

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

**MEETING MINUTES
DECEMBER 11, 2018**

Present: Kristin McKeon, Lucky Evans, John Zannotti Joe Parisi and Richard Aldrich
Others Present: Tom Hanna, Ms. Bailey, Tim Sampson, Bill Cormier, Rod Parsons, Jeff Scott, John Koopmann.
Joe Parisi is appointed as a full member tonight.

The Zoning Board of Adjustment met at the Chesterfield Town Offices on December 11, 2018.
Kristin McKeon called the meeting to order at 7:05 p.m.

November 13, 2018 Meeting Minutes

John Zannotti moved to approve the November 13, 2018 meeting minutes as amended. Lucky Evans seconded the motion which passed.

Hearings:

Margaret Bailey: 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. This rehearing is continued from the meeting on November 13, 2018.

The public hearing was opened at 7:15PM. This is a rehearing of the ZBA denial of an equitable waiver of dimensional requirements (Article 2 Section 203.4C and Article 203.6B of the Zoning Board Ordinances). The application is to permit completion of a two story storage building with finished space on the second floor.

The first speaker was Tom Hanna, Attorney for Peg Bailey who is the client and owner of the property at 16 Silverdale Lane in Spofford. Hanna noted that this is a situation where the letter of the law takes a back seat to fairness and justice. Hanna noted that an equitable waiver is designed for relief of an honest mistake concerning dimensional requirements. Hanna noted that this mistake does not cause harm to the public or the neighbors; and the closest neighbor has provided an affidavit stating he has no issue with the garage and no issue with it being finished. Hanna noted that the mistake was discovered after it was substantially completed.

Hanna read ordinance 674:33 indicating that the ZBA had previously indicated they agreed with sections A, C & D. Hanna noted he would focus on item B. Hanna indicated that this mistake was not ignorance, or failure to inquire, or bad faith. Hanna noted it seems that Rod Parson make a misinterpretation of how the law was applied. Hanna noted that he has affidavits from Tim Sampson, the architect, and Bill Cormier, the builder, stating that there was no ignorance or failure to inquire. Hanna noted that the equitable waiver is not designed to assign blame, but to remedy an honest error. He believes the issue is how Rod Parsons, Building Official, misinterpreted the application of the law. Plans being reviewed are Zoning Board plans. Rod's plans are dated earlier, from September 19, 2017. Hanna noted that the discovery was made sometime in January 2018 following the building permit in November 2017. Hanna indicated that the mistake is that the stairs encroaching the setback by about 18 inches. Lucky Evans asked about the stair encroachment. Hanna explained the previous structure was 170 square feet encroaching in both the front and the side setback. The encroachment into the front was about 8 feet and the furthest in the side was approx 6 feet. The new structure reduced the overall encroachment to 14 square feet and the front was eliminated entirely. There remains a side setback encroachment of about a foot and a half.

Tom Hanna then asked questions of Rod Parsons. Parsons noted he has worked with Tim Sampson for many years and has a trusting relationship with him. Parsons noted that there were some issues with the original application that were discussed and quickly rectified as requested. Parsons stated that when he sees a rectangle such as the one on the drawing, he believes it to be all inclusive. Parsons indicated that he believed the intent to move the entire building out of the setback.

It was noted that the building permit was issued and the building went up, and then in January 2018 Parsons discovered the mistake. Hanna noted that they are before the board because a mistake was made. Parsons noted that during a progress inspection of the site, with the amount of work done, it was his take that if the stairs were done, they would not meet his original interpretation of the drawing and would infringe on the setback if the property line was accurate. Parsons noted that it was winter and there was some question if the property line was correct.

Parsons stated that he indicated that he could not let this matter go and did not have the ability to make a determination or interpretation on this issue. Parsons noted he explained this is a potential setback issue and needs to be resolved. Parsons noted that they spoke about modifying the design to bring the stairs inside or bringing them to the opposite side of the building, but the leech field is located there. Parsons noted that there had been issues with discrepancies in the property line and the septic system. Hannah asked if Parsons believed that Sampson was attempting to show the stairs were going to go outside the footprint. Parsons indicated he could see that now, but did not have that interpretation at the time. It was noted that Parsons does not believe that Sampson was being dishonest. Parsons noted that he does not believe that Sampson acted in bad faith.

Richard Aldrich asked what was Rod's understanding of moving the building. Parsons noted his understanding was to get it out of the setback. Parsons noted that was the discussion in the non-binding consultation with the Zoning Board. It was noted that Parsons letter of October 2017 was not received by the Zoning Board.

Hannah noted it was an honest mistake and asked if 18 inches into the setback can be mitigated. Hanna noted his intent was not to obfuscate the issue. To force this owner to correct this mistake in this case is not reasonable, he said.

Aldrich noted he cannot believe it was allowed, but it was done.

There was discussion about the septic plans dated 11-8-2017, which includes the garage. Parsons said he did not see the septic was located before issuing the building permit. Hanna said this was emailed to Rod on 11-16-2016 and included was the Shoreline Application and three attachments which included the septic plan. This was not hidden, he said. Rod clarified that he is not concerned with the shore land issue; he only was concerned with the building permit.

There was talk about putting the stairs into the deck and Parsons noted that there was not enough room for the treads.

In summary, Rod said all building codes were met. The first realization of an error was at the inspection in January. He saw the building was a rectangle and permitted. He was under the impression the building and stairs would be in the rectangle on the plans. The boundary line may still not be correct. The impermeable aspect was not a consideration of Rod's at the time.

Discussion of the stairs followed. Lucky said the original drawing shows a box. Hanna said the stairs are outside of the box. He said it is reasonable to interpret that stair are not required to be out of the setback. No, said Richard, not according to the ordinance.

Public Comment: Jeff Scott said it is not up to the builder to know the ordinances. This is the architect's responsibility.

Lucky Evans moved to close public input. The motion was seconded by John Zannotti and passed unanimously.

The Board reviewed the Zoning Ordinance. It was agreed that section 1A and C are complied with. Regarding section D: Lucking said taking the building down will cost a lot of money. Richard said he does not see where the cost of correction outweighs benefit to the town. There was discussion about ways to move the stairs. Regarding section B: Lucky thinks this knowledge is incumbent on the architect. In the case of the agent, this could be ignorance of the law. Joe thinks this meets item B, particularly the last section. John thinks there was too much reliance on Rod by the contractor and architect. Kristin said this could be okay if we can make an equitable solution. Lucky said certain things are maxed out; the stairs and deck are not on yet. There was discussion of ideas to re-design the deck and it was agreed this is not the boards function. It was agreed removal of the second floor is prohibitive.

John Zannotti moved to approve the Equitable Waiver with the following conditions:

The stairs out of the setback and the total square footage of stairs and deck shall be no greater than total square footage of the stairs and deck in plan A1 dated March 16, 2018.

The motion was seconded by Richard Aldrich and passed unanimously.

The next scheduled meeting is January 8, 2019.

With no further issues to discuss, the meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Tricia Lachenal
Interim Secretary

Approved



Kristin McKeon, Chairman
Zoning Board of Adjustment

16 May 19
Date