

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

**MINUTES
JANUARY 10, 2006**

Present: Chairman Burt Riendeau, Andy Cay, Charles Reilly, John Perkowski, Harriet Davenport, Alternates Tony Souza and Lucius Evans, Selectmen's Representative Jon McKeon and Code Enforcement Officer Chet Greenwood.

The Zoning Board of Adjustment met at the Chesterfield Town Office on January 10, 2006 at 7:30 PM. The following items were discussed:

1. Nine A LLC represented by Dave Bergeron/Brickstone Masons requests a Variance from Article 203.6a, Permitted Uses, to permit a single-family detached and single-family attached condominium Cluster Development. The property is located on Route 9A, Spofford (Map 5K Lot B3) Spofford Lake District.

Dave Bergeron, Neil Berkson and John Chakalos were present. Bergeron presented the site plan and advised that the property currently contains a 90,000 sq ft institutional building and a sewer treatment plant that was constructed to serve the building in an area that is primarily residential with smaller lake front lots. Using the Simplex test for hardship in a use variance Bergeron advised that:

1. Hardship:

a.) The property is unique in that no other properties in the Spofford Lake District have the sewer capacity to handle the development of 15 single-family homes. The majority of the property is outside the Spofford Lake District which is where the leach fields would be located.

b.) Cluster subdivisions are not a permitted use in the Spofford Lake District to restrict development of properties close to the lake. The Cluster Development ordinance allows density of up to 4 units per acre for attached multi family. This density could pose a hazard to the lake due to overloading of leach fields near the lake. This property has the sewer capacity and leach fields located more than 500 ft from the lake, which is outside the Spofford Lake District. Therefore, a cluster subdivision in this location would not pose a danger to the lake and would actually pose less of a danger than single-family lots with on site leach fields. Also, replacing Spofford Hall with single-family houses would bring the property more into conformity with the surrounding area.

c.) The proposal would not injure the public or private rights of others as it would fit better with the existing neighborhood and would better blend with the overall residential use of the area.

2. Granting the variance will not be contrary to the spirit and intent of the ordinance because the existing sewer treatment system will handle all of the effluent from the project. The leach fields will be located over 500 ft from the lake, outside the Spofford Lake District. The development of the lot with single-family homes would have combined smaller footprints than the existing building and less lot coverage.

3. The variance is in the public interest because it would remove a nonconforming building from the residential zone and be replaced by single-family houses that would blend in with the other homes in the area.

Laurie Rauseo, traffic engineer, submitted information comparing the previous use and the proposed use. The study indicates there were 400 – 600 trips per day with 100 employees covering the various shifts and up to 100 residents. The proposed use would generate 160 trips per weekday considering 10 trips per day per unit. The proposed residential development is expected to generate significantly less traffic than the previous use of the property.

4. Denial of the variance would result in injustice because the owner has the infrastructure in place to support the proposed development. Denial would leave a large, unused building deteriorating in value.

5. The variance would not diminish the values of surrounding properties because the proposed use is a better match for the neighborhood and will enhance the values of the abutting properties. L Manias of Capital Appraisal Assoc, Inc. on Page 4 of his “Summary Report of a Consultation Assignment of a Proposed Cluster Subdivision” dated 12/22/05 notes that the proposal will not diminish property values.

It was noted that there are 30 acres involved in the proposed development with 6 acres on the lakeside of the property where 11 single-family homes would be located. There is 400 ft of frontage on the lake lot. The Board asked about docks. Bergeron stated that these need DES permits and would be regulated by the State. These issues would be taken up with the Planning Board during site plan review.

Bergeron stated the single-family homes could be approximately 3,000 sq ft with attached 2 bay garages. Even estimating high allowing for 50,000 sq ft with the road and driveways it is still less than what exists now.

Bergeron advised there would be a condo association that would own the 30 acres. Berkson advised that the definition of condominium is land used in common. There would be common area of open space land, limited common area i.e. front and rear yards, decks and patios and individually owned units. The trash would be picked up. There would not be a dumpster on site. The landscaping would be done through the association. Those in the association would share the expenses. Berkson stated they would comply with setback requirements from the lake.

Riendeau asked if they had taken into consideration having less development or just looked to max out the lakeside lot. Cay stated that it does not comply with the cluster development as it is presented. Berkson stated they are asking for a variance to allow a cluster development within the Spofford Lake District. When approved they would meet the conditions of the cluster development ordinance. When the engineering is completed, they would see how many units would comply with the density requirements.

Berkson stated that State law provides for condominium cluster developments. Cay stated it must still meet the 30,000 sq ft and 120 ft frontage. Berkson stated it must be developed in

condo form. He stated that Article 301.2 D1 would not apply to condo development. D2 would apply to the 4 units outside the Spofford Lake District. D3 would be met with their proposal and they must comply.

The Board asked what are the density guidelines they are working with? Bergeron stated the 30 acres minimum lot size and 15 units based on 2 acres per unit. They understand they could end up with less units or more land. Bergeron stated it is their intent to meet the conditions.

Berkson stated this existing structure is a white elephant that is a burden on Chakalos and the Town. To the Town it is an eyesore that needs rehabilitation. A request had been made to use the facility as a juvenile drug rehab facility but that didn't come to pass. If it remains as it is someone will come along to use it as it had been used. They will have to go for a variance but the laws have changed. This is a win-win situation to replace Spofford Hall with what is in keeping with the lake.

Berkson presented a list of proposed conditions of approval for the variance. Berkson amended condition #4 to 11 per the proposal. Berkson advised that as a practical matter it is too expensive to do the total engineering on the project prior to the granted variance. It makes sense to have parameters.

Cay asked why they don't rezone? Berkson stated it doesn't qualify. Cluster developments are allowed in the residential zone and this property is in the residential zone, however, it is also overlaid by the Spofford Lake District. Cay asked if they had considered the PDD. Bergeron stated they had looked into it but again considered that the Spofford Lake District was an overlay on this residential zone.

Bergeron stated there is an onsite well that has capacity to service this development.

Elizabeth Guzofski, abutter, stated she is the closest neighbor. She advised that the existing building is low. The proposed structures would be in her line of site of the lake. This would impact her immensely.

Jay Jenkins, abutter, advised it would destroy the old growth trees. He stated that tearing down the existing building because it is an eyesore does not hold up. The trees and cove are benefiting the wildlife. This would hurt the integrity of the cove.

Linda Thomas, abutter, stated she is not opposed to the project but would like to see a lot less density.

Sandy Harris, abutter, stated there had been problems with leaching of the septic system because it was not adequate. Her concern is that this is urban development. She owns 5 acres on the lake and 25 acres across the road that she preserves. She is not opposed with a residential use but this proposal would damage the sense of community, 11 homes on the lakeside are too dense.

Brian Foster, Nina Foster's son, stated he agrees that Spofford Hall is an eyesore but would like to see something aesthetically pleasing. He is unclear on the designs proposed but

would like to see a less dense development. He stated the stand of pines is over 150 years old.

Mary Jenkins, abutter, stated she is protective of the cove. This area is the habitat for bald eagles and mink and she is also concerned with protecting the old growth trees. She suggests that perhaps attached condos could be built where the structure is now.

Evans asked about lighting and fire protection. The lighting would be as any residential site and they could have an underground storage tank for water and the lake is there. Bergeron stated that any concern for tuition increase would be covered by taxes but most likely these would be second homes.

Perkowski moved to close the public portion. Reilly seconded the motion, which carried unanimously.

Perkowski noted the density issues on the 6-acre lakeside lot. The Board reviewed the hardship issues that this property is unique on the lake with the 90,000 sq ft building. This would most likely be torn down whatever was done on the property. The building has been vacant for 10 years. The Shore Land Protection Act requirements were reviewed in reference to the tree cutting. The proposed plan would remove most of the trees on the lakeside lot, which is not allowed under the Act. Reilly also noted that Bergeron said that the existing sewage treatment plant might not be used but made smaller. How can this then be used in their argument for hardship?

Cay asked if this was a variance. The applicants have postured it as a use variance and the Simplex hardship test would be used. First we would look to the neighborhood and there is nothing on Spofford Lake similar to this proposal. We would have to go the perhaps Lake Winnepesaukee to have a similar situation. The applicant does have vested rights in regard to the sewage treatment plant that could function for a significant development.

Cay noted that when dealing with the United Natural Foods request to use an R/A lot for a Commercial use there were many factors in favor of the use variance; the lot was surrounded by commercial properties as well as across the street.

In this situation there is not a big difference between Residential and Spofford Lake District. The intent of the Lake District is not just the septic issue for protection of the lake but also aesthetics and habitat protection.

Cay stated this proposal would be a very good candidate for the PDD.

In regard to the density issue for cluster developments, 8.5 units would be the maximum allowed on the lakeside lot. Berkson passed a note forward to the Board suggesting they amend their plan to allow 8 units on the lakeside lot.

Hardship was discussed. The lots are usable as residential lots. It was noted that a cluster development could be done on the lot across the road without a variance. The septic issue is not the only intent of the ordinance and the testimony that was given by abutters this

evening noted that it would hurt the rights of others. Unless we can point to other properties, the Simplex test is not met.

Perkowski stated that the existing use is no longer there and the building has been vacant for 10 years. If the building were usable it would have been leased long ago. This does not meet the test of hardship.

Cay made a motion that having reviewed the application as a use variance and having applied the Simplex analysis we deny the application for a variance and find that it in particular does not meet the test of hardship. Relative to the other criteria for a variance we find as proposed as a variance that it would be contrary to the spirit and intent of the ordinance, the variance is not in the public interest, denial of the variance would not result in injustice and the variance could well impact the values of the surrounding properties.

Criteria for approval:

- A. Denial of the variance would result in unnecessary hardship for the property owner seeking it. No
- B. The granting of the variance would not be contrary to the spirit and intent of the ordinance. No
- C. The variance is in the public interest. No
- D. Denial of the variance would result in injustice. No
- E. The variance will not diminish the values of surrounding properties. No

Davenport seconded the motion, which carried by unanimous vote. (Davenport, Cay, Reilly, Perkowski and Riendeau)

2. Keith Wallace requests a Variance from Article 203.6b Section B, Side Setback to permit a temporary structure within the setback until the spring when it will be removed. The property is located at 152 North Shore Rd, Spofford (Map 5D Lot B21) Protected Shoreland District.

The applicant was unable to attend. Greenwood advised that he received a complaint from an abutter. The structure is a tent cover storing a boat. Phil Goulet stated that he was concerned that this would be ongoing year after year. He had met Wallace and let him know about the setback requirements. A deck was built within the setback. The Quonset hut has been there for 2 years. He has no problem with the structure being there through this winter but would like it removed by the spring. Greenwood stated that Wallace was first notified in early November but did not respond until he was notified of a fine for non-compliance.

Chet Spring advised that there is a stockade fence and Goulet couldn't see the structure. Goulet stated that the fence is 6 ft high and the hut is 10 ft high.

Cay moved to close the public hearing. Evans seconded the motion, which carried unanimously.

Cay moved to allow the structure in the side yard setback in the current condition until May 1, 2006 because of the hardship of getting it out in the winter. It must be gone by May 1,

2006 and may not be put back into the side yard setback. The side yard setback must be respected for all structures.

Criteria for approval:

- A. Denial of the variance would result in unnecessary hardship for the property owner seeking it. Yes
- B. The granting of the variance would not be contrary to the spirit and intent of the ordinance. Yes
- C. The variance is in the public interest. Yes
- D. Denial of the variance would result in injustice. Yes
- E. The variance will not diminish the values of surrounding properties. Yes

The motion was seconded and carried by unanimous vote. (Davenport, Reilly, Cay, Riendeau and Evans)

3. Other

Greenwood asked guidance from the Board on the following items.

- Jozefa Johnson cottage on the lake – Remodeling proposed and a change is suggested for the entrance. The Board advised they should get a variance.
- Glebe Road property – There is a lot located in both Chesterfield and Westmoreland. The frontage is in Westmoreland, however; the owner would like to purchase a ROW to enter the lot from Chesterfield. The Board advised that the property owner would need to show hardship. If he can prove hardship they would entertain a variance to cross the side setback through the ROW.
- Asgard Rd – Are private roads subject to setback requirements? The Board advised that they were but if it is an existing lot of record, the frontage requirement and lot size are grandfathered. All other zoning requirements would apply.

4. Review 12/13/05 Meeting Minutes

Cay moved to approve the meeting minutes as presented. Perkowski seconded the motion, which carried unanimously.

5. Adjournment: The Board adjourned at 10:30 PM.

Respectfully submitted,
Carol Ross
Secretary

Approved:

Burton Riendeau
Chairman
Zoning Board of Adjustment

Date: _____