

Town of Chesterfield, NH
Zoning Board of Adjustment
MINUTES
July 9, 2020

Kristin McKeon, Chair, opened the meeting at 6:30 P.M. Also, in attendance, were John Zannotti, Joe Hanzalik, Lucky Evans, Joe Parisi, Gary Winn as Selectmans representative and Tricia Lachenal.

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 873 1534 3966 or by clicking on the following website address: <https://us02web.zoom.us/j/87315343966>

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

Joe Parisi is seated in place of Richard Aldrich

The ZBA asked if there was an update on making Joe Parisi a full member.

Lucky noted he would like to be an alternate. Winn noted that the this topic is on the next Board of Selectmens agenda.

Review Minutes 6/11/2020 and 6/25/2020 site visit if available:

Joe Parisi moved to accept the minutes of the June 11, 2020 Zoning Board of Adjustment meeting as amended. Kristin McKeon seconded the motion which passed unanimously by roll call vote.

Site visit minutes from June 25, 2020 were not available and were tabled to next the meeting.

Application:

Continuation from May 12, 2020 and site visit 6/4/2020 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 0.4 acres with a steep paved driveway leading to the existing 5 bedroom Dwelling with a 143 square foot shed. (Tax Map 5C, Lot C8)

McKeon stated that the ZBA received a letter from Mike Bentley. The letter indicated he will be representing the applicant and requested a continuance to the ZBA meeting in August.

The board noted they received the letter from Mr. Bentley regarding the Board of Selectman. McKeon noted that a board member is the one that is able to decide to recuse themselves from a discussion. McKeon noted that spouse can serve on different boards and speak for themselves without influence from the other , but it is the applicants right to bring it up. McKeon noted that if there a is a direct monetary interst in the action then the board member should step down. Bentley noted that he has no objection with having the hearing continued and these issues being discussed at the August meeting. McKeon noted she will put it with the rest of the packet and it will be on for discussion in August.

Bentley noted that if he understands it correctly, the recordings are kept until the minutes are approved and would like to request that the June 11, 2020, tonight's and the recording in August be kept and not erased. McKeon noted that in the past applicants have asked for the recordings and are allowed to have it. McKeon asked Lachenal to preserve the minutes from June 11, 2020, July 9, 2020 and August 13, 2020.

Joe Hanzalick moved to continue the hearing for variance at 66 North Shore Road to August 13, 2020 at 6:30 PM. The motion was seconded by Kristin McKeon and passed unanimously by roll call vote.

Application:

A variance is requested from Article II section 203.4C and 203.6b of the Zoning Ordinance to permit construction of a carport over an existing paved parking area increasing the building coverage to 12% and its within 20 feet of side setback and 50 feet of road setback. Property is located at 49 Barn Road, Spofford. (Tax Map 5H, Lot B24)

McKeon noted that she was unable to attend the site visit, but did go to the site today. McKeon noted that Dara Carleton took hand written notes at the site visit, but has not done the minutes yet, but has stated that she will get them to McKeon. McKeon noted she will send them along to the board when they are received.

Zannotti noted that there were several members present at the site visit and they did have a quorum. Zannotti noted they were able to take a look at the property and see what the applicant was requesting. There is an existing paved area that has railroad tie walls around it. Zannotti noted that he understands they are trying to erect a car port. Zannotti noted that during the site visit, more questions were brought up. Zannotti noted that Carleton was asked to collect some of the information. Zannotti noted that there are 2 or 3 propane tanks that are on the property line or a few inches away from the property line. Zannotti noted the ZBA was not sure if those tanks were permitted or not. Zannotti noted that there was a question about if the existing paved area was permitted. Zannotti noted that the other question was the private road that runs through the property and if the setbacks apply on both sides of the road. Zannotti noted that the board came away with more questions from the site visit than were answered. Zannotti noted that it is clear what the applicant is looking to accomplish, but the permitting questions and guidance on the private road questions still remain.

Parisi noted that he would like to note that the applicant refers to it as a carport, but when you read through the application, it has a roof and three (3) sides making it more of a garage without a door than a carport. Parisi noted that he found it to be a little misleading stating that without reading the details it was not clear. Parisi noted that he does not know what kind of review process would be necessary if the structure was approved now and they later decided they wanted to have a door. Parisi noted that in the absence of having that information, the ZBA would be approving a garage with this application. McKeon noted that the ZBA would have to stipulate that there would be no sides or door. Parisi asked if the addition of a door would go back before any board and if not, this approval would give the approval for a garage.

Evans noted that the retaining walls are for dirt. Parisi noted that the application reads that the retaining walls would be removed and replaced. IT was noted that the walls go all the way to the roof. Parisi noted that the photo shows a carport, but the application states differently.

McKeon noted she was trying to figure out why they have to stay in the setback. McKeon stated that the grade does not look very steep. Zannotti noted that the grade would make it hard to comply with the setback requirements. Hanzalik agreed it would be hard to push it out of the setback due to grade and placement of private road. Evans noted that it seems to be tucked in where it is due to lack of space. Parisi noted that a structure of that size would be hard to move, but a smaller one could be put there and it would clear the setback.

McKeon noted that for the past 4 or 5 years the Town has been going around having tanks removed from setbacks. McKeon noted that gas companies were installing them and telling homeowners it is not a big deal. McKeon noted that the Town has been having a lot of requests for variances. McKeon noted that if there is any way to get them out of the setbacks, it is being required. McKeon noted that some people are getting permits for them and some are not. Hanzalick noted that with the tanks being rentals, why do they need a permit. McKeon noted that it does not matter who owns the property as they are considered structures and need permits. McKeon noted that as of right now, for whatever reason the Town does not require a permit to pave your driveway. McKeon noted that is how a little track becomes a 30 foot driveway.

Zannotti noted that the pavement is there now and putting a 32X24 carport there does not change the impermeable surface. McKeon noted that it moves it from one category to another, but in this case it does not seem to make much difference. Parisi noted that with the lack of permitting or variance on record and part of it being in the setback, it should start with the notion that nothing is there now and they want to add something. Parisi noted that if a variance or permit was found, he would be looking at it a little differently.

Evans noted that he would like clarification on how the road works.

McKeon opened the discussion to the applicant.

The applicant noted that it is called a carport in the application, but if the board prefers, it could be called a three (3) sided garage as that would be accurate. Mr. Dix noted that they plan on connecting the walls to the roof but do not want to close the front as guests frequently turn around there. It was noted that they purchased the property two (2) years ago and this is how they purchased it. Dix noted that the family that owned it previously had purchased it in 2006 and the basketball hoop was there from the owners before that. Dix noted that they are not planning on increasing the footprint. Dix noted that when the application was submitted, they did not think a driveway was considered an existing structure and were wondering if they should have filed for a non-conforming lot. Dix noted that the structure coverage may be over the allowable amount.

McKeon noted that one issue with the application is the lack of detail on the roof. McKeon noted the type of material and pitch etc is not stated in the application. McKeon noted that the board has a picture, but no detail about what is being planned. Dix noted that they did not want to spend even more money for the plans and then find out that they would not be allowed to do anything. Dix noted that they do not want a second floor or any storage area. It was noted the roof would be pitched for snow load only. Dix noted the area cannot be plowed as it is and they need a place to park the cars under cover.

Zannotti asked for the square footage of the driveway. Dix noted that the gravel driveway is 768 square feet and it is included in the last line under proposed structure on the calculation. Dix noted that it appears maybe it should have also been located under existing impervious, but they were not sure.

McKeon asked if the Right-Of-Way that goes past the house is used. Dix noted there is one house beyond them, but they are never there. Parisi asked if the legal description is a shared driveway or is it a driveway owned by the Dix with an easement. Dix noted that they will try to dig up some information on that for the board.

Zannotti noted that when the board first arrived at the site visit, many were parking along the road and the applicant came out to say that the cars should be moved because FedEx and UPS move through there frequently. Dix noted that sometimes during the summer months, delivery trucks drive through when they deliver to their house. Dix noted it is a private road owned and maintained by the various homeowners. Dix noted that it is believed that it is an easement with a separate agreement for maintenance. Dix noted that the deed refers to it as a right-of-way. The Town is not responsible for the maintenance or plowing of the road.

Parisi noted that the board needs clarification on the setback requirements for the legal description of the road. Zannotti noted that Lachenal spoke with Lord who indicated it is a class 6 road and the Town does not maintain it. Parisi noted that the board needs the legal description of the road and the setback requirements based on the legal description.

McKeon noted that the board wants to make sure that they have the correct information on the road and need to look more at the setback requirements. McKeon noted that she would also like to know what it will look like with elevations and such. Evans noted that he believes the board needs to know what is permeable today. Dix noted that they are not changing the impervious coverage of the lot as there is already pavement there. Dix noted that they are unsure if they filled out the application correctly with lot/building coverage. Dix indicated that now that they have looked at it more, maybe they should have applied for an expansion on a non-conforming lot. McKeon noted that would change the calculation to cubic footage.

Parisi noted that a better description of what is being requested is needed. Parisi noted it does not have to be an architectural drawing or a construction drawing, but the basic elevations are needed. Hanzilick noted that he would like to see more details as well.

Zannotti noted that the big key is the setback requirements on a right-of-way and if the applicant needs to resubmit the building coverage. Zannotti noted that the impermeable coverage will go way up with the driveway.

McKeon noted that she believes that the board can get the information on the right-of-way/private road questions and she will look into that.

Dix asked if the existing road would be part of the impervious coverage. McKeon noted that the driveway may be in the wrong category on the application. McKeon noted that when the parking area goes to a building, it moves from one part to another. McKeon noted the road would be considered impervious. Parisi asked if that is a shared driveway, does the number get divided by the number of lots that share it. McKeon suggested the applicant take the measurements with and then without the road. McKeon noted she will look up the laws regarding zoning on private roads and rights-of-ways.

Dix asked how to submit the changes. McKeon stated they should send them to Lachenal by email and Lachenal noted a hard copy should be delivered or mailed to the Town Offices as well.

McKeon noted that drawings with elevations and topographical maps will let the board know where it will go and be laid out to show how big so that if the board approves anything, it is approving something specific.

The meeting was opened to public input:

Jim Phippard noted that he is not working on this application nor does he have any relationship with the applicant, but had a question.

Phippard asked that if a structure meets all setback requirements then it would be conforming to all the building setbacks then they are not required to get a variance to expand the volume. McKeon noted that if it was an otherwise conforming lot, but this is putting a roof on and that changes it from one category to the other so it is not as simple as just moving it over. McKeon noted it is possible, but without knowing the coverage of the lot, but it would change it from the 10% to the 20%. Phippard said that if we say that the lot is non-conforming lot just for frontage, but meets all setbacks and lot coverage can I expand the volume on that conforming structure on that lot without a variance. McKeon noted that she believes that you do have to go to zoning to expand on a non-conforming lot.

Phippard noted that the other question is when McKeon stated that in Chesterfield you need a variance for a 2nd floor on a garage or carport. So if I have a conforming structure with an attached garage and I want a room over the garage, I need a variance? McKeon looked at the regulations stating that she would have to find it. McKeon noted she could not locate it at the moment, but would email it to Mr. Phippard.

Koopmann noted that the application seemed like a complex application and recommended the applicant discuss it with a professional. Koopmann noted that it is hard to wade through an application as a novice. Koopmann noted that one tool the Planning Board uses is a conceptual consultation. McKeon noted that the ZBA is not allowed to do that.

McKeon noted that she would like to keep the public hearing open and continue the hearing. Parisi noted that he would like to reinforce a comment that was made regarding these types of applications. Parisi noted that money is well spent on engaging professionals. The product is much better and goes through the process much easier. Parisi noted that when the professionals are there in defense of the application it is easier on everyone. Dix noted that they did get a quote that was an astounding amount to just figure out if we can do this. Dix noted they would like to figure out if this can be done before spending that kind of money.

Kristin McKeon moved to continue the application for variance at 49 Barn Road to August 13, 2020 at 6:30 PM. The motion was seconded by Joe Parisi.

Discussion: McKeon noted that the applicant is to provide the board with driveway and row calculations and a more detailed drawing of the proposed building and McKeon noted she will bring information about this row or private road.

The motion passed unanimously by roll call vote.

The board took a 5 minute break.

Request for reconsideration of decision on Joy St. LLC ZBA member Kristin McKeon requests the board reconsider their decision on Joy St. LLC Appeal from Administrative Decision. I would like to bring the appeal by Joy St. LLC forward for reconsideration *74 Cox Street LLC V Nashua, 156 NH 228 (2007)*. As a board we may reconsider our prior ruling and upon reconsideration make the same decision for the same or different reasons *Fisher V Boscawen, 121 NH 438 (1981)*. This can be found in full on page 36 of the 2017 Procedural Basics for Planning and Zoning Boards.

McKeon noted that she originally was thinking that the meeting needed to be reopen the entire thing but that was incorrect. I am requesting that we reconsider our decision on Joy St., LLC. McKeon noted that boards can reconsider prior rulings making the same or a different decision and in her opinion she would like to add more information to the decision. McKeon read from the Zoning Handbook section 4-2:

The board may reconsider their decisions provided it is done within the statutory 30-day appeal period of the original decision. "...we believe that municipal boards, like courts, have the power to reverse themselves at any time prior to final decision if the interests of justice so require. We hold that belief because the statutory scheme established in RSA chapter 677 is based upon the principle that a local board should have the first opportunity to pass upon any alleged errors in its own decisions so that the court may have the benefit of the board's judgment in hearing the appeal." *74 Cox St., LLC v. City of Nashua, 156 N.H. 228 (2007)*. It is recommended that the board include a by-law provision allowing for board-initiated reconsiderations.

McKeon noted that rules and procedures to allow this #14, page5. McKeon noted that as long as we are within the 30 days, we can look at the decision, can add to it or make changes or even reverse the decision. McKeon noted that she is asking that under item 1, add a-d. McKeon read her suggestions as follows:

1.a The Town is authorized by RSA 483-B: 8, I, to adopt zoning ordinance regulations that more stringently regulated the protected shorelands, and the Town has done so by the terms of the Spofford Lake District. Compliance with the requirements of this District includes not only the uses and setbacks in the Spofford Lake District, but also the Area, Frontage and Coverage Requirements of the Residential District.

1.b The subject property does not meet the coverage requirements of zoning ordinance section 203.4, C, as that property already exceeded the 20% impermeable coverage limit when the most recent work was undertaken that included the installation of impermeable pavers, which the Town does not recognize as a permeable surface, given the definition of "impermeable coverage" and "structure" as those terms are defined in the zoning ordinance.

1.c The ordinance defines "structure" as including "any temporary or permanently... placed material... in or upon the ground", and these installed pavers fall within that definition.

1.d Further, the ordinance defines "impermeable coverage" to include both "all that horizontal areas of a lot, parcel, or tract due to manmade alteration to the natural surface of the land, including structures... and other development." Permeable pavers are both a man made alteration to the natural surface of the land" that is a form of "other development" and a "structure".

McKeon noted that she only suggests this because if this moves on from here, the more specific the board is with the regulations and definitions, the better position the board will be in to defend the decision.

Parisi asked if the board does the reconsideration now or if it is done at a different time. McKeon noted that within the 30 days appeal time. Parisi stated that if we did it, it would happen without the applicant being notified. McKeon noted that yes the board has the ability to do that. McKeon noted that the applicant can still appeal the decision as the deadline is not over until Saturday. Parisi noted that the applicant would not have the benefit of the discussion and the meeting minutes do not have to be posted within the 2 days, so they will not even know it happened. McKeon noted that she believes that the edited decision would restart the 30 days for the applicant and they could then have an additional 30 days to appeal. McKeon noted that the board will not be creating a new decision, just editing the one that was previously made. Parisi stated that he would think that the board would want to give the applicant the benefit of a public hearing. McKeon noted that the way she is reading it, if the applicant asks for a rehearing and the board grants it, the application starts over the following month. Parisi noted he is not suggesting starting the process over, he is suggesting that if changes other than administrative changes are suggested, the applicant receive the benefit of a public hearing. Parisi noted that if time does not allow that, then he has an issue with the reconsideration.

McKeon stated that she is not asking to change the decision, she would just like more detail in the decision. McKeon noted that it is the same decision and if the applicant chooses to appeal the decision, they are appealing the decision not the details. McKeon noted this option is designed to allow the board to take a look at their decision within the 30 days and make the decision more clear. Zannotti noted that if we do consider a rehearing, the public is unaware that we are doing this. McKeon noted that reconsideration is only allowed by the board but a rehearing is different. Zannotti asked if there was a place that says the board does not have to hold a public hearing. McKeon noted that is an open meeting and the reconsideration is on the agenda. Zannotti asked if the applicant has the right to contribute. McKeon noted that the board would only be making sure the information is factual and legally correct so that if it goes forward it is defensible. McKeon noted that all the arguments have already been made. McKeon noted that she will pull up the case law. McKeon stated that the Court says RSA chapter 677 does not set out any procedure by which a ZBA may consider to deny rehearing that is not the end of the matter (in regards to this specifically) we have no difficulty in conducting that when the legislature authorized ZBA's to grant or deny requests for rehearing that statutory grant included the authority to reconsider decisions to deny rehearing within the 30 day limit. McKeon continued reading: Notwithstanding that the board and courts come by their authority in different ways, we believe that municipal boards, like courts have the power to reverse themselves anytime prior to final decision if the interest of justice so require. The statutory scheme is based upon the principle that the local board should have the first opportunity to pass upon any alleged errors in its decisions so that the court may have the benefit of the board's judgment in hearing the appeal. McKeon noted that the case is *Blagborough Trust vs. the Town of Wilton*.

Parisi noted that it does not help him as it does not speak to the original applicant is to be noticed or not. Parisi noted the process potentially allows us to do this and then given the calendar the results will not provide sufficient time to know about it and appeal it. Parisi noted that he believes this to be fundamentally wrong. McKeon noted that the meeting is publically noticed. McKeon stated that we have a right to look at

our work. McKeon noted that the decision was to deny, and if they want to appeal, they would be appealing the denial. McKeon noted that if we add to the decision to clarify, it will not change the decision to appeal. It is not a discussion with the applicant, the decision was made, it was making sure that we dotted our i's and crossed our t's. Zannotti noted that during the meeting where the application was denied the meeting had been closed to the public and then came to the board for deliberation and decision and the board made a decision so if we think we need to add a few details to the decision, I believe the public has already been served. Zannotti noted that it was public until the public portion was closed. McKeon noted this is a public meeting and was publically noticed. Zannotti noted that he is ok with it.

Kristin McKeon moved to reconsider the Joy Street, LLC appeal. The motion was seconded by John Zannotti and failed. (Yes: Zannotti, McKeon) (No: Parisi, Hanzlick, Evans)

Discussion: Changing start time from 7:00PM to 6:30 PM with hearings beginning at 6:45PM and changing meeting day to second Thursday of the month. 3rd vote.

Kristin McKeon moved to change the start times of ZBA meetings from 7:00 PM to 6:30 PM with hearings beginning at 6:45PM and changing the meeting day to the second Thursday of each month. THE motion was seconded by Lucky Evans and passed unanimously by roll call vote.

Discussion: Passcode/waiting room for future meetings.

Lachenal noted that Zoom will require either a passcode or a waiting room enabled in the near future. . The board would like passcodes when this becomes necessary not waiting rooms.

Next Meeting Schedule:

August 13, 2020 at 6:30 PM

ADJOURN:

Joe Hanzlick moved to adjourn at 8:50 P.M. John Zannotti seconded the motion and it passed unanimously by roll call vote.

Respectfully submitted,

Tricia Lachenal
Interim-Secretary to the Zoning Board of Adjustment
Approved by:



Kristin McKeon, Chairperson

_____ Date

