

Town of Chesterfield, NH
Zoning Board of Adjustment
MINUTES
September 10, 2020

Kristin McKeon, Chair, opened the meeting at 6:30 P.M. Also, in attendance, were John Zannotti, Joe Hanzalik, Lucky Evans, Richard Aldrich, 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 821 4105 3047 or by clicking on the following website address: <https://us02web.zoom.us/j/82141053047>

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 603-313-4757 or email at: office@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

McKeon introduced John Zannotti, Richard Aldrich, Joe Hanzalik, Lucky Evans, and Gary Winn as the Selectmen's rep.

Review Meeting Minutes 08/13/2020:

John Zannotti moved to accept the minutes of the August 13, 2020 Zoning Board of Adjustment meeting as amended. Richard Aldrich seconded the motion which passed unanimously by roll call vote.

Application John & Jan Dix: Continuation from July 9 and August 13, 2020. A variance is requested from Article II 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 she did hear back from the lawyer who stated that a private road meets the same requirements as any street, lane, avenue or road. McKeon stated the Fire Chief had weighed in noting that private roads should be at least 20 feet wide to accommodate any fire apparatus; if the road does not meet that requirement a waiver should be signed by the homeowners and insurance company to release any fire company of liability in the case of destruction or injury. McKeon stated that the applicants furnished the deed on the private road. McKeon noted she had sent out the definition of a road to the board for reference and the Public portion of this case is still open.

John Dix stated that as far as a road goes, he is not sure of the exact width, but right in front of the planned garage it is more than 20 feet wide. Dix stated that no matter the size of the building, it will not protrude into the road. Dix noted that they are not impacting the width of the road with this project, and there are at least 5 other structures within 50 feet of this road already built.

Dix noted that this building will not cover what is currently paved, however the way the roof is planned any weather that collects on the roof will fall off to side into the woods and should be better in terms of water runoff.

McKeon noted if emergency vehicles need access, there would now be solid building in the way. Dix answered that there are currently four foot retaining walls in the area right now that would inhibit any emergency vehicle access.

Jan Dix stated that there is no plan for a door for this building, it will remain open in the front.

John Dix stated that some neighbors had sent emails supporting the construction. Jan Dix stated those are the two neighbors most affected.

John Dix noted that the ZBA might have some concerns about the potential for living space in this building, but that is not part of the plan as there will be no plumbing. John Dix noted that the only reason there is a pitch in the plans is to accommodate the rafters. Aldrich noted his concern about the ability of emergency vehicles to get to the area in the case of an emergency. John Dix stated that generally there are vehicles parked in that spot anyway. McKeon noted that this is normally a through road, and there is not usually a need for vehicles to turn around.

Evans asked about plowing availability in winter. John Dix stated not really any plowing for the full road, it only extends to the next house after them.

Dana and Kate McGinns stated as neighbors to the Dix, there is no way a fire truck could get up this road at all. Kate McGinns stated that the proposed carport will have no physical impact on the current placement of parked vehicles, and she is perplexed by the proposed fire issue. McKeon noted that the biggest concern is if the building goes on the paved area, they are right on the lot line and there is no wiggle room. Dana McGinns noted that it appears that the inclination is to deny the application. DMcGinns asked if anyone can drive by the site. McKeon stated all the board members have seen the site physically.

McKeon asked if the carport were going to start back at the highest part of the retaining wall. John Dix stated that the walls of the garage will be where the retaining walls are now although on the side near McGinns property line, the structure will not go as far as the retaining wall does now. John Dix noted that it depends on where the road is officially placed but the building will be at least nine feet and six inches from the road on the far side. John Dix noted that the near side is at least four feet and six inches to the road.

Aldrich stated that nothing on the property is conforming and the board is continuously running into a problem of how many lots are non-conforming around the lake. McKeon noted that many of these houses were built long enough ago that current rules did not apply.

Jeff Scott asked McKeon to outline the roads. Scott asked if the carport needed to be 32 feet deep. McKeon noted that it is proposed 32 feet wide.

The board discussed how far the road is from the lake. John Dix noted that the corner pin is 258 feet from lake.

McKeon stated that the house sits in the front setback as well. McKeon asked what would happen if the garage was turned. Evans noted that the land surrounding gets very steep. John Dix stated that the bank gets very steep in that area and they would have to dig into the bank and extend the culvert in order to turn the plans as McKeon asked.

DMcGinns noted that the alterations that have been made have had a big impact on runoff, altering the garage as McKeon suggests would cause more problems than it would solve. DMcGinns also noted that just before the Nottinghams house, there is a turnaround for an emergency vehicle which is approximately 35 feet from one side to the other, the only place on this road that a vehicle could turn around. John Dix noted that is where oil delivery trucks turn around.

McKeon asked board how they are feeling about this. Evans stated that the applicant has to make the carport slightly narrower by four feet going back to the pavement. McKeon asked that they were establishing how far the carport was from the road. John Dix stated that is correct, the north corner by the road sits back about four and a half feet from road, the other side sits back about nine feet.

Aldrich noted that this is a real anomaly, and he is not sure what to think. Aldrich stated that moving the design in any direction will cause a lot of changes to the current plans.

Evans stated he cannot see why this is called a road; it is more like a driveway. Evans noted that if the neighbors agree to everything, he can see the carport going up

Zannotti stated that the deed does not assist in any way. Zannotti stated that if the attorney says this is a private road but requires compliance with a street, he is inclined to suggest that the ZBA should not be encouraging more non-conformance as this application requests.

John Koopman asked how long ago this parking area was installed. John Dix stated they have only been on the property for two years but he is guessing it has been there since the early 1900's. Koopman would like to echo Zannotti's comment on non-conformity, and suggests reducing the size of the proposed carport to

24 feet by 24 feet, moving it eight feet back from the road and reducing the apparent impact of the non-conformity. Evans noted again that the bank is very steep. Evans and John Dix both stated that a car would not fit in a building of 24 feet by 24 feet. Jan Dix stated that changing to 24 by 24 does not really impact the setback on the road. McKeon clarified that if the building were made shorter it could be angled without too much impact on surrounding area. Jan Dix stated that there are steep slopes and woodlands all around there. Aldrich stated, looking at the photo the Dix presented, moving the carport back four feet from the current retaining wall would bring the carport into less non-conformity. Jan Dix stated the retaining wall logs are rotting out, which is what initiated the project. Aldrich stated that would be fine, just excavate beyond the current retaining wall four feet deeper.

Winn noted towards the owners design that the state fire code requires a generator to be five feet away from any combustible materials. Winn stated that the applicants may have to move the generator before any building begins. Evans noted that the newest code allows metal cased generators more proximity to combustible materials.

Scott asked if the 32 by 24 area was now impervious. Aldrich stated yes. Scott suggested backing it up four to six feet in the line it currently follows; or go down to 24 by 24 and start ripping up some of the pavement. John Dix noted that a smaller design is not going to allow for turning vehicles around.

Aldrich stated he is still stuck with the problem of setback. McKeon stated that there are no precedents set by any other cases; any decisions made at one time do not need to justify or conform with others.

Lucky Evans moved to close the public portion of the meeting. The motion was seconded by John Zannotti and passed unanimously by roll call vote.

McKeon asked if there were any way to move the plans into compliance and still keep the 32 foot width.

McKeon stated she believes that two cars will fit in a 24 by 24 and meet all the other requirements.

Zannotti stated that the board is not supposed to find a solution for the applicant; they should approve the plans as is or deny them. Zannotti stated he is not comfortable trying to compromise. McKeon stated the variance can be approved with conditions. Aldrich agreed with Zannotti, the board might be better to just say no and have the applicant come back with a better design that is more compliant. McKeon clarified that the board states the current size is not compliant, but a 24 by 24 would be acceptable and does not think it is fair to have the applicant go through the entire application process over again. Aldrich stated he does not understand why the board cannot have the applicant come back with another design. Hanzalik agreed with Aldrich. Aldrich asked if a provision could be made upon doing an excavation, repair, and refinement, and the applicants return with a slight change. McKeon stated that the board cannot hear a slight change but can make conditions on the original proposal.

The board reviewed their five criteria.

McKeon asked if it is reasonable to put a roof over the current carport. Evans noted that the applicants want a carport and the town wants the carport further off the road.

Hanzalik noted he does not have any further input but stated that there is a continuing issue with property purchased around the lake. Hanzalik stated that it is a compromise, and he may be in favor of approving the plans with some conditions. Hanzalik stated he also believes the ZBA is not the "solutions desk." Hanzalik noted he still does not feel like he has enough information from the Town or town attorney.

Zannotti returned to discussion on street requirements for setbacks stating there are no setback here.

Zannotti discussed emergency apparatus mobility again. Zannotti noted he is struggling with putting more ideas into a non-conforming situation.

McKeon stated a hypothesis: the carport cannot be within 10 feet of the side lot line and cannot be within 10 feet of the road. Zannotti noted he feels uncomfortable when the ZBA enters situations where the board does not like what the applicant provides, and he does believe it is fair to dictate what the design contains. Aldrich stated a reasonable person could see the carport will not be compliant.

Kristin McKeon moved to approve the variance for the Dix's carport with the following conditions: no larger than 24 feet by 24 feet, the southern point of the carport must be perpendicular at least 8 feet from the Larson's lot line, and that same point must be at least 28 feet from the southwest lot line that runs along the Nottingham's property, it must be open in the front. The motion was seconded by Richard Aldrich.

Kristin McKeon moved to amend the motion to include that this movement is based on the Plot Plan prepared by Jonathan Dix using site plan prepared for Roger Monsel by C.T. Male Associates, Inc. Oct 1985, signed by the Dix's on May 13, 2020. The motion was seconded by Richard Aldrich and passed unanimously by roll call vote.

Discussion: Kristin McKeon asked if motion as stated met all criteria. The board discussed and agreed.

The motion in the entirety now states: Based on the Plot Plan prepared by Jonathan Dix using site plan prepared for Roger Monsel by C.T. Male Associates, Inc. Oct 1985, signed by the Dix's on May 13, 2020, Kristin McKeon moved to approve the variance for the Dix's carport with the following conditions: no larger than 24 feet by 24 feet, the southern point of the carport must be perpendicular at least 8 feet from the Larson's lot line, and that same point must be at least 28 feet from the southwest lot line that runs along the Nottingham's property, it must be open in the front. The motion was seconded by Richard Aldrich and passed by majority roll call vote. (N: Hanzalik)

Application Burt Riendeau: Continuation from August 13, 2020 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)

The board discussed the continuance of the application. Burt Riendeau recapped his presentation from the previous meeting: a half-acre lot located on Mountain Road with an old house in the front setback, both side setbacks are clear, Riendeau is proposing to take the 24 by 30 square foot house down and replacing it with a 26 by 44 house. Riendeau stated he is asking to move it back two feet from the front setback (currently 20 feet from the front setback) and shifting to the North two feet to get it away from the road. Riendeau noted that by moving north two feet it goes away from the maple tree he would like to preserve. Riendeau also stated that by pushing it back two feet it takes the back of the house into the conforming part of the property. The rest of the construction proposed is in the conforming part of the lot. Riendeau stated that he is primarily here to move the house back from the road and to the north so the footprint is shuffled slightly.

McKeon stated she drove by the site and took some photos.

Hanzalik asked if the old house is being taken completely down, why not have the whole structure be conforming. Riendeau stated that the the layout does not work to get it into the current footprint in the middle of the property. Riendeau noted that he was trying to get the septic system from the front setback into the conforming part of the lot. McKeon asked why he was moving the septic out of the setback; septic systems do not need to worry about setbacks. Riendeau stated it seemed to make sense to push it back from the river and town road and there is space for it; otherwise two other trees will need to be cut down to put a new system in. McKeon asked if there was a holding tank or actual septic system in place. Riendeau stated it is a septic system, and does not need to be replaced, it has passed state inspection. Aldrich noted that the septic existing is not on the same lot the house is on. McKeon clarified the system on the drawings were proposed but not put in. Riendeau stated that the septic he is proposing will be on the lot.

Aldrich noted if the applicant would tear the place down and move the septic, the proposed new structure fits almost perfectly within the legal setbacks. Aldrich stated that this can be done entirely by making it a conforming lot in total. Hanzalik agreed with Aldrich.

Evans stated that if the plans were more conforming, it would be good enough for him.

McKeon stated the roofline will be higher, and this will put more volume in the setback. Riendeau stated that cubic expansion does not increase living space, it will all be roof or attic. Riendeau noted that when looking at the zoning for safety health and density, the increase of the roofline will be due to new foundation and other factors. Riendeau stated that the plans were designed to be pushed back from the setback to decrease the impact of the increased roofline. Riendeau noted he would like to have it oriented so there would still be a river view, and that would dictate the orientation of the new house. McKeon asked why house could not be shifted to the back of the garage, would still face the river. Riendeau stated he is not forced to build into the conforming part of the lot due to a grandfathered structure already being there. Zannotti asked the last time someone lived in the building. Riendeau stated possibly four to five years. Zannotti asked if that fell into abandonment. Riendeau stated no.

Aldrich stated his position on this as it will be difficult satisfying the five value criteria list, because there is no unnecessary hardship when the restriction applied to property doesn't interfere with applicants use of the property. Aldrich noted that the applicant can build a new house on existing footprint. Aldrich stated his suggestion to put the house entirely within the setbacks, so it is completely conforming. Riendeau reiterated, is it a reasonable request to take a building in the non-conforming part of the lot and shift it marginally back. Riendeau stated he believes the town would want the house further off the road and more visually pleasing.

Riendeau stated what separates this application is that there is already an existing building on the land. Riendeau noted that when looking at those enforcements, the board is not taking the grandfathered structure into consideration.

McKeon asked if the board wanted to close the public input part of the meeting.

Lucky Evans moved to close the public input session of the meeting. The motion was seconded by John Zannotti and passed unanimously by roll call vote.

Lucky Evans moved to accept the application as proposed. The motion failed for lack of a second.

Zannotti asked if Aldrich's suggestions change how the applicant views the river. Aldrich stated his suggestions were more to the footprint than the views.

Zannotti stated it looks like there is an opportunity here to bring into complete compliance.

Joe Hanzalik moved to deny the application as it was presented. The motion was seconded by Richard Aldrich.

Discussion: Hanzalik stated that if it is possible to be completely in compliance why not make it so. Hanzalik stated he does not believe this application fits the spirit of the ordinance because they are capable of being fully compliant. Richard Aldrich stated reference to the five criteria Simplex list. McKeon asked if the board agrees that the application cannot meet all five criteria.

Richard Aldrich moved to amend the motion that literal enforcement would not result in unnecessary hardship and the property can be used in strict conformance. The motion to amend was seconded by John Zannotti and passed unanimously by roll call vote.

The motion as it reads in the entirety states: Literal enforcement would not result in unnecessary hardship and the property can be used in strict conformance as well as not meeting the spirit of the ordinance, for those reasons Joe Hanzalik moved to deny the application as it was presented. The motion was seconded by Richard Aldrich and passed unanimously by roll call vote.

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 and continued from August 13, 2020: requesting an appeal of an Administrative Decision made by the Code Enforcement Officer in relation to Article 203.4C Coverage: Building Coverage shall not exceed 10% of the area of a lot. Total impermeable coverage shall not exceed 20% of the area of the lot to permit a pervious paving system. The property is located at 217 Route 9A, Spofford, NH 03462 (Tax map 5L, Lot A8)

Mike Bentley asked that Joy street be continued until the October meeting.

Kristin McKeon moved to continue the Joy Street, LLC rehearing to the October 8th ZBA meeting. The motion was seconded by Richard Aldrich and passed unanimously by roll call vote.

Application Matthew & Melanie Jangro: a variance is requested under Article II, section 203.6B Setbacks; Article V, section 503.1 Expansion; and section 503.2 Abandonment, Discontinuance, Destruction. The property is located at 871 RT 63 Spofford, NH 03462. (Tax Map 5B, Lot A7)

Zannotti stated he would like to do a site visit. McKeon agreed with Zannotti. Melanie Jangro asked that the board see to this case during tonight's meeting. McKeon clarified that this is the first time the board can address this case as a whole and so may push this case to the October meeting.

Zannotti suggested 09/24/2020 as the date of the site visit. McKeon noted that she is available any time before 3PM. Zannotti proposed to meet at 11AM at the site. Zannotti noted that the plot should be approached from the back, off County Road.

Kristin McKeon moved to continue the public hearing to a site visit at 871 RT 63 Spofford on September 24, 2020 at 11 AM. The motion was seconded by Joe Hanzalik and passed unanimously by roll call vote.

The board took a 5-minute break.

Other

McKeon discussed the West East Westmoreland reconsideration. Hanzalik and Aldrich stated their complete agreement with the wording of the reconsideration.

Kristin McKeon moved to add her reconsideration into the motion made by Joe Hanzalik at the previous meeting. The motion was seconded by Joe Hanzalik and passed unanimously by roll call vote.

The request for reconsideration is as follows: I would like to request a reconsideration of the decision made 08/13/2020 to deny the application from West East Westmoreland and discuss including any/some/all of the wording below to that decision so as to clarify and solidify our decision to deny the application.

1 contrary to public interest and 2 spirit of the ordinance: the variance request does conflict with the zoning objectives of the ordinance. The ordinance was created to address overcrowding and congestion on the lake. With the development of this property at 45% when the ordinance calls for no more than 20%, bringing the coverage down by 1%, but raising the roofline by roughly 6 feet actually shows an increase in nonconformity based on ordinance 503.1. Regardless of whether the applicant intends to lower the cubic footage in other areas the direct living space will increase by adding a second floor. The applicant taking down a shed and bay windows to make up for the difference is simply not the same. A variance which expands an already nonconforming lot is completely against the objectives of the ordinance. The applicant does not meet the first and second prong of Simplex. Work permitted by DES needs a town permit.

3. Substantial justice is not done in this case. The town receives a large amount of tax revenue from lakeside properties. Those same lakeside properties threaten the health of the lake as they become more heavily developed. Without the tax revenue from lake properties the tax burden on the public will increase greatly. The ordinances were implemented to address the overburdening of the lake, thus keeping it healthier and keeping the tax burden on all town residents low. Therefore any loss to the applicant is outweighed by the good to the public.

4. The values of surrounding properties may be diminished. The six foot height increase on a side of the building which sits very close to the building next door may effect the value of that home as the property owner attested. The property on the other side is vacant at this time and owned by the Town of chesterfield. The town Selectmen sent a letter opposing a variance. Property owners across the street were in support of the project. The closest of those properties is about 40 feet higher in elevation.

5. There is no unnecessary hardship. The property sits on a small, steep lot and abuts Lake Spofford. This is similar to many other lots on Spofford Lake. The property owner is able to fix his foundation, make repairs, and bring the building up to code without a variance. The property owner can reasonably enjoy his property without a variance. The lot as it is now is already overburdened in terms of coverage. To add to this either by footprint or volume, will increase an already overburdened lot.

Zannotti asked Winn if he knew anything about continuing virtual meetings. Winn stated if the emergency order goes away then most members will have to meet in one place to conduct a meeting as before. Winn stated he is not certain how that would affect the public noted perhaps the public could continue to attend virtually. Winn stated that the law dictates the public must have access, but it does not state the public need

to be physically present. Winn stated he suspects the virtual meetings will continue but he does not have anything to base that on. Zannotti asked if Jeanny Aldrich was actively involved in perpetuating the virtual meetings without the need for an emergency order. Winn stated that Jeanny Aldrich sent a letter, but he believes it would take an act of legislation to approve. Winn noted further that the Municipal association has been kept abreast of the situation and there are individuals working on it. RAldrich stated it seems to allow for increased attendance. Winn agreed, noting that people turn the public meetings on simply to listen in and it provides opportunity to stay informed without having to go out. Winn noted that this method saves on a lot of secondhand information rotating.

McKeon discussed watching workshops on the NHMA website. Winn stated that November is the next NHMA conference, and for the board to keep their eyes open for that information.

Next Meeting Schedule:

Site Visit to 871 RT 63 Spofford September 24, 2020 at 11 AM

Next ZBA meeting October 08, 2020 at 6:30 PM

ADJOURN:

Joe Hanzlik moved to adjourn at 10:36 P.M. Richard Aldrich seconded the motion and it passed unanimously by roll call vote.

Respectfully submitted,

Jim Smith

Secretary to the Zoning Board of Adjustment

Approved by:



Kristin McKeon, Chairperson



Date