

Town of Chesterfield, NH
Zoning Board of Adjustment
MINUTES
August 13, 2020

Kristin McKeon, Chair, opened the meeting at 6:31 P.M. Also, in attendance, were John Zannotti, Joe Hanzalik, Richard Aldrich, Fran Shippee, Tricia Lachenal, Lucky Evans, and Jim Smith.

As Chair of the Zoning Board of Adjustment, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are:

a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means;

We are utilizing the Zoom platform for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the Zoom platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone # 1-646-876-9923 and password 842 5169 8329 or by clicking on the following website address: <https://us02web.zoom.us/j/84251698329>

b) Providing public notice of the necessary information for accessing the meeting; We previously gave notice to the public of how to access the meeting using Zoom, and instructions are provided on the Town of Chesterfield website at: <https://chesterfield.nh.gov/>.

c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access; If anybody has a problem, please call 603-499-6534 or email at: Selectman-a@nhchesterfield.com.

d) Adjourning the meeting if the public is unable to access the meeting.

In the event the public is unable to access the meeting, we will adjourn the meeting and have it rescheduled at that time.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Introduction of Board Members and Selectboard Representative to ZBA

John Zanotti, Joe Hanzalik, Richard Aldrich, Kristin McKeon, Lucky Evans, and Gary Winn, Selectmen Rep.

Review meeting minutes 7/9/2020, site visit minutes 06/25/2020 if available

John Zanotti moved to accept the minutes of the 07/09/2020 Zoning Board of Adjustment meeting as amended. Joe Hanzalik seconded the motion which passed unanimously by roll call vote.

Application:

Continuation from May 12, 2020 and site visit 6/4/2020 and 07/09/2020 meeting, West East Westmoreland Trust requesting a dimensional variance is requested under Article 503 Non-conforming Buildings and Structures subsection 503.1 Expansion –for the repair and restoration of the existing non-conforming dwelling constructed in 1953 and construction of a 768 square foot garage on existing non-conforming lot of record. The property is located at 66 North Shore Road, Spofford with 8728’ frontage on North Shore Road and 108.6+/- feet of frontage on Spofford Lake. The subject lot is .04 acres with a steep paved driveway leading to the existing 5 bedroom swelling with a 143 square foot shed. (Tax Map 5C, Lot C8). Katie Sutherland stated that a shed will be deducted, and the space utilized as the apron for the driveway leading into the new carport.

Aldrich stated he was struggling with the concept of removing a shed to increase or calculate living space. Zanotti noted there was a request for the proposed floor plan and whether it was received. Sutherland noted that this was a private floor plan and was not going to be shared with the Zoning Board. Zanotti noted that it was earlier agreed that a septic inspection would be done. Chris Guida stated that the inspection had not been done yet. Guida stated that this was a condition if the board approved the plans. Mckeon stated she wanted input from the board without closing the public meeting. Mckeon noted if looking at the proposed carport, if it were required to be permanently closed off from parking, it would bring the plan more into compliance and would make more permeable space. Lucky Evans noted that the roof was considered permeable. Sutherland stated she would clarify it would be an 18” deep bed. Sutherland noted there would be a lot of water treatment and bio-retention included in the plan. Sutherland noted it was approved as a pervious space. Evans stated that the board does not want to get into designing on behalf of applicants. Evans noted there would be no sharing of ideas to make the application more approved. Evans stated that there might be some impermanence to the land regarding the gardens and carport. Sutherland stated it would be 18 inches of ground on top of a concrete slab on top of a steel skeleton. Sutherland noted it would be mowed as the rest of the grounds. Evans noted that the concrete and metals were not permanent. Sutherland stated that it would last over a hundred years. Evans stated he was not sure of the lifespan of this structure. Guida stated if the carport were ever to fail it would be repaired and replaced. Guida noted that there is periodic maintenance as with any other yard fixture. Mckeon stated that an annual or five-year report from an expert in that field could be mandated as required. Evans stated it should not be accepted as permeable land. Mckeon stated that these plans will bring the land back to fully permeable. Guida noted that the roof is not part of the impervious calculations. Guida stated it is basically an additional area of infiltration that did not exist before. Zanotti stated he had a concern about the impervious, considering there are three rain gardens proposed, and with rain gardens there is maintenance required. Zanotti stated he questioned the validity of a rain garden to last longer than three years. Zanotti stated that this puts a further task on the town to verify that compliance is being met.

Aldrich asked if the application was in violation of ordinance 503.1. Mckeon stated that they are filing for relief from 503.1. Aldrich asked on what grounds are they requesting relief. Mckeon stated that the details were in the paper materials sent to each member. Aldrich stated that the ZBA's first decision is to find out what the plans can do without variance.

Joe Hanzalik stated he agreed with Aldrich, there has not been cooperation on behalf of the applicants. Mckeon stated that the board could outright deny the applicants, or the board can bring the plans into more compliance. Mckeon stated that there has been approval from DES but there are certain variances that need to be met from the town. Aldrich stated he wanted to talk about the basic rules and how 503.1 was clarified.

Bentley asked from phone-in, should Aldrich be sitting in on this application. Mckeon stated that the board cannot take a vote and have a member recuse themselves. Mckeon stated ultimately the board member would make that recusal. Bentley noted that the record should reflect that Aldrich should be excluded from this matter. Bentley noted that the applicants want a five-member board and they do not want Aldrich voting on this issue.

Jeff Scott asked what the existing square footage for the existing structures as they stand. Sutherland stated that the answer is in the application. Sutherland stated the proposed 645 square feet is less in the proposal than in the existing footprint. Scott asked what is the existing square footage. Sutherland stated she did not know. Mckeon stated there were 3164 sq feet on the first floor and upper story finish. Scott asked what is the proposed square footage and how many bedrooms are there. Sutherland stated there was no change to the number of bedrooms. Scott stated he would like to see plans of the exterior with dimensions.

Sutherland stated she chose the roof and decks in the package sent in (page 4). Scott questioned why a variance is needed. Sutherland stated that the bedrooms are very small. John Koopman stated speaking as a member of the Planning board. Koopman stated that any grassy surface would be considered permeable as long as it is above the ground. Mckeon stated she was not trying to reclassify anything. Koopman asked if the carport is attached to the house. Mckeon answered no. Koopman stated what is the classification on a carport. Sutherland noted it would be open on three sides.

Jeanny Aldrich commented for the record that the letter that came to the ZBA from the BOS was signed by all the selectmen and was not just one person.

Zanotti stated that none of those noted conditions have been met since the applicant is not sure whether they will be met with approval.

Jeff Scott stated that this is a great plan and the applicants put a lot of time, thought, and energy into it. Zanotti stated that 626 sq ft of unaltered woodland is shown, where is this referred to? Guida stated it is on the plan and follow up exhibit from the site log, along the perimeter of the boundary line and goes along each side. Zanotti stated in front of the shed is a beautiful 16-18" tree will be cut down and questioned whether that was allowed. Guida stated yes this is permitted, this would not be part of the unaltered area. Zanotti stated during the site visit there were stumps present and asked if they should they be removed. Guida stated the removal of stumps weren't part of the renovation plan and that as long as they didn't interfere with the renovation plans they would not be removed.

Zanotti stated on the record this land is .4 acres 17424 feet. Guida stated there was a boundary survey done prior to this case, allowed the discrepancy in the amount of feet for the application (19000). Guida stated typically .412768 acres which allows the 19000 feet. Zanotti stated he only mentions that in reference to the impermeable area increasing.

Mckeon noted that by 19000 sq ft there would be .43 acres. Guida stated that the .4 is not precisely .4, the plans are based more on the 19000 sq ft than the .4 acres. Mckeon if there were any further questions from the public. Mckeon asked if there are there any further comments from the board. Aldrich stated he wanted the dimensions of the depth and style of the bay windows facing the lake. Sutherland stated they are part of the deduction and are being eliminated. Aldrich stated he needed to see the dimensions. Sutherland stated she would follow up.

Bentley asked about a discrepancy in J Aldrich's comments this evening regarding the bottom of page 6 and goes over to page 7 in a letter, who may have authored the letter regarding R Aldrich's recusal. J Aldrich did not mention the author of the letter, rather the 3 selectmen signed in agreement. R Aldrich stated in regard to his recusal, they need to demonstrate that he has some undisclosed financial interest or it is a bullying tactic. Mckeeon stated the bottom line is that it is ultimately R Aldrich's decision to remain in the decision. Mckeeon stated the system isn't perfect and situations like this will arise on occasion. Mckeeon stated is anyone on the board comfortable closing public input. Hanzalik stated he would like to close to the public. Zanotti stated he agreed. R Aldrich stated he was comfortable closing to the public. Evans stated he feels there is sufficient public input. Mckeeon stated that once the meeting goes non-public, it cannot be made public again without notice. Evans stated he is comfortable with closing.

Joe Hanzalik moved to close to a non-public meeting. Richard Aldrich seconded and motion passes by unanimous roll call vote.

The board took a five minute break at 8:19 PM.

Joe Hanzilik stated his mind is made up and he is ready to make his decision regarding West East Westmoreland Trust. Zanotti stated if Hanzilik has a motion, he will wait to make further comments. Aldrich agreed. Mckeeon stated if a motion is made and seconded, amendments can be made or voted down, and clarified that this vote does not determine that the application is denied, rather the motion to it just means the motion failed.

Joe Hanzilik moves to deny the application for 66 North Shore Road (West East Westmoreland Trust asking for a dimensional variance under 503.1 of the Chesterfield Zoning Ordinances under the following criteria:

- 1. Granting this variance is contrary to the public interest as the added roof lines and upper decks would interfere with the views from North Shore Road and that of the abutting neighbors to the north.*
- 2. If the variance were granted, the spirit of the ordinance would not be observed as in the initial statement submitted by the applicant, the foundation is in need of repair however the scope of work to be done on the property just not fall in to what is needed for the foundation repair.*
- 3. Granting the variance would not do substantial justice as the mentioned much need for safety repairs could be done as well as drainage projects within the existing footprint and current volume of the dwelling without disrupting future continued use.*
- 4. Granting the variance would diminish the value of surrounding properties with the second story decks to the north side of the property as there would be less privacy between lots.*
- 5. There is no hardships due to the majority of homes that are lakeside on North Shore road all share similarities to proximity to lake, steep slopes and same driveway conditions. Also, as mentioned many times, the initial cause for the application (foundation repair) does not warrant the rest of the projects that were added into the application.*

Discussion: Kristen Mckeeon stated that the work they want done with DES would require some variance from ZBA. Joe Hanzilik stated that the initial application outlines the initial repair to a failing foundation and that is a separate issue. Kristen Mckeeon stated with that this does not have anything to do with foundation repair. Joe Hanzilik, speaking as a builder in Vermont and New Hampshire, stated that if this was the case then the applicants should have stated their application completely differently. Kristen Mckeeon stated she was trying to represent the case from all sides. Kristen Mckeeon asked if anyone else would like to discuss. John Zanotti questioned whether there are any specific RSA's that are supporting the motion to deny the application. Kristen Mckeeon stated the zoning ordinances are written to support the

master plan of the town. Kristen Mckeon noted that variances are in place when the applicant simply cannot meet the parameters of the master plan. Joe Hanzilak stated that he did not have any specific RSA's in support of denying the application. John Zanotti stated that there are a lot of situations like this because there are a lot of non-conforming properties around the lake. Joe Hanzilak stated that is why the ZBA is here to make sure that this type of action is stopped. Aldrich stated that the DES requires applicants to come to the ZBA for a permit.

Lucky Evans stated that these plans for water gardens need to be constantly maintained. Kristen Mckeon stated those plans have nothing to do with the ZBA. Joe Hanzilak stated he believes they can perform the required repairs and renovations while maintaining the same footprint and square footage. Richard Aldrich asked if the motion could be amended.

Richard Aldrich moved to amend the motion to first address what can be done without a variance that the application is being denied based on Joe Hanzilak's motion. Joe Hanzilak seconded the motion to amend.

Discussion: John Zanotti stated he was not sure what value that amendment added to the statement. Aldrich noted this came down to Case Law.

The motion to amend passed by majority. (No: Zanotti, McKeon)

The motion in final form reads as follows:

After addressing what can be done on behalf of the applicants to complete this project without a variance, Joe Hanzilak moves to deny the application for 66 North Shore Road (West East Westmoreland Trust asking for a dimensional variance under 503.1 of the Chesterfield Zoning Ordinances under the following criteria:

1. Granting this variance is contrary to the public interest as the added roof lines and upper decks would interfere with the views from North Shore Road and that of the abutting neighbors to the north.
2. If the variance were granted, the spirit of the ordinance would not be observed as in the initial statement submitted by the applicant, the foundation is in need of repair however the scope of work to be done on the property just not fall in to what is needed for the foundation repair.
3. Granting the variance would not do substantial justice as the mentioned much need for safety repairs could be done as well as drainage projects within the existing footprint and current volume of the dwelling without disrupting future continued use.
4. Granting the variance would diminish the value of surrounding properties with the second story decks to the north side of the property as there would be less privacy between lots.
5. There is no hardships due to the majority of homes that are lakeside on North Shore road all share similarities to proximity to lake, steep slopes and same driveway conditions. Also, as mentioned many times, the initial cause for the application (foundation repair) does not warrant the rest of the projects that were added into the application.

The motion to deny the application was unanimously passed by roll call vote.

Application:

Continuation from July 9, 2020. A variance is requested from Article 11 Section 203.4 C and 203.6b of the zoning ordinance to permit construction of carport over an existing paved parking area increasing the building coverage to 12% and is within 20 feet of side setback and 50 feet of road setback. Property is located at 49 Barn Rd., Spofford, NH (Tax map 5H Block B Lot 024).

Mckeon stated supplemental information was in past the deadline, if the board wants this to move forward it needs to be continued to the next meeting of the ZBA. Mckeon stated she would allow Dix to weigh in.

Dix stated that they have been through three meetings in June of 2020 and this needs to be moved ahead. Mckeon stated there was further supplemental information that was not submitted on time for this meeting and that deadline is stated within the packet that the applicants signed. Mckeon stated that board members had received information on the private roads. Zanutti stated he was looking for more information on the right of way and how that impacts the current paved area for the carport. Zanutti noted that he is not for or against this application, he would simply like more information and more guidance. Aldrich stated he concurred that Zanutti. Mckeon stated she would get more clarification on the RSA's regarding right of ways. Zanutti stated he does not know the property lines or where the right of way is. Dix stated they provided a plot plan, a large version as well as an 8.5x11 version. Dix stated that if there is more information needed by the board then the applicants should be notified going forward. Dix stated that all they have is what is in their deed, "the public has a right to go along this route." Dix stated they do not want this to drag out from another six months. Mckeon stated she will request more information from the town lawyer in reference and if there are any other questions. Zanutti stated when speaking with attorney, there are a lot of phantom dotted lines and some setback. Dix stated that they do not think a map could be found that shows the dimensions of the roads. Zanutti stated we may want to ask the Spofford Fire chief's input on the safety of the property. Evans asked if there are gates or bars. Mckeon stated no it is a private road.

Kristen Mckeon moved to continue this decision until the September meeting of the Zoning Board of Adjustment. Lucky Evans seconded the motion which passed by unanimous roll call vote.

Motion for rehearing of decision on Joy St. LLC

Michael Bentley of Lane & Bentley, P.C. requests a rehearing to an Administrative Appeal denied on June 11, 2020. Mckeon reviewed the repeal from the original applicant. McKeon noted it would be re-heard. Mckeon noted that a complete re-do is not necessary but if there is an opportunity to clarify or verify, an applicant's request for a re-hearing would be granted. Mckeon asked the board if there were any discussion or review. Aldrich asked what the applicant's argument was. McKeon explained that the town ordinance was a problem. McKeon stated that Ordinances 4 and 5 contain grounds for denial. McKeon asked if the board was willing to re-hear the decision. Mckeon asked if this is a decision that needs to be added to or changed. Mckeon stated nothing will be opened tonight, and the board is voting to grant the repeal. Evans asked if this was going to be a rule of order. Mckeon stated there would be no decision making, only voting to see if a repeal would be heard. Mckeon asked if it was in anyone's interest to be re-opened. Aldrich noted he does not have anything in front of him to help in the voting. Aldrich asked if the DES would overrule the ZBA's decision. Mckeon stated yes it would. Aldrich stated he wanted to go over the applicant's argument again. Mckeon noted that the applicants feel the ZBA's decision is secondary to the DES's decision. Mckeon stated the applicants have three legitimate reasons for denying the application. Aldrich stated if the applicants had done what they were supposed to do their application would not have been denied. Mckeon asked if there are there enough qualifications to repeal this case or does it go to court. Zanutti stated that there is enough literature to support the ZBA's decision. Zanutti noted that municipalities are encouraged to put in more stringent requirements to protect the shoreland. Zanutti mentioned he sees no error on the ZBA's part. Mckeon stated that the responses might not have answered clearly enough to address the denial. Mckeon noted if a repeal would be heard, it would put the decision-making process back at square one. Mckeon stated that once a decision to re-hear has been made, a new date must be set that meets all requirements.

John Zanutti moved to rehear the application from Joy, St., LLC. The motion was seconded by Kristin McKeon and passed by majority. (No: Hanzalik)

Mckeon stated that the scheduled re-hearing will be heard September 10, 2020 at the next ZBA meeting dependent upon all requirements being met.

Application:

For a variance from Article V Section 503.1 of the zoning ordinance to permit the removal and rebuild of a new home, making it less nonconforming than it is currently. Property is located at 71 Mountain Road, W. Chesterfield NH (Tax Map 14C, Lot C11).

Riendeau stated he would like to start and see how much information could be covered before adjourning. Riendeau stated that the board has the packet and application sent to them. Zanotti asked if everyone in the public could view this screen sharing as well. Mckeon stated yes. Mckeon stated that she had asked Lachenal if this could be uploaded to the website. Riendeau stated he had an existing half acre lot with a pre-existing house built in the 50's that had been occupied up until a few years ago. Riendeau stated the house is currently in the front setback. Riendeau stated he wants to remove the house and push it back to 22 feet from the front boundary line, then North by 2 feet, relocating the footprint. Riendeau stated the conforming part of the lot would hold any expansion.. Riendeau stated he wants to expand the width from 24 to 26 feet. When moved back that takes 2 feet out of the rear and close to a wash at the back of the property. Riendeau stated that the purpose of this is to get the width to 26 feet. Riendeau noted that the new house will be 26x44 once completed with the understanding that the only concern is with with 26x28 feet because the rest is in the conforming part of the lot.

Riendeau stated that the existing septic system is in the front setback and has been relocated. Riendeau noted that he is thinking of putting the new design in the conforming part of the lot.

Riendeau stated he is trying to improve the neighborhood with this project. Riendeau stated he wants to move 2 feet to the north to preserve the maple trees on the property. Zanotti stated that the rest of the board cannot see anything on zoom. Aldrich asked why the new dwelling is not being put within the setbacks. Riendeau stated no one will really notice that it has been moved. Aldrich asked if Riendeau does not want to move the house into total compliance simply because he doesn't want to. Riendeau stated when looking at topography and elevation where the hundred-year flood zone and septic system are, he is trying to keep everything at the highest point of the lot. Riendeau stated that this allows the most sense in positioning and spacing.

Aldrich asked if Riendeau owns the lot behind the one in question and asked why not do a lot line adjustment. Riendeau stated that situation was not in question. Riendeau stated he knows there are reasonable lines that property owners can utilize, homes can be less conforming in terms of building or building code. Riendeau stated he is trying to keep this property in the current footprint and explained that all expansions are in the conforming part of the lot which is allowed.

Riendeau stated a new roof will be put on the house going back away from the road and will lower the impact visually along the road.

Hazel Hunter of 125 Mountain Rd stated that she is in support of the plans and that the property has languished. Hunter stated that the previous owner let it become an eyesore. Hunter stated she believes the current plans will be an improvement to the neighborhood and hopes the ZBA will support the Riendea proposal. Mckeon stated it was 10pm, they had a lot of good information from Riendeau, and asked if there was any need for the site visit. Zanotti stated he would like Riendeau to reiterate why becoming more non-conforming is a good thing. Riendeau stated that any other non-conformance has a minimum of 750 square feet to be considered a dwelling and this proposal will meet that requirement. Mckeon asked again if the board would like to make a site visit.

Kristin McKeon moved that the Board of Adjustment have a site visit at 71 Mountain Road. The motion was seconded by Richard Aldrich and failed. (No: Hanzilak, Evans, Zanotti)

Lucky Evans moved to continue the public hearing on the variance request at 71 Mountain Road to September 10, 2020 at 6:45 PM. Richard Aldrich seconded the motion which passed unanimously by roll call vote.

Mckeon stated that the public portion is remaining open.

Zanotti asked if meetings will continue to be virtual. Mckeon stated as soon as the board finds out the answer to that, the public will be made aware.

Winn stated that the current State of Emergency will end on the 28th of August.

Zanotti asked if Joe Parisi was not here this evening does that mean he is no longer a board member. Winn stated that the Board of Selectmen has not currently resolved anything regarding Joe Parisi.

John Zanotti moved to make Joe Hanzilak vice chair of the Zoning Board of Adjustment. Kristen Mckeon seconded the motion which passed unanimously by roll call vote.

Next Meeting Schedule:

September 10, 2020 location to be determined by Governors orders.

McKeon noted that the agenda for next meeting should state the meeting begins at 6:30 and public hearings will begin at 6:45.

ADJOURN:

Lucky Evans moved to adjourn at 10:23 P.M. Joe Hanzilak seconded the motion which passed unanimously by roll call vote.

Respectfully submitted,

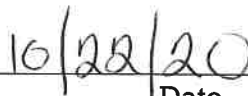
Jim Smith

Secretary to the Zoning Board of Adjustment

Approved by:



Kristin McKeon, Chairperson



Date