

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

**MINUTES
July 10, 2007**

Present: Chairman Burt Riendeau, Andy Cay, Renee Fales, Alternates Charles Reilly and Carol Ross.

The Zoning Board of Adjustment met at the Chesterfield Town Office on July 10, 2007 at 7:30 PM. Riendeau introduced the Board and explained the evening's procedures. The following agenda items were heard.

1. David & Judy Hickey request a Variance from Article 204.5 Section D, Route 9 Setback to permit a pool temporarily within the Route 9 setback. The property is located at 820 Route 9, W Chesterfield (Map 12 Lot A2.2) Rural/Agricultural zone.

Hickey advised that he would like the pool to remain for the summer while he is filling in the hole with wood chips further back where he plans to place the pool next year and it would be beyond the 50 ft Route 9 setback.

This is an above ground rubber pool 18 ft in diameter and 4 ft high. He was noticed of the violation by certified mail from the Building Inspector. Hickey stated he did not measure the distance but approximates it to be 25 to 30 ft from the front property line.

Hickey advised he had lost his pool last year in another location because the ground was not stable enough to hold the weight and the pool went over the bank. He stated that the area he is filling is wet. Ross suggested that before he invest more money into the project that he contact DES regarding wetland area requirements.

Dale Truckenmiller, abutter, was present. He advised he just wanted to see the process but was in favor of the application.

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

The Board went to the site. Riendeau opened the meeting. The Board viewed the area and the present location of the pool and the area Hickey is filling with wood chips to provide a spot for the pool outside the setback requirement. The Board viewed the area behind the house where the pool had been located last year.

Cay states that if you have a place on the land to place the pool you need to move it. Hickey stated that Greenwood had not spoken with him personally. He found out about the violation by certified mail. Riendeau advised that the burden to know the ordinances is on the property owner. He could have called the Town Offices to get that information.

Hickey stated that he had lost the pool in the back yard area last year due to the instability of the soil. Truckenmiller stated that Hickey has tried to keep the pool in the backyard. Hickey

advised he would like to keep the pool where it is to the end of August when it would be removed. Hickey stated that the pool had been up 3 weeks before Greenwood had notified him that he was in violation.

Cay asks why should the Town allow this because Hickey proceeded without contacting the Town to see what was required. Truckenmiller stated that a property owner should be able to do what he wants on his own land up to a point. Reilly stated that the Town has asked the Zoning Board to uphold the ordinances and make variances where it is necessary. It is up to the property owner to know the rules.

Cay moved to deny the variance application on the basis that it does not meet the Boccia analysis for hardship and does not meet any of the other criteria under the variance. He suggests, however, that the Board grant a 2-week period of time for the pool to be taken down and moved. After that point it would be in violation.

Fales seconded the motion.

Discussion: Riendeau suggests a 30-day period to come into compliance. Cay stated he did not want to change his motion.

A vote was called on the motion, which failed by majority vote. (2-Yes: Cay, Fales 3-No: Reilly, Ross & Riendeau)

Reilly moved to deny the variance application on the basis that it does not meet the Boccia analysis for hardship and does not meet any of the other criteria under the variance. He suggests the Board grant a 30-day period of time for the pool to be taken down and moved.

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. No*

And;

➤ *The same benefit cannot be achieved by some other reasonable feasible method that would not impose an undue financial burden. 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 will not diminish the values of surrounding properties. No

Ross seconded the motion, which carried by majority vote. (4-Yes: Reilly, Fales, Riendeau, Ross 1-No: Cay)

2. Edward Klein requests a Variance from Article 203.5 Section B to permit the driveway within the Side Setback. The property is located at 46 Meadow View Rd, W Chesterfield (Map 14 Lot A12.7) Residential zone.

Klein advised that he was made aware of the need for the 20 ft side setback for the driveway when Bevis came out last August. His brother-in-law did the driveway in its present location but had forgotten the requirement between August 2006 and April 2007 when it was installed. It is a surepac drive and the neighbors do not have a problem with it.

Klein advised if he had to move it due to the angle of the property line the driveway would have to angle causing a need to take a sharp turn into the garage. It would also not be as aesthetically pleasing.

This is a new house and they had moved in the end of May with a temporary C/O. Klein advised there is a granite planter installed that would have to be moved if they angled the driveway.

Reilly stated that the Kleins knew about the setback requirements last August and the driveway was installed in April. Klein stated they forgot over the length of time. The Board asked if the driveway had been installed when they received the C/O. Klein said it was but there were things that needed to be completed in the house.

Ross asked if they had a temporary C/O. Klein stated they did. Ross advised the Board that a driveway permit is issued then the Road Agent meets with the property owner on the site. This occurred last August. When the driveway is completed the permit is signed again by the Road Agent and by the Code Enforcement Officer. A C/O would not be issued without this completed permit.

Klein advised there is 200+ ft frontage on the lot. They placed the house toward the right side of the lot to keep the left side available for a future addition onto the house to allow a Master bedroom on the first floor.

The driveway comes out at a 90-degree angle to the street but due to the property line angle the drive is setback 20 ft midway up the drive down to approximately 1 ½ ft at the street edge. Cersosimos had re-staked the property line last November due to some confusion on the development property lines.

There were no abutters present.

The Board discussed moving the meeting to the site for a visit.

The Board walked the site. Riendeau stated that he doesn't see the hardship. There are no topographical issues and there is no reason the driveway couldn't be made compliant. They just missed it.

Cay asked what purpose it would serve looking at it in relation to the neighborhood. It was an honest mistake and it actually turned out to be a better access to the road at 90-degree angle. It doesn't make sense to make the change. He does not see that there was an intention to violate the ordinance and there is no hardship to the neighbors. Cay stated that you wouldn't know there is even a violation.

Cay moved to grant the variance as requested and consider the impact of the infraction to be minor. It was an honest mistake by the homeowner for the cause of the displacement of the driveway by an approximate 10 ft. The impact to the neighborhood is very small given the location of the house next door and placement of their driveway and lawn. The Board finds that there is no good reason to force the homeowner to incur the expense to cure it. It is consistent with the spirit and intent of the ordinance. It would be an undue hardship for the property owner and meets all the other criteria for a variance.

Criteria for approval:

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

*Fales seconded the motion, which carried by majority vote. (3-Yes: Cay, Fales & Ross
2-No: Reilly & Riendeau)*

Ross stated she voted yes because of the fact that you wouldn't know there is a violation.

3. Review 6/12/07 Meeting Minutes

Cay moved to approve the June 12, 2007 meeting minutes. Fales seconded the motion, which carried unanimously. (Voting: Riendeau, Cay, Fales, Ross)

4. Other

- **New postage rates** - \$5.21 per certified – The Board discussed the fees and thought it prudent to charge the actual cost to the Town and increase the fee as the postage is increased. The cost was raised \$.04 for rounding purposes and to take into account the cost of the envelope.

Cay moved to charge \$5.25 for the certified. Reilly seconded the motion, which carried unanimously.

Cay stated however, that it doesn't make sense to have 2 Boards with different certified charges. The Planning Board charges \$6.00.

- **Review application fee** – Ross advised that she and Carrier had reviewed the advertising costs. These would fluctuate depending upon how many applications there were per month as well as the amount of words in the notice. Averaging the advertising costs over several months it seems that the costs are covered by the application fee. The Board decided to keep the application fee as it is at this time.

5. Adjournment: The Board adjourned at 9:05 p.m.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burton Riendeau
Chairman
Zoning Board of Adjustment

Date:_____