

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

**MINUTES
May 8, 2007**

Present: Chairman Burt Riendeau, Andy Cay, John Perkowski, Harriet Davenport, Renee Fales, Alternates Tony Souza, 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 May 8, 2007 at 7:30 PM. Riendeau introduced the Board and explained the evening's procedures. The following agenda items were heard.

1. Rodney Parsons requests a Special Exception under Article 204.3 Section A, Home Industry Article 402.4 to permit a landscaping and snow removal business. The property is located at 105 Lincoln Rd, Spofford (Map 3 Lot B8.1) Rural/Agricultural Zone

Rodney and Kirke Parsons were present. Rod stated the business has been operating for 27 years and has grown over the years when Kirke joined the business. Rod stated he disagrees that this is a home industry because all work is done away from his property. He stated that the ordinance states "providing services at that location". There is a question of the definition of a home business, not to debate but to validate the business being there for 27 years. There is equipment storage and an office there.

The Board reviewed the pictures and the sketch of the property that had been submitted with the application. He advised that they do screen equipment and most of the equipment is vehicles that are all registered. Kirke stated there are 4 – 8 employees, 4 may come and pick up equipment. Employees don't all come to the property but could meet at a job site.

Kirke stated they have a storage facility in Westmoreland for all off-season equipment storage. They have a few mowers, a couple of construction trailers, bob cat, and a sander on a stand was moved from the road to around back per Greenwood's request. Rodney stated this is not out of the ordinary in an R/A zone. There is no signage and the lot is about 4 acres. Riendeau asked about screening. Rodney stated that the neighbors could see the equipment depending upon the amount of foliage on the trees. They have put in some shrubs and try to keep the equipment to the center and rear of the property.

Perkowski asked who owned the business. Rod stated that he and Kirke own the business. The property is Rod's residence. Cay asked about the number of employees currently. Kirke stated that it is the two of them and 4 others. In the winter it could be up to 8 employees.

Equipment is serviced in the garage or at Fairfield's. Two or three employees will park at the property to take equipment. There is minor storage of 1-½ gallon containers, no tanks. Riendeau asked if Rodney wanted the Board to look at this to see if this is a home industry or go to the application process. Rod stated he doesn't want to debate but wanted to validate his business that has been there for 27 years. He asks that the Board rule on the application

even though he questions the wording of the ordinance. There is an office on the property. Kirke stated that he does invoicing at the house and the accountant does a majority of the tax work. There is no point of deliveries or on-site customer traffic.

Riendeau asked what is the inventory of equipment on site currently. Kirke stated there are 2 trailers, skid steer, skid steer bucket, sweeper, forks, 4 lawn mowers and three trucks (1-ton dump, ¾ ton and the pickup, which is his personal company truck.) In the winter the trucks have plows but the plows are in storage now and the lawn mowers and sweepers are stored in Westmoreland during the winter. The mowers are commercial walk behinds and one regular riding mower.

They have a utility trailer and a bobcat trailer. There is a small wood shed and garage used for both personal and business storage.

Tim Peloquin was present representing his brother Rian who is an abutter. A signed statement was presented, signed by several neighbors who are not in favor of the proposal. He advised that the vehicles are not screened and can easily be seen. There is a lot of traffic.

Peloquin presented a form from the Secretary of State showing Kirke only owns the business and he lives in Keene. The LLC information was presented. The ordinance calls for a resident owning the business so it seems that this would invalidate the application.

John Caveney, abutter, stated they have been neighbors for 20 years and Kirke still plows his driveway. He advised his concern is his residence as his only asset and the value of his property. He has observed the growth of the company from mowing laws to what it is today. He is also concerned with what is stored in the shed as his well is north of the operation in line with a natural drainage area. Seasonally water flows in that direction.

Caveney stated he was troubled that the Board did not make a site visit. Riendeau advised that a decision to view the site would not have been done prior to the presentation of the application and that is what is happening this evening.

Caveney stated he was concerned with the sketch presented. There are two driveways, one to access the company vehicles. There is a compost pile on the property and a skid steer loader runs once every 7 to 10 days. He is concerned with how the business has grown. There is activity there any day of the week. Caveney noted the work noise starting at 5 a.m. and there are back up alarms and men calling out. He stated he feels like a victim and wants to make sure that when he goes to sell his property that he can get the best price possible.

Caveney stated that Peloquin also has a dump truck, tag along trailer parked on his property plus other equipment. The potential of 2 businesses in the neighborhood will not benefit his asset.

Riendeau explained the reasoning behind the Home Occupation ordinance and that was passed by Town vote. The Board is trying to apply the law as the ordinance is written today.

Kirke owns AGM Landscaping LLC. Rod said he is a partner in the business. Kirke stated the first official report was done in September 2006 and only one name is allowed. Cay

asked if Rodney was a member of the LLC. Rodney stated a very small member and he has a partnership with Kirke. It was noted that there is nothing filed that shows Rodney as an owner with the State of NH. Rodney's primary residence is Lincoln Rd and Kirke's is in Keene.

Perkowski asked at what point would they be ready to move into a commercial location. Kirke stated that his goal is to eventually get bigger and have a commercial warehouse. He doesn't foresee getting any more trucks at this time. It was noted that they have a compost pile that would be brought back to gardens. There are no large quantities of insecticides, just what a homeowner would have.

Cay asked if all the tax return for the LLC went to Kirke. Rod advised that it did. Cay stated that on that basis you don't meet the ordinance. You don't qualify for the home occupation. If he were an owner in the business he would qualify under the ordinance. Rodney asked what constitutes an owner. Cay stated that Rodney and his wife own the property and one of them have to be an owner of the business. Cay stated that as it sits tonight, Rodney doesn't meet that condition.

Options were discussed; to deny on the basis of ownership or this could be continued to give the applicant opportunity of get the paperwork in place. This would take care of the ownership issue only. There are other issues to consider. Rod was asked how he would like the Board to proceed and he advised he would like the Board to review the application contingent upon the paperwork if that's the only item left. Kirke stated that Rodney just needed to be named a member of LLC and that would take a couple of days.

Riendeau stated that during deliberation the Board might decide whether to rule contingent on paperwork or to continue to next month. Rod stated that Greenwood has seen the property several times and has observed vehicles coming and going and asked that the sander and table be moved to the back and they did what he asked.

It was noted that there are screening issues and a debate on the number of employees. Caveney asked if it were important for him to put his testimony in writing. He stated his concerns are very real to him. Riendeau advised that the testimony would be reflected in the minutes.

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

The Board noted that the ordinance requires that the business be owned and operated by the resident of the property. This is Rodney's property but his son's business. The business is where it is because of the way it has evolved. Perkowski stated that if it is an ownership issue only this could be remedied. He does question when is it time to move. The neighbors are saying the noise wakes them up at 5:00 a.m.

The Board notes that the employee # is a problem and all that equipment comes and goes from that location. Riendeau notes that the spirit and intent of the ordinance is not to change the character of the property with a commercial venture. Cay noted that currently 6 people are employed, 4 off site and it goes as high as 8 employees. Riendeau questions at what

level of employees does it become a commercial use in a residential district instead of incidental to the residence. Perkowski sees the impact of the equipment is greater than the number of employees. Fales notes if it is R/A zone you can expect farm noise. Cay stated that this is not a farm but a commercial venture and you don't expect that intensity on a residential lot.

Riendeau stated that the ordinances came about because the Town had a lot of grandfathered home occupations. This is not an office type but industrial. These ordinances came about to try and fit what was in Town and to regulate it. The pre-existing uses had to come in for a permit to document the use and it alleviates the person down the street from saying he's doing it so I can too. Leniency was given to the older business but they still needed permits. Businesses were not grandfathered beyond what the ordinance allowed.

Perkowski stated it is a reasonable expectation to be a residential property in a residential district. Does one neighbor have the right to reduce someone's property value? Cay stated as background that the courts had ruled on what constitutes a home business; barbershops, offices, etc and not pay loaders and other heavy vehicles in someone's yard. In the absence of an ordinance, the courts would be very strict. He added that the test is it cannot change the character of the neighborhood. Does a lawn business change the character of the neighborhood when it reaches a particular scale?

Riendeau asked if the fact that this is a non-conforming lot of record made a difference, as it doesn't meet the area and frontage requirements. Cay stated that it would come into consideration on the impact to the neighbors. Perkowski stated that if it were an 80-acre lot the neighbors probably wouldn't have complained.

Riendeau asked if the number of employees factor in. They have six and the ordinance allows three. The higher number of employees gives it a more commercial flavor. Perkowski asked if they reduced the number of employees and get the ownership settled, it could work but it would reduce his income. It was noted that this wasn't before the Board. Riendeau stated that this doesn't meet the spirit and intent of the ordinance. The number of employees drives the intensity of use.

Cay moved to deny the application. The business is not owned by Rodney Parsons, the owner of the property. The business is not operated by Rodney Parsons but by his son Kirke Parsons. The intensity of use is too high as there are more than 3 people not residing at the premises that are employed with the business. Upon review of the application for those conditions and it doesn't meet those conditions there isn't a need to go further in our evaluation of the application.

Criteria:

- A. The special exception is specifically authorized by Article II of this ordinance. No*
- B. The proposed use will not be injurious or detrimental to the neighborhood. No*
- C. Any special conditions required by Article II, Article III or Article V will be complied with. No*
- D. The proposed use will not make an excessive demand on municipal services. No*
- E. The proposed use will not generate traffic volumes that will overburden existing roads and streets. No*

F. The proposed use will not have an adverse impact on the natural environment. No

Perkowski seconded the motion.

Discussion: Perkowski asked if the Board should consult with the Town attorney. Cay stated that this ordinance came from the Peterborough model, the hometown of Town council and he has blessed it.

Riendeau asked when does the cease & desist occur. It was noted that Greenwood could work any transition period and there is also the appeal process available. Greenwood stated that 90 days is the standard time frame.

The vote was called and the motion carried unanimously. (Yes: Cay, Perkowski, Davenport, Fales and Riendeau)

2. Cory Shepherd requests a Variance from Article 203.4 Section C, Coverage, to permit a 760 sq ft garage addition to replace 700 sq ft of decks and sheds to be removed. The property is located at 535 North Shore Rd, Spofford (Map 5J Lot E7) Residential district.

Shepherd advised that he would be removing 544 sq ft and adding 768 sq ft. A 120 sq ft shed will also be removed. He stated that he purchased the property last year. The building coverage exceeds the 10% maximum allowed. He stated that his lot is larger than noted on the tax map but he didn't want to make an investment in a survey because he still believes he would need a variance.

He accesses his property off North Shore Rd by a ROW. The frontage is on Pine Crest Dr. Shepherd advised he would be removing 2/3 of the parking area, approximately 1400 sq ft and this area would be grassed.

Shepherd stated that removing the structure would improve his property and the neighborhood. The proposed garage will be a 2 story 32 x 24 ft garage with a family room above. He will be removing porches, deck and entryway on the east side. The rear deck will stay. He advised that the well is on the north side.

Jim Howell, abutter, advised that the ROW used to access Shepherd's property is through his property. He owns to the center of the driveway and Willard owns the other side. Howell stated he was concerned with the garage and an apartment going in over the garage and the noise it could generate. He stated that Shepherd has his business equipment on the site.

Shepherd advised that there is an apartment in the basement that was done in 1980 and he believes it was done illegally. This is rented out and the tenants access the apartment from Pine Crest Dr.

Ross, abutter, asked if there is a plan to put an apartment above the garage. Shepherd stated not at this time. He understands there is a process he would have to follow in order to do that. He stated there are 6 bedrooms in the building, 4 in the house and 2 in the apartment.

Shepherd advised that the roofline would be 2.5 feet lower than the existing roofline but would be in line with it.

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

It was noted that the building coverage would be going from 15% to 16.3%. The impermeable coverage would be reduced from 4,782 to 3,730 sq ft, making this a significant reduction by taking the paving out. The Board discussed his reducing the structure a bit. Cay suggested going look at it to see the massing and the impact to the neighborhood.

Perkowski moved to continue the meeting to the site on Thursday, May 10th at approximately 6:30 p.m. Cay seconded the motion, which carried unanimously.

3. NSR 1981, LLC, Edwin & Sharron Smith Trustees, request a Variance from Article 203.6a, Permitted Uses to allow an accessory structure on a lot without a residence. The property is located off North Shore Rd, Spofford (Map 5C Lot C23) Residential/Spofford Lake District.

Smokey Smith stated this is a small parcel that had been subdivided by the Colony family in 1981. It was designated a beach property for them. Two years ago the Smiths bought the 100 ft x 150 ft lot and would like to put a storage shed on it for lawn equipment. They used a tent last year. A pamphlet showing the picture of the proposed shed was viewed.

Smith advised that they own the lot next door and a lot across the street. There is one residence of lot #1. He stated they want to keep the small lot separate for their children in the future to go with the lot across the street for lake access. They have access to the small lot by a deeded ROW over the Kalich's property.

The approved subdivision signed by the Planning Board on 5/3/82 notes that the small lot is, "to provide beach privileges for both owners. There are restrictions as to its use." It seems that restriction would be that members of the family own it.

The 12 x 16 ft shed would be 50 ft back from the lake and 20 ft from the side boundary lines. There is electric to the lot for the lighted pathway.

Cay asked if they merged this lot with Lot #1 they wouldn't need a variance. Smith stated he wanted to keep it separate and available to the owners of the lot across the street.

Mrs. Smith stated there is a small umbrella picnic table with chairs and no structure above the table. They only want the shed. There would be no plumbing in the shed. They noted that a tent or camper would be within the ordinance. They advised that the grandchildren might sleep in it as in a playhouse.

Kalich, abutter, was present and advised they have no objections to the proposal.

Souza moved to close the public portion. Davenport seconded and the motion carried unanimously.

The Board noted the small size of the lot and that a residence could not be placed on it. The Board notes that this is a use variance and would use the Simplex standard. The history of the lot was reviewed. If this were part of the subdivision in 1982 it would not have met the lot standards. It seems to have been created for beach access. The sale dates for this property were reviewed. Cay thought that the lot was kept as part of Lot 3 across the road or possibly was used as a separate campsite.

Perkowski noted that this would be a one-story structure with no plumbing and possibly would have electric.

Cay stated that if the lot were merged with Lot #1, owned by the Smiths and then given a deeded easement, there would be no problem down the road with perceived vested interest. Why make it more non-conforming than it is? If they merge the lot they could still do what they propose to do. If there is a way to accomplish this without a variance then that is the way it should be done.

Perkowski asked if there is a concern of setting a precedent. Cay advised that if there is another alternative, why not use it. Perkowski stated that a tent could be used and conform to the ordinances. Cay stated that if they merge it they could define the easement the way they liked. Riendeau stated this is different than what has been allowed on these types of lots and he doesn't see the hardship.

Cay moved to deny the application on the basis that it does not meet the condition of hardship. We find that the proposed building could be located elsewhere on lot 2. The subject lot could be merged with lot 2 and other approaches could be taken to accomplish what the applicant is looking to do without necessitating a variance.

Criteria for approval:

- A. Denial of the variance would result in unnecessary hardship for the property owner seeking it. Simplex analysis for hardship:*
 - *The zoning restriction as applied to the property does not interfere with the reasonable use of the property, considering the unique setting of the property in its environment. No*
 - *There is not a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property. No*
 - *The variance would not injure the public or private rights of others. No*
- B. The granting of the variance would not be contrary to the spirit and intent of the ordinance. No*
- C. The variance is in the public interest. No*
- D. Denial of the variance would result in injustice. No*
- E. The variance could possibly diminish the values of surrounding properties. Yes*

Souza seconded the motion, which carried unanimously. (Yes: Cay, Perkowski, Davenport, Souza and Riendeau)

Upon leaving the meeting Smokey showed a picture of a camper that would be allowed, however, in his opinion would not look as nice as the proposed shed.

4. Jason Bafundi requests a Variance from Article 205.5 Section B, Side Setback to permit a 10 x 16 ft garden shed within the side setback. The property is located at 563 North Shore Rd, Spofford (Map 6A Lot C6) Village district.

Bafundi presented pictures of his property. He stated it is a small .25-acre lot. He stated he has 1200 sq ft with the house and garage. The well is beside the garage and the septic is between the house and the proposed location for the shed. This would be a tool shed only with no driveway to the shed. Bafundi stated he doesn't have a basement for storage. The shed would be a standard 10 x 16 ft saltbox on blocks and no piers. This would be along the side property line but it clears the front setback.

Riendeau asked if there were another location that would be conforming. Bafundi stated that only by the front entrance to the house. He may be able to move it 1 ft more off the side property line. When asked if he had thought of expanding the garage he stated that it is not sound and is also within the setbacks.

Jeff Fournier, abutter, advised that aesthetically this is the best location for the shed. This is a tough property due to the topography. Fournier stated that Bafundi has maintained the property well with improvements. He is all for the project.

*Cay moved to continue the meeting to the site on Thursday, May 10th at 6:00 p.m.
Perkowski seconded the motion, which carried unanimously.*

5. Request by abutters, Bialowski et al. to rehear Hodgkins' application for the Special Exception granted on March 20, 2007.

It was noted that this is not a public hearing on the appeal just a public meeting for the Board to review the appeal request and decide if there is enough new information to warrant a rehearing on the application.

The Board reviewed the appeal request. Fales stated that the appeal notes that the Board did not take into account a fence for screening the area. She asked if the Board needed to specifically note what is in the ordinance. Riendeau stated that Greenwood would make sure that they comply with the ordinance.

Deliveries were addressed at the meeting but were not noted in the minutes.

Riendeau stated that most of the time we give opportunity to hear only new information and because this is so controversial it might be good to rehear it. Souza stated he sees no new evidence in the appeal and suggests that this is more ideological due to the fact that it involves guns.

Riendeau stated that the Board could address concerns more precisely in a motion with a rehearing. Cay noted that the issue of parking was not noted in the minutes and asked if the Board failed to ask for the location of parking on the site.

Fales stated that when she was running around the lake she heard gunfire from that direction. Mrs. Hodgkins was present and stated that they were gone from the property on business so it couldn't have been them and would have had to be someone else.

Cay stated that the Board could be inviting a lawsuit and we should get Town council's opinion of the nature of the use. Perkowski stated that the Board had included reviewing this permit next March in the motion. Cay stated that would not stop a lawsuit. He added that there are no vested rights during the appeal period.

The Board reviewed the reasons to rehear an application.

- New information given that was not presented during the initial hearing.
- A rehearing gives the ZBA the opportunity to correct an error.
- The ZBA would have the opportunity to further clarify its position.

Cay read from Laughlin.

It was noted that no old information would be rehashed at a rehearing. If things were missed in the minutes it could be fixed the second time around.

The Board reviewed an e-mail response from Hodgkins to the appeal.

Riendeau moved to rehear the application. Fales seconded the motion, which carried by majority vote. (Yes: Cay, Perkowski, Fales, Riendeau - No: Souza)

Those appealing will be responsible for all fees for the rehearing. Bialowski had told Ross he would be in contact with her.

6. Review 4/10/07 Meeting Minutes

Cay moved to approve the April 10, 2007 meeting minutes. Fales seconded the motion, which carried unanimously. (Voting: Riendeau, Cay, Souza, Fales, Larkin and Evans)

7. Adjournment: The Board adjourned at 11:00 p.m.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burton Riendeau
Chairman
Zoning Board of Adjustment

Date:_____