

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

**MEETING MINUTES
MAY 8, 2018**

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

The Zoning Board of Adjustment met at the Chesterfield Town Offices on May 8, 2018.
Chairman Kristin McKeon called the meeting to order at 7:30 p.m.

Kristin: Before the meeting starts, do we have any motions?

Kristin McKeon moved to allow Joe Hanzalik to vote in place of Eric Barron at this meeting. The motion was seconded by Lucky Evans, which passed unanimously.

Kristin: We only have four members present tonight.
If there is anyone who wants to wait until we have a full 5 member board. We can wait until next month if you would prefer.

Rules of Procedure

John: When it comes to Rules of Procedure. There's actually three things that I'd like us to consider. One is the start time. If the meeting is advertised as starting at 7:00 p.m. it should start at 7:00 p.m. with public hearing. The other is the end time. The last few meetings have gone to 11:00 p.m. or 11:30 p.m. I think we should establish a goal in the rules of procedure to say that our goal is 10:00 p.m. and a stop limit of 10:30 p.m. There's a point in time when our brains are fried and we may not be thinking as clearly at 11:30 p.m. as we would be at 7:30 p.m. or so. It may not be fair to the applicants. I think we should actually state an end time as well. And the last thing is, I'm not savvy enough to get 14 pages of documentation 5 minutes before this meeting starts. I'm just not that good. So, the third proposal is, to put in the procedure that documents should be submitted to Pat two days prior to meeting. That gives us time to read it and analyze it ahead of time. Otherwise, throwing that in front of us is not doing the applicant justice. So, those are the three things that I'd like to encapsulate into the Rules of Procedure. And I know we have to do that three times.

Kristin: I completely agree with you. My question is then, and a couple of these we'll have to run by legal counsel, is if we can end at a certain time. This last meeting we had to get the applicants to agree to continue because they do have the right to be heard.

The other point is, I've often thought that when you send in applications, they should be complete. If you're handing us stuff the night of the meeting or you're handing out sheets of paper as you're doing your presentation, then apparently your packet was not complete. But again, we would have to get legal counsel to make sure that is a correct interpretation.

Lucky: Are submittals public knowledge? This had no chance to be viewed by the public.

John: On item 2, the end time. There's actually a public hearings and meeting section. Item number 4, board has option to end public meeting at 10. So it's already written in the Rules of Procedure. We are just not adhering to it. We are choosing to not end at 10. "Current case and any other unheard cases or business will be tabled until the next regularly scheduled meeting."

Lucky: It would be good to warn someone who is waiting to be heard that a deadline is coming up.

John moved that the public hearings start at 7:00 p.m. and to make sure everyone will be prepared, documentation must to be submitted 48 hours before the meeting.

Kristin seconded the motion.

Discussion:

Kristin: That would make it on a Sunday. Maybe 7 calendar days, rather than 48 hours.

John: How about Friday? If it is in by Friday by noon, Pat will be able to send it all to us on Monday.

Kristin moved to amend the motion to add that every document has a digital copy and must be submitted to the ZBA secretary by Friday at noon before the meeting date.

Joe H. seconded the motion to the amendment, which passed unanimously.

Vote called on the original motion to start the public hearings at 7:00 p.m., establish a goal to end meetings no later than 10:30 p.m. and make it mandatory to receive any supplemental documentation by Friday at noon. The vote passed unanimously.

Kristin: We'll have to vote on this three times.

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 April 10, 2018)

Kristin: Pat sent it out to us and we were making corrections on it if anything was different from what we remembered, or if anything needed clarification.

Lucky: Point of information is, we were told by the attorney that those spaces have been handicapped forever. They haven't. Anyone could park there. They've never been marked as such. So, I take that as a rather unfavorable insistence.

Kristin: We already made that decision.

Lucky: But, we went by the map that we were given. They had 2 spaces on the side of the building in the original design. And they said nothing on the west side of the building.

Kristin: Right. The responses that we wrote down were sent out and any changes that we felt needed to be made or any clarifications, it was under our response to each issue. The minutes as well. The response to the appeal starts on page 8 in the minutes.

John: My comments in red are my suggestions for corrections.

Kristin: Anything I added was just to make things clearer. Anything that said “This” or “The” or “They” I just went through and said what it was to make things clearer
All I did was clarify.

Kristin: Number 3. It said original application and I put in “applicants plan submitted to the Planning Board.” And added “or needs to apply to the Zoning Board for a variance.” Only because that wasn’t there and that’s what they needed to do.

I can take both of these and have Pat or Liz make a third one with what we put in with another color and we can print it and I can sign it. If that’s acceptable. I’ll need a motion.

Jeanny: So you’re approving those changes?

Kristin: Subject to it being sent out so everyone can make sure that it is accurate. I’m asking for it to not be saved until next month.

Kristin: I will need to make changes and wait until next month if the motion is not tonight.

Jeanny: Can you have everyone just email changes?

Kristin: That is what we were doing

Kristin: Went through more of the clarifications on minutes for approval.
The second line said they wrote configuration conforms. Number 3. It said “original application” I put “the applicant’s plan submitted to the Planning Board”. Just to clarify.

John: Is there a date?

Kristin: November 2017. Then it said “Needs to correct the number of spaces”. I wrote “on the East side of the property so it meets the regulations of 208.6B.” Then it said that they need to insert a buffer space and I added “Or apply for a variance.” Because that’s also an option.

I didn’t do anything to number 4

Number 5 line 5

I added June 2016

Is that ok?

And then on 6, I took out “wants” put in “requests”

Added “to the planning board” and added “to start process over again”

Second line it says, “only over stepping of authority” I added “by planning board”

The next line down I added “The ZBA does not require applicant to start the process again.”

Should I put “resubmit”?

John: I think it’s ok. Maybe write in summary.

Kristin: 6 was them wanting us to send it all back.

Then if you go to 9, it said “all deliberation was based on November 20 2017” I added “supplied to the planning board by the applicant.” It was unclear who they supplied plan to.

If we’re good with that I’ll have it printed and sign to send out.

Joe H. moved to accept the changes made from the draft decision of April 10, 2018. John seconded the motion, which passed unanimously.

- **Xpress Natural Gas LLC – Motion for Rehearing**

(Continued from April 10, 2018)

Present: Attorney Michael Bentley

Kristin: The first item on the agenda is Express Natural Gas Motion for rehearing

They sent the original motion for rehearing.

We will only make the decision to do a rehearing if there are reasonable grounds to revisit. There were a lot of assertions or accusations. And if we agree that what we heard and the information that we had and what we used to make that decision was correct then there is no reason to open back up for rehearing. If we think that there was something in those 49 points that perhaps may be valid for reconsideration, then tell us which ones you think.

John: The one that I think is most interesting is number 28. Did we overstep in defining “trucking terminal” at one previous meeting without going to public hearing?

Sites RSA 675:3 saying that you need public vote

If that's true, maybe we didn't have jurisdiction to amend the zoning ordinance.

Kristin: I looked at it and I didn't feel that RSA 675:3 applied. We were not acting as an ordinance. We were simply interpreting what was meant by ordinance. We had to determine what was meant by “trucking terminal”.

Lucky: We had to determine whether it was just parking or if there was activity of trucks.

Kristin: The Planning Board creates zoning ordinances. Often times, their interpretation is sometimes different, which is why it sometimes ends up with us. We have to look at it and make a determination of what is meant by the ordinance. Our legal counsel agreed that that was the proper thing to do. They don't have a definition of everything that was put in the ordinance. We had to decide why they said truck terminal, that's what we were deciding. In my opinion 675:3 doesn't apply.

Jeanny: You're interpreting the facts that are placed before you.

Kristin: There are a lot of accusations, but don't have anything to do with the decision made. They were unfounded. On 16 and 17, there was no outside communication. Yes, I'll address 17. We are not allowed to spend money on legal counsel without permission from the board of selectmen. So, there was no way to continue without communicating with the Board of Selectmen.

20, was a bit concerning because that was them saying they didn't know about our legal counsel. They're not entitled to know what goes on in an “unmeeting”.

John: 27, information from Garelick. Asked for information prior to decision. The information presented in this package was certainly after the fact. So, I don't see how this could even be considered. The decision was already made.

Kristin: And this letter was not dated, no letter head, and the signature was interesting.

John: I think the signature was electronic. I'd dismiss 27.

Kristin: Yes. No date, no letterhead. Plus we asked for it months ago. I thought we addressed most of the points brought up again.

42, talking about plowing bill. They themselves said that was the latest one they had. It's not irresponsible of us to assume that that was the last one. The applicant was irresponsible for not providing us with the latest bill.

Lucky: And they sent information on the property but not trucking terminal. They showed pictures, but no date was available.

Kristin: 45 is incorrect. Saying that there was a lease and it wasn't abandoned. Overall we took all of the evidence that was presented. Made a decision based on all of the information presented. No evidence was provided by the applicant that it had been used as truck terminal. It hadn't been used in over a year.

Lucky: Potential use is not use.

Joe H.: They could have provided items or documentation or something saying they were using property. Not just a couple sentences.

Jeanny: And it was sent in after decision had been made.

Kristin: Yes and it had no date, no letterhead. I have no idea who wrote it. I'm not sure how that should be used.

John: We would never be able to close an application if the applicant can continue sending things after decision is made.

Kristin: What if we say we're not accepting late information? We have no way to verify any of this.

Lucky: There is no procedure for including tardy information.

Kristin: They want to appeal because there is new information. They want to come up with more information again and again. It has happened each time. The answer wouldn't be different whether it came in or not. It's got no value as far as I can see. That letter was included in appeal packet. We don't have to accept it. Even if we say it's part of appeal and we're going to look at it, we don't know if it's legitimate. There's no date and no letterhead.

John: I'll make a motion that we deny rehearing.

Kristin: We need acknowledge that this was put on the table before making motion.

John: Yes, it's just another situation of data coming in after the fact.

Lucky: I see no reason to read this.

Kristin: One of the reasons the court was able to come back, certain items didn't end up in the minutes that's why it was able to come back. If this goes to court again and we have ignored this, will it be able to come back again?

Lucky: We haven't completely ignored it. We're discussing it now.

Kristin: This was handed in at 6:55 on the night of the meeting. Only one copy. I'm not accepting it.

John: Made a motion to deny a rehearing.

Joe H. seconded the motion, which passed unanimously.

- **Leslie G. Mattingly and Jennifer S. Mattingly** request a Variance from Article II Section 203.6b (A,B & C) of the zoning ordinance to permit construction within the lakefront setback, side setback and the road setback with a reduction of the nonconforming square footage and volume of the building within the setback areas. This parcel is located at 10 Silverdale Lane in Spofford, NH 03462 (Map 5B Lot B22) Spofford Lake District
Present: Dave Bergeron, Brickstone Land Use Consultants LLC

Mattinglys want to table until next month to wait for 5 ZBA members.

Kristin: Opening to continue without having to renote everyone.

Continue until June 12 meeting.

Kristin motioned to continue the Mattingly hearing to June 12. Lucky 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 at 16 Silverdale Lane in Spofford, NH 03462 (Map 5B Lot B19) Spofford Lake District
(Continued from April 10, 2018 and Site visit of May 1, 2018)
Present: Tim Sampson, Architect and William Cormier, Building Contractor for Margaret Bailey

Tim Sampson: Shore line protection information submitted to all ZBA members present.

The reduction goes from 148 ft of building within the setback down to 22 ft.

We are trying to minimize the dimensions of stairs. And it's 1 ft of stair that hangs over onto the setback. I think the discussion last week was that there would be 6 ft of stair. We were going to cut it down to 3 ft which is still a comfortable stair.

Kristin: John pointed out that there is 30% coverage of the lot. So it's over the 20% coverage.

John: The buildings alone were 19.2%

Now if you include the deck, it jumps up by 1.5%. So we're over 20% just for the buildings.

Tim: Can I ask what you're using for a lot square footage.

John: Town record shows 11,761.

The land is .27 acres in town records.

Tim: It says here in my records that the lot is .38 acres. Which is 16,522.

Jeanny: The assumptions should go by town records.

Kristin: What does the deed say?

Jeanny: They don't always say.

John: The deed doesn't give that information.

Lucky: That would be a good piece of information to have.

Kristin: I used map key, did the math and came out with different numbers each time. But, I just tried to go by the scale on the map.

Lucky: Tax maps have a curve to represent an old road that wasn't a property line.

Tim: This is what was turned into the survey for shoreline protection act.

John: This says Tax Map 5B Lot B19. Looking at the record of that plot says .27 acres. So I'm not sure where the .38 acres came from.

Lucky: I think we should continue this until we have that information.

Kristin: We're looking at a variance for stairs and deck too. Because it was already non conforming in lot coverage, by allowing the garage to go up to double in size that becomes a bigger change of what is allowed for expansion. Will this be a case of them coming to us for equitable waiver of dimensional requirements. It's not giving them a pass and not allowing them to be grandfathered.

Jeanny: They would have to reach the four elements which is, an innocent mistake, not discovered until too late, no nuisance, high correction cost. So it has to meet those four for it to become an equitable waver.

Kristin: The only problem is B. It has to be good faith error in measurement or calculation made by an owner or an owner's agent. Or an error in ordinance interpretation or applicability. And we could probably go under that. An ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

674:33-a

John: Where does volume requirement come in?

Kristin: Anything nonconforming, we have to look at square and cubic footing.

Tim: The volume is where it's supposed to be.

Kristin: That's where cubic footing comes into play. When the garage was moved, it was over the footage by double.

Tim: It doesn't specify height.

Kristin: At this point, it would be. Equitable waiver of dimensions. Look at deck as well as stairs aren't built yet, but the garage itself is. The lot is already well over the amount of impermeable surface allowed by zoning. Wants to get legal counsel before making decision.

Lucky: We need an accurate survey of the lot.

John: The application includes a record that says .27 acres.

Lucky: I think it would be good for them to come forward with real information

Jeanny: We should go by the information in the application.

Kristin: I'd like to get legal input to make sure our interpretation is correct.

We need to make sure that, we already know coverage is over, but deck is different request. The coverage wasn't addressed at all.

Jeanny: This is not adding up correctly. We should have them get equitable waver.

Kristin: The only part that isn't finished is stairs and deck.

Jeanny: We should tell them that they should be applying for equitable waver

Kristin: We're looking at a variance for the stairs.

The lot coverage was never brought up by anybody. It wasn't addressed in the permit process.

Tim: We built everything with a permit. I talked to Rod Parsons about everything.

Tim: I had extensive discussions with Rod about it.

John Koopmann (resident): When viewing plans, looking at coverage. The plan submitted showed driveway. Was going to remain grass. Anything approved should not reflect driveway.

Lucky: What if there is a fire down in the garage? What do you do? Should there be some egress out there.

Jeanny: That's not up to us.

Tim: If I can't show a driveway on the drawing, what do I do?

Kristin: Everyone just parks on the grass. There are no driveways.
It's tough when converting camps.

Just look at how much you've hammered everything down during construction and make sure you can still grow the grass back in that area.

John Koopmann: Other homes were pointed out, no one had a driveway. Insurance proffered that they would do this as well. That should be added to the lot coverage.

Kristin: Pam, you have history down there. Has it always been like that?

Pam Walton (resident, Conservation Commission): Yes. It's called overflow parking. The Baileys seems bigger than .27. Is it summertime use? Seasonal?

Kristin: That's not our prerogative.

Pam: I wanted to know is it can be used year round

It's not meant to be used year round.

Kristin: The issue is the stairs. The deck is a coverage. Do we want to decide this now or get legal counsel?

Lucky: if an accurate survey is offered, could that be evidential if we close the public part?

John: We're still well over. (Referring to whether the lot is .27 or .37 acres)

Tim: Deck is .7%

Lucky: The previous garage was very much in setback. We'd like to encourage things becoming more conforming.

Kristin: But, if he moves it out of setback, that increases the already overloaded coverage area.

Lucky: If it's not in the setback, volume is not an issue.

Kristin: That's where I want some legal counsel. Is volume an issue because the lot is over the 20% impermeable surface?

Jeff Scott: Why was this not designed with stairs not in the setback?

Kristin: The plans were misread. They were approved thinking stairs were not on the line. As they got closer, the building inspector acknowledged the error.

I propose we continue this and get legal counsel. We will know if that's an issue for equitable waver. Do we include the deck on the variance? Or wouldn't we need to because it's not built yet? Had it been done before he noticed, we would be having equitable waver application. Even though they are not built is that what we should be doing? That's what legal counsel should be looking at.

I'd rather wait another month and have good information

Lucky makes motion to continue with access to legal counsel on June 12. John seconded the motion.

Discussion:

John: The only thing they are applying for is 1.5 ft.

Kristin: The stairs are part of the coverage of the lot that is already over coverage.

John: With an application like this that is very specific, we have authority to look at whole zoning reg correct?

Kristin: We haven't had a building inspector approve anything without information. He's told them to apply for a variance mostly post construction. At this point with it substantially done, I don't want to decide a variance if we should be looking at an equitable waiver. Variance different criteria than equitable waiver.

Kristin: We can just look at the stairs and say yes or no, but then they have another problem. Maybe it can all be addressed with an equitable waver. We need to do what's right, but I'd like to do it right the first time.

John: At what point to do we take off the proposed driveway off plan?

Kristin: We can put that in decision. I don't want to make them go through 2 variances and then an equitable waver. Especially because it was our code enforcement officer that told them to do this.

Vote called: *The motion passed unanimously.*

John: How do we learn from this experience?

Kristin: Supposed to be code enforcement officer.

Jeanny: In discussions with Rod, the stairs didn't appear to be substantial enough on the drawings for him to observe.

Kristin: He didn't look at coverage. He needs to look at that before issuing permit. He needs to know zoning regulations.

This will be continued and we will put in a request for legal counsel.

- **Craig and Sylvia McBeth** request a Variance from Article II Section 203.6b (B&C) of the zoning ordinance to permit the install of a propane tank within the side and lake setbacks. This parcel is located at 72 North Shore Road in Spofford, NH 03462 (Map5C Lot C6) Spofford Lake District

Present: Craig and Sylvia McBeth

Craig McBeth: We want to add a gas cooking stove and heating stove to extend our seasonal use. Need to add tank to that. The gas line would be minimal distance. It's a 60 gallon tank. About 2.5 ft in diameter. It would be 20 ft to property line. On the east side of the house. The shore line angles a bit.

John: Why can't it be put on the other side?

Craig: It would still be 50 ft from shore line. And the electric box is on that side. And it sits in pure sunlight and is the most visible part of the property. Where we are proposing it goes, it would have the shortest carry line for the gas. There is an entrance way to the house. But it would be free standing out in the yard. We would need to dig the line.

Kristin: Bigger sizes need to be away from the house.

Craig: It's smaller so we can put it up against the house. It's seasonal use, so it won't be used much.

John: What about putting fencing around it?

Craig: We would probably put lattice work around it.

Kristin: We've gone out and looked at almost all of these. Sometimes it's reasonable and we can do it. I'm concerned about the lake setback. I'd rather take a look, but I'm just one person.

John: What's the terrain like?

Craig: Pretty flat.

Jeanny: So there's no other place to put it?

Craig: It would be out in the woods.

Lucky: Where's the roof line?

Craig: Roof line parallels the lake

Lucky: So no snowfall?

Craig: The snow falls lakeside and roadside, so no snow would fall on the tank.

Lucky: Is there a crawl space?

Craig: Yes.

Lucky: It could go near the electric box and just run it under.

Craig: This brings us to the most logical place to put it on the property.

Kristin: Anyone else like to say anything?

Gary Winn (abutter): As far as an abutter, with the ledge around there, I wouldn't dig 18" down.

Craig: From a cosmetic stand point, it would be a gas tank free standing in the yard. It would be safest and most practical up against the house.

Lucky: This is fairly far from the lake, and close to the setback. Away from the window.

Craig: We sold another cottage on the lake that had a tank that was 10 ft from the property line.

Kristin: How far back can you get it to the back of the house?

Craig: 46' if its 2' in diameter.

Jeanny: We should go look

Kristin: I would like to go see it.

John: So the site visit would be between now and June 12?

Kristin: Yes. We could even do the visit on June 12th

John moved to have site visit June 12 right before the ZBA meeting. Joe H. seconded the motion which passed unanimously.

The site visit is scheduled for June 12th 6:30 p.m. at 72 North Shore Road in Spofford, NH.

Kristin: I would like if everybody could look over what we have. Some rules of procedure are very vague or not necessary. If everyone could look over those during the month. We can continue the voting process.

John Koopman: Suggestion: most applicants wind up with problems with setbacks and square footage. With lake front properties, they have no application standards. Anything involving setback and coverage should have survey and calculations for coverage provided.

Kristin: We had talked about extra training. We would need to go before selectmen for approval for funds. Why don't we come up with potential dates for us? Will let everyone know when? We can submit our potential dates to John Ratigan.

The sooner that we have the extra information, the earlier it will make our nights. Either the 15th or the 21st at 6:00 p.m.

With no other business to conduct the meeting adjourned at 9:47 p.m.

The next meeting will be held in the Town Offices at 7:30 p.m. on June 12, 2018.

Respectfully submitted,

Elizabeth McKeon

Acting Secretary

Approved

Kristin McKeon, Chairman
Zoning Board of Adjustment

Date