

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

**MINUTES
April 10, 2007**

Present: Chairman Burt Riendeau, Andy Cay, Alternates Tony Souza, Renee Fales, Jim Larkin and Lucius Evans, Select Board representative Bob Brockmann and Code Enforcement Officer Chet Greenwood.

The Zoning Board of Adjustment met at the Chesterfield Town Office on April 10, 2007 at 7:00 PM to review the Roles and Responsibilities of the Zoning Board of Adjustment. Riendeau distributed a paper by Susan Slack, LGC legal counsel for the NH Municipal Association. Riendeau highlighted portions of Slack's paper regarding the function and the responsibilities of the Board. He expressed the importance of attendance at meetings for both regular and alternate members and a commitment to participate, learn the ordinances and learn how the Board works through issues at meetings.

Riendeau stated that alternates typically are given the opportunity to ask questions and speak during the public portion of an application. Once that portion is closed the voting members would deliberate on the application. The alternates who are not voting do not speak but are considered as part of the public.

It was recommended to Riendeau that the alternate members alternate monthly in attending the meetings but Riendeau stated this doesn't allow the chance to learn. Ross suggested that when an alternate is needed to vote on an application and there are more alternates present than are needed that the alternates are given the opportunity to vote when there is more than one application before the Board. It was noted that if the 5 regular members were present, alternates would not participate in voting.

Evans suggested that the alternates should take part in deliberation to contribute to the discussion or the helpful contribution would be lost. Riendeau stated that he has asked legal opinion on this as well as the ZBA trainings and both recommend that alternates not voting would not participate in the deliberation.

Larkin stated it is the regular members responsibility to let Ross know when they can't make it and then she can call in the alternates. Riendeau stated that everyone should come to the meeting if they can make it. He stated that even if the alternate was not needed to vote that evening if they attended they would be familiar with the application and testimony if the application were continued and a regular member was not available. Fales advised that happened on a site visit and she was able to step in and vote because she had been present during the presentation of the application.

Souza stated that in the 80's an alternate not voting on an application went and sat in the audience and did not participate in the deliberation. Cay stated that it is the Chair's prerogative to establish protocol. This makes sense and we should follow the direction of the Chair. It was also noted that if a member has a conflict that they should step out to the audience.

Riendeau stated that this procedure would allow for better control and keep the meetings moving. The intention is not to make alternates lose interest in the Board. Evans stated that helpful input would be lost if alternates couldn't participate in deliberation. Riendeau stated that it is similar to the applicant and they may come up with an idea during deliberation but they can't speak either after the public portion is closed unless allowed by the Chair.

Public Hearings

Riendeau introduced the Board and explained the evening's procedures. The following agenda items were heard.

1. Pierre Saba dba Riverside Plaza – This is a continuation for review of the request for Equitable Waiver of Dimensional Requirement. The property is located at Riverside Dr, W Chesterfield (Map 14C Lot B1) Commercial/Industrial district.

The voting members would be Riendeau, Cay, Perkowski, Souza and Fales.

Mike Bentley was present representing Saba. He reviewed the proposal to mitigate the height issue.

- The doghouses will be removed and replaced with a hatch. The roof hatch will be at an elevation of 275.8'. The highest parapet elevation is 275.89' and the elevator shaft elevation is 278.28'.
- Grading on the front of the building is the same all across the front of the building. The grading was raised 1' 6.5" on either side of the entryway.
- On the rear of the building the finish grade is up to the bottom of the basement windows.
- The rear deck will be 15' deep and will wrap around the south side of the building.
- The site plan has been updated showing the deck elevations and the finish grade elevations. Bentley advised that all plans would be the same to the Zoning Board, Planning Board and the Building Inspector.

Bentley advised that the 16,000-gallon fire protection tank was installed with-in the 50' setback from Route 9. This was noted at the Planning Board meeting. He advised it would not be visible because it is underground. They would have hardship with the costs associated with moving it and where to move it.

Bentley stated that a dry hydrant could be installed for the Fire Dept to use for the west side of Town. If the Board doesn't allow the pipe sticking up he asks that they be allowed to keep the tank where it is.

DeMarinis, Sage Engineering, stated that there is at least 3 ft of cover over the tank. The only visible part is the 36" manhole cover at ground level to access the tank for maintenance. There is a cement slab on top and bottom of the tank. The edge of the tank is over 85 ft from the new Route 9 pavement. The former Route 9 area now has a sidewalk and grassed area.

DeMarinis stated the tank must be up grade for the pumps. There is a fill pipeline that back feeds the tank with an auto shut off. The tank always stays full. Bentley advised they are

also before the Planning Board with the amended site plan that is continued to the April 16th meeting.

Bentley advised that the roof in the front is under the 30 ft height limit from the finished grade and approximately 32 ft with the parapet. The height from the earth under the deck to the parapet in the rear is 37 ft 8 7/8th in. It was noted that there would be all downcast lighting.

Bob DelSesto stated it is his understanding that only the Zoning Board could grant a variance for the water tank. Is that variance included in the request? He also asked about the dumpster pad.

Riendeau asked Bentley if they are requesting that the tank be included in the decision. Bentley stated they would like it included. Bentley stated that the Equitable Waiver was not required to be noticed but he is willing to notice for the tank if the Board required it.

Bentley advised that the septic has been moved allowing for the dumpster pad to be moved making it compliant.

DelSesto stated that the dry hydrant may be beneficial to the Town but if it were used and didn't have time to refill the fire protection would be removed for the hotel residents. Riendeau stated that the ZBA would only be dealing with the tank as a structure.

Souza moved to close the public portion. Fales seconded the motion, which carried unanimously.

Discussion

The Board agreed that there would be no benefit in reposting the application for the tank. The abutters were all in favor of the hotel and the tank wouldn't even be seen, as it is underground. Souza stated that the intent of the setback ordinance was to keep big structures out of that setback area such as Tire Warehouse.

The Board asked for clarification of the roof hatch. DeMarinis advised that it would be a 4 x 4 ft hatch framed within the stairwell opening. They will maintain the stairway to the hatch.

Equitable Waiver

Cay stated that the Board would deal with the Equitable Waiver first. Following up on all that was discussed on March 28th we have been presented with a plan that now shows a good faith effort on the applicant's part to address the height problem. We think they have gone as far as is reasonably possible given the circumstances to mitigate the height variances that they have. In keeping with the terms of the Equitable Waiver we will grant them a waiver in this case for the height. Souza seconded the motion.

Souza asked if the tank should be included in the Equitable Waiver to avoid setting a precedent with a variance. Cay stated that he views the tank similar to a septic system that has specific exclusions from setbacks. The fire protection system is also underground and would not be seen.

The vote was called and the motion passed unanimously. (Voting members: Riendeau, Cay, Larkin, Souza and Fales)

Variance

Cay moved to allow the 16,000-gallon fire system water tank to be placed in the front yard setback from Route 9. The reasons for doing so are: 1) As the applicant has represented, given the taking for the new Route 9 it now places Route 9 quite a bit further away from where this original property line is and the impact to Route 9 is less than it would have been under the old Route 9 layout and 2) The spirit and intent of the ordinance is to prevent encroachments into the front for massing of buildings or other structures in the front. This is an underground structure and doesn't present any of those problems. We would analogize a fire retention tank to be similar to a septic tank or septic leach field, which would be allowed in the setback under Article 207.5A. Therefore we grant this variance and find favorably on all 5 points of a variance.

Criteria for approval:

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

 - 1. The special conditions of the property make an area variance necessary in order to allow the development as designed. Yes**
- And;*
- 2. The same benefit cannot be achieved by some other reasonable feasible method that would not impose an undue financial burden. Yes – This is the most reasonable approach to provide an underground water storage system given the need to have gravity feed to the building to pressurize the sprinkler system and the advantage to having it on the site.*
- 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*

Souza seconded the motion.

Riendeau asked if the State had setback requirements. He noted the septic that was required to be moved on the corner of Route 9 and Pond Brook Rd. Cay advised that septic system was actually in the States ROW and not just in the setback area. Saba's tank is on his property.

The vote was called and the motion carried unanimously. (Voting members: Riendeau, Cay, Larkin, Souza and Fales)

2. Elaine Blake requests a Special Exception under Article 204.3, to permit an attached two family dwelling. The property is located at 323 Pond Brook Rd, W Chesterfield (Map 13C Lot C17) Rural/Agricultural Zone

Steve Pro and Tom Levlocke were present representing Blake. Pro stated that the redesign was necessary because they couldn't meet the egress requirements for the basement

bedrooms. The amended plan is for an addition of a 2 bedroom attached dwelling similar to a duplex. They are well outside the setbacks on the 14-acre lot. The 30 x 44 ft addition will have 4 ft to 6 ft frost walls and radiant heat.

There were no abutters present.

Souza moved to close the public portion. Fales seconded the motion, which carried unanimously.

Cay moved to grant the Special Exception in accordance with Article 601.3.

Criteria:

- A. The special exception is specifically authorized by Article II of this ordinance. Yes*
- B. The proposed use will not be injurious or detrimental to the neighborhood. Yes*
- C. Any special conditions required by Article II, Article III or Article V will be complied with. Yes*
- D. The proposed use will not make an excessive demand on municipal services. Yes*
- E. The proposed use will not generate traffic volumes that will overburden existing roads and streets. Yes*
- F. The proposed use will not have an adverse impact on the natural environment. Yes*

Fales seconded the motion, which carried unanimously. (Voting members: Riendeau, Cay, Larkin, Fales and Evans)

3. Review 3/20/07, 3/25/07 and 3/28/07 Meeting Minutes

Cay moved to approve the 3/20/07, 3/25/07 and 3/28/07 meeting minutes. Fales seconded the motion, which carried unanimously. (Voting members: Riendeau, Cay, Fales, Larkin and Souza)

4. Board Positions

Cay nominated Riendeau as Chairman. Evans seconded the motion, which carried unanimously.

Fales nominated Cay as Vice-Chair. Ross seconded the motion, which carried unanimously.

Riendeau advised that Charlie Reilly has officially asked to change from a regular member to an alternate position due to his work situation. The Board of Selectmen will appoint a full member from the alternates.

5. Information

- Planning & Zoning Spring Conference – April 28th in Manchester.
- May 5th Planning and Zoning Workshop in Hinsdale – 8:30 a.m. to 11:30 a.m.

6. Adjournment: Fales moved to adjourn at 9:00 p.m.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burton Riendeau
Chairman
Zoning Board of Adjustment

Date: _____