have been there until March 15, 2016. He added that through the course of the summer, Fletcher stated that he has used it with his own trucks and trailers. He stated that for someone to say that the property had been abandoned for two years is a blatant lie. Fletcher stated that you know how all that happened. McKeon stated that he should have produced that information when the ZBA asked for it at the time. She added that the ZBA acted in good faith and had you brought that information during several months of hearings. Fletcher had the opportunity to bring information to the Board but he chose not to before the ZBA made their decision. Bentley asked Fletcher if Garelic Farms ever pay you rent and not have trucks there while they were renting from Fletcher. Fletcher replied, "No". Cheryl Fletcher stated that they parked the trucks on the lot at night and would be gone in the morning because they delivered mostly in Vermont and they got down to six trucks. She noted that they originally started with 18 trucks and it got less over the years. She told them, when they got down to six trucks, that they (Fletchers) were planning on selling the property in 2016. She noted that the company had told her that they weren't interested in owning any more property. She stated that the company had already made other arrangements when she gave them the closing date on the

property in March and they said that they only had about six trucks on the property at that time. The court is looking for the evidence that shows the activity before January 18, 2017. Fletcher stated that he was parking trucks there used by his company of Fletchers Sand Blasting Company after March 15, 2016. He noted that he didn't keep a schedule of it. Bentley asked William Fletcher if he leased the property to Xpress Natural Gas on December 15, 2016 for two months. Fletcher replied, "Yes, because they were buying it". Stubb Thomas stated that he doesn't know of a time when there hasn't been trucks at that location since March of 2016.

Lisa Prince works at Twin State Trucking Company and lives in Hinsdale. She stated that her office overlooks that property. She stated that Twin State has security cameras and has looked at the cameras for what has happened during the night and made note of the activity of vehicles coming in and out of that property during the night between 2 a.m. and 6 a.m. but she didn't get the exact dates since the G.S. Precision issues. McKeon stated that there are a lot of trucks in the Bickford parking lot in Brattleboro that are not supposed to be there. McKeon's family owns that property. McKeon noted that it could be random activity that may not belong on the property, possibly UNFI or C&S. Prince stated that she couldn't tell what trucks were coming in and going out and that she could only see their headlights.

Joe Parisi asked if there is any specific evidence from Garelic Farms that said "we operated on this property during this period of time and had this level of activity"? McKeon asked Bentley if that information is anywhere in the ZBA packet. Bentley replied that there is no written lease with Garelic, since they were a month-to-month tenancy but the board does have their notice of termination. She asked if there was clarification in writing noting if they had a number of trucks going in and out at that location and times. Bentley replied that in 2015 there was an environmental inspection done on the property that shows Garelic Farm trucks on Lot 4. But to the extent that the Board needs an affidavit from Garelic Farms as to the actual use of the property and the number of trucks coming and going, we're happy to try to obtain it. So no, we do not have such an affidavit tonight nor does he feel one is required because he believes that the notice of termination and the fact that they were going to clean the property before they left is ample evidence that they were there.

Nancy Eddy, Farr Road, W. Chesterfield, provided a letter of evidence, dated January 9, 2018 that she asked to have entered into the minutes.

"To: Zoning Board, Town of Chesterfield, NH

I am requesting that the following letter be entered in the minutes of the January 9, 2018 Zoning Board meeting.

I wish to report from my own considerable observation of the site on Mill Road in West Chesterfield where Xpress Natural Gas wishes to set up its truck transfer station that I have not seen milk trucks parked at the site for the last two years. The lot has remained deserted. I use the word considerable because I spent lots of time there, on every day of the week. The parking lot was my first stop in teaching two children how to drive. I spent many hours there with both daughters, and it was ideal for our purposes because it was utterly deserted. There is a disintegrating strip of railroad ties by the former office where we spent much time mastering the art of parallel parking before attempting it for real on the streets of Keene. In all this time there was never any human activity, or trucks parking in, or leaving the lot. I remember thinking when I started driving lessons that the lot was much more convenient for our use with the milk trucks gone. (specifically July 2016) (1 trailer only 2015)

I should also report that I drive to Keene around four times a week, and ordinarily use Mill Rd both going and coming. I have seen no milk trucks parked at the sight over the last several years through all these comings and goings. I do, however, avoid using Mill Rd, choosing Cross Rd instead, when conditions are icy or snowy. I do this because of visibility, and because I know that cars traveling in either direction will need more time to stop under these conditions. If this is an issue for me in a car capable of rapid acceleration, is it not also an important one for slow trucks carrying hazardous compressed natural gas? Should we not take into consideration the fact that hazardous weather conditions are frequently present for 6 months of the year?

I would further reiterate that multiple entrances and exits of slow moving trucks from the highway is a safety hazard. The Route 9 corridor is becoming increasingly dangerous. During 2017 I passed more accidents than I have ever seen on Route 9. Two of them requiring ambulances, and involving severely damaged cars happened at the intersection at the brow of the Hill where Perkins Home Center and gas stations stand opposite the state liquor store. Visibility, and people increasing their speed as they climb the hill must have been contributing factors. Speeding and limited visibility makes this intersection dangerous, the same factors that exist where Mill Rd joins 9. As businesses proliferate along Route 9, numbers of entrances and egresses will grow, and policing the road to ensure that it remains safe will fall largely to our town. I state in the strongest terms that it would be a grave mistake to impose this extra burden on our police and fire departments and on our town in general. A recent misadventure with a propane truck, of which everyone is no doubt aware, strained the resources of all our local fire departments to their limits. WE are very thankful for their efforts, and glad something much worse did not happen. Allowing Xpress to use the site on Mill Rd only encourages future such disasters.

*Respectfully,
Nancy Eddy
110 Farr Rd.”*

Eddy read her letter out loud stating that she has not seen trucks parked at the sight for the last two years and that the lot has remained deserted for much of the time. She has used the lot considerably to teach her children how to drive in that parking lot because it was empty and it was a safe place for them to begin to drive. Eddy states that she has used the lot for many hours during the week but not during the night hours. She also wanted them to use the railroad ties to learn how to parallel park. She stated that in 2015 she saw one milk trailer there and she noted that in the summer of 2016 the trailer was gone. She noted that she drives to Keene about four times a week and stated that there have been some trucks parked there but they have just been sitting there in recent history. She stated that she has never seen anyone using the loading docks and never seen anyone leaving or entering the parking lot.

Jeff Scott inquired as to whether Garelic would have a record of where their trucks are at all times by keeping some type of a log.

Steve Dumont, Assistant Building Inspector for the Town of Chesterfield noted that he has seen a decrease of activity from that area over the past three years. He stated that Garelic Farms used to provide a delivery truck for the fire department to keep their corn cold during the Annual Corn Roast but that stopped during the 2013 event. Since that time, the fire department has had to meet someone in Brattleboro at Exit 1 to get their product through a donation.

Cheryl Fletcher has asked that two photos be copied from a book that she had to show two trucks from Dean Foods, who has bought out Garelic Farms. Mr. Fletcher became upset stating that this has become a great financial burden to both he and his wife and this has cost them a lot of money. He threatened the chairman that this might end up in court again. Bentley requested that the cover page and one page (he indicated which one) that shows this lot showing the Garelic trucks as a single record. Bentley noted that the report is dated but the pictures are not.

Joe Parisi, Spofford resident and PB member, "If it's determined there has been continuous use and therefore doesn't have to go to ZB, does it still have to go to PB for final approval?" McKeon replied that it is before the ZBA to determine whether they should have reheard it or whether they were correct in not rehearing it. Parisi noted that it doesn't mean that the project is approved if it is determined that the property is allowed to be a continuous use, the property owner must get site plan approval by going through the Planning Board process.

Nancy Eddy asked what is meant by use when speaking of continuous use and how many trucks are coming and going and defining use should be established. It was noted by the property owners that they have been using the lot for their own vehicles and whether that should be part of the continuous use or whether the lease is for Garelic trucks only.

Bentley noted that while the property was rented to Garelic Farms the Fletchers did not use the property for their use during that time. He added that the Planning Board or whether site plan review is required should not be discussed during this hearing and should not be an issue in this deliberation.

Zinn noted that there seems to be some confusion as to whether the owners truck is used as a part of the time of use on the property as a terminal.

McKeon noted that we have individuals saying that trucks have been parked on the property, some saying that unidentified trucks have been coming and going during the night and other individuals stating that they haven't seen any trucks on the property for a few years. We don't have any dated photos of any trucks on the property. Bentley stated that he will try to get Dean Foods to provide further evidence and asked the ZBA to continue the hearing to give the owners the opportunity to provide that evidence.

Nancy Eddy stated that she conducts her driver training during the summer months.

Zinn moved to close the hearing to the public. Evans seconded the motion, which passed unanimously.

The Board felt that they will seek legal counsel to work with them on several concerns that they have including but not limited to what is continuous use, who has the burden of proof and other issues discussed during this hearing. The Board will be looking for a definition of a truck terminal and what constitutes an active use of a truck terminal. They also want to know if casual use the property owner counts.

Barron moved to continue the hearing to February 13, 2018 and the hearing will be renoticed, Zinn seconded the motion, which passed unanimously.

Seminar Topics – Training for ZBA and Planning Board members

4. Next Meeting Scheduled – February 13, 2018

5. Adjourn

McKeon made a motion to adjourn the meeting. Zinn seconded the motion, which passed unanimously. The meeting adjourned at 10:05 p.m.

The next meeting will be held in the Town Offices at 7:30 p.m. on February 13, 2018.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Kristin McKeon, Chairman
Zoning Board of Adjustment

Date