

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

**MEETING MINUTES
OCTOBER 9, 2018**

Present: Kristin McKeon, Lucky Evans, John Zannotti and Alternates Eric Barron, Joe Hanzalik and Joe Parisi

Also present: Jeanny Aldrich, Selectmen's representative

The Zoning Board of Adjustment met at the Chesterfield Town Offices on October 9, 2018. Kristin McKeon called the meeting to order at 7:00 p.m.

McKeon requested that Hanzalik and Parisi vote as regular members on the first hearing.

Review:

September 11, 2018 Site Visit Minutes

Zannotti moved to approve the September 11, 2018 meeting minutes as amended. Evans seconded the motion.

Vote called: Evans – yes; Zannotti – yes, Parisi – yes; McKeon – yes; Hanzalick - yes

Motion passed unanimously.

Hearings:

- **Chesterfield Board of Selectmen** request for Clarification/Rehearing for Variance Granted to Chesterfield Board of Selectmen for property located at 504 Rt. 63, Chesterfield, NH 03443 (Map 12B Lot C9) Residential District

Present: Jeanny Aldrich, Selectmen's Representative and Attorney John Ratigan

McKeon noted that the ZBA had approved this variance exactly how the Selectmen had requested it on their first application. The Selectmen are asking the ZBA to either approve a more open variance or amend the original variance to make it more adaptable to different businesses.

Attorney Ratigan noted that he is at this hearing to serve and represent the Selectmen as their client. He noted that he is not acting as counsel to the ZBA.

Selectboard member, Jeanny Aldrich, asked the ZBA to remember what happened during the warrant at the Town Hall, which was highly debated. The town voted to pass this warrant and it was for mixed use. Nothing was specifically said about exactly what businesses would go there.. It was also noted that it would allow the Board of Selectmen to represent the Town's interest, to put in a business. The warrant was for a mixed use. It was not meant to be so narrowly formed that it would be difficult to find someone that would be best suited for our Town.

McKeon noted that the Selectmen are requesting the ZBA to allow the use to be more relaxed than what was originally written in our decision. The ZBA gave them exactly what they asked for in their application, even though that was not what they intended. The BOS are requesting the ZBA amend the variance to give them more leeway.

Jeff Scott noted that the town overwhelmingly voted not to spend money to tear that building down. The Town voted, by more than 70%, to allow the Selectmen to sell the building for

different uses, with the intent to use the back room as a studio and maybe use the front of the building as a café. He asked that the ZBA allow the Selectmen to make the decision of that use.

Ron Rzasa noted that the Selectmen would like to streamline the process so that it doesn't go on month after month. It would allow them to move on to Plan B to select a potential buyer for the property.

Zannotti moved to close the public portion. Evans seconded the motion.

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

Discussion: McKeon noted that the Selectmen want more leeway. The ZBA can either clarify the variance or rewrite the variance. Zannotti suggested the ZBA just amend the variance that was granted. Parisi had a concern that if it's too broad, the Zoning Board loses control of what goes in and what goes in there could expose the school student population to the activity in that building. he also noted that the Planning Board is a capable organization McKeon replied that she feels comfortable that the PB will act responsibly when the plan comes before them. with what will be decided as to what is allowed.

Zannotti moved that the Board vote to clarify that the variance granted to the Chesterfield Board of Selectmen by the ZBA at its July 10, 2018 meeting from Article II, Section 203.2 of the zoning ordinance is meant to allow the property to be used for mixed use purposes, with the first floor of the building to be used for small businesses, such as a coffee shop, an art studio or other small retail or office business uses. The second floor of the building could be used for a residential use, or for either storage to support the first floor business use, or an extension of the first floor business use. Evans seconded the motion.

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

- **Erik & Marguerite Barnes** request a Variance from Article II Section 205.5 & Article V Section 503.1 of the zoning ordinance to permit a deck within the front setback and is a nonconforming structure. This parcel is located at 46 Main Street in West Chesterfield, NH 03466 (Map13C Lot A8) Village District
Present: Erik Barnes

Hanzalik recused himself from voting on the Barnes variance request. Voting member on the Barnes variance request are McKeon, Evans, Zannotti and Alternates Barron and Parisi.

Barnes noted that he is requesting approval to put a deck on the front side of his house, which is inside the front setback. The deck will be further from the road than the house. Barnes noted that he is currently residing the side of his house and has nothing to do with this application. The total impermeable coverage is well within the numbers on this lot. There was a variance granted on this property before the Barnes purchased the house. The distance from the road to the edge of the deck is 22 feet. McKeon asked if anyone has any alternatives or feels that it's unreasonable for the applicant to have a deck. Zannotti noted that the application appears to be a reasonable one. McKeon noted that the right side of the house appears to be screened by greenery. She added that there is no door on the other side. Barron noted that the surrounding properties seem to be similar lots and the deck seems to be a reasonable one. McKeon noted that the lot is steep behind the house.

Chester Young, an abutter to the Barnes, stated that he has no objection to the applicants' request. A suggestion was made that, if the variance is approved, that the vegetation remains between this property and the abutters to the side so that the privacy remains between the two houses. Barnes stated that the arborvitaes are on the abutters' property.

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

Vote called: Evans – yes; Zannotti – yes; Barron – yes; Parisi – yes; McKeon – yes

Motion passed unanimously.

Facts supporting this request:

1. The variance is not contrary to the public interest because: It's not going to alter the neighborhood and it's not going to threaten public health. The lot and houses were there before any ordinances came into being and most of the other houses are in the same situation on that road.
All agreed.
2. The variance will not be contrary to the spirit and intent of the ordinance because: The way the property is situated, anywhere is going to be in violation and the way the lot was set up historically, it is impossible to conform. It's a reasonable request. Parisi did not feel that the variance is contrary to the spirit and intent of the ordinance, but not for those reasons. The buffer is provided by the heavy vegetation. McKeon noted that the way these properties are set up and laid out, there is no way that they can meet that and it is not the spirit and intent of the ordinance to penalize these people who are on nonconforming original lots. All agree.
3. Substantial justice is done because:
Evans stated that it is a small house and it would make it a lot more comfortable place to live and the deck would give a second set of steps coming off the deck. Nothing harms the public. All agree.
4. The variance will not diminish the values of surrounding properties because: They are all in the same boat and it would look nice. All agreed
5. Literal enforcement of the ordinance would result in unnecessary hardship.
 - (A) Because of the special conditions of the property that distinguish it from other properties in the area:
 - (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property.
It avoids overcrowding and encroaching on the neighbors in the front. These lots along that road were created before that was in our standards. It was a pre-existing condition.
And
 - (b) The proposed use is a reasonable one.
The door is already there and all other lots are doing the same thing to shallow up.
 - (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 variance is therefore necessary to enable a reasonable use of it.

The lot is very shallow and the house has always been in the setback and it's been a lot of record for quite a while.

All agreed.

Zannotti moved to approve the variance request by Erik & Marguerite Barnes from Article II Section 205.5 & Article V Section 503.1 of the zoning ordinance to permit a deck within the front setback and is a nonconforming structure. This parcel is located at 46 Main Street in West Chesterfield, NH 03466 (Map13C Lot A8) Village District.

A condition would be to maintain the vegetation to the maximum extent possible between the two properties and it meets the five criteria as established in the variance request and it's based on the map provided stamp dated September 25, 2018.

Evans seconded the motion.

Vote called: Evans – yes; Barron – yes; Parisi – yes; Zannotti – yes; McKeon – yes

Motion passed unanimously.

Barnes asked if McKeon has findings of property across the street as referred to the abutters. McKeon stated that she will continue to look. She considered the adjacent lot as being contiguous and she will get back to Barnes. McKeon noted that Barnes original variance request had several abutters that were not listed on the application and he agreed.

- **Michael Kray** requests a variance from Article II Section 204.2 of the zoning ordinance to permit a 10 ft. x 20 ft. shed and 12 ft. x 40 ft. shed on 880 Route 9, Chesterfield, NH 03443 (Map 12 Lot A2.4) Rural Agricultural District

Eric Barron was excused from the meeting at 8:17 p.m.

Voters for the rest of the hearings and meeting decisions will be Evans, Zannotti, McKeon, Hanzalik and Parisi.

The Zoning Board reviewed the application for completeness to determine if the application will be discussed at the meeting. It was noted that there is no site plan included with the application. It was determined that the application is incomplete.

Zannotti moved to open the hearing to discuss why the application is incomplete. Evans seconded the motion.

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

Motion passed by majority vote.

To open the hearing will give the applicant a chance to complete the application without refiling the application and without renoticing the abutters.

Kray was told that the prior variances taken out for the temporary structures have expired and those temporary structures should have been removed. McKeon noted that a one-year variance was granted in 2014 and in 2016 another one-year variance was granted and at that time the driveway was supposed to be finished and the house was supposed to be ready to go up. The variance goes with the property, regardless of who owns it. Kray stated that he removed everything from the property at that time.

The application requires a minimum 24x36" site plan drawn to scale and must include eight sets. None were supplied by the applicant. The electronic/digital version of the site plan is also required and was missing from this application. It was explained to Michael Kray the importance to identify the sheds and where they will be located on the plan and any other structures, whether they are temporary or permanent structures and their locations. Also note where the original buildings are that will be leaving. Everything must be drawn to scale. Kray was instructed to provide those materials to the Zoning Board secretary by the October 23, 2018 deadline date.

The purpose of the variance is that there can't be non-resident structures on the property without a residence.. Kray is asking for a variance, which is after the fact. The structures are on the property. Parisi stated that not only is the incompleteness of the application due to the applicant not providing a site plan, but the application is incomplete because it isn't clear as to what he is asking for. The lack of completeness goes beyond lack of structures shown on a drawing. Parisi also stated what's being asked for and why should be articulated somewhat in the application.

Evans moved to continue this hearing to November 13, 2018. Hanzalik seconded the motion. The motion passed unanimously.

Zannotti noted that he would be available to Skype into the meeting on November 13.

Other Business

Hanzalik provided the ZBA members with sample worksheets to help guide them through calculating square footage and cubic footage of structures and impermeable coverage of lots.

- **Margaret Bailey** requests a rehearing of ZBA's Denial of an Equitable Waiver. This parcel is located at 16 Silverdale Lane in Spofford, NH 03462 (Map 5B Lot B19) Spofford Lake District
Present: Attorney Jason D. Reimers for Margaret Bailey

McKeon explained that the ZBA has read the Motion For Rehearing of ZBA's Denial of Equitable Waiver. At this meeting, the ZBA will determine if it will grant or deny the rehearing and abutters were not noticed to make this determination. There will be no testimony or comments from the public. If the motion is denied, the ZBA doesn't move forward. If the motion is accepted, then the application starts all over again. If the motion is denied, any affected party with standing can appeal to Superior Court within 30 days.

If new information is presented, that information is not added to the old decision. It is up to the ZBA to determine if the new information is reasonable to rehear the Equitable Waiver.

Zannotti stated that he is trying to understand what is the new information, besides the motion for a rehearing. It appears that the applicant trying to justify each position but he doesn't see what things have changed and there doesn't seem to be any new information. The applicant is attempting to say that they relied on our Code Enforcement officer as the final say for ordinance issues. That was one of our positions early on and Zannotti doesn't see where that's changed.

McKeon notes that on page 6 applicant contends that the ZBA made a legal error by deeming the volume to have been unlawfully increased. so that's how they are looking at Section 503.1. They are also using the definition of impermeable coverage that may or may not be different than what Chesterfield has historically used as impermeable coverage on page 7. For instance, they are saying that stairs and deck are permeable and Chesterfield defines those as impermeable and

always has. They are getting different numbers than we are, based on that interpretation. Zannotti noted that we have come to a determination on the lot size. Evans stated that the drawing shows the steps going way up high and the rain will come down at different angles. A lot of water will be coming off the roof.

McKeon noted that the applicant only has 12.8% of the property as impermeable and our calculations show that it was over 20%. The buildings were over 10%. They are also questioning the coverage. The volume is roughly doubled. On page 8 and 9 they write that they relied on the Building Inspectors interpretation and application of the Zoning Ordinance. They also reference that the Building Inspector consulted with the ZBA on October 10, 2017. The meeting minutes of October 10, 2017 state, "No minutes were taken as conceptual consultations are non-binding on either party."

McKeon noted that the Motion for Rehearing also states that the applicant worked in good faith with the Building Inspector and they noted that "This is not a case in which an applicant submitted incomplete or vague plans", however there was never any lot coverage on any plans until after the application for an Equitable Waiver was submitted.

Parisi asked whether the Building Inspector had completed any testimony in August. McKeon replied that the applicant should have brought all of that information before the ZBA. McKeon noted that in Section VI. The Applicant's Reliance on the Building Inspector's Representations Estops the ZBA from Denying the Equitable Waiver". She stated that the applicant's representative (Tim Sampson) DID know because he came to the ZBA with a Variance in 2014 for just such a variance for another property that he was working on and he knew of those ordinances. They both (Sampson and William Cormier) did know, should know. Where they spoke of them meeting with the Building Inspector, no minutes were taken and that's nonbinding. Zannotti noted that the architect and the building contractor need to know the zoning ordinances and comply with them. Parisi stated that the Code Enforcement officer is the town's representative to ensure that the townspeople are living by our code. If he implicitly or explicitly said that what they were proposing satisfied the codes and that, to me, is a strong statement. McKeon noted that the impermeable coverage was never addressed. Parisi stated, as an applicant, if he (Building Inspector) gave me a bulk building permit, I would assume I am meeting town codes and I would assume that I'm good to go. McKeon replied that any mistakes made by a public official do not absolve the applicant of knowing the law. Parisi stated that he feels it would have a valuable input to have the Code Enforcement officer/Building Inspector comments on record, as testimony for us, on what his conversations were with the applicant and what his assumptions were and where he concluded. Evans stated that professionals should be familiar with the codes and should understand the process to be following the codes. McKeon noted that the applicant could have had Parsons come in to state their case, when they were applying for the Equitable Waiver. It's the applicant's responsibility to bring the proof to the ZBA or he may have information that the ZBA did not have before and it may be worth rehearing it. Parisi stated that if he was the applicant and he has invested \$60,000 plus in the project, then he would take it to Court. The better path to the Town would be to reconsider a rehearing.

Parisi made a motion to approve the Request for Rehearing of the ZBA's Denial of an Equitable Waiver with the parcel located at 16 Silverdale Lane in Spofford, NH (Map 5B Lot B19).

Discussion continued: McKeon noted that they keep saying that they depended on the Code Enforcement officer/Building Inspector. However, according to the minutes, Timothy Sampson was aware that lot coverage is an issue and if you are over by a percentage and he was aware of the ordinance and no figures of lot coverage were on any of the plans until after they applied for an Equitable Waiver. Parisi questioned whether the plan was complete and he would like to hear from Parsons. Evans noted that possibly the plan was incomplete. The applicant had the obligation to do all of the calculations. McKeon stated that it is assumed that the applicant has met all of the requirements when they signed it.

Zannotti noted that when an application for a Chesterfield building permit is requested, the applicant must sign and date the application and a statement on the application reads, "This project, when completed, must be in compliance with all of the Town of Chesterfield Zoning, building ordinances and adopted codes".

"All provisions of the laws and ordinances in the State of New Hampshire and the Town of Chesterfield that apply to this project and will be complied with and whether specified herein or not . . . " certified by it's owner or agent. McKeon noted that by signing the document, it is assumed that you are aware of all the ordinances and you meet them.

Hanzalik seconded the motion.

Zannotti stated that he doesn't feel that anything has changed from when the ZBA decision was made. The applicant is suggesting that they did heavily rely on the Building Inspector and in verbal communication during the ZBA meetings it was stated by the contractor and the architect that they haven't even read the ordinances. McKeon noted that this was a professional architect and a professional builder who is representing the homeowner. The builder has stated that he doesn't know any of the codes and never looks at them.

Parisi called the question. Evans second the call.

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

Motion passed by majority vote.

Vote called to grant the rehearing for Margaret Bailey:

Evans – yes; Hanzalik – yes; Parisi – yes; Zannotti – no; McKeon – no

Motion passed by majority vote.

This will require a new application and all parties must be noticed. All parties must present all information again and a new record is created. The decision will be based on the new record. Eight copies of the application and one digital copy must be submitted at least 21 days before the next meeting.

Jason Reimers asked if it is the applicant's responsibility to arrange for Mr. Parsons to attend. McKeon replied it would behoove the applicant get him to attend and if you can't get him to comply, the ZBA will help.

Proposed Budget:

The Proposed 2019 Zoning Board budget was reviewed, as prepared by the Town Administrator. The proposed budget increase for the secretary salary line item is due to a proposal of hiring a part-time secretary for next year. McKeon suggested to add another line item for a Records Research assistant at \$15 per hour for 4 hours a month for 12 months, increasing the budget to

\$720 per year. The money for the assistant would be recouped from the applicant. It was suggested to increase the postage from \$1,000 to \$1,200.

McKeon moved to make changes to the proposed budget and McKeon will submit the changes to the Board of Selectmen. Hanzalik seconded the motion, which passed unanimously.

The Planning Board provided a copy of their Notice of Decision made on September 10, 2018 to approve to restore the North Shore Enterprises LLC property back to its original residential status.

The Planning Board also provided two proposed zoning amendments, both related to the sign ordinance, that will be voted on at a public meeting to be held on October 15, 2018. The ZBA members do not have any changes to be made to what is proposed.

Parisi noted that the Planning Board is asking the ZBA if they have any zoning issues that would benefit from changes to the zoning ordinances. Those would need to be signed, sealed and approved by approximately mid-January 2019 for any zoning board ordinance changes. The Planning Board process takes about three meetings. McKeon suggested that the ZBA send their recommended changes to the ZBA secretary to be discussed at the next meeting.

The ZBA members reviewed several zoning board application samples from other New Hampshire towns. The board will schedule a work session to redesign the zoning applications to help guide applicants through the filing process. McKeon suggested that members send their recommendations to the ZBA secretary.


McKeon will place an order for revised copies of the Land Use Regulations for the ZBA members. E-books and CD Roms are also available.

The next scheduled meeting is November 13, 2018.

With no further issues to discuss, the meeting was adjourned at 10:12 p.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved



Kristin McKeon, Chairman
Zoning Board of Adjustment



Date