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

**THURSDAY, JANUARY 14, 2021
6:30 P.M. PUBLIC HEARINGS
BEGIN: NO EARLIER THAN
6:45P.M. VIA ZOOM REMOTE
MEETING**

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 # 1-929-205-6009, 1-312-626-6799 or 1-301-715-8592 Meeting ID 840 7816 4360 and passcode 645384, or the following website:

<https://us02web.zoom.us/j/84078164360>

Meeting ID: 840 7816 4360

Passcode: 645384

- 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 **text** 603/398-6712 or email at: kmckeonzba@gmail.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 the ZBA

Chairwoman McKeon introduced Vice Chair Joe Hanzalik, members Lucky Evans, and John Zannotti, alternate Joe Brodbine, Selectmen's representative Gary Winn, and the Zoning Board secretary Jim Smith.

Chairman & Vice-Chairman 2021 Nominations

John Zannotti moved to nominate Kristin McKeon as Chairman for the Zoning Board of Adjustment for 2021. The motion was seconded by Joe Hanzalik and passed unanimously by roll call vote.

John Zannotti moved to nominate Joe Hanzalik as Vice-Chair. The motion was seconded by Kristin McKeon and passed unanimously by roll call vote.

Review Meeting Minutes: 12/10/2020

John Zannotti moved to accept the 12/10/2020 minutes as amended. The motion was seconded by Lucky Evans and passed unanimously by roll call vote.

McKeon asked if the board would like to discuss possible changes to the Zoning Board application. Zannotti asked if these changes had been forwarded to the board. McKeon explained that they had. Zannotti suggested waiting until a later time so the board could be reminded of the proposed changes.

Jim Phippard asked the board if they would attend to the George application this evening and if they were not, could those applicants be notified so they do not need to attend the full meeting. McKeon noted that if the board were to address that application, she would be recusing herself and it would be Schnackenberg's first time hearing a ZBA application and Hanzalik would take over the meeting.

Applications:

- 1. Lyle Foley & William Manter**-Jim Phippard (agent) presenting a Continuation from the 11/12/2020 and 12/10/2020 Zoning Board meetings requesting variance from **Article V, Nonconformities, Section 503.1, Expansion** of the ordinance to permit construction of a new house in place of the existing house. A variance is also requested from **Article II, Use Districts, Section 203.6b, Setbacks** to allow a single-family residence and three drainage structures within the front, side, and road setbacks. The property is located at 873 Route 63 Spofford, NH 03462 (Tax Map 5B Lot A-5).

McKeon opened discussion by asking if Phippard would present the updated information requested from last meeting. Phippard noted he tried to respond to as many questions

from the previous meeting as possible. Phippard presented the cross section of the plans. Phippard noted areas for drainage vectors for stormwater, also noting the walkway down to Route 63 and to the lake. Phippard stated the applicants will be adding steppingstones which are permitted. Phippard noted that the cross section exhibits two new retaining walls to the North of the existing driveway or private road. Phippard added that another retaining wall will be located adjacent to the house. Phippard stated the steepest portion of property is at Route 63 which is a 29 percent grade; that will be moved out, loamed, and seeded for maintenance free vegetation.

Phippard presented how the land would be graded noting that there was a drainage analysis completed as requested. Phippard stated that this analysis was done by a professional engineer and can certify based on hydro analysis there will be no increase in runoff across Old County Rd or across Route 63. Phippard stated he submitted a written narrative answering each of the questions asked by the board members at the previous meeting.

Question one: Non-conforming area (square footage) 1635 square feet, including square footage of garage; non-conforming volume 29,947 cubic feet. The proposed plan has the current house and garage being removed and building a new house into the 50-foot setback from the private road. There is 845 square feet that is conforming and meets all the setback needs. There is 930 square feet of non-conforming area. The non-conforming volume is 36,500 cubic feet. Phippard stated he wants to point out that on the variance application, the house plans are proposing less than 10 percent lot coverage, the height of the house is less than 35 feet (lower than existing house) and conforms to ZBA dimensional requirements. The plans conform in size and in height and should be permitted on the property. Application filing addresses setback issues created with the private road and Old County Road. The total conforming volume will be 21,800 cubic feet which includes all living areas including the basement. Phippard stated that the proposed living area will exist in less area than the current buildings.

Questions two: Phippard was asked to identify walkway which he showed in the new plans.

Question three: Phippard was asked about excess soil. Phippard answered that it will be used to fill around new house footprint and behind the new retaining walls.

Phippard continued stating that this would make for more conforming and easier drainage by putting up retaining walls and degrading those slopes.

Questions four: Phippard was asked about lot coverage. Phippard answered that the proposed plan reduces lot coverage on the property.

Question four: Will the view of lake will be obstructed? Phippard answered stating that he had stood on Old County Road facing the lake and viewed a snow-covered mound of dirt on the property showcasing a very limited view of the lake. Phippard stated that where the house is located there is not clear view of the lake because Old County Road is lower in elevation than the current house.

Question five: Phippard was asked about the Steep slopes ordinance and how it would affect these plans. Phippard responded that he is aware of the towns developmental steep slopes ordinance and understands those concerns; noting that the steepest area is closest to Route 63. Phippard stated that once the current house is removed that slope will be covered in vegetation to reduce untreated runoff and hopefully be a great improvement in that area.

Question six: Phippard was asked to discuss the level spreader maintenance. Phippard responded that maintenance is required; NHDES requires that applicants provide a maintenance program for level spreaders. Phippard continued the landowner is required to do annual report once level spreader is in place. Someone retains the right to do manual inspections. Phippard stated he provided notes in the drainage plan for the maintenance of the level spreader. Phippard noted that the level spreaders seem to work well on other properties; no buildup of sediment and vegetation does not get out of control. Phippard noted that no sediment would be deposited in the lake from the outlet of the level spreader.

McKeon asked Phippard if he had seen the agreement between the Planning Board and the golf course (each lot owner has their drainage professionally checked each year) that the ZBA members would be encouraged to look at as these issues will keep cropping up in the future. McKeon noted it seems to be a comprehensive agreement with different roles clearly defined. Zannotti noted he looked at the agreement and if this case goes forward, the board will need to put more emphasis on the maintenance and responsibilities of the landowners as well as the board and town. McKeon noted the agreement is included in the deed should the property be sold. Brodbine noted similarities between this case and a previous Planning Board case concerning the golf course; stating that this would be different from that situation since this is one lot. McKeon agreed and noted there was a lot of valuable information in the golf course case that could be applied to the maintenance questions in this case.

Zannotti noted discussion on asking the fire department if they could get emergency vehicles into the area. McKeon noted that Steve Dumont has not been up to the area to evaluate but made a blanket statement that if the road is less than 20 feet wide it will not meet requirements; he does not believe anything can be done to County Road. McKeon continued, stating that historically there is a document that residents on a private road or class 6 road, sign and have recorded at the Registry of Deeds, waiving the town of responsibility.

Zannotti stated that all the plans are dated 11/24/2020; some have revision dates of 01/04/2021 and asked why the applicants cannot provide a signature to identify the plan and date put before the board. McKeon responded that Smith is working on a stamp to confirm that this is plan being used before the board. Hanzalik agreed with McKeon, noting that Zannotti continuously brings this subject up and it is not unreasonable for applicants to provide such a signed document; providing a name to go along with the date when being revised. Evans noted this would be further verification and affirmation. McKeon noted that going forward with this, the Zoning Board would need to state that these plans replace the previous ones. Evans noted that would be extra rather than a simple affirmation. Zannotti stated that if there are changes to the initial plans, there should be a further date and signature affirming that these plans are confirmed to be updated. Hanzalik and Evans agreed. McKeon noted going forward that any revisions need to be signed by whoever does them. Zannotti stated that this should be part of standard practice and the Zoning Board should not have to change their paperwork to include that. Hanzalik and Evans agreed that if those credentials are not met, Smith should be acquiring those upon receipt of the application or rejecting the application. McKeon clarified for Phippard that the board has faced similar problems before with incorrect plans being put before other boards after leaving the ZBA.

Evans asked about the rock underlayment of this area and the depth. Phippard noted that there are plan sheets in the drainage report which shows the depth to ledge and depth to groundwater as is standard.

McKeon then opened the discussion to public comment. James Corliss stated that due to the drawings on the town website, the cross section was not part of the Manter documents. McKeon asked Phippard if those were included in the drawings. Phippard responded that in the drainage reports they used the HydroCAD program. Smith noted that everything submitted was updated to the town website. Corliss noted that it would be better if the whole package were available. Corliss noted he looked at the non-conforming area and setbacks; his opinion that most of the new non-conforming area is due to the setback of a private road. Corliss continued, stating he does not believe the Zoning Board should be terribly concerned about that part of it. Corliss noted he had sent notes on the site visit on November 20, 2020; stating he believes that overall, this is a positive change if the drainage works and is maintained depending on design. Corliss stated he agrees with Zannotti on confirming and affirming which plans and drawings are being approved. Hanzalik noted that on the Zoning Board page on the town website there are links for the drainage plan, pre and post. Corliss noted he does not see the cross-section profile. McKeon stated that it would be included on the website shortly. Hanzalik agreed with Corliss that this cross-section would be useful for the public to view.

John Koopmann noted that on the Planning Board, the secretary does not turn a plan away for inadequacy. McKeon noted that Smith has a checklist for new applications and if the application is missing anything on the checklist it does not go before the Zoning Board. Koopmann noted that the cross-section is available on the hard copy available in the office. Koopmann stated when looking at the drainage plan and file overall; there were written comments submitted by abutters concerning drainage issues. Koopmann stated it is interesting that two thirds of the upper property are more elevated than the abutters. Koopmann stated there would be interest in seeing how drainage would potentially affect those lower abutters. Phippard stated that the drainage plan exhibits flow vectors indicating the direction of flow for the storm water being directed away from the abutters. Phippard noted that they are reshaping a portion of driveway so the runoff will be directed onto the Foley-Manter property.

Jeff Scott stated he has concerns about the level spreaders. Scott asked why this inspection cannot be performed every year and then forwarded to the town. McKeon responded that this is something to consider when discussing approval.

Jill Diesl stated she was not around when the town created the zoning qualifications to have at least two acres; asking what the incentive of the town was when that was incorporated. McKeon noted that was done to address over-crowding the lake. Diesl noted that part of what was going on here was that the applicants are attempting to put a lot of construction on a small property. Diesl stated that this is not the right place for this house to be built with so little property, and there are too many contingencies being requested. McKeon noted that the applicants have the permission to put this level of construction on this area as the current houses were there before the zoning ordinances went into effect. McKeon noted that the applicants were asking for relief from the setback ordinance.

Bill Manter stated that in general, it is difficult for members on small boards to be experts in so many areas. Manter noted comments on the town relying on NHDES as well as the

Conservation Commission. Manter noted, regarding Diesl's comments, they believe they are improving the area and hope to be improving the situation for all neighbors; referencing the improvements to Jangro's driveway which is currently on Foley-Manter property.

McKeon asked the board how they felt about the current discussion, but she would not be closing the public portion at this time. Brodbine noted the board should discuss what conditions should be made on the grade.

Zannotti stated that he is ready to move a decision. McKeon suggested looking at the variance criteria and determine whether the board had enough information to answer all questions. Evans asked if the public had spoken. Zannotti suggested putting a motion on the floor and second, then discuss and amend, as necessary. McKeon asked if the board would like to move a decision while the public portion was still open. Zannotti stated he did not need to hear anything further from the public. McKeon stated the procedure going forward to Brodbine and Schnackenberg as alternates; noting the board should be careful about closing the public portion. McKeon clarified that alternates could participate and ask questions but cannot be involved in a vote unless seated on the board for that meeting.

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

Zannotti stated he had reviewed the application and attended the site visit and stated that the character of the neighborhood would be significantly affected. Zannotti stated the Zoning Board is being asked to take a non-conforming situation and move it to another non-conforming situation with no significant improvements. Zannotti noted that the level spreaders are a big concern and asked if maintenance goes beyond five years and becomes a responsibility of the town, would they become less effective. Zannotti continued, stating while looking at the position of the level spreaders: one is on the property line between the Foley-Manter's and the Jangros. The other is more elevated. Zannotti stated that the level spreaders are positioned in a difficult place aesthetically and continued, stating safety is an issue; the board must consider the effects of property transfers and new residents moving in; regarding emergency vehicle access. Zannotti stated that the property values would decrease.

John Zannotti moved that for those reasons previously stated, he feels it is reasonable to deny this application. The motion was seconded by Joe Hanzalik.

Discussion: Hanzalik noted that his biggest hang-up is the drainage plan. The maintenance on the level spreaders is critical as they require a lot of care. Hanzalik stated that changing this property so drastically would greatly change the character of the neighborhood. McKeon noted abutter letters addressing character and values. Zannotti noted that three letters came in addressing drainage concerns. Zannotti referenced Diesl as an abutter with concerns to the character of the neighborhood. McKeon stated with all the other questions, she did not realize the character would be questioned so ardently. McKeon noted she is surprised at the lack of comment on the size of the proposed house. Evans asked, speaking of aesthetics and future maintenance, is this more or less conforming. Evans noted that this decision is a difficult one and speculated what decision

would be “kinder” to the lake and invited further discussion before voting. McKeon referenced the five variance criteria.

McKeon speculated on whether drainage would change if the current house were taken out. McKeon noted discussion on the 4th criteria, would the neighboring property values be diminished. Zannotti noted that he feels the Jangro property would decrease, and the further away from the proposed plan the less the effects. Hanzalik noted he agreed with Zannotti, continuing that if the level spreaders fail abutting foundations could be in jeopardy. Hanzalik also noted that having the house at a higher elevation might decrease abutting property values as well. Brodbine stated that the plans would increase the value of the properties, noting that more expensive housing increases the property value.

Brodbine continued, stating that the level spreaders would improve the property; right now there is no drainage direction and any direction would increase the value. Zannotti responded that he agrees with Brodbine regarding the upper-level spreader but the lower of the level spreaders right next to Jangro’s property would be an issue.

McKeon stated there are special conditions with this case, noting relieving pressure on the lake as much as possible as well as setback constrictions. Hanzalik noted that to significantly decrease the impact on the lake, the whole row of houses would need to move not just one. McKeon asked Zannotti if his motion answered all questions asked by the five criteria.

Kristin McKeon moved to amend Zannotti’s motion to include the criteria that the application does not meet. (1 contrary to public interest & 2 does not meet the spirit of the ordinance). The motion to amend was seconded by John Zannotti and passed by majority vote. (No: Brodbine)

The motion in its entirety now reads:

John Zannotti moved to deny this application for variance as the application is contrary to the public interest and does not meet the spirit of the ordinance for the following reasons: the Zoning Board is being asked to take a non-conforming situation and move it to another non-conforming situation with no significant improvements; will the level spreaders maintenance cause more hardship; the level spreaders are positioned in a difficult place aesthetically and safety is an issue; the board must consider the effects of property transfers and new residents moving in; regarding emergency vehicle access; and finally the property values will decrease.

The motion to deny the application for variance failed by majority vote. (N: McKeon, Brodbine, Evans)(Y: Zannotti, Hanzalik)

Evans continued discussion, stating he feels the plan is more conforming in terms of reducing stress on the lake and runoff drainage.

Brodbine stated moving any houses further from the lake would be an improvement and continued stating that implementing any kind of drainage plan is an automatic improvement. Brodbine noted this plan would increase rather than decrease the abutting property values, and stated he feels this is good for the town and good for the lake.

Hanzalik noted this is creating a precedent to introduce more “McMansions” to the North shore of the lake. Hanzalik continued, speaking as a lake resident, he does not see this will make a dramatic impact unless the entire Brattleboro Row is removed. McKeon

asked if the size of the house had any bearing on his decision.

Brodline stated he has a hard time calling this a “McMansion.”

Hanzalik asked if the separate garage was a permitted structure. McKeon stated she has no idea, noting that it was built after the ordinance came into effect. Hanzalik noted that many of the abutters would not have any interest in moving their houses back.

McKeon reiterated that the board needed to utilize the 5 criteria in deciding. Zannotti stated the plans meet criteria 3 but not 4. The board agreed that there would be no harm to the public through these plans.

Joe Hanzalik moved to deny the application based on the applicants inability to meet the first and second criteria as the plans alter the historic neighborhood “Brattleboro Row” by having a large hole in the line of artisan cottages currently in place, along with the fifth criteria because the plans would alter the current character of the neighborhood as well as the alternative to the fifth criteria as there is a current use in existence. The motion was seconded by John Zannotti.

Discussion: McKeon asked if the board wanted to continue this motion to a future meeting. Hanzalik stated he could not meet next week and would like it decided this evening.

The motion to deny the Foley-Manter application passed unanimously by roll call vote.

The board took a 5-minute break.

2. **Marilyn E. George-Jim Phippard** (agent) requesting variance from **Article II, Section 203.6 Spofford Lake District, part 203.6b Setbacks, Part C Lake Setback** of the zoning ordinance to permit construction of a single-family residence 41 feet from the lake where 50 feet is required. The new residence will replace an existing nonconforming residence in the same location. A second existing residence and an existing garage will be removed. The properties are located at 14 Tyler Road, Spofford NH 03462 (Tax Map 5M-A006), and 16 Tyler Road, Spofford NH 03462 (Tax Map 5M-A005). Hanzalik and McKeon stated that the board continued this application to next month’s ZBA meeting.

Other Business

- West East Westmoreland Judicial Summons
 - The board discussed whether the motion was made out of context, referencing a corrected record in the minutes. McKeon noted that Bentley did not read the full motion. Evans stated that had nothing to do with the board’s decision. McKeon stated Bentley used the motion the board went back and amended and expanded upon; not the final decision; he is addressing the variance before it was reconsidered. McKeon stated she would be consulting Ratigan further.
- Amendments to ZBA application
 - The board decided to table further discussion to a future meeting.
- Winn asked Hanzalik if he was interested in continuing for another term. Hanzalik responded he will be. Winn noted the only other person to ask would be Richard Aldrich. Smith noted he would contact Aldrich to confirm this coming week.

Next Meeting Schedule: February 11, 2021

Adjourn no later than 10:00PM unless the board votes to continue meeting.

John Zannotti moved to adjourn at 10:38PM. Lucky Evans seconded the motion and passed unanimously by roll call vote.

Respectfully submitted,

Jim Barey
Secretary to the Zoning Board of Adjustment

Approved by:



Kristin McKeon, Chairperson

2/17/2021
Date