

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

**MEETING MINUTES
JULY 10, 2018**

Present: Kristin McKeon, Lucky Evans, John Zannotti, Alternates Joe Hanzalik, Joe Parisi (Arrived at 7:20 p.m.) and Select Board Representative Jeanny Aldrich
Absent: Eric Barron

The Zoning Board of Adjustment met at the Chesterfield Town Offices on July 10, 2018. Kristin McKeon called the meeting to order at 7:12 p.m.

McKeon requested that Hanzalik vote as a regular member on the hearings.

Review:

June 12, 2018 Site Visit Minutes

Zannotti moved to approve the June 12 Site Visit meeting minutes as presented. Hanzalik seconded the motion, which passed unanimously.

June 12, 2018 Meeting Minutes

Hanzalik moved to approve the June 12 meeting minutes as amended. Zannotti seconded the motion, which passed unanimously.

Parisi arrived at 7:20 p.m. McKeon requested that Parisi vote as a regular member on the hearings.

Other Business

Rules of Procedure – 3rd Reading

The following changes will appear on the Rules of Procedure and on the ZBA application:

1. A deadline for accepting incoming items will be at noon on a Thursday before the hearing.
2. A digital copy is required of ZBA applications and any other information.

The following change will appear on the Rules of Procedure:

3. Meeting start time will be 7:00 p.m., starting with the meeting minutes review, public hearings to start at 7:15 p.m.

Zannotti moved to approve the three changes for the Rules of Procedures that were discussed from the minutes of last month for the final time. Evans seconded the motion.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – abstained; Zannotti – yes
The motion passed by majority vote.

Rules of Procedure – 2nd Reading

Under Public Hearings and Meetings – the ZBA should change opening/closing, opening/closing public input, as it appears on Page 4, under XI, vi, vii and viii, “A” and “6” is not legal, the ZBA can’t ask questions after closing the public portion and can’t direct questions to members of the public and receive answers during deliberations. The public hearing must be opened.

Hanzalik moved to approve the second reading on Public Hearings and Meetings for the Rules of Procedures that were discussed from the minutes of last month for the second time. Zannotti seconded the motion.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – yes
The motion passed unanimously.

Rules of Procedure – Further modifications:

Hanzalik has offered to write a paragraph requesting that all applications include the lot size, total permeable and impermeable coverage, building square footage and building cubic footage. The paragraph will be presented at the August 14 ZBA meeting for further discussion.

Parisi stated that the role of the Selectmen’s Representative is not defined in the Rules of Procedure. He suggested that the role of the Selectmen’s Representative be included. McKeon stated that the Selectmen’s Representative role doesn’t usually appear in the Rules of Procedure. That role is generally is there are questions of rules, questions of the law or to bring the ZBA information from the Selectmen. McKeon will provide the written information on that role to be available for discussion at the August 14 ZBA meeting.

Other:

Parisi noted that the brief discussion of alternate members going to full members. The notes only reflect that Joe (Hanzalik) saying that he would be willing to go as a full member. Parisi noted that he also stated that he would be willing to go and Eric (Barron) said that he would not be. Parisi also noted that there was an item missing from the minutes which was input from John Koopmann (the public) talking about protecting the lake and he gave his suggestion on a definition of hardship related to the item on hand.

Hearings:

- **Chesterfield Board of Selectmen** request a Variance from Article II Section 203.2 of the zoning ordinance to permit the proposed use of this property which would be mixed use, the first floor would be split between a small retail business (coffee shop) in the western section and an art studio in the eastern or old selectmen’s meeting room. The second floor would be residential or storage for both lower floor operations. This parcel is located at 504 Rt. 63, Chesterfield, NH 03443 (Map 12B Lot C9) Residential District

Present: Attorney John J. Ratigan and Selectmen’s Representative Norman W. VanCor

Ratigan stated that this variance flows from Town Meeting. The voters deliberated at Town Meeting on the idea of what was the best future use of the property. There had been some consideration about demolishing the building and there was another option of saving the building for either selling or leasing it. It was decided at the Town Meeting that the building would be sold. Because it is in the residential zone is why we are here to ask for a variance for mixed use, for perhaps a coffee shop or an art studio on the first floor and either residential or storage for those uses on the second floor.

Ratigan noted that the variance is not contrary to the public interest. The use will not threaten the public’s health, safety or welfare nor will it change the character of the neighborhood. That issue had already been taken up at Town Meeting and it was supported at Town Meeting to change the use of this building.

Granting of this variance will not be contrary to the spirit and intent of the ordinance. The property will not be put to a use that is any greater intensity than the building has historically had. It is not out of character with the type of uses that are ongoing with the Town Hall, library, and school nearby. These are community center activities and a coffee shop would be a convenience to people and to have an art studio would be supporting the arts, which may have some interaction between the art studio and the school.

Substantial justice must be done. At Town Meeting it was determined that the building should be put to a future productive use and it would be a loss if the variance was not granted to allow that use. There is no gain to the public if the variance is denied. **that is resulted and that would be a loss to the property owner, which are the residents of the town, in that it is good to recycle the building in this way.**

The variance will not diminish the values of the surrounding properties. Carol Pelczarski of Pelczarski Realty provided a letter stating that, based on her opinion, if the variance relief is granted, allowing it to be an art studio/coffee shop, it would not adversely affect the value of the surrounding homes. The prospective owner is expected to commit to substantial rehabilitation to the property. They would keep the exterior consistent with the historical character, including maintaining the slate roof.

Literal enforcement would not result in unnecessary hardship. That analysis starts with what is the special condition that distinguishes from others in the neighborhood. This property is surrounded on all sides by municipal uses and that does distinguish it from other properties in the neighborhood. It was approved at Town Meeting for this low intensity business retail use. The proposed use is a reasonable one and it was approved at Town Meeting and it is largely consistent with the character of the community. This could be used as a community center to grab a cup of coffee while waiting for their kids after school or while they are at the library.

Parisi noted that Ratigan mentioned the Town Meeting decision but he doesn't recall the scope in what was voted on. Parisi did attend the Town Meeting and stated that the potential use was what is being proposed. Ratigan did not have the Town Meeting minutes and didn't have the details on the voting. Parisi noted that Ratigan is going beyond of what was agreed to at Town Meeting. Parisi stated that it was agreed to sell the building for one dollar but keep the land owned by the town. Zannotti stated that the application did not include the Town Meeting minutes and he doesn't know what went on at the Town Meeting or what was voted on.

Ratigan noted been no purchase and sale agreement. Evans stated that the Dompier's voiced in doing exactly what was described here. Hanzalik asked what parking is part of that property if the house is being sold. He also asked if there would be increase in traffic, especially first thing in the morning and afternoon, when students are being picked up. Ratigan replied that none of the land is being sold. The building is being sold and there will be a lease between the prospective building owner and the town. There was a town meeting to offer a lease for up to five years, which is what the Selectmen can do without having the specifics of the lease in front of Town Meeting. Ratigan replied that the parking is not a Zoning Board issue. Until there is a variance, no one is going to buy this property because there is nothing to buy.

Radigan noted conditions pertaining to maintaining the character of the building will be covenanted to the deed so that they will run with the property going forward and be requirements to be maintained in the future.

Barbara Girs presented a copy of the Annual Town Meeting minutes of 2018. McKeon read aloud Articles 9, 10 and 11 of those minutes:

ARTICLE 9: Jon McKeon made a motion, seconded by Gary Winn to see if the Town will vote to raise and appropriate the sum of Thirty Thousand Dollars (\$30,000) for the demolition of the old town office building or act in anyway thereto. This is a special warrant article per RSA 32:10 1 (d)

McKeon spoke to the articles: Article 10, which was put in by petition, must appear as it was written. Because selectmen felt the meaning wasn't exactly as the petitioners intended, selectmen inserted Article 11. The Board of Selectmen do not support Article 9. Open Houses have been held and a potential buyer has come forward. All due diligence was done in informing the public of potential problems with the property. Experts in the field of property law and prior practice have been consulted; stipulations for the look and use of the building have been addressed. All of this will be covered in a deed in order to protect the town. Dan Cotter proposed an amendment, seconded by Norm VanCor, to add "located at 504 Route 63, Chesterfield, NH" so that it conforms to the other articles. The amendment passed. Cotter continued: some time ago he listened to arguments that building was uninhabitable, dangerous and should be torn down; water well to service the building is shared by fire department and town office, and many other concerns. Joe Scrivani spoke at length about his involvement with the building and his many concerns about future lawsuits should the building be sold. Suggested evidence was overwhelming to tear down the building. Kristi Dompier introduced herself as the person, with her husband, who wishes to buy the building. They are 25 year residents of the town with two sons who went through the school. Steve Dompier is an electrician, she is an artist. They will repair any structural damage and bring up to code. They intend to use the back room for her studio and think the front would make a perfect little café. Building is in excellent shape considering how long it has been cold and vacant. Elaine Croteau agreed with Dan Cotter and voiced concern about sketchy characters that might come to the building which is so close to the school. She suggested the Dompier's buy the building and move it. In response to a question from Paula Duston, Jon McKeon replied that although years ago a town lawyer had warned about selling the building and possible liability issues, two current lawyers the Selectboard consulted said this opinion was incorrect—as long as all known issues are revealed to a prospective buyer. John Pieper offered that if weird people hanging around near the school are a concern, the town should shut down the library. Burt Riendeau asked about zoning. Sandy Harris: the building has historic quality to it and would be a tragedy for it to come down. Ella Montgomery thanked the older residents who are concerned about the future but assured them that people like her would be here. NH has a problem keeping young people; saving history will help. Tom Woodman said the families of his campers always mention the gingerbread house in town, not the lovely stone buildings. When it's gone it's gone forever. Woodman wants the building to stay. Jeff Scott described his efforts in cleaning up the interior of the building according to state regulations with closed windows and HEPA filter vacuum, and pointed out that the original \$445,000 figure for fixing the building included an elevator. The numbers were inflated to guarantee a new office building. "We take risks every day." Of 180 paper ballots cast, 60 voted YES, 120 voted NO. Article 9 failed. Dan Cotter made a motion, seconded by Jon McKeon to restrict reconsideration. The motion carried. Cotter raised a point of order and read RSA 40:10 IV to stop a vote on Article 11. Selectboard and Moderator agreed that it does not apply but will check with Department of Revenue Administration after the meeting.

ARTICLE 10: : A voice vote was in the affirmative on a motion made by Jon McKeon and seconded by Ella Montgomery: Per RSA 41:14-a, the proposed sale of the Former Town Office Building located at 504 Route 63 shall be inserted as an article in the warrant for the town meeting.

ARTICLE 11: Brad Roscoe made a motion, seconded by Ella Montgomery to see if the Town will allow the Board of Selectman to sell the building on the property located at 504 Rt. 63, Chesterfield, NH. Paula Duston called the question, seconded by Barbara Evans. The motion passed. Of 143 paper ballots cast, 102 voted YES, 41 voted NO. The motion passed.

Parisi stated that the building (former town office) is surrounded by school activity. To the North is the extension to the playground and there are kids out there playing soccer. My concern is that the variance is contrary to the public interest because of the additional activity and traffic could

put the children at risk, who are adjacent to it. The library is not adjacent to the school. The library is on the far side of the town hall. One of my concerns is the safety of the children. McKeon asked how Parisi could see that when the residents of the town voted that this was a good idea. Parisi replied that what the residents voted on is to give the Selectmen the authority to sell the building for one dollar.

The vote was not to sell the building for one dollar to be used to convert it to multipurpose use and to use it for this specific reason. Parisi stated that his issue is the coffee shop. He added that there is going to be what type of people would be drawn into that coffee shop and we don't know what danger that's going to be for the school children. McKeon asked how it is controlled for who comes into this (Town Office) building. Evans stated that it was in the deliberations as to the explanation by the Dompier as to how they would going to use the building and that's what the town considered to vote on. Evans asked how the lease will be passed on. McKeon stated that the lease is only for the surrounding property and parking and the ZBA is not addressing the lease. Ratigan noted that the deed will control what the use of the building will be, such as an art studio and a retail business, like a café.

Ron Rzasa, Crowningshield Road, noted that when the building was a town office, there was a lot of traffic and there wasn't an issue at that particular time.

John Pieper, Spaulding Hill Road, stated that regarding Parisi's comment on what was voted on, it would have been foolish to have worded the warrant article to say that the town approves the sale to the Dompier for the purpose of a studio, etc. because if they were to back out of the sale, the town would be back to where it was with a piece of property with no benefit to anybody. I assume that the warrant article was deliberately vague as to what it would be sold for so that what the town approved would be flexible enough if plans had to be changed. He added that the public discussion made it clear that the first priority for the Selectmen would be to approve it for the sale and the overwhelming vote in favor of this clearly had to be influenced by the intended use.

Jeff Scott noted that there will be a limited amount of parking, approximately 10 or 12 spaces. He added that the building was used as the town office for many many years with a lot of traffic and the school was there then, so I don't see traffic as being an issue at all. He noted that he does see it as a hardship for the property owner, the property owner being the Town, because it will cost us \$30,000 to tear it down we would lose it as tax revenue. He stated that would be a hardship to the taxpayer. Scott noted that the town voted overwhelmingly to be allowed to sell the building for one dollar, after Kristy (Dompier) had gotten up and explained her intended use for the building.

Barbara Girs stated that a small group of people cleaned up the building before it was offered for sale for one dollar and anyone could come in to look through the building. Form sheets were available during the walk throughs for anyone wishing to give suggested uses or comments about the building. Thirty six people came to the first walk thru. 12 people had no suggestions and had just come to look at the building and the 23 people suggested various businesses and one person noted that it would make a good home. There was only one solid offer for a business use. The town was okay with a business going in there, obviously because there was discussion about it just being a home, so it would be a hardship to the town, which is one of the criteria that must to be met.

Lee Brockmann spoke of the comment made about strange people that the coffee shop might pull in. The police department is right there and all they have to do is drive through there and not through here.

Sandy Harris noted that she was at the Town Meeting and she noted that a lot of the discussion was raised by all those attending about maintaining the character of Chesterfield with this building, noted particularly by those who have lived in this town all of their lives. Everyone knew that the Dompier's want to use this building for a coffee shop and art studio and it was very clear that they were interested in buying the building. There was overwhelming support in the votes in the town.

Bob Brockmann asked for a definition of a coffee shop. Will it have 12 or 50 seats and will it be "make your own coffee". Ratigan replied that the definition would be decided by the Planning Board, assuming that this got that far.

Robert Del Sesto, Welcome Hill Road, stated that this is taking something that's zoned residential in a residential zone and it would be creating a commercial use. In our commercial use, it is permitted to have a supplementary use of it and is restricted on size, etc. Once it allowed for a commercial use, to have a residential use in it. Commercial allows you to have a residential minor use of it. McKeon stated that she thought it was up to 50%. Del Sesto stated that, whoever buys it owns the building. That buyer could change the building's use to commercial use, which is not industrial. He had concerns with there is no Purchase and Sales Agreement that can be discussed. Without a Purchase and Sales Agreement, how can it be discussed on what the liabilities that the town wants to be protected from. He stated that the new owner's insurance policy should name the town specifically and not hold the town not liable and it should hold the town protected for the same amount of insurance. Del Sesto also stated that the variance is for a residence on the second story of the building. He asked if the potential property owner plans are make this their permanent residence. He noted that he has concerns as to whether the apartment was going to be rented. He noted that no one has mentioned disability acts and who is going to live there. Del Sesto asked if anyone knows if there are bathrooms upstairs. McKeon replied that issue is not the ZBA purview. The ZBA is going to look at whether they meet the criteria to grant the variance. Del Sesto asked what is required to make the second floor handicapped accessible and does it have to be handicapped accessible. McKeon asked Attorney Ratigan to answer that question. Ratigan stated that a certificate of occupancy cannot be given until the building meets code, just like any other building. When the property is sold, that will be the responsibility of the new property owner and not the town's responsibility. As to the issue of precedent, every property stands on its own bottom and there is no precedents. It is very seldom that you have the same set of conditions and circumstances that are identical and in this property, there is no other one like it; it's surrounded by municipal uses on all sides.

Pieper stated that this variance is for a specific use and if the property owners change their mind, they could not, under this variance for example, open a real estate office.

Del Sesto noted that this variance will stay with the property and not the owner. Under Section 3 of the variance states that something would be mixed commercial/residential use in a residential section.

Zannotti asked, if the second floor is going to be residential, does it mean one or two apartments and how many people will be residing on the second floor. VanCor replied that any uses would

go through the Selectmen and the Planning Board. Zannotti noted that he had concerns with safety and traffic and how many parking spaces are going to be occupied by the residents. He also asked that if the allotted parking spaces are not sufficient for both the residents and the coffee shop, where would people park. McKeon asked Ratigan to reply to that question. Ratigan stated that it would be up to the Planning Board to review and decide how that will be handled. He added that there will be a Purchase and Sales Agreement, which will be contingent upon the buyer to go to the Planning Board for an approval of what they can live with. Parking and safety issues will be decided by the Planning Board. After Planning Board gives approval, then the Selectmen will finalize a lease when they know the decisions the Planning Board. The Planning Board could approve a lease that this prospective buyer may not find acceptable.

McKeon noted that, if the ZBA allows the variance, the decision could say that it is for an art studio and a coffee shop on the first floor and on the second floor, either and apartment or storage and that, if that changes, the applicant needs to come back to the ZBA for another change so that we are not subject to any commercial thing that comes along. We can add that the character of the building must remain the same. Parisi asked if the ZBA define the restrictions or should the applicant say what they are proposing and whether the Select Board have any other restrictions that they are considering that should be part of the scope of the variance. VanCor replied that there are conditions in the Agreement and it is a standard real estate transaction. The Agreement give the opportunity for the Selectmen to say “No” to certain uses. The Agreement has not available at this time.

Steve Dompier, potential buyer of the building, noted that he and his wife don’t want to be too limited to just a coffee shop.

Jill Diesl noted that the Chesterfield Post Office is across the street from the former town offices and the post office building used to be a general store and post office on the first floor and there is an apartment on the second floor. That building has maintained its character historically.

John Koopmann questioned whether it is the ZBA purview to get into the details. If the ZBA allows the general use for that building, it’s going to be in the scope of the Planning Board for the change of use or any future change of use of that site is going to require site plan review of the Planning Board.

Barbara Girs provided the ZBA members copies of the general limits and restrictions provided during the open house written by the Selectmen for the former town office building. It listed restrictions for what could be done at the building.

Zannotti moved to close the public portion of the meeting. There was no second to the motion.

Ratigan suggested that the variance be approved.

Kathy Harvey stated that she was in favor of the variance. She notes that the proposal fits within the town plan and community and encourages a small business. She notes that the School Board has not taken a position either way on the request.

Barbara Girs stated that the traffic issues around the school are the parents of the children attending the school, not people going to cafes.

Hanzalik moved to close the public portion. Zannotti second the motion.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – No; Zannotti – yes

The motion passed by majority vote.

Discussion:

Evans stated that the proposed use is mixed use. The first floor will be used as a coffee shop business and an art studio in the former select board meeting room. The second floor will be residential or storage for both operations. Zannotti requested that the ZBA not expand on what the Select Board has asked for.

Zannotti moved to apply the criteria to the variance exactly as written. Parisi seconded the motion, which passed unanimously.

Discussion:

Zannotti felt that there will be an increase in traffic for the coffee shop with people running in and running out. The traffic will be quicker traffic and not leisure traffic that may have safety concern. McKeon stated that PB will take care of the traffic. Zannotti stated that the proposed use would enhance the character of the neighborhood. Parisi has concerns with the safety issues of the kids during recess and is disappointed that the school hasn't taken a formal decision on this. McKeon noted that if the school has a concern, they would have come in (for this hearing). He added that there will be an increase of traffic in an area that hasn't had any traffic in a number of years.

This is in a residential area but it hasn't be occupied for a long time. There was a business in the building in addition to being a residence, McKeon noted.

All members felt that substantial justice is done.

All members agree that values will not be diminished.

All members agree that literal enforcement would create a hardship if the variance wasn't approved. No one else wanted to do anything with this building.

Evans moved to allow this variance namely that the proposed use of the property will be mixed/commercial/residential use in a residential section for relief from Article II Section 203.2, based on a vote of each criteria.

There was no second to the motion.

*Zannotti moved to grant the **Chesterfield Board of Selectmen** request a Variance from Article II Section 203.2 of the zoning ordinance to permit the proposed use of this property which would be mixed use, the first floor would be split between a small retail business (coffee shop) in the western section and an art studio in the eastern or old selectmen's meeting room. The second floor would be residential or storage for both lower floor operations.*

Parisi seconded the motion.

Criteria for approval:

1. The variance is not contrary to the public interest.
Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – No; Zannotti – yes
The motion passed by majority vote.
2. The spirit of the ordinance is observed.
Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – No; Zannotti – no
The motion passed by majority vote.
3. Substantial justice is done.
Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – yes

The motion passed unanimously.

4. The values of surrounding properties are not diminished.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – yes

The motion passed unanimously.

5. Literal enforcement of the ordinance would result in unnecessary hardship.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – yes

The motion passed unanimously and the variance has been granted.

- **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, Site visit of May 1, 2018, May 8, 2018 and June 12, 2018)
Present: Timothy Sampson and William Cormier

McKeon announced that ZBA is waiting for legal counsel input.

Evans moved to continue the two Bailey applications to August 14, 2018. The motion was seconded by Zannotti.

Discussion:

Parisi wanted to ask the applicant's representatives how this will impact the applicant to continue this hearing until August. Sampson replied that he didn't know. Cormier replied that the customer is getting very frustrated because we have done everything that we were supposed to.

McKeon noted that some of the continuances were due to the applicant's request.

The motion to continue the Bailey's two applications to August 14, 2018 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
(Tabled from May 8, 2018 and June 12, 2018)

Present: Dave Bergeron, Brickstone Land Use Consultants and Attorney Gary Kenyon

Bergeron noted that the site visit earlier this evening allowed the attendees to see that the existing building is completely within the front setback. By the new design, the new house will be set back so that the front wall of the house will be on the back of the old house was. There will be a 1.663 ft. encroachment across the front setback line. The new house will be more conforming and have reduced the lot coverage from 26% to 19.6%.

Zannotti requested a signed copy of the plan that is being proposed for the record. Bergeron agreed to sign any of the site plan copies presented. McKeon noted that the plans should also be dated so that a different plan isn't submitted later.

McKeon noted that a question from the Conservation Commission: 25% of vegetation between 50 and 150 ft. from the shore, from the Shoreline Protection Act, must be left natural. She noted that it appears to be approximately seven trees that meet that criteria and we know that three of those are going to go. Bergeron stated that the Mattinglys are willing to replant trees that will be taken down.

McKeon asked whether the calculations for the impervious pavers were counted in the coverage. Bergeron noted that he counted them into the calculations. Those pavers will be the walkway and entryway to the house and the driveway still leaves the coverage under 20%.

The gas tank between the house and the fence will be removed. A small gas tank may be set next to the house within the developed area.

Bergeron noted that the house will be used seasonable but is capable of being use year round. Bob Brockmann asked if the new building will increases the living space. It was a 4-bedroom house and will remain a 4-bedroom house. A new septic system meets all the requirements for a 4-bedroom house.

Kenyon noted that Bergeron made a complete presentation at last month's hearing about the large differences between the existing non-conforming use and how close it is to the lake and how much improvement there is to the site and the new house with moving back the new house. The site visit tonight really brought home to the Board how stark this contrast is between the existing use and the proposed use, with Dave painting lines and showing how little the front deck will sit in the front lake setback.

Zannotti moved to close the public portion of the hearing. Hanzalik seconded the motion.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – No; Zannotti – yes

The motion passed by majority vote.

Discussion:

Zannotti noted that this is a significant change from the site plan presented in September 2017, which was denied. The applicant has come back for the Board for a new hearing.

McKeon was very impressed from what the applicant took from the Board the last time and came back with a much better plan that only has the deck outside of the buildable area. They could have rebuilt with exactly what they currently have with all the decks and porches. They provided a plan that is as conforming as possible.

Zannotti moved to approve the Mattingly application for 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 he road setback with a reduction of the nonconforming square footage and volume of the building within the setback areas. This property is located at 10 Silverdale Lane in Spofford, NH 03462 (Map 5B Lot B22) Spofford Lake District

Hanzalik seconded the motion.

1.The variance will not be contrary to the public interest.

The variance enhances the essential character of the locality and does not threaten public health, safety or welfare.

Vote: Passed unanimously

2. The spirit of the ordinance is observed.

The spirit of the ordinance enhances the essential character of the locality and does not threaten public health, safety or welfare.

Vote: Passed unanimously

3. Substantial justice is done.

The applicant provided a site plan dated April 17, 2018 that is substantially more compliant than their previous application in September 2017, which was denied. The new site plan shows

the house to be fully within the setback requirements except for 1 foot within the side setback (1.66 sq. ft.) and the 380 sq. ft. deck.

Vote: Passed unanimously

4. The values of surrounding properties are not diminished.

To the contrary, neighboring property values will likely increase.

Vote: Passed unanimously

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(a) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

Due to the lot configuration and size, it does not support reasonable full compliance with the zoning ordinances. The proposed use is a reasonable one as it conforms to the character of the surrounding properties.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, 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 and a various is therefore necessary to enable a reasonable use of it.

Due to the lot configuration and size, it does not support reasonable full compliance with the zoning ordinances. The proposed use is reasonable as it conforms to the character of the surrounding properties.

Vote: Passed unanimously

Stipulations:

1. Site plan dated April 17, 2018 shall be signed by appropriate Brickstone authority prior to the ZBA vote.
2. Minimize tree removal and provide for replacement erosion protection.
3. Site plan shall be modified to define the driveway as gravel or pervious pavers.

Vote: Passed unanimously to approve the variance.

- **Peter A. & Linda L. Remy** request a Variance from Article V Section 503.1 of the zoning ordinance to permit a two-story 10’x10’ addition on a foundation at the northwest corner of an existing 4 unit apartment house to allow for an expanded kitchen on the first floor and improved bathroom facilities on the second floor. The expansion affects three separate apartments, one on the first floor and two on the second floor. This parcel is located at 9 Church Street in Spofford, NH 03462 (Map 10B Lot A010) Residential District (Continued from June 12, 2018)

Present: Peter A. & Linda L. Remy

McKeon noted that Planning Board minutes of August 3, 1992 for a consultation to upgrade the septic system for a 3 unit to a 4 unit apartment. Minutes were taken on the consultation and a motion was made and seconded and no site plan was needed. The ZBA minute of November 3,

1993 for a request for an administrative appeal were found pertaining to the Remy property. Nothing was found in 1987. The administrative appeal consisted of an expansion of a nonconforming use beyond 25% to permit conversion of a 3 unit apartment building to a 4 unit apartment building citing the denial from the Board in 1987. The original variance and the denial were not found.

Remy has applied to construct a continuous concrete foundation for a physical expansion and not a use expansion. He noted that the septic system is good for 5 bedrooms, which are (4) one room apartments. The expansion is not to increase the number of residents. McKeon stated that Remy is not increasing the impact on the property. Parisi asked what was driving the need for a new foundation. Remy replied that there are three piers under the building and one of them is no longer straight and needs to be replaced. He is asking to put in a continuous foundation all around except where he has highlighted on his sketch, which consists of stone and block. McKeon noted that a 75 ft. protective radius for wells is required from the septic system or the property line. Remy noted that there is 9.67% increase of the total volume of the existing house, 7% increase in cubic feet for the new addition. He noted that the volume of the house is 48,463 cu.ft. and the addition is 4,646 cu. ft. This volume includes raising the roof but that may not have to be done. The change to the house would improve two bathrooms and make one kitchen larger and the addition will be two stories. Remy did not have a sketch of what the roof line will be. He notes that he may have to raise the roof on part of the main building because there may not be enough pitch. McKeon noted that the addition would make two of the apartments nicer. The building was constructed more than 100 years ago.

Zannotti moved to close the public comments. Hanzalik seconded the motion.

Vote called: Zannotti – yes; Hanzalik – yes; Parisi – no; Evans – yes; McKeon – yes

Motion passed by majority vote.

Discussion:

Zannotti noted that this would be putting more sq. footage into an existing nonconforming situation. He asked where is the hardship that allows it to be in that spot. McKeon stated that the building was constructed more than 100 years ago before zoning setbacks regulations and the addition is where the bathrooms are located now, as is the kitchen. She noted that stipulations can be set so that it ties in with the roof line height and no more than (4) one bedroom apartments and that it's strictly for two bathrooms and one kitchen.

Parisi asked if the septic system would require recertification if improvements are being done to the bathrooms. That could be listed as a condition that if the state or town requires review of the septic system, that condition needs to be met.

*Hanzalik moved to approve the **Peter A. & Linda L. Remy** request for a Variance from Article V Section 503.1 of the zoning ordinance to permit a two-story 10'x10' addition on a foundation at the northwest corner of an existing 4 unit apartment house to allow for an expanded kitchen on the first floor and improved bathroom facilities on the second floor. The expansion affects three separate apartments, one on the first floor and two on the second floor. This property is located at 9 Church Street in Spofford, NH 03462 (Map 10B Lot A010) Residential District*
Parisi seconded the motion.

Criteria for approval:

1. The variance is not contrary to the public interest.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – No; Zannotti – yes
The motion passed by majority vote.

2. The spirit of the ordinance is observed.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – no
The motion passed by majority vote.

3. Substantial justice is done.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – yes
The motion passed unanimously.

4. The values of surrounding properties are not diminished.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – yes
The motion passed unanimously.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, 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 and a various is therefore necessary to enable a reasonable use of it.

Vote called: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – yes
The motion passed unanimously.

Conditions:

The variance is approved under the following conditions:

1. That the applicant seek guidance from State and local officials and adhere to regulations for any septic system upgrades required,
2. That the roof line and elevation remains the same at the current second story,
3. The number bedrooms and bathrooms remain the same (one of each for the four apartments)
4. Sign and date all the plans presented at this hearing.

Vote called on the conditions: Evans – yes; Hanzalik- yes; McKeon – yes; Parisi – yes; Zannotti – yes

The motion passed unanimously and the variance has been granted.

- **Margaret Bailey** requests an Equitable Waiver of Dimensional Requirement where a garage has been constructed. This parcel is located at 16 Silverdale Lane in Spofford, NH 03462 (Map 5B Lot B19) Spofford Lake District
Present: Timothy Sampson and William Cormier

McKeon announced that ZBA is waiting for legal counsel input.

Evans moved to continue the two Bailey applications to August 14, 2018. The motion was seconded by Zannotti, which passed unanimously.

This hearing will be continued to the next regular scheduled ZBA meeting of August 14, 2018.

The next scheduled meeting is August 14, 2018.

With no other business to conduct, the meeting was adjourned at 10:48 p.m.

Respectfully submitted,

Patricia Grace

Secretary

Approved

Kristin McKeon, Chairman
Zoning Board of Adjustment

Date