

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

**MINUTES
October 9, 2007**

Present: Chairman Burt Riendeau, Andy Cay, Harriet Davenport, John Perkowski, Renee Fales, Alternates Jim Larkin and Lucky Evans, Select Board representative Bob Brockmann and Code Enforcement Officer Chet Greenwood.

The Zoning Board of Adjustment met at the Chesterfield Town Office on October 9, 2007 at 7:30 PM. Riendeau introduced the Board and explained the evening's procedures. The following agenda items were heard.

1. Mortis & Tenon for William Penney request a Variance from Article 206.4 Section B, Lot Frontage, to permit the lot frontage of 144.97 ft and a Variance from Article 206.5 Section A to permit a 30 ft front setback. The property is located on Lyman Way and Route 9 (Map 14 Lot A11.5) Commercial/Industrial

Steve Pro was present representing Penney's application for the Truck/Camper Warehouse. He stated that there are problems with the understanding of the corner lot regulations. The applicant proposes a Truck/Camper Warehouse to include sales and repairs. They had presented the proposal to the Planning Board under a Conceptual Consultation and the Planning Board had interpreted the ordinance 207.3 B that Route 9 would be the frontage giving a 30 ft setback along Lyman Way. He understands that a consultation is non-binding, however, from that meeting they went to full design phase and went back to the Planning Board for a site plan review.

They were informed by the Planning Board that there was not adequate frontage along Route 9 and told they needed a Variance for the frontage. Pro advised they have tried to keep green spaces and have kept the building as far from the Wissell's property as possible.

Lyman Way is a private road that has been built to Town standards except that the top wear course is not on. It is not a through road and all lots located on the road are now commercially zoned approved by Town Vote in 1993.

Pro presented the plan showing a 30 ft setback from Lyman way property line with an additional 20 ft of ROW to the road. The lot is 2.1 acres. The design was done with ease for truck access as well as safety issues. A redesign to move the building would cost possibly an additional \$60,000 and would affect traffic patterns. This proposed use is an allowed use in this zone.

A variance had been granted to the Wesfield property to allow the building being built within the setback due to the topography of the land on the west side of the property.

Pro advised that his client acting in good faith spent \$20,000 on a design plan on the basis of the conceptual consultation. The road serves 5 commercial lots, one that has been developed and this proposal.

There were 4 camper sites noted on the plan. Pro advised that these were for the convenience of the customers who are waiting for service. There would be a holding tank for pumping these campers and they would not be on the leach field system. This would not be a campground but only for those that need to stay over for servicing the vehicles. There would be no more than 4 campers at a time but typically there are only 2 during the busy season and usually for one night. There are rules involved if the camper were to stay over night.

Pro showed sketches of the proposed building. The proposed metal building would be 106 x 70 ft with a metal roof and will be no higher than 30 ft. The Board asked how many sq ft would be within the 50 ft setback area. Pro will figure it before the end of the meeting.

Wissell was the only abutter present. He advised he would like to keep the building at the proposed location to protect his privacy. Penney would install a fence per his request.

Bob Del Sesto, Planning Board Chair, stated that all conceptual consults are non-binding and the applicant is still required to look at the ordinances and request waivers or variances where necessary. He presented the original subdivision and stated that all lots have met the 200 ft frontage requirement along Lyman Way. The Board pointed out that the Zoning Ordinance for corner lots was in existence in 1988. This was a valid subdivision by the Planning Board but they had interpreted only frontage requirement should be along Lyman Way.

Del Sesto stated that the minutes for the site plan had noted that the Town would be deeded the road and the Planning Board at that time postponed signing with this condition. He stated this could be a Town road.

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

Discussion:

The Board noted that the Lyman Way status doesn't change anything if it is a Town or private road. Ross checked the road list and Lyman Way is a private road.

The definition of Frontage was read as "the continuous side of a lot of tract of land abutting on one side of a street, measured along the street.." Frontage does not necessarily designate the front of the lot as in the case of a corner lot; there is "frontage" on both streets. The confusion seems to be with confusing Frontage with Front setback.

Cay stated that the frontage requirement only relates to subdivisions. It appears that the Planning Board overlooked the corner lot ordinance in regard to the frontage requirement issue. The ZBA sees this as a pre-existing non-conforming lot of record and that the 50 ft setback requirement is from both Route 9 and Lyman Way. The frontage is a mute point on an existing lot.

The Board asked if Pro had calculated the portion of the building and parking area that would be within the 50 ft setback area. Pro stated that there would be approximately 300 ft

of building and 360 sq ft of parking area. He had also calculated the driveway into this but that was not necessary, as driveways are allowed in the front setback.

Perkowski stated that it looks like there are remedies to accomplish what they propose i.e. boundary line adjustment or lot merger. Pro advised that there is a 10% grade difference in the property.

Cay suggested turning the building to make it work. Riendeau asked if the applicant could have a reasonable use of the lot and be conforming. Cay stated that this is an approved use within this zone. Davenport stated that one argument for this proposal is to keep the building this distance from the Wissells. Fales asked if turning it 90 degrees and reconfiguring the parking, would they lose the truck access. Perkowski stated that there are still 3 commercial lots to be developed on this road.

Cay stated he would be willing to continue the hearing to give Pro opportunity to get more accurate #'s of encroachment and develop more compelling arguments. Pro conferred with Penney and they would like to continue.

Cay moved to continue the application with the expectation that the applicant will come back with further information as to why the plan has been developed in this manner; why other alternatives do have significant consequences to them; why there is hardship in the land that is forcing them in the direction of this design and why the size of the building, layout of the traffic flow and the parking are important in terms of the intended use which fits the Commercial/Industrial zone. Fales seconded the motion

Pro was asked if the parking was adequate for this project. He advised that the parking was broken out by warehouse, office and showroom space and meets the Ordinance requirements.

Vote: The motion carried by majority vote. (4 Yes: Cay, Fales, Davenport, Riendeau – 1 No: Perkowski)

2. Kathleen Cooke requests a Variance from Article 203.6b Section B, Side Setback, to permit replacing two non-conforming buildings with a 2-car garage. The property is located at 156 North Shore Rd, Spofford (Map 5D Lot B24) Spofford Lake District.

Cooke advised she proposes a 24 x 22 2-car garage with a height of 18 ft. There will be no living space above the garage. Cooke stated that her lot is only 50 ft wide and the garage would be centered on the lot giving 13 ft on either side of the garage to the side property lines. She would be removing 2 existing structures and replace them with the garage. The existing buildings are 522 sq ft and the proposed garage is 528 sq ft for an additional 6 sq ft but improving the non-conformity by bringing it further away from the side property lines.

Cooke stated that she had spoken with Phil Goulet and he expressed concern with being boxed in. She stated that there is a stockade fence and a hedge of arborvitae on the property line. He had also expressed his concern with runoff from the new building. Cooke stated that her land is lower than Goulet's arborvitae and doesn't believe that runoff would cause a problem.

Rodden, abutter, was present and stated the arborvitae hedge does not go down to the lake and water has runoff onto her property and caused a hole. They had gotten a permit and have rebuilt a rock wall in that area. Cooke advised she is willing to put gutters around the garage to help with runoff.

Riendeau stated that the tax card does not reflect the existing buildings to be removed as 522 sq ft but as 458 sq ft. Goulet stated that he has estimated them to be 512 sq ft.

Cooke stated that the height would be 18 ft or less. She stated she has no basement storage in the cottage.

Goulet, abutter, stated he sees this as a serious encroachment problem on the other side. He stated that his 24 ft wide garage is only 16 ft high and would like to see the maximum height of the proposed garage to be 16 ft. He is also concerned with the positioning of the garage and would like it further away from the cottage needing less driveway area and less impermeable coverage and would also reduce the visual impact.

He would like to see the garage guttered and the runoff piped to the lake and to help with the water from the driveway make sure it is graded properly. Having these issues done could be a positive result from the project. Cooke stated she is willing to push the garage back further from the cottage.

Rodden stated that she is in favor of removing the 2 deteriorating structures and improving Cooke's property. She noted that Cooke's deck overhangs 8 inches onto her property and wants this 8 inches removed as part of the conditions for granting the variance. The deck had been built in 1984 and a C/O was issued in 1986. The Board informed Rodden that the deck is a civil issue and not under the purview of the ZBA.

Rodden stated she is also concerned with the health of the Cyprus like trees on her property and any excavation done for the garage might damage them. She wants in writing from Cooke that if the trees are damaged Cooke would replace them in kind. She is also concerned that no room is placed above the garage so would like the height to be kept lower than the proposed 18 ft. Also to make sure that the 2 deteriorating buildings are removed. Cooke stated she is willing to do what she can however she doesn't know how keeping the excavating 13 ft away from the shrubs would be possible. Riendeau stated that when people plant trees on a boundary line they should consider that the trees would grow out. Rodden stated that is the purpose of the 20 ft setback.

Larkin asked if Cooke had thought of a single door for the 2-car garage, as this could reduce the width of the garage by 2 ft. She stated she didn't think the door would be as strong and didn't want to concede this point.

Cooke stated that she would be putting hard pack on the driveway to reduce the water problem. There would be no living space above the garage but storage only.

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

Discussion

Cay noted the concerns expressed by abutters and it seems like the Goulets are closer in agreement with Cooke on the specifications of the project and the Roddens are expressing concerns about things that we don't have jurisdiction over other than drainage. Cay notes specifically the deck is clearly not in our jurisdiction.

Cay stated that we are not in the redesign business and Cooke is not present to say yea or nay so the Board is faced with accepting the application as presented with the modifications that she had agreed to i.e. moving it back so that it lines up to where the shed is now. She is willing to gutter it and engineer the drainage so that it doesn't negatively impact the neighbors on both sides. She did not agree to the height change.

Larkin suggested a site visit to give Cooke the opportunity to agree to changes.

Davenport stated the narrow lot is a hardship and taking 2 non-conforming buildings down to make one less non-conforming structure is a benefit. The Board discussed a 6/12 pitch that would give a 16 ft height. Riendeau sees this as an expansion of non-conforming structures and Cooke proposes removing 2 smaller structures but they are also shorter than the proposed garage increasing the volume.

Cay asked is under Boccia is a 2-car garage a reasonable use and if it is what is a reasonable height. This is a trade off; it is a benefit to the Town to get rid of the 2 structures. Riendeau asks if for this lot size this project may be too big. Cay stated that the standard garage is 24 x 24 but there were a number of issues expressed by abutters.

Cay stated that Cooke was willing to move it back to where the wood shed starts and willing to gutter it and address drainage so not to negatively impact the neighbors.

Cay moved to approve the application as follows: 1) the building will be 22 x 22 ft. in footprint dimensions with a maximum of 16 ft high. 2) The placement of the building will be moved back away from the lake such that as you are walking from the home back to the existing woodshed the garage placement would start at the woodshed going toward North Shore Rd so it will be no closer to the lake than the current wood shed. 3) The approval is based on the camp and the woodshed being removed and the site being restored to natural land or landscaped area with no further structures. 4) We find that in accordance with the Boccia analysis that an area variance is required given the special conditions of the property and the special condition most notable in this case is the very narrow and long nature of the property. We find that the benefit being sought cannot be achieved by any other reasonably feasible method. We find that it meets the other criteria for a variance. 5) We further stipulate that, as the applicant has suggested she will, the building will be guttered on both eaves. The gutters will be run to a piping in the ground and be carried away in a suitable manner such that the storm water is not negatively impacting neighbors on either side. 6) We also ask that the applicant respect the Roddens' concerns regarding the arborvitae shrubs as they do their excavation in close proximity to the property line.

Criteria for approval:

A. Denial of the variance would result in unnecessary hardship for the property owner seeking it. Boccia analysis for hardship:

- *The special conditions of the property make an area variance necessary in order to allow the development as designed. Yes*

And;

- *The same benefit cannot be achieved by some other reasonable feasible method that would not impose an undue financial burden. 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*

Evans seconded the motion, which carried unanimously. Voting members: Riendeau, Cay, Davenport, Evans & Larkin.

3. Review 8/14/07 & 8/22/07 Meeting Minutes

Cay moved to approve the August 14th and August 22nd minutes. Larkin seconded the motion, which carried unanimously.

4. Adjournment: The Board adjourned at 10:50 p.m.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burton Riendeau
Chairman
Zoning Board of Adjustment

Date: _____