

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

**MEETING MINUTES
APRIL 10, 2018**

Present: Kristin McKeon, Lucky Evans and Alternates Eric Barron, Joe Hanzalik and Joe Parisi. Also in attendance was Selectboard Representative Jeanny Aldrich.

Absent: Lance Zinn

The Zoning Board of Adjustment met at the Chesterfield Town Offices on April 10, 2018. Chairman Kristin McKeon called the meeting to order at 7:32 p.m.

John Zannotti called in to request that he be allowed to participate during this meeting via Skype. He was not able to attend this meeting because of his work schedule and will be alone during his time for this meeting.

Evans moved to allow Zannotti to join the meeting via Skype. Barron seconded the motion. The motion passed unanimously.

McKeon noted that Parisi has recused himself from the first hearing because he serves on the Planning Board. Those voting on this hearing will be McKeon, Evans, Zannotti and Alternates Barron and Hanzalik.

McKeon moved to go into Nonpublic RSA 91-A:3 II (L) Legal correspondence

The motion was seconded by Evans, which passed unanimously.

Evans moved to come out of Nonpublic. Barron seconded the motion, which passed unanimously.

McKeon moved to seal the nonpublic minutes. Evans seconded the motion, which passed unanimously.

1. Hearings:

- **Chesterfield Board of Selectmen** request an appeal hearing of the Planning Board decision on December 18, 2017 on the application of Mark Lanoue, 1763 Route 9, Map 10A, Lot 5A in Chesterfield, NH. This parcel is located in the Office/Retail/Service district of the Town of Chesterfield. (Continued from February 13, 2018)

Present: Attorney Steve Bonnette and Mark Lanoue

Bonnette stated that Jim Phippard sent a letter to the ZBA dated February 27, 2018 requesting that Ms. McKeon be disqualified from participating in the hearings and he cited the RSA's for that in reference to RSA 673:14 II. McKeon noted that it was discussed at the February 13 meeting. After a brief discussion on McKeon not recusing herself, Bonnette agreed to move forward.

Bonnette noted that he would like to move through the steps raised by the BOS. One point was the two handicap spaces. There were two handicap spaces in the front of the property. That property was first set up as residential and the front setback was 50 ft. Both the building and pavement were conforming, at that time, and the building became nonconforming when the property was rezoned to O/R/S, which it is now, which required a 75 ft. setback. The handicap spaces were there at the time, even though there were not lines between them and

they were grandfathered. The Planning Board did not want to make a huge issue to take away two handicapped spaces that have been there since the seventies, which is set forth in Paragraph 1 of Phippard's letter. It was a nonconforming use and should remain a nonconforming use. McKeon asked if there were handicap parking during the 1970's and would they even have existed back then. Bonnette didn't know if it was on any plan. Evans asked if there are any handicap signs there. Lanoue stated that there were none. Bonnette stated that the issue was not raised by the ZBA during the variance request submitted to the ZBA in January 2016 and decided in August 2016.

Bonnette noted that the second issue raised by the BOS talks about the plan used by the ZBA consisting of 11 parking spaces on the eastern border of the site and the Planning Board approval of 22 spaces on the eastern border of the site, however, the ZBA has no specific plan for the number of spaces but for Mr. Lanoue to go to the Planning Board. There was no condition regarding that in the ZBA approval. The ZBA limited the number of cars to 65 cars and the PB has cut that number down to 44 cars. The final plan (submitted by the BOS in their packet, and dated November 2017) review notes indicate that the ZBA has granted a variance for automotive sales on August 9, 2016 with conditions.

Bonnette noted that the conditions were:

- (5.1) There will be no outside repairs or cleaning of vehicles,
- (5.2) All trash and car parts placed in the dumpster area (set forth on the plan)
- (5.3) No junk cars on the lot, only cars that are sales ready and in good working order
- (5.4) Limited to 65 cars on the lot involved in the internet sales business – there are 42 instead of 65
- (5.5) Only a single row of cars for sale on the eastern border running past the 75 ft. setback. It does not say there can only be 11 spaces and there is only 11, as set forth on the plan.
- (5.6) No cars for sale within the front or side setbacks. Bonnette stated that there are none, as set forth on the plan.
- (5.7) Screens will be placed in the front setbacks – 75 ft. from Route 9 in the south eastern corner of arborvitae or similar plants for screening from the road. Bonnette stated that there is much more landscaping than what was contemplated. He noted that one of the BOS concerns was that arborvitae shouldn't be used because they have limited life. He noted that arborvitae have a life span of between 50 and 100 years if properly cared for and are often used for screening. ZBA requested to use arborvitae or similar plantings.
- (5.8) If this use is discontinued or the property owner changes, the variance will not apply. Bonnette stated that that is agreeable as a condition.

Bonnette noted that every variance condition requested by the ZBA has been met and has more stringent requirements put on this project by the PB.

Zannotti asked for the date of the plans that Bonnette was discussing. McKeon replied that the map provided was dated November 20, 2017. Zannotti stated that the ZBA drawing was dated January 2016 but the PB minutes stated that there were new plans that were dated December 2018. Zannotti noted that there appears to be more plans that the ZBA has not seen. Bonnette stated that he is looking at plans dated February 12, 2018.

Joe Parisi stated that he is a member of the Planning Board and a member of the Zoning Board. He is at this meeting on behalf of James Corliss, PB Chair, who is dealing with a

medical issue and delegated the PB responsibility to Parisi. He noted that the site plan was conditionally approved on December 18, 2017 with 7, 8 or 9 conditions that needed to be met. He noted that the final site plan has not been signed off and won't be signed off until all of those conditions are met. He noted that one of the pending items is a boundary line adjustment where the applicants plans on acquiring 50 ft. to the east side of the property. There are a set of plans that came before the PB last Monday (April 2, 2018) and those plans are specific to the boundary line adjustment. He stated that the plan has not been signed off yet. The applicant needs to bring the prerequisite number of prints back to the PB. It does not look like the plan that came to the ZBA originally.

Bonnette stated that another point by the BOS that parking areas should not contain more than 20 spaces in a row without separation by a 10 ft. landscape area. As set forth by Phippard, the spaces on the plan are not parking but are for display. The variance of space by the ZBA was specifically for the display of vehicles. Bonnette noted that Lanoue acquired a 50 ft. area for a buffer zone, which is grown up and developed.

Bonnette noted that the BOS have stated that (Lanoue) application was filed after the development of the property and that the PB has the responsibility to require that the applicant reestablish pre-development conditions and noted that the PB had noted that it would just be a burden on the applicant. Bonnette noted that the Town of Chesterfield sued Mark Lanoue and sought a temporary injunction, based on allegations that he (Lanoue) improperly brought in fill and improperly cut trees. On the preliminary injunction the judge said that he didn't see enough on this and went to the final hearing. The town lost on the case and the town filed for a Motion for Reconsideration and the town lost on that. Bonnette noted that the judge had stated that Mark Lanoue explained that he sought permission from the Town Administrator to bring in fill and that, during one of his visits with one of the town officials that he checked with the Town Administrator about clearing the land and adding fill and was told that no permit was required for such conduct. The court credits the testimony of Lanoue and the judge found that Lanoue was granted permission, by the town, to clear that lot and to add fill and more than 30 days have passed since that decision of June 7, 2017. Bonnette asked that the BOS appeal be denied.

Parisi stated that the PB adhered to every condition set by the ZBA and went beyond, The ZBA has referenced a site plan that they approved in June 2016. Parisi stated that there is no documentation that officially cites that as being a condition of the variance. If the plan was a requirement for the variance, the PB could not have met that site plan because that site plan does not satisfy many of the land development regulations within the town. He continued that there is nothing on that site plan that has anything to do with waste water collection or addresses the additional 50 ft. buffer, which per the property line adjustment condition cannot be altered over the life of the property. It does nothing about what is allowed or not allowed to be put on the fill area.

Parisi stated that, in the BOS letter, it states that the PB had an obligation to make the applicant return the property back to the previous conditions. The court said the applicant had no need to do that. The PB cannot supersede a court decision, Parisi added. The PB came up with the best use of that property.

Zannotti stated that there were three different ZBA decisions in 2016 and not any one of them talked about a site approval. McKeon noted that there was a map layout showing the layout of the parking with the number of parking spaces and where they were going to be. She added that it was apparent that the PB did not receive a copy of that map layout. During the process Lanoue had brought the ZBA a different plan near the end of the process and the ZBA told him that he couldn't change the plan and it must show the original parking that the ZBA had agreed to. Lanoue should have brought a copy of the plan to that PB that he had presented to the ZBA. Evans noted that ZBA approved what was presented. McKeon noted that the ZBA made the decision on how many parking spaces would be allowed but not distinguish on how they would be used for parking and/or display. She stated that the ZBA will decide whether the zoning applies or the zoning was met, based on what was presented and each item will be discussed separately.

Parisi stated that there is no reference to a site plan on the Notice of Decision and there is no reference to that as a condition and that drawing was never presented to the PB. Parisi stated that the PB received a site plan from the applicant of which we had no reference.

Bonnette stated that the intent of the public hearing was to address whatever evidence that the ZBA was going to deliberate on. He added that he hope that some plan shows up and is deliberated by the Board and whatever plan there was is a nonissue, where it was never in the minutes and never a condition and nothing was signed. He stated that we are not going back to rehear a ZBA matter that happened in 2016. Parisi stated that the PB did not approve the plan that the applicant originally submitted to the PB.

Zannotti noted that there are documents that were presented to the ZBA (i.e. from James Corliss and a document from the BOS) that were not signed. Parisi replied that the document presented by Corliss was from an email. He stated that the PB authorized Corliss to act on this matter, at the PB meeting on February 5, 2018. He noted that, based on his medical issue, Corliss delegated that authorization on to him (Parisi) as Vice Chair today. The BOS document left in the Selectmen's office was also unsigned. A vote was done in BOS nonpublic session and sealed. McKeon noted that the BOS would have to be asked to unseal those minutes to obtain that information. Barron suggested that we move forward. McKeon suggested that the ZBA Rules of Procedure should include that all documents received must be signed.

Discussion – ZBA Members:

McKeon pointed out that the Plan was noted in the ZBA minutes of August 9, 2016, Page 3 stated that the ZBA was presented with a site plan dated June 12, 2016. On Page 4, Paragraph 6 notes that the drawing presented by the applicant only showed 49 parking spaces. McKeon noted that per NH law the minutes can be included in the Variance. She noted that the ZBA are only going to look at six points raised by the BOS when going into the public input.

Lanoue stated that there are only 11 parking spaces on the east side of the building and the rest of them are on the north side of the building. He added that one reason for the PB decreased the number of parking spaces is because the ZBA approved his plan where parking was over a septic system that should not be parked over.

Parisi stated that the original plan that was submitted to the PB had to be changed for a number of reasons. He noted that the plan that was submitted to the PB did not have sufficient parking spaces, not car storage spaces, allowed for the size of the building and the business of this type. That would lower the number of spaces for the cars for sale. Parisi didn't recall a discussion of parking over a septic system. The parking changes were based on the plan that the PB was given. Other changes were based on where the fill was, achieving the right slope in order to prevent erosion to create a swale and other changes were required, based on the plan that was presented. The PB saw that the applicant satisfied all of those conditions.

Barron noted that it is unfortunate that the ZBA now has only two members that were here at the time of Lanoue's application. McKeon noted that the ZBA can only look at what the ZBA has jurisdiction over and will follow the guidelines.

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

Complaint

Point 1 – (2) Handicapped Parking Spaces within the Front Setback

McKeon noted that the handicap parking was not a request on the original variance application and was not addressed. No parking was discussed in the front setback for display of cars. Evans stated that the parking was limited to 65 cars for the internet sales business. McKeon stated that there are only two or three references to the plan in the meeting minutes. The plan was dated January 2016. She noted if we based our decision on this plan and this layout then we did, indeed, address the two handicap spaces that are in the setback. If we did not use this plan, then we did not address these handicap spaces and there was no variance granted for them. The PB has stated that they didn't know anything about that plan and the applicant did not bring it forward to them. Evans stated that the conditions were written in the meeting minutes. Evans stated that the August 9 decision was based on the following conditions:

Cars must be in good working order and sales ready; eliminate work being done outside to eliminate noise, including outside power washing; no outside repairs; site review plan at the Planning Board; 65 cars permitted with no cars in setbacks; put in screening of trees or shrubs; no junk cars; limit the use for internet car sales only; space is required for customer parking.

McKeon asked if the ZBA expected that the map went forward or not. Evans felt that the handicap spaces were an oversight. Zannotti stated that the only site plan that was referred to in the minutes would be one dated January 2016 and that has to be the one of record, since that is the only one that exists. McKeon noted that the PB and the applicant said that they knew nothing of this and that there was no plan included that went forward to them from the ZBA. McKeon asked the ZBA members if they should use the plan as a guide or to accept what we're hearing from the applicant saying that it was not referenced anywhere and it didn't have any part in what went to the PB and the PB also saying that they didn't get it. The applicant presented the drawing to the ZBA and the PB states that it did not go forward and was not referenced anywhere in the variance itself. McKeon noted that all of the minutes are considered to be part of the variance. The applicant also indicated that this would be for

internet sales and that people would not be driving in or out looking at cars and there would be very little traffic, except for when someone came in to sign the papers and take their vehicle. These are representations taken from the applicant that are also considered to be as part of the agreement and part of the variance and the plans should be included in the decision, noted McKeon. Barron stated that the plan has to be part of the ZBA decision. McKeon noted that the ZBA approved just one row of parking to the east because there was to be no visibility to distinguish it in order to keep it within the spirit of the ordinance. Because it is not in the Commercial District there is less activity and screening would be important because a car dealership is not allowed in the district that it's in.

McKeon stated that anything on the left side of the building was crossed out and not included because it was within the side setback and we not allowed. The ZBA did not allow any sales cars allowed within the front or side setbacks.

Evans moved to continue this Request for a Rehearing at 10:00 p.m. Barron seconded the motion, which passed unanimously.

McKeon reopened the BOS Request for Rehearing.

McKeon noted that the ZBA approved the two handicapped spaces in the setback, based on the plan, therefore point 2 is acceptable.

Point 2 – Based on whether the ZBA used the Plan as part of the Decision (for the PB)

McKeon stated that the Board needs to look at what was accepted from the ZBA by looking at the ZBA meeting minutes and make it clear as to how the ZBA got to that decision.

Zannotti stated that it should be the PB decision to determine the number of parking spaces should be establishing, and not the ZBA and that the ZBA could determine where they could be in reference to the setbacks. McKeon added that when the ZBA grant a variance, the ZBA can require certain actions to be taken that may overlap the PB. McKeon noted that there were 11 spaces on the east side and the other double row of 17 spaces each were behind the building and not be observed by the general public. She noted that the applicant provided a plan specific. If the applicant had the spaces drawn over a septic or leach field, that's not possible. She added that there are a required number of spaces per the square footage of the building required for parking. The 17, 17 plus 11 spaces is what the ZBA used going forward, as shown on the plan presented. The third page of Exhibit C shows 72 parking spaces. The two businesses at that location affects the parking. There was no outside sales and this was approved for internet sales and the extra vehicle parking would not have applied. It would fall under retail sales, which is one space for every 150 sq. ft. of sales area plus one space for every additional 600 sq. ft. of the floor space area. That may affect the number of parking spaces, based on the ZBA approved for inside sales and not outside sales on what is required. Did it make sense to what the zoning ordinance is for the town? The building is retail but used as multi-purpose. McKeon stated that the ZBA anticipated that the PB would be addressing that issue. The applicant was requesting outside sales display of vehicles. The ZBA concern is to keep the parking from falling into the setback areas. It was presented as outside display and the parking spaces that were already there. There would have to be additional parking to accommodate employees. The ZBA addressed the parking spaces for sale/storage vehicles and another plan came in that the ZBA said "no" because the vehicles would be more obvious, which may not have been left or submitted. The ZBA was

trying to keep within the intent and spirit of the ordinance which involves lessening visual impact of vehicles from the road.

Did the PB change the ZBA variance with what is shown on the plan in going back for relief? McKeon stated that they did not. They did not change anything that you can see from the road and they put the employee parking behind that. It appeared that they were going to be marked spaces but now just looks like the parking will be unmarked gravel and that becomes a nightmare for enforcement. It appears that the septic is on the left side of the building and it would have gone under the 17 spots. It doesn't seem that it would necessitate the applicant coming back for relief. The intent seems to be met but this is the plan dated November 2016 the ZBA is going by. McKeon stated that it appears that they were including the employee parking. Zannotti felt that the only issue was that the handicap parking was within the 75 ft. The ZBA addressed and approved that as part of the original plan dated January 20, 2016. He stated that those all are within the purview of the PB.

McKeon stated that the PB hasn't varied from what the ZBA's intention was. Everything is behind the building and there is one row. They explicitly address what the ZBA did not address and did not intend to address on the employee parking issue. #2 is okay.

Point 3

Barron noted that 208.6 doesn't say anything specific about parking spaces. McKeon reads that no parking spaces should contain more than 20 spaces in a row without separation of 10 ft. of landscaping. If they are display spaces then it's not addressed in 208.6. McKeon notes that if you go down to "E" (reading) "Duration and conditions of outside display . . . will be addressed during the site plan review . . ." Do they need to come to the ZBA and ask for relief? It wouldn't hurt to break it up although what kind of display are they talking about? McKeon stated that the ZBA has to interpret the intent of what the ordinance was. This happens to be parking spaces and display. Barron noted that it's not even display, but it is storage.

Applicant can come to the ZBA or put the break in between. It meets the parking and the outside storage. It is not outside sales. The BOS wants the applicant to get a variance for this or they can put the break in between. This doesn't meet criteria "E" because it doesn't meet outside storage. No exception was given on "B". Evans stated that "E" falls during the site plan review. The ZBA okayed "A" and they need to do something under 208.6B and it's not a deal breaker. The ZBA will stick with "B". McKeon stated that this all falls under the site plan. Applicant needs to either put a break in the eastern line of vehicle parking, come back to the Zoning Board for a variance, or eliminate some spaces.

Point 4

The ZBA agreed that this is not their issue.

Point 5

PB – 72 spaces

ZBA – 65 spaces

The ZBA did not include what was going to be needed for employees. McKeon stated that the ZBA is going to make the assumption that the PB knew how many spaces would be needed.

Retail – 20 spaces, Retail – 1 space, Auto Sales – 2 spaces, Auto Display – 5 spaces, Total spaces required – 28, Total Spaces Required – 72; 72 minus 28 gets you the 44 Display spaces

Zannotti noted that in the meeting minutes it was determined that the spaces on the side of the building was designated for Manny's and not for display. Evans noted that the two handicap spaces were intended for Manny's. The ZBA designed 45 spaces for display and the PB had 44.

Point 6

The ZBA noted that only Point 3 is the only issue but does not justify to rehear the whole application for putting in a 10 ft. strip.

Zannotti stated that, per the PB meeting minutes of November 2017, it appears that there is another site plan in addition to what plans are being looked at tonight. Should the ZBA be looking at those plans for concerns that the BOS might have. McKeon replied that the ZBA is basing their decision of November 20, 2017 as supplied as Exhibit C, Sheet #3.

The ZBA has agreed that the plan submitted to the Zoning Board by the applicant dated June 2016 was in the minutes and should be part of the ZBA Variance and should have gone to the Planning Board.

Response to each issue:

#1) Based on the site plan of January 20, 2016 supplied by the applicant (Lanoue). The ZBA agreed that the two handicap spaces go with the plan. The two handicap spaces can be within the setback. The four spaces to the left of the building were removed by the ZBA before their decision was made. Keeping as close to the spirit and intent of the ordinance was upheld by the Planning Board, by only having one row of vehicles on the east side of the property and having it go back and away from the road.

#2) The Planning Board did not change what the ZBA had as the 22 spaces on the east side versus 11. The configuration conforms to the ZBA attempt to lessen the visual impact of vehicles from Rt. 9.

#3) 208.6b The applications plan submitted to the Planning Board needs to correct the number of spaces on the east side of the property so it meets the regulations 208.6B, needs to insert a buffer space (208.6B), or needs to apply to the ZBA for a variance.

#4) Wasn't within the scope of the ZBA with Section 604.

#5) There are 72 parking spaces; the 72 parking spaces are appropriate because the ZBA addressed the outside storage spaces of 45. The ZBA did not address, or attempt to address, the parking spaces for employees of either business. If one subtracts what was necessary for employees and sales, based on the regulations, applicant is left with 44 outside spaces, which is one less than what was shown on the original plan submitted by applicant to the ZBA. The ZBA only addressed outside storage spaces.

#6) The BOS requests the ZBA to send applicant back to the Planning Board to start the process over. The only overstepping by the Planning Board was based on 208.6B. Only

208.6B needs to be addressed. The ZBA does not require applicant to begin the planning process again.

All the deliberations are based on the plan dated November 20, 2017 of the applicant supplied to the Planning Board by the applicant.

Barron moved to continue this topic until May 8, 2018 to finalize the language that we only concur with the BOS concern about 22 parking spaces and 208.6B, that we don't find any standing for their other objections. Evans seconded the motion, which passed unanimously.

- **Margaret Bailey** requests a Variance from Article II Section 203.6B of the zoning ordinance to permit construction within the side setback with a reduction of non-conforming square footage within the front and rear setbacks. This parcel is located in the 16 Silverdale Lane in Spofford, NH 03462 (Map 5B Lot B19) Spofford Lake District
(Present:)

Barron moved to continue the Margaret Bailey request for a Variance to a site visit at 16 Silverdale Lane on Tuesday, May 1, 2018 at 7:00 p.m. Zannotti seconded the motion, which passed unanimously.

2. Other Business

Xpress Natural Gas LLC – Motion for Rehearing

Present: Attorney Michael Bentley

Barron moved to continue the Xpress Natural Gas LLC Motion for Rehearing to the next ZBA regularly scheduled meeting of May 8, 2018, if it is acceptable by the applicant's representative. Evans seconded the motion.

Attorney Michael Bentley noted that it is acceptable to reschedule the Xpress rehearing request until May 8, 2018.

The motion passed unanimously.

The ZBA discussed the possibility of changing the start time of the meeting to 7:00 p.m. and the required process of changing the Rules of Procedure before that can be done. This will be on the May 8 meeting agenda.

3. Review :

February 6, 2018 Meeting Minutes

Evans moved to accept the meeting minutes of February 6, 2018 as amended. Barron seconded the motion, which passed unanimously.

February 13, 2018 Meeting Minutes

The ZBA will discuss the February 13 meeting minutes on May 8, 2018.

4. Next Meeting Scheduled – May 8, 2018

The next regular meeting will be held in the Town Offices at 7:30 p.m. on May 8, 2018.

5. Adjourn

With no other business to conduct, the meeting adjourned at 11:33 p.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Kristin McKeon, Chairman
Zoning Board of Adjustment

Date