

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

**MINUTES  
July 11, 2006**

**Present:** Chairman Burt Riendeau, Andy Cay, Harriet Davenport, John Perkowski and Alternate Jim Larkin.

The Zoning Board of Adjustment met at the Chesterfield Town Office on July 11, 2006 at 7:30 PM. Riendeau introduced the Board and explained the evening's procedures.

**1. Nine A LLC represented by James Phippard/Brickstone Masons** requests a Variance from Article 203.6a, Permitted Uses, to permit a residential Cluster Development partially within the Spofford Lake District. The property is located on Route 9A, Spofford (Map 5K Lot B3) Spofford Lake District.

Neil Berkson and Jim Phippard were present. Let it be noted that Berkson had a stenographer present. Berkson advised they are before the Board to propose removing Spofford Hall and replace it with residential housing. Berkson reviewed the 2 previous applications. The January meeting was for a cluster development of 11 houses on the lakeside and 2 duplexes across the road, giving a total of 15 units on 30 acres. This was a use variance that was denied. The April application was strictly a subdivision of the 6-acre parcel on the lakeside reduced from 11 units to 7. They were looking for frontage and acreage variances. The density was a better fit and some abutters agreed with that. The Board denied that application and quoting from that meeting's minutes the Board stated, "The Board acknowledged there is a special condition with this property with the existing building and improvements. It is obsolete in many respects, costly to tear down and costly to convert to another use." The decision rejecting this proposal expressly encouraged the applicant to apply for a cluster subdivision and for other plans that they feel meet the spirit and intent of the ordinance.

Berkson stated that they had requested rehearings for both the January and April applications. Both the petitions were denied and are pending in the Cheshire Superior Court. They would like to work something out at this level and are proposing another cluster subdivision as suggested in the last decision. It still has 7 lots on the lakeside and 3 duplexes across Route 9A and 30 acres altogether dedicated as the cluster. They are specifically asking for a use variance to allow the cluster development in the Spofford Lake overlay district. If the variance were granted they would then go to the Planning Board and work out the details of the cluster.

This proposal is for 13 units altogether. They would restrict lake access to the 7-lakeside lots. The 2-lakeside units would have lake access at the gazebo area while the other 5-lakeside lots have direct access. The lots across the road would not have access from the lakeside lot but could access the lake at the public beaches. They would not reserve access to any development done on the remaining 50 acres across the road. If this application were granted the 2 court cases would be moot.

Berkson noted the cluster regulations criteria in Article 301.2 of the Zoning Ordinances.

301.2

A. Parcel Size: Cluster developments shall not be permitted on parcels less than thirty (30) acres in area. Wetlands and slopes in excess of 25 percent may be counted to make up the minimum parcel size but may not be counted to determine the number of dwellings permitted under Section 301.2 C. Berkson advised there is about 2 acres of wetlands with 28 usable acres. They meet the acreage requirements.

B. Type of Dwellings: In a cluster development only single-family detached and single-family attached dwellings are permitted. No building may contain more than four (4) single-family attached dwellings. They meet this requirement with 7 detached units and 3 duplex units.

C. Number of Dwelling Units: In cluster developments the total number of dwelling units shall not exceed one dwelling unit for every two (2) acres of gross land area of the tract, not including wetlands or slopes in excess of 25 percent. Under this criterion they have 28 usable acres and would be allowed 14 units. They are proposing 13 units.

D. Net Development Densities:

1. Single Family Detached Dwellings: In a cluster development that includes single family detached dwellings on individually owned lots, the lot area and frontage requirements of the applicable use district may be reduced to not less than 30,000 square feet and 120 feet respectively. Front setbacks may be reduced to forty (40) feet. They meet the 30,000 sq ft for the single family detached with 30,928 sq ft for the smallest lot. The 120 ft of frontage would be under the exception of 301.2 H, "Frontage on Cul-de-Sacs: Frontage requirements for cluster lots having more than half their frontage on the circumference of a cul-de-sac or teardrop are exempt from any frontage requirements of this ordinance." The three lots that do not have 120 ft have more than half their frontage on the cul-de-sac.

2. Single Family Attached Dwellings: In a cluster development that includes single family attached dwellings the density of the portion(s) of the tract on which such dwellings are sited shall not exceed four (4) dwelling units per acre. All buildings shall be spaced at least thirty (30) feet apart. They meet this requirement.

3. Land Capability Adjustment: The above increases in development densities are allowable only if the slope/soils capability of the site will support the increase. Berkson advised that Phippard would address this more specifically.

E. Minimum Preservation Acreage: The land area reserved for preservation shall not be less than fifty percent (50%) of the tract for cluster developments in the R District. The land area that they have preserved is about 66%.

G. Location of Dwellings: Dwellings in cluster developments shall not front on existing roads or have access off them. No dwelling shall be located within 50 feet of an existing road or within 50 feet of the property line of a parcel abutting the development. There are existing driveways for the duplexes and the cul-de-sac would service the 7-lakeside lots.

F. Preservation of Significant Natural Features/Open Spaces: The land area reserved for preservation shall be "significant" as per Section 301.3.

**301.3 Preservation of Significant Natural Features/Open Spaces**

In addition to the threshold requirements of Section 301.2 above, area(s) proposed for preservation must qualify as significant by meeting any one of the following criteria:

- A. The area(s) to be preserved must be at least thirty (30) contiguous acres in size, exclusive of wetlands or slopes over twenty-five percent (25%). They do not meet this criterion.
- B. At least two-thirds of the area to be preserved shall be within 200 feet of wetlands. They do not meet this criterion.
- C. The area to be preserved must be an active or inactive (but not overgrown) farm tract. This does not apply.
- D. At least half of the area to be preserved must consist of soils with either fair or poor development capabilities. They meet this criterion.
- E. At least half of the area to be preserved must consist of slopes in excess of fifteen percent (15%) but not twenty-five percent (25%).
- F. At least two-thirds of the area to be preserved must consist of any combination of the following critical resources:
  - 1. Agriculture or inactive agriculture (but not overgrown) farmland. No
  - 2. Slopes in excess of 15% but not 25%. Yes
  - 3. Soils with poor or fair development capability. Yes
  - 4. Land within 200 feet of wetlands. No

Berkson advised that he would not go into detail unless the Board found it helpful about what he had said about variance law at this point. If it comes up in the course of the discussion he would be glad to respond. The application lays out the reasons why they think they meet the criteria. The Board has found that there is a special condition there meaning the white elephant, the 90,000 sq ft Spofford Hall, which is deteriorating.

The proposal drastically reduces the potential of use both of the 80 acres parcel and the 6.1-acre parcel. The lakeside parcel with Spofford Hall has 70 beds and there is some sentiment that they should try to redevelop Spofford Hall to an institutional use. Assuming they were able to do that, those 70 beds would be divided by figuring 3 bedrooms per housing unit you'd be talking about 20 or so houses as opposed to the 7 they are proposing. The lot coverage currently is about 38% with Spofford Hall and the proposed lot coverage would be 20 – 22%, almost cut in half. The intensity is less; the lot coverage is less. The bonus for everyone would be in restricting the lake access to the 7 units lakeside. There is nothing preventing the development of the 80-acre parcel with one unit for every 2 acres with 40 units that could have some sort of access to the lake. That is doable. That would not be

done. This was a concern of the neighboring property owners and wanted the lake access restriction.

This proposal removes a wasting eyesore and is more harmonious than what is there currently. Berkson advised that in the April application maps were submitted and have been resubmitted with this application showing the comparable densities and frontages around the lake. Berkson asked that the record of the first 2 applications be allowed in this case if the case goes any further so he would not have to resubmit anything that was in those applications. Riendeau asked who was sitting on the Board during those 2 applications. The Board sitting this evening was not all involved in those applications. Berkson stated that if he has to file a motion for rehearing and there is anything that is not in the record up to the motion for rehearing he would include it in the motion for rehearing.

Jim Phippard reviewed the soil types for the proposal. He advised that the soil from this area is cardigan kearsarge soil. The USDA publishes a survey of the area and identifies soil types and characteristics. Within the manual it identifies the building capabilities for the soil types. The lakeside of the roadway is flatter and has already been developed and evidences that it can accommodate development. The area of the 2 duplexes is an existing parking lot and the third duplex would be located where the treatment plant is today. All the areas of proposed construction have been developed previously.

They propose putting in a pump station on the lakeside to collect sewage from the 7 units and pump it up to a leach field in a location across the road in part of the open space area. The soil manual identifies the characteristics of the rest of the soil on the property as severe because of the shallow depth of ledge, the wet area on the property and the steep slopes. The pump station would be underground with no structure above grade other than identifying the location for access for maintenance and an air vent. The existing treatment plant would be removed. The sewage would be pumped up to a standard septic tank to the leach field. There are two existing functional leach fields, one will be utilized; one will be removed.

Phippard advised they have submitted a report from a traffic consultant that looked at changing the institutional use to the residential use, the curb cut and line of sight and concluded there is adequate safety for the proposed capacity.

Phippard advised they have submitted a report from a real estate appraiser who had looked at the plans and concluded that there be no diminution of property values. This report was also submitted with the first application for 15 units but they have changed the number to reflect the current application for 13 units.

Phippard advised that the units away from the lakeside of Route 9A will not have lake access on the lakeside property but would have to use the public beaches and boat ramp. He also stated that there were no acres with over 25% slope. The greatest slope is between 15 and 21%. In calculating the preserved land they subtracted the 6.1 acres in its entirety, subtracted 3 acres for the 2 duplexes, which is the existing parking lot, ½ acre where the treatment plant is located today, and leach field location of about 18,000 sq ft. They are talking about 10 acres of utilized area. There is approximately 2 acres of wetland area.

Cay stated that to be clear on the soil types, the survey states they are cardigan kearsarge but in fact the leach fields are located in the area that Phippard is saying are non-developable. Phippard advised that the soil maps show a general category of C & D slopes would indicate that those are the maximum slopes in that area but not that the entire area are those slopes. There is a flat area for the leach fields. It looks like it could have been made artificially flat and he thinks that it was in order to accommodate the leach fields.

Phippard stated that the rest of the area by the leach field is very shallow depth to ledge with the rating considered severe with a considerable slope. Cay stated that in Chesterfield we do not have a steep slopes ordinance and slopes over 25% could be built on at this time. Cay stated that under 301.3 condition that Phippard is attributing to this is D where at least half of the area to be preserved must consist of soils with either fair or poor development capabilities. Cay asked if the soil maps categorize the soils as all the same. Phippard advised that they are all mapped cardigan and kearsarge, those 2 categories. These are very similar in terms of the ability to support development. Cay asked if the soil maps take you to a level of understanding to that degree that all of that is the same then the only way to figure it out further is to go out and do test pits and evaluate the soil specifically. If we know that a portion of that has been done where the septic system has been built on we shouldn't be jumping to conclusion in the absence of testing that the rest of it doesn't support development based on the soils map.

Phippard stated that if you spend enough money and get a good enough engineer you could overcome most site restraints. But for practical purposes and that is what the ordinances are looking to do allow you to use resources such as this to determine what are the capabilities. You go to the site because of the location is in very close proximity to Spofford Lake it is not best practice to build on slopes over 15% because of the potential of erosion could happen very quickly.

Cay stated that Phippard is considering slope and the article speaks to soil. Phippard stated that in order to determine capability of soil whether it can support development, slope is one of the factors. Phippard advised that the US government developed the methodology and their manual states that for this area soils are cardigan and kearsarge soils and both of the categories fall under severe. He passed the manual around to the Board. Phippard stated that his experience on the property has been that other than the areas that have been altered to date, the property has exposed bedrock or bedrock very close to the surface evidenced by the trees and the vegetation on the property. The wetland area is also evidence that the area would be difficult to develop without extensive alterations.

Cay asked if there would be a subdivision setting apart the cluster from the other acreage and Phippard advised that there would be. Phippard advised that the approximate 18 acres would be set apart as the preserved area. He advised that this area would be accessible to the association using Mulligan Rd.

Riendeau asked about 301.2 G, "Dwellings shall not front on existing roads or have access off them". Berkson advised that the cul-de-sac is the existing curb cut location for Spofford Hall. They propose to build a separate roadway for the express purpose of providing frontage and access to the lakeside lots. The one duplex is located on the existing roadway leading up to the treatment plant. The driveway has already been utilized and is in place and

stabilized. The other 2 duplex units would be located on the existing parking lot area and has an existing curb cut leading into the parking lot. There would be no driveway leading directly to Route 9A and no individual unit would be accessed from the existing roadway. They are trying to avoid connecting the access points because they would be required to cross a wetland area.

There would be a 50 ft setback from Route 9A from all units, 50 ft setback from the lake and the abutting properties. There is a 40 ft setback from the cul-de-sac that is allowed in a cluster development and 20 ft side setback from the other properties within the development. The existing Spofford Hall is a 2-story building with the gym area being 30 ft high.

Berkson advised that they have put a 3,000 sq ft footprint that is on the conceptual plan however they do not have any plan to build at this time. He assumes the houses could be 2-story structures.

Perkowski asked about the Shoreland Protection Act and the removal of trees with this proposal. Phippard stated they are able to comply with the Shoreland Protection Act. Berkson advised that most of the proposed building sites fall within the existing building area and parking lot area.

Cay stated that they are seeking a use variance under Simplex and asking for a cluster to be overlaid on the Spofford Lake District. He asked that Berkson speak to the argument under Simplex for this case. Cay stated he hasn't specifically addressed it for cluster other than the written material.

Berkson reviewed Simplex vs. Newington. It modified the law dramatically noting the purpose of a variance should be to allow for a waiver of the strict letter of a zoning law without sacrificing the spirit and purpose. By allowing variances litigation of constitutional questions may be avoided and remedies afforded in cases where special conditions exist. It went on to emphasize the constitutional rights of landowners have been shortchanged in the development of variance laws before Simplex. The court found that the ordinances had to be reasonable and not arbitrary and rest upon some grounds of difference having a fair and substantial relation to the object of the regulations. Quoting, "We believe our definition of unnecessary hardship is become too restrictive in light of the constitutional protection by which it must be tempered i.e. the constitutional right to enjoy the property."

Simplex went on to say that you could prove unnecessary hardship justifying a variance by showing 3 things. (1) That the zoning restriction interferes with the reasonable use considering the unique setting of the property in its environment. He has made it clear that this is a unique property. If there were an undeveloped flat 6 acres they wouldn't have a case. But because it has the 90,000 sq ft white elephant, that is what makes this property unique. (2) Is there a fair and substantial relationship between the general purposes of zoning and this specific zoning restriction? Berkson stated that these densities are overwhelmingly comparable with those around the lake and the residential use is much more in keeping with what is around the lake than what Spofford Hall is.

The variance would not injure the private rights of others. Some abutters had mentioned they liked the wooded nature of the lot, or they liked their view but these are not private

rights but private privileges. Each year an abatement has been requested and granted due to the mold problem. He knows we have differing opinions as to whose fault that is. Berkson advised that the property as it stands is unusable and wasting economic value to both parties, by removing this property as a wasting asset both for Nine A and the Town of Spofford. Every year an abatement has been petitioned for and he is unsure if one has ever been denied. To replace it with a more conforming development with less intensity for the public benefit and the added benefit of restricting lake access to just the 7 units on this parcel and no access through this parcel for the duplexes let alone any other future development of the Nine A land.

Berkson stated that both Simplex and the cases following Simplex note that economic concerns are relevant in variance determination. Before Simplex they couldn't have come in and say they have an economic problem. After Simplex they could come in and say that one of the problems they have that justifies relief is our economic problem. It is not dispositive and the Board could say that you don't buy it or it is not enough to change my mind but it is relevant and is a consideration that justifies granting the variance. In combination with all the other benefits to this proposal compared to what it is today, the economic argument is a strong one. There is also a potential for vandalism on the property. There has been vandalism there and all sorts of problems remain with a vacant building. They could get 1 or 2 units on this property but it won't economically justify tearing down Spofford Hall.

The other variance criteria remain and one of the key ones is whether the cluster development would alter the character of the neighborhood. The Board has to evaluate that. That's a different question than zoning for 2-acre density. The cluster would be allowed if this were not in the Lake District. Berkson advised that because  $\frac{3}{4}$  of lake lots are under 2 acres all around Spofford Lake, does this  $\frac{3}{4}$  - acre to almost an acre 7 units alter the fundamental character of the neighborhood. He submits that it doesn't. This is the broad-brush of the hardship and variance arguments amplified by the written materials they have submitted.

Cay asked to speak to the economic argument. On the record they have the cost of tearing down the building as \$250,000. Berkson stated that was the minimum. In the clients belief they can't use the 90,000 sq ft commercial building for any revitalized commercial use because of the mold and all that would go into retrofitting the building and there isn't a demand for that kind of use. Berkson stated that the cost of the mold has come up since we got the estimate for tearing it down so there may be more cost in tearing it down. In addition to the mold problem, which is a high 6-figure fix, they have marketed this building for at least 5 years that he knows of trying to get another institutional use. People have looked at it for all sorts of uses. There was some interest and one contract but the potential buyers backed out. Berkson stated that about  $\frac{1}{2}$  dozen different efforts have gotten serious and then had fallen away.

Cay asked if Berkson contends that the highest and best use there is to tear it down and make it residential. Berkson stated yes. If they complied with zoning on the 6.1 acres and they put in a short cul-de-sac, what is the maximum number of lots they could get? Berkson stated 2 lots with land for a road. Cay stated Berkson had submitted evidence of what land is going for on Spofford Lake, 2-acre lots, several recently have traded for  $\frac{1}{2}$  million dollars for raw land. Presumably 2 single lots would be worth more than a million dollars based on

those sales comparisons. Berkson stated he didn't think that you could presume that but say they did and they are talking about a million dollars value vs. a property that has been appraised by the Town as late as last year as over 3 million dollars. Cay stated that Berkson had said it was irrelevant because of the white elephant and is within his clients ability to have that appraisal adjusted to where it needs to be. (The current assessed value for the Spofford Hall property is \$1,425,500, abated for 2005 taxes.) Berkson stated that what is relevant is that the value of this property was higher, somewhere around 5 or 6 million dollars. If you turn the lens around and look at the economic investment that Nine A has, they had as late as last year a 3 million dollar property on the books. To say that if you tear it down, you would still get 1 million dollars for it doesn't justify their economic interest and they wouldn't do it.

Cay stated that a 3 million dollar property on the books, the amortization period is 37 ½ years for a commercial building and the lease, which was presumably fully amortizing was probably 20 so it doesn't really matter what is on the books. Berkson stated that it doesn't matter because amortized value vs. value is two different things. Cay stated that what matters is what's put into it and what you're getting out of it and what its worth today. What was the property purchased for in 1978 or 1979 and if it has paid for itself under the lease situation with a tenant then today it is just a question of the highest and best use of what it is worth, which is why they are here. Cay suggests that one economic scenario is that you have 2 or 3 lots less the cost of tearing down what's there and make the land ready. That is your economic value, maybe that's anywhere between \$500,000 to \$1,000,000 of net valuation. Then what becomes relevant for the Board to consider the economic argument is that is it incumbent on the Town to provide a greater return to the owner than ½ million to a million dollars. That is not an equation we will spend a lot of time with but it seems to him there is real value there under a client scenario but the next step is, it is a white elephant. It doesn't do the client or the Town any good. Last time the Board talked about the preexisting conditions and what that entitles the owner in terms of redevelopment. That was under the Boccia analysis, now we are under the Simplex analysis. We still have the special condition.

Berkson stated the special condition would apply to either case. We are not going to settle the economics here, he believes the case law is a little more generous to property owners than what Cay is suggesting because it is talking about a fair return. We may not agree on a fair return but he doesn't think that a million dollars would be a fair return on that property. Cay stated that he doesn't think there has been sufficient evidence submitted to the Board to make that determination. Berkson stated the Board does not need to make that determination in order to grant a variance, it is just one of the justifications for a variance. He believes there is enough evidence showing that this is an economic white elephant. This is the kind of redevelopment that would justify tearing Spofford Hall down.

Perkowski asked what was the sales contract amount. Berkson stated that to the best of his knowledge it was around \$5,000,000 in 2002. That was the last deal that went that far. Pat Paquette advised it is currently on the market for \$5,000,000.

Cay stated that in his view a cluster is the best way to get to the question of density if as long as the subdivision of 2 lots doesn't work and what Berkson is saying is that it doesn't work and they would need more units to justify taking down the white elephant and going through

this process. They have gone through the cluster analysis and that comes up with 7 units on that side of the road and it seems they have gone through all the criteria.

Cay stated that there are 5 lots proposed with direct lake frontage. Presumably there would be 5 docks out there and 5 boat moorings. Perkowski stated that they would have the right to do that. The other 2 lots would have access for docks at the gazebo area by way of an easement or the equivalent of an easement. There would be no further access to the lakefront for any other units except those 7. Cay asked if the dock space could be concentrated for those 6 acres so that it is not spread out. Phippard advised that each of the 5 lots abutting the lake have 100 ft of lake frontage and state law entitles them to a dock. How do you tell a homeowner with frontage on a lake that they can't have a dock? Riendeau advised that with the cluster development there would be an association and it could have restrictions only allowing a marina. Phippard stated they haven't gotten that far in drawing up documents for the association with the common land.

Riendeau stated that this is a new development and part of the association criteria could be to allow one dock and that is how they were able to overdevelop the property. Berkson objected to the representation that it is overdeveloped. Riendeau stated that he means in terms of 6 acres and 7 lots. Berkson stated that the Board had encouraged them to come back with a cluster so yes it is 6 acres but it is also 30 acres and they are taking a significant amount of land out of development as part of this.

Berkson stated that if this doesn't fly the way that Chakalos is comfortable in developing it, instead of having 5 docks and a marina you could have beach access for 30 or 40 houses. That is a possibility. This cuts that off. Cay stated that is a hollow threat because there is no way that it is better access for 30 homes for a beach than it is for residential development. The highest and best use of the land is residential development on the 6-acre portion. Berkson stated that there are all sorts of things that could come up. He doesn't intend it as a threat. The neighbors they spoke to were very concerned with that issue and the applicant came up with this proposal.

Cay asked if they had looked at clustering on that side of the road with attached buildings so that the structure would be back as far as the existing building. Berkson stated that they had and found that the best use was the single structures looking at the lots around the lake. Larkin asked what the size of the adjacent lots next to Spofford Hall. Jenkins lot is 1.6 acres and Guzofski is .91 acre. Berkson pointed out that there are 63% of the lots around the Lake that are under  $\frac{3}{4}$  acre. Larkin stated that he would be more concerned that the development of the property was balanced with what was around it. Berkson stated that they do have balance. He pointed out the maps showing the like size lots and frontages around the lake.

#### Abutters

Lee Guzofski stated they have gotten a fair return with the 2 or 3 lots. As far as the mold problem, the owner allowed that. He noted the 70 beds in Spofford Hall vs. the possible 13 units with a family of 4. Guzofski stated there would be a dramatic impact on the area with construction and increase to lake traffic. Elizabeth Guzofski stated that with Spofford Hall there was a restriction of no one using the lake. This will not benefit her. Riendeau stated that Spofford Hall was a non-conforming use and if it changed back to a conforming use they would have rights to use the lake and develop the property according to the ordinances.

Joan Cook stated that they would have access to the common land by way of Mulligan Rd that she believes to be a Class V road. Phippard stated that he understands it to be a Class VI road. He could not find any evidence that it has been turned over to the abutting property owners. Cook stated that Nina Foster had told her that it had been turned back to the property owners.

Pat Paquette, not an abutter but a lake front owner, stated that this is in keeping with the Namaschaug Landing development. She stated that it would be difficult to put in a marina type docking due to the rocky area. She is in favor of the proposal.

Lynn Thomas, her brother Dave Thomas is an abutter and she is also a lake front owner. She is in favor of the proposal and believes it to be in keeping with the character of the lake. It would remove an eyesore and put in high-end homes most likely bought by retiring people and not adding to the school roles.

Bill Hamlin, 223 Route 9A, advised he is concerned with the economics. They have tried to sell this property. This proposal is in keeping with the character of the lake. This is the 3<sup>rd</sup> application and they have made concessions. This will eliminate the eyesore. He stated that the 70 beds would not be the issue but the traffic from the staffing also would have 100 to 120 people coming day in and out increasing the usage on the roads and would be much more than the 13 residential units. He is in favor of the project.

Berkson swore in Phippard for the record. Phippard is a land use consultant hired to develop the land for this project. He is familiar with the cluster housing 301 in the Chesterfield Zoning Ordinance and in particular section 301.3 relative to preservation of natural features and open space. In Phippard's professional opinion more than ½ the area to be preserved in this project consists of soils with fair or poor development capability. He bases this on the soils report from Cheshire County prepared by the USDA, test pits that were performed on the property and several site walks. The exhibited characteristics of poor drainage, ledge out crops, tree species and vegetation are consistent with the characterizations represented in the soils report as being severe limitations on the ability to develop the land.

In reference to 301.3 F, having read the ordinance, Phippard stated that at least 2/3 of the land area they are proposing to preserve does include slopes in excess of 15% but less than 25%; it does include wetlands itself as well as being adjacent to wetlands; it includes soils with limited development potential on the severe category.

Riendeau stated they are being asked to allow a cluster development in the Spofford Lake District and the Town's people had voted not to allow clusters in this zone. He sees this as a rezoning to allow this. He asks what they offer to the Town to benefit the Town to allow this type of development. He hasn't heard that argument. In Simplex, was that a change in the zoning area as far as what is allowed? He stated that perhaps the people here do not understand. The zones have been laid out by the Town with allowed uses in those zones. This Board is trying to enforce that as 5 members of the community. Some abutters are stating they don't see a problem with throwing out the rules that the Town has voted in to allow this development. This Board has worked a lot of hours on this. He doesn't see much compromise. He sees one lot short of the maximum allowable and maybe that's saying

Town of Chesterfield you have saved yourself one lot and that's the bonus that the Town is getting by allowing the applicant to have something that is not allowed in this zone.

Berkson stated the issue here is no different than any other variance case. Any time you have a variance request you are varying what is allowed in a particular zone. Riendeau mentioned the area variances but the uses don't cross zones. Berkson stated that Land Use laws can be too rigid and variance law states that in order to avoid constitutional issues by violating property rights, the issue being is there a legitimate purpose to this restriction that justifies the denial of a property owner the constitutional right to develop his property. We are not asking for rezoning. The case law looks at the special condition. The courts are saying that the Zoning Boards need to put the property owner first, not the Town and not the abutters. This proposal fits under cluster and cluster makes sense here because all the septic will be out of the Lake District, the use is less intense, the lot coverage is less intense and the boating is restricted. Berkson stated that the Board shouldn't be asking is there some reason to allow this but rather is there a reason we shouldn't allow this.

The benefit to the Town is an attractive development that has been put together. They have the numbers to get 8 lots but they don't need 8, they need only 7. They are restricting lake access for the lakeside development only. They are cutting back on the lot coverage. They are carving out 30 acres a portion of which would never be developed. This will all still go to the Planning Board for approval. In terms of land use these are strong benefits for the Town. The tax base would be increased. Currently Spofford Hall is assessed at approximately 1.6 million. With the homes it would be 10 times that much. We would be getting rid of Spofford Hall. It would be a good balance for the property owner, the Town and abutters. If this gets done, 5 years down the road no one would remember what the fuss is over.

*Cay moved to close the public portion. Davenport seconded the motion, which carried unanimously.*

(A gentleman spoke with Andy Cay during the break in the hearing of the Board with a general discussion and Phippard objected to this stating he was influencing the Board without Berkson present. The public portion had been closed. The objection was noted.)

#### Board Discussion

Davenport stated that she believes the applicant has tried to make accommodations to what had been expressed in previous hearings. They have taken into consideration the concerns of the abutters limiting access to the lake. Remembering that when Spofford Hall was in operation the residents were not accessing the lake but from the stand point of Route 9A there will be less traffic than when it was in operation.

Perkowski stated there would be more water usage and people who live on the lake should have the right to use the lake. He looks at it as a piece of property in the residential zone that has a large commercial building that needs to be removed no matter what. From a pure zoning aspect there isn't enough frontage for 2 lots as it sits now. We haven't allowed cluster development in the Lake District and we would be establishing something we haven't done before. He prefers that 4 of the houses were located across the road. He is more concerned with the density impact to the Town with 7 houses 30 ft high. He feels like

he is rezoning it in an area where clusters are not allowed. How many if any of the large pine would be left? This would also add 7 docks with a couple of boats on each dock.

Larkin stated that Spofford Hall is an eyesore. If you took the structure and tried to convert it to some useful purpose, what would you get, condominiums? It seems like it would have to be a clinic. With the mold, what you see is just the tip of the iceberg. Larkin suggests restricting the size of the homes and maintaining as much of the natural surroundings of the trees as possible.

Perkowski stated he would like to see it and asked if it could be staked out to view the site. Larkin pointed out that 3 of the lots could be staked out, as they are not within the existing building area.

Cay stated that he believes they meet the criteria for a cluster. The question is does it make sense to allow it in the Spofford Overlay District. Perkowski stated it would still be rezoning. Cay stated that the Board has taken up this issue before with what otherwise would have required rezoning. He noted the variance granted to United Natural Foods. The Board did not do it for what has become the PDD. Cay stated that we have to look at the facts for each individual case. In this case we have a 90,000 sq ft white elephant and it is in everyone's best interest to try and work out a solution.

In theory if you put in a stub of a road you could have 2 or 3 lots there. Their argument is economic. Either way it is a costly proposition, therefore, they are looking for the density to help make economics work.

The lots could be profitable with 2 lots but a property owner doesn't need to prove there is no value in the land to get a variance. But there is a question if it is incumbent on the Town to bale out a property owner to maximize profit. On balance you look at the circumstances and say what density is appropriate to make sense here.

Cay stated that if its 2 or 3 lots they won't do it, they would take it to the courts. This would be precedent setting. The question is what do you get for a building that you put there 25 years ago. Economics would be very important. The best thing to do would be to work it out.

Riendeau stated that they had looked at putting in attached dwelling units in the existing building but economically it didn't make the same return as 7 separate lots. Larkin asked if you would want condos. People take their separate lots and there are unique qualities with owners taking pride in their sites. They have more of a sense of ownership than they would in a condo unit. What would you rather see, condos or single-family units? He would prefer to see single-family homes. Also, the larger the lot the larger the house would be.

Riendeau stated that around the country they are putting restrictions on the size of houses because you can't get rid of them. It was asked if there were other lots around the lake that could possibly look at a cluster development on the lake. It was noted that none would have the special condition of Spofford Hall.

The Board discussed the possibility of viewing the site. Is it feasible to stake out the buildings? Larkin asked if restrictions could be placed on the buildings built in that area. 7 houses works for him if the size could be restricted. Cay stated that the Board could place any reasonable restrictions when allowing a cluster.

Berkson stated that this is a conceptual plan and the staking would be conceptual. They have no desire to not be aesthetically pleasing. Perkowski stated the staking would give them an idea of how it would look and if restrictions would be reasonable. Berkson stated he wasn't sure that the Board had the power to put restrictions on the size of the houses as long as they complied with zoning. The plan shows the building envelopes.

Cay asked Berkson in his view with 7 units on the waterside and 6 units duplex fashion across the road, what is this site plan, in your mind, restricting you to otherwise.

Berkson stated that the plan shows building envelopes. They are committing to the configuration of the lots, the location of the roadway and access to the lots, the building envelopes. They used a 3,000 sq ft house plan for the conceptual plan. Cay asked that they stake out the houses using the 3,000 sq ft footprint to see the density for lots 3, 4 and 5. Phippard stated that he could do that.

*Cay moves to continue the meeting to the site on August 4<sup>th</sup> at 5:00 p.m. when the public portion would be reopened. Larkin seconded the motion, which carried unanimously.*

**2. Lynn Clair** requests Variances from Articles 203.6b Setbacks Section B, Side Setback and Section C, Lake Setback (1) to permit addition of shed dormers and (2) to permit extension of lakeside screened porch. The property is located at 157 Route 9A, Spofford. (Map 5L Lot A2) Residential/Protected Shoreland District.

Riendeau advised that the application should also be noted for a Variance from Article 503.1 Expansion of Non-Conforming buildings. He read the article and explained that the building is non-conforming due to its location within the setbacks and if a portion of the building is within a setback or is non-conforming due to coverage that portion cannot be increased vertically or horizontally without a variance.

Mike and Lynn Clair were present. Mike Clair stated they are looking to add 2 shed dormers raising the roof and changing the 12/12 pitch. The house would remain the same height. The second request would be to cover the walkway and extend the screen porch over the walkway. It was noted that a building permit was given to screen in the existing deck without a variance.

Clair stated that the dormers and decking would increase the functional use of the building.

*Cay moves to continue the meeting on site Friday, July 14<sup>th</sup> at 7:30 a.m. Perkowski seconded the motion, which carried unanimously.*

### **3. Review Meeting Minutes**

- **5/30/06** – Cay moved to accept the minutes. Davenport seconded the motion, which carried. (Riendeau, Cay, Davenport & Ross voted)

- **6/13/06** – *Perkowski moved to accept the minutes. Ross seconded the motion, which carried. (Riendeau, Perkowski & Ross voted)*

**4. Adjournment:** The Board adjourned at 10:45 PM.

Respectfully submitted,  
Carol Ross  
Secretary

Approved:

\_\_\_\_\_  
Burton Riendeau  
Chairman  
Zoning Board of Adjustment

Date:\_\_\_\_\_