

**TOWN OF CHESTERFIELD, NH**  
**ZONING BOARD OF ADJUSTMENT**  
**SITE VISIT**  
**August 4, 2006**

**Present:** Chairman Burt Riendeau, Andy Cay, Harriet Davenport, John Perkowski and Alternates Jim Larkin, Renee Fales and Lucky Evans. The meeting was called to order at 5:00 PM on Friday, August 4, 2006 at the Spofford Hall site.

The Board was present to hear the continuance of **Nine A LLC** represented by James Phippard/Brickstone Masons request for 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.

Riendeau introduced the Board and those who would be the voting members.

Neil Berkson and Jim Phippard were present. The Board walked the lakeside property and Phippard had staked out the conceptual plan showing 3,000 sq ft footprints of 3 houses along the lakefront. Several members of the Board and public viewed the inside of the building.

The hearing was continued to the Town Offices. Riendeau asked if Berkson had anything to add after the site visit. Berkson stated he has said all but would like to have the opportunity to respond to any questions and/or comments from the public and the Board.

Doug Dreyer, abutter, asked what the plan was for the gazebo access and if it was to be used for a common area. He stated that the area around the gazebo was very rocky and was concerned with swimming off that area. Berkson advised that the proposal calls for the 2 lots on the lakeside that do not have direct access would be allowed to access the lake at the gazebo. Berkson advised that the shoreline is subject to State regulations. He stated that the plan for the development of the shoreline would have to go by State regulations, Planning Board oversight and a Homeowners' Association. There would be rules to provide for safe access to the lake.

Berkson stated that the gazebo would either have one owner with easements for the 2 lots without direct access to the lake or it would be designated a common area. If it were a common area Dreyer is concerned that it would be a congregation point contributing to the noise carrying across the lake and safety issues swimming at the gazebo. Berkson stated that he didn't have an answer but it would be looked at through the Planning Board session. Berkson stated that it seems the most reasonable solution is to have one owner of the gazebo with easement rights to the 2 lots with no direct lake access. Dreyer advised that his preference would be for one owner of the gazebo. Phippard stated that the gazebo is along the shoreline of lot 3. Currently the gazebo is owned by Nine A LLC and is considered an historical structure. After the subdivision, the gazebo would be deeded to lot 3.

Jenkins stated the gazebo is a landmark and it would be obscene to put docks off the gazebo and he would like to keep its historic appearance. He believes the zoning should be maintained and that a cluster not be allowed here, as it would not be in keeping with the lake. If the houses were stretched along the shore he didn't think anyone would have a problem with that. Seven large homes on the peninsula would look very dense and the density would erode the natural aspect of the lot and waterfront. Jenkins also asked that any tree larger than 12" should remain to stand as a prerequisite of the development. He urges the Board to deny the variance. Dreyer stated that a bald eagle nests in the pine trees.

Berkson stated they are committed to allow the 2 lots to access the lake at the point of the gazebo and if it didn't work there then another place would be designated for the access. He pointed out that Chakalos could take the gazebo down at anytime. It is not their intention to remove it but if it gets too much of an issue that could be done. Berkson advised that there needed to be some trust in the developer of the land to do what is right. He stated that the lot coverage would be reduced by half, 38% to 22%. He further noted that the houses are already screened.

Dreyer stated that the existing building is already a low profile building. If a significant number of trees were taken out the high profile homes would be a big impact on the lot. It was noted that zoning sets the height of the buildings.

Perkowski asked about the 2 appeals before the court. Berkson advised they had agreed to put off the cases until October. If there is a favorable decision on this application the 2 cases would be withdrawn or they would have the 3 cases heard at the same time.

Jenkins stated he would like to see the established homeowners and not this plan be given precedence over the established properties. Riendeau stated the Board is trying to make sure there is a plan that would work well for the Town and the property owners. Jenkins stated that the Town should not work with the developer and if its not allowed deny it.

Berkson stated he respects the position of Jenkins but advised that at the last meeting there were people from around the lake who were supportive of the plan, particularly with the lake access to be limited to only the 7 lots and no further access from the duplexes or the rest of the applicant's property across the road.

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

Cay gave a background in terms of Namaschaug Landing. That was permitted as a cluster subdivision in 1989. It has 6 acres on the lakeside and 6 lots were allowed on the lake. The sewage is pumped across the road and the preserved area is across the road. That development as a cluster is very similar to what is before the Board.

In 1999 the Town passed the Spofford Lake overlay district and specifically excluded clusters. Other things were excluded as part of that such as 2 family housing, multifamily, manufactured housing, churches, schools and cemeteries. There was not much more in the public record as to why this change was made but there was enough

concern to preserve the lake. It was noted that the Spofford Lake District extends 500 ft from the high-water mark of the lake and part of the duplex units were included in the SLD. The Board asked that the site maps be displayed for review.

If this application were proposed in 1989 and it met all the conditions of a cluster development it would have gone through the Planning Board process and would not have required Zoning Board approval. Post 1999 Town Meeting this all changed.

The reason the Board is here tonight, there is a 90,000 sq ft building that is obsolete and they are looking for a better use of the site. Cay stated that in the absence of what might be an arbitrary, discretionary process of determining density, he has been an advocate for them to look at the cluster subdivision since it exists in the R/A zone. Cay had been unaware of the background. Now knowing what went on at Namaschaug since it has been used in this manner previously that it at least gives us a way to come up with density. That being said, is there a special condition on that site that might allow them to get a variance to do this type of development. Is the 90,000 sq ft commercial building a special condition that warrants the Board granting them permission to do a cluster subdivision where a cluster subdivision otherwise would not be allowed?

Perkowski asked what would be allowed. It was stated that 2 lots would be allowed without a variance with a stub of a road.

The first question is 1) is there a special condition that warrants looking at it as a cluster subdivision and if you get past that then 2) the issues of trees, gazebo, water access, density, how it looks comes into play. Unlike in 1989 a cluster subdivision is not allowed. Once you allow it then it goes to the Planning Board and they would review it using the cluster regulations. The only way it gets adjusted to reflect the circumstances in regard to the trees, water access etc. is through the Zoning Board. It is entirely incumbent on the Zoning Board to put any conditions on the approval that are warranted because of the unique circumstances.

Perkowski stated that we have the unique situation that we have the 90,000 sq ft building that is in disrepair. Its probably not going to be repaired and has been for sale for years. He believes that no matter what happens, that building will disappear. It is in nobody's best interest to keep the building there. Perkowski believes the building will not be there 2 years from now. Whether the only remedy is a 13-unit cluster development on 30 acres, six of which are on the lakeside is yet to be determined. Should the Board be concerned with how profitable this would be for the applicant. He sees 2 or 3 building lots would be profitable without a cluster development or units on the other side. If the Board were to allow this they can place reasonable conditions on the approval.

Cay stated that in terms of the preexisting condition and the special condition that exists it is safe to say in Mullins' opinion it is a litigable item and would be a precedent setting case in the State of NH relative to variances. Because it is a 90,000 sq ft commercial building in a residential area, is obsolete and its owner has vested financial interest in it, all these things would be taken into account. We know that the Supreme Courts' position on variances is that it is in flux.

Perkowski stated that he agrees there is a special condition but is cluster development the way to remedy that. Cay stated that if 2 house lots don't work for the developer then how do you get to the next density. Perkowski stated by area variance they could get 3 lots in there.

Cay asked if the Board is in the business of asking a developer for a cash flow statement on 3 vs. 2 or 4 vs. 2 and then making a discretionary assessment of the profit. Perkowski stated that he would want to do what the Town has asked him to do.

Evans stated the spirit of the ordinance is what is on the lake and the least development on the lake. To what extent does this building become a special condition because of economics and not the hardship of the land? If there is a special condition due to economics then the Board needs specific numbers. The mission is what is the most reasonable use of the land and not the most monetary gain for the developer.

In 2001 Simplex came into play in zoning and the Board needs to look at it using the Simplex analysis.

Riendeau stated the Board needed to decide if it makes sense to look at a cluster. He thought they had crossed that hurdle from the last meeting. The cluster would tie up additional land across the street for a total of 30 acres in the development. Does the cluster mediate the 90,000 sq ft?

Perkowski doesn't see a financial hardship if 3 lots were allowed. The Town has said no clusters in the Lake District as soon as 1999 and he believes we should stay as close to that as possible.

Cay stated that the Namaschaug project lots vary in size from 32,000 sq ft to 42,000 sq ft. All size of those lots is in that range. The smallest lot size for this application is .71 acres so they are close in size. The Namaschaug houses vary in size from 2,800 to 4,025 sq ft total living space not including decks and garage. From a scaling standpoint looking from the lake or the road it would give you a sense of what those size houses look like.

Perkowski asked if the Namaschaug project prompted the restriction of clusters in the Lake District. The Board did not know the answer to that.

Cay asked if the Board had its choice of a cluster development of 7 lots on the lake side property and have the say on what size they are, how many trees get cut and how the frontage looks or you could have a 90,000 sq ft drug and alcohol treatment center assuming it hadn't been there before what would we pick. That was the choice when the treatment center was put there. It was noted that there was a hotel 30 years prior to the center. Cay stated the Board would be hard pressed to deny an application if another treatment center were proposed.

*Cay moved to deal with this decision in two parts.*

Part A

*In this motion the Board would cross the bridge that there is a special condition with the 90,000 sq ft commercial building and its obsolescence. We agree that a cluster*

*subdivision zone is an appropriate method for evaluating what would be built there. This motion just gets the Board off the question of whether a cluster subdivision would work there or not and is the appropriate methodology to evaluate it.*

Part B

*Part II would be an evaluation of the density, the aesthetics and all the issues that have been raised before the Board and what special conditions might be placed on any development that goes on there.*

The intent of this motion is to get the Board past Part A onto Part B, if Part B fails, then Part A is moot.

Fales asked if it would be appropriate to have a joint meeting with the Planning Board. Cay stated that any guidance that the Planning Board would have other than the regulations would be from the Zoning Board and the conditions that this board places on the development.

Larkin stated the building does have potential uses if it was further investigated but the economic value of residential lots outweighs the economic viability of the existing building.

Cay stated the applicant is saying there is no economic basis for using the building. The teardown is \$250,000 plus the mold abatement and the reuse is a million plus. The Board might differ with that but that is what the application has testified to. Larkin stated there is value in that building especially with elder care. The profitability is there but they want an immediate return. Larkin stated he is a contractor and has done mold abatement. He believes the Board should focus on the practical purpose of this based on the value of the property.

Riendeau advised the Board tries to make lots more conforming than they were previously. As a Board we have to decide if having a commercial use on a residential lot is better for the Town or returning it to residential use. The Board has an opportunity to take a huge commercial building that is obsolescent and returns it to residential use and change half the lot coverage back to green space. In some respects in terms of zoning that is an improvement. If this were proposed to go back to commercial use there would be a bunch of hurdles to jump and there would still be opposition to it.

*Davenport seconded Part A of the motion.*

Perkowski and Evans ask if they want to overrule the decision made by the Town in 1999. Riendeau reminds the Board they need to keep Simplex in mind. Davenport agrees they must use Simplex. Simplex was reviewed. Larkin stated if residential is the best for the Town then that is the direction the Board should be going.

The motion carried by majority vote. (4-Yes: Cay, Davenport, Larkin, Riendeau 1-No: Perkowski)

On review the Board is past asking if there is a special condition there and past asking if the Board would entertain cluster housing.

Cay stated that it was brought up by one of the abutters that they do not necessarily agree that a residential use is necessarily a better use than a commercial use of the building. The abutters had given testimony to that effect. Riendeau stated that the Board understands the opposing sides of the question.

Cay stated now they are at the issues of density, what is the size of it, what is it going to look like, what trees will be there, what about the gazebo, the size of the houses. Perkowski asked if the meeting should be continued to another meeting as he sees hours of discussion on these issues. Cay stated that only a couple that merit significant discussions; density is the main issue with the massing of the structures and the aesthetics.

Perkowski stated they needed to tie down the size and number. Riendeau stated the Board was not here to redesign this. Cay stated that he would entertain that discussion. Generally with a variance you are saying yea or neigh on an application but this is different because you are superimposing a cluster zoning and you are only doing it looking at the whole number of issues and warrants special conditions that are particular to the situation. One possible outcome from this evenings meeting is that the Board would arrive at a rationale for density and we would make a motion to approve a cluster subdivision under particular parameters subject to review of the subdivision plans to be brought to the Board next month.

Riendeau asked the applicant if discussion on redesigning would be appropriate. Cay stated that he thinks there is a number between 3 and 7 that would work for the Board and the applicant. The applicants will have to determine for themselves if they would want to litigate it or argue against the conditions the Board has placed on the approval. If the Board goes through this process the applicant will know where they are. The alternative is to just vote the application up or down. Riendeau asked if Berkson wanted the Board to take the time to discuss the density question that may deviate from the 7 proposed lakeside lots. Berkson asked for a moment to speak with Phippard.

Upon returning Berkson advised that he was unable to reach Chakalos but he would like to hear the Board's discussion. He advised that this is the 3<sup>rd</sup> time they have come before the Board and they have compromised every time. Under Cluster Development they could put 8 there but they don't need 8, only 7. If the Board comes to under 7 then he would like to know why so that he could tell Chakalos. Berkson stated that there is an option to add acres to the cluster although he does not have authority to make the change.

The density thought process is that in January 1999 this could have been approved without any interference of the Zoning Board if it had met the cluster regulations and the Planning Board would not have had the power to put conditions on it that the Zoning Board has the power to put on it today.

In 1989 Namaschaug Landing was approved and is very analogous to this with 6 acres on the lakeside and 24+ and septic on the other side. There was a very obsolete camp in

disrepair and the lot had big and small structures all over it. This lot has a peninsula so that it has a unique shape; that project is linear along the road and rectangular so that it was easy to make the separate lots. If you are looking precedence or for some way to make this decision about density and you are trying to overlay it with reasonableness, it doesn't seem to take a great leap to look to Namaschaug Landing saying they couldn't do that today but they could have in January 1999. This is a special situation and the Board is willing to entertain a cluster to get it more conforming and all the other reasons that have been articulated but perhaps the Board would look to the Namaschaug project for a derivation of the density. If you do that you might reduce this development to 6 in density on the lakeside and if they want to pick up the extra one or two units with attached buildings on the other side they could choose to do that. Then you would look at the sizes and put a limitation on the total living space for each of the houses.

Perkowski suggests eliminating the lots that don't have direct lake access but put them across the street. This would eliminate the concerns with docks off the gazebo or that it be common property.

Cay advised that they could change the layout for 6 lots to give them all lake frontage with the gazebo could be assigned to one of the lots. Minimum frontage is required to provide for a dock.

Riendeau asks if the Board agrees that Namaschaug turned out to be a good development. Perkowski asked if Namaschaug was the driving reason to exclude clusters from the Lake District. Cay stated that even if that were so a 90,000 sq ft building deserves a look that warrants special treatment. They had voted that it does warrant this look. Evans asks but to what extent.

Larkin suggests 5 lots on the lakeside with duplexes across the road with each lot having approximately 1 acre and lake frontage. That would be financially feasible. There would be more flexibility in regard to position of houses and salvaging the trees. This would give the sizing of the homes a little more flexibility. He could see a 4,000 to 5,000 sq ft house of living space. A one-acre lot would allow 4,300 sq ft footprint for a structure.

Riendeau sees how Namaschaug could give them the cluster but not the 6 lots. He sees 5 lots as being more appropriate. Cay stated that if 5 were allowed, the applicant would be looking to make up the density through the size of the house. Is the number the more important figure or is it massing?

Perkowski stated that once this property is subdivided and the lots sold they would hire a contractor to build a house. Riendeau asks then what would be the size allowed. Cay is suggesting that the houses would be larger to make it more valuable. Larkin stated that an acre lot would allow for an 8,000 sq ft house. Cay stated that if you look at Namaschaug and massing the living space ranges from 2,800 to 4,000 total sq footage, not footprint. The footprint is probably around 1,800 sq ft. Cay stated here you could have 5-8,000 sq ft houses or you could have 6-4,000 sq ft houses. Which fits better with the environment?

Larkin states that the 5 lots would minimize the effect on the trees. The houses could be pushed further from the lake. Evans noted the trees, the shallow and rocky area and asks what extent does the special condition merit going against the 1999 ordinances.

Perkowski stated that the main concern is the 6-acre lakeside lot. He suggests that a big house could almost disappear amongst those trees. If the trees were removed it would be a greater impact than the houses. He would be willing to see more houses across the road. \$500,000 is a reasonable price to put on a 1-acre lakeside lot. From a developers perspective a duplex unit would be a quick sale. Land value for a duplex unit could be \$25,000 vs. \$500,000 lakeside. Giving additional units across the street would not be incentive to a developer. The difference between .71 acre and 1 acre would not be a material difference in market value on a Spofford Lake lot.

Cay asked what if you allowed the 7 lakeside lots and across the street you give them 2 houses and you require that they inventory all the trees and research the State dock ordinance and lay out where the docks would be and what is allowed and this would become part of the deed conveyances. You specify the house sizing and specify where they would be place relative to those trees and specify what trees would be saved. The Planning Board does not have that authority but the Zoning Board does. Is it not better to have more density here done right and controlled and no multifamily across the street? We are using the cluster route to get the density.

Cay stated that he would rather see a well-planned development done by one developer building complimentary homes, positioned correctly on the site and maximizing the trees. You can control the aesthetics of this development but the real economics is the lakeside lot. What is the difference between one and two more house. There is far more to be gained defining how that happens.

Larkin states the focus should be on the environment and how the proposal would impact the neighborhood. He noted the old growth trees. Cay stated that the trees were not taken into consideration in placing the houses. Cay asked if the duplexes would be in keeping with the neighborhood.

Evans stated that he believes fewer houses even though they would be larger would be better. He thinks the cost of the lots would be made up with larger lots and larger houses. The Board discussed the trees and that if they were properly protected they could be maintained. Riendeau stated that there is no guarantee how long those trees would live. Cay disagrees that there is not a large difference in the value of a .71-acre lot vs. 1 acre. The Board agrees that there is a huge economic difference in single-family lots vs. duplexes.

Cay asked if a properly mastered planned site with full consideration of all the different issues with a higher density isn't better than lower density and let them have carte blanche. You give them 6 or 7 on the lake and single family across the street if they are so inclined but you inventory those trees, permit building envelopes and prescribe what the lake access components would be and you lay it all out so that you know what the end result will be. If the house size is 4,000 sq ft maximum you are allowing the developer economic opportunity but you are ending up with an overall result while putting density

on the lake. It may look a lot better than giving too much flexibility for 5 lots. Perkowski stated they could still give 5 lots and take away the flexibility. Cay stated the compromise should be attractive enough to avoid litigation. Perkowski stated it is the Board's responsibility to allow what it looks like in the end. If the trees go it will change what it looks there in a big way.

Davenport stated she was disappointed that they didn't come back with fewer lots on the lake. She would rather see 5 lots lakeside and added that the duplexes were not as pleasing aesthetically. Cay stated that Berkson points out that the cluster ordinances allow for attached dwellings.

Cay suggests 6 houses on the lakeside and 3 single-family houses across the street. Fales stated that if they were duplexes they would be more affordable housing. Cay stated there are more appropriate places in town to allow duplexes. The Board agrees that the Town does need that type of housing but not in the Spofford Lake District. The single-family homes would be more in keeping with what is across the road.

Perkowski believes that 5 houses on the lake should be the maximum. It was noted that 50% of the acres is designated as open space under the cluster ordinance. Larkin stated that the developer would try to maximize the site. He likes the idea of single-family homes across the road.

Cay stated what if the Zoning Board could get the developer to engineer the site and identify all the trees and give us building envelopes for all 6 sites and agree to a building envelope for those 6 homes. Isn't that a better result than giving them Carte blanche? Perkowski and Larkin said you could make those same conditions with 5 or 4. The closer we can stay to the zoning the better for the Town. Cay stated how do we give the owner incentive to get a good result.

Cay stated that there are 3 acres allocated for 6 units across the street so that you are at 18 acres and you could take 3 of those back and still comply to the 50% cluster regulation giving 15 acres set aside for preserved space. This would make the project compliant from an acreage standpoint.

Perkowski still believes that density is the problem. The 5 lots would still make it profitable. Larkin stated there must have been a market analysis and if the Board gives them a focused direction. If the Board went with the 5 lots lakeside the applicant already knows what they could get because they are all waterfront. They would have to make up the money across the road. Larkin stated it's not the number of houses but the dollar amount they are looking at.

The Board discussed the potential size of the houses. Cay stated that removing 1 or 2 houses on the lakeside development doesn't change the character of the lot materially. If there were 5 huge houses allowed there and positioned closer together as a result, would it be a better result than a master planned site of the property with smaller homes and density. Larkin and Perkowski stated they could limit the sizes of the houses.

Cay asked how do we give incentive to the owner to do the right thing by Spofford Lake that is in keeping with the character of the neighborhood. Perkowski stated it would be controlled here. Cay stated we want the parties to work together to get a good result. Perkowski thought limiting to 5 would give a better chance to protect the vegetation there. The lake is the Town's most important asset.

The Board reviewed the information regarding Mulligan Rd provided by Neil Jenness. There had been a motion to accept the reconfigured road in 1906.

Cay stated that the general public wouldn't know the difference between 5 or 6 lots. What the average person in Town will know is that a cluster development went in there with a sizeable number of homes on small lots by comparison to the ordinance. The Namaschaug model makes sense to him, 6 lots on 6 acres. The end result was a good development and the Town is in better shape with a master planned site. Cay stated that by giving one more house the Board is giving encouragement to do the right thing, to accept this deal and not litigate it and moving them in the direction towards working out a master planned site to know what would go there, which the PDD is supposed to do but has failed so far.

Perkowski stated he is willing to go from 3 to 5 and they should be willing to go from 7 to 5. Riendeau stated he wasn't sure if anyone was ready to make a motion. Riendeau noted they didn't have a developer and numerous developers could develop it. He hasn't heard a commitment from a developer to build homes on this site.

Cay stated how could we get this to move in the direction we want. If it were a mastered planned property and you saved the maximum number of trees and positioned the houses to look good and have the houses nestled in there to make a nice little community then that would be a good result. We can't tell the developer how to build it but we can take a step in that direction by erring on the side of giving a little more to the developer and then we structure it as tightly as we can within reason so that the developer is encouraged to master plan it and do it right. If you inventory the trees and you know what the lake access is going to be and you have building envelopes where the buildings will be built so there would need to be planning as to what they will look like and where they would be placed, if you do all that then you have managed to get what we are aiming for than just treat it more generically. It was noted that John Chakalos is a developer in Connecticut.

Larkin asked couldn't the applicant be required to plan the project with options that the Board could look at and choose from. Cay asked is this fair to the applicant. Larkin stated this is the 3<sup>rd</sup> application before the Board. Cay stated they have been looking for direction from the Board and to ask them to go back to the drawing board and make 3 plans so that the Board could pick what they like is not a reasonable request. Larkin stated it would be giving them a light at the end of the tunnel saying here are 3 options and the Board can choose one. Cay asked Larkin if they would give them assurance tonight that we would pick one. Perkowski stated the Board might not choose any of the options provided. Cay stated that the Board must give them clear direction so that if they come back with that, it's a done deal. Larkin stated then why don't we give them that direction. He sees it as 5 or 6 from what he is hearing tonight.

Cay stated his rationale is to leave enough on the table to encourage the developer to work with the Town. We are saying to the developer to come back and commit to these things so that we know that when they go to the Planning Board it would get done in the fashion we intend it to happen.

Perkowski stated he still believes it should be the least number of houses and smaller footprints. Cay asks where is the give and take with the applicant. Riendeau stated he hears that the Town is giving them 2 lots from 3 to 5 and that Cay's opinion is that this wouldn't be enough for a developer. Cay stated his concern is the end result and if you limit it to 5 the size of the houses would increase.

*Larkin moves to allow a 5-lot subdivision on the lakeside and up to a maximum of 6 small single homes on the other side of the road, the maximum sq ft of 6,500 per house on the lakeside and smaller across the road. The developer would salvage as many trees as they can, position the houses to maintain a visual to the lake and that the houses compliment each other.*

*Perkowski seconded the motion for the purpose of opening it up for discussion.*

Perkowski stated he would like to see more detail so not to turn the developer loose. He would like to use Cay's suggestion of Part B using 5 lots. Do we think we can get past this with restrictions? 6,500 sq ft living space is a big house and then there would be a garage. That may be what those lots deserve. Cay stated that compared to his 4,000 sq ft living space would be 12,500 sq ft more living space over the 5 lots. Perkowski stated that it's too big. Would we be handicapping the developer keeping him to 4,000 sq ft? Perkowski stated he has more of a problem with more houses than the size of them. Perkowski suggests the Board schedule another meeting to work out the details.

*Larkin moves to amend his motion based on the discussion to a maximum of 3,000 sq ft footprint including the garage. Cay asked if they want to have 5-5,000 sq ft houses there. Cay suggests going in the opposite direction. Cay stated that it's not the houses sq footage but the massing. Cay stated that in 10 years time the Board would not be having this same discussion. We will be talking about global warming and fossil fuels and not 5,500 sq ft houses. As a Town we will be encouraging development down and conservation up. To encourage this kind of development is unwise. Perkowski stated that a reasonable number of houses and lots is what should be there but the Board disagrees with what is reasonable. There was no second for the amendment. The amendment dies for lack of a second.*

*Larkin moves to amend the original motion to remove any reference to a footprint or sq footage. The amendment dies for lack of a second.*

The original motion was brought to a vote.

*The motion was overturned by majority vote. (No: Cay, Davenport, Perkowski, Riendeau Yes: Larkin)*

*Cay moved to approve 6 homes to be built on the lakeside and we would not approve any attached duplexes across the street but we would allow 3 single-family homes across the street on those 3.5 acres. The 6 houses site plan is to be reconfigured for the 6 house subdivision on the lakeside such that it conforms as closely as possible to the cluster zone regulations in frontage, setbacks and all the various criteria preferably allowing lake frontage for each of the 6 lots. The gazebo would be assigned to one of those 6 lots and not be property in common but property of that one parcel.*

*The Board makes several conditions on the development.*

- 1. The homes would have a maximum square footage of 4,000 sq ft living area.*
- 2. The applicant is asked to provide a site plan in sufficient detail to map out all existing trees.*
- 3. The applicant is to delineate building envelopes for each home. That delineation should be approximately the size of the footprint of those homes. It will be incumbent on the developer to design the positioning of those homes in a fashion that would work for the whole development. If the homes were reoriented on the site plan at a later date the applicant would have to come back before this Board to have that approved.*
- 4. The gazebo would be kept as part of the project as the Board recognizes the significance of its historic character.*
- 5. All attempts will be made to preserve as many of the high quality old growth trees on the site.*
- 6. The dockage, swimming areas and any boat mooring areas will be delineated on the site plan after consulting with the State on the regulations for those so that the Board will understand exactly where those six lots would gain access to the lake.*

*This is an unusual approval for the Zoning Board, one which found in our earlier motion that the cluster subdivision was a reasonable approach given the special condition of the 90,000 sq ft commercial building on the site which is out of character with the residential nature of this neighborhood. We are asking things of the applicant to come back to this Board with what amounts to essentially a master planned site so that we will understand massing, scaling and layout so it could then go forward with the planning process before the Planning Board in accordance with our agreement to provide this variance.*

*To clarify, in making this motion, the Board is saying no to the application before the Board and yes to this concept subject to final subdivision planned presentation to this Board at the next meeting or whenever the applicant chooses to come back.*

Davenport seconded the motion.

The motion was amended to include:

*In the event there are to be any accessory buildings then those either have to be indicated on the initial site plan or they would require an individual variance to provide for them in the future if an owner of a lot were to wish to do that.*

Davenport seconded the amendment. The motion carried by majority vote. (3-Yes: Davenport, Cay, Riendeau 2-No: Larkin, Perkowski)

Berkson asked that this motion should be treated as preliminary so that the applicant didn't have to re-notice the next meeting. He advised that they would respond to the substance of the motion or they would not change their application and the Board would deny the application. This is not a final on the application giving the applicant the opportunity to come back before the Board.

It was noted that the hearing is continued until the time the applicant comes back before the Board.

## 2. Other

- **Law Lecture Series registration – Procedural Basics for Planning and Zoning Boards. Scheduled for October 4<sup>th</sup> in Jaffrey.** Perkowski, Cay, Larkin and Riendeau asked to be signed up for the lecture.
- **2007 Zoning Board Budget**
  - **2006 Budget to date**
  - **2006 Revenue to date**

The Board reviewed the proposed budget and recommends increasing the Meetings and Conference line by \$700 to \$1,000 to allow for 2 additional classes at \$350 each.

*Perkowski moves to amend the budget. Cay seconded the motion, which carried unanimously.* The Board also authorized Ross to purchase a digital recorder for the Board meetings.

- **Nine A LLC v ZBA trial date October 18<sup>th</sup> at 1:30 p.m.** Representation will be discussed as the time draws closer.
- **2006 Fall Planning & Zoning Conference – October 28, 2006**  
Cay, Larkin, Fales, Davenport and Ross plan to attend the conference.
- **CEO – question re: Shared driveway on Route 9 and house delivery prior to ZBA public hearing.**  
The Board advised that the modular boxes could be put on the site with the understanding that they do it at their own risk. The Board understands that the State has placed a hardship on the property in that it is a limited access highway, however, without an application before them they could not guarantee approval of a variance.

## 3. Review Meeting Minutes

- **7/11/06** – Cay moved to approve the amended minutes. Perkowski seconded the motion, which carried.
- **7/14/06** – Cay moved to approve the minutes. Perkowski seconded the motion, which carried.

The meeting adjourned at 11:10 PM.

Respectfully submitted,

Carol Ross  
Secretary

Approved:

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Burton Riendeau  
Chairman  
Zoning Board of Adjustment

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