

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

**MINUTES
January 8, 2008**

Present: Chairman Burt Riendeau, Andy Cay, Renee Fales, John Perkowski, Alternates Charles Reilly and Lucius Evans, and Select Board representative Bob Brockmann.

The Zoning Board of Adjustment met at the Chesterfield Town Office on January 8, 2008 at 7:30 PM. Riendeau introduced the Board and explained the evening's procedures. The voting members for this evening will be Fales, Cay, Perkowski, Reilly and Riendeau. The following agenda items were heard.

1. Alex Kwader, represented by David Bergeron of Brickstone Masons, requests a Variance from Article 204.4 Section B, Lot Frontage, to permit a residential lot with 55 ft of frontage where 400 ft is required. The property is located on Poocham Rd and Pinnacle Springs Ext (Map 4 Lot B1) Rural/Agricultural zone.

Bergeron advised that the Kwader lot is 150 acres and he proposes subdividing 15 acres at the end of Pinnacle Springs Ext to be used as a house lot for his son. They request a variance to permit 55 ft frontage along Pinnacle Springs Ext. Bergeron noted that there are 4 residential lots accessed on this road and the only lot that has conforming frontage is Hall's property. His property is presently accessed from Overlook Rd.

Bergeron reviewed the criteria for a variance. In regard to hardship Bergeron advised that this 150 acre lot has frontage on two roads in Chesterfield. The western side of the lot fronts Poocham Rd and has approximately 241 ft contiguous frontage and another section on Poocham is approximately 50 ft. The second is 55 ft of frontage on the cul-de-sac on Pinnacle Springs Ext where they are requesting the variance. They propose subdividing a 15+ acre lot that would meet all zone dimensional requirements except frontage in an established residential neighborhood.

Bergeron stated there is no other reasonable feasible method available to the owner to subdivide the lot. There is no additional land available to the owner to meet the frontage requirement of the zone. Pinnacle Springs Ext is a 2000 ft long dead end private road. The Town standards limit dead end streets to 1200 ft. They had also thought to extend the road into the Kwader property but the length restriction won't allow it.

This application is not contrary to the spirit and intent of the ordinance. Frontage requirements are for the purpose to provide separation and limit density. The proposed site distance from the driveway is over 300 ft. Due to its location at the end of the road on a cul-de-sac no other driveways will conflict with a driveway in this location. The lot will be larger than the minimum lot size required in R/A. The house will be located more than 450 ft from the closest existing house.

The variance is not contrary to the public interest as the rural character would be maintained because of the lot size and the house would not be visible from the road. The Supreme Court ruled in the past that if gain to the public is slight but damage to the property owner is great; the detriment to the public is negligible compared to the property owner.

The variance would not diminish the property values of the surrounding properties. A report was submitted from Powers, Smith & Assoc, a licensed appraisal firm, and they conclude that in their opinion allowing a single-family home on this site would not adversely affect the property values in the area.

Bergeron presented a worksheet showing the cost comparison for a driveway accessing the proposed lot from Poocham Rd would be \$332,217 compared to accessing the lot from Pinnacle Springs Ext would be \$36,544 with a difference of \$295,674.

Bergeron stated that he thought that the ordinance must have been changed since the 1987 subdivision increasing the lot size and frontage requirements. He advised that in 1987 a subdivision was done creating Pinnacle Springs Ext. A Boundary Line Adjustment was done in 2006 and that is when the 55 ft frontage was created on Pinnacle Springs Ext. Bergeron showed the plat from the former Kwader/Hall property.

It was noted that the Boundary Line adjustment was approved with the condition it be merged with the Kwader property. This subdivision was not Kwader's intention at the time of the BLA. The private road is owned by Brad Chesley. The Board asked to see the Planning Board file for the BLA.

Cay asked if the remaining acres were to be developed, where it would be done. Bergeron showed a topo map and pointed out the various flat areas and shallow sloping areas that could be developed. He noted that there were wet land areas in the parcel.

Perkowski asked if Overlook Rd could be extending. Bergeron advised that extending that dead end road would exceed the length requirements.

The floor was opened to the public. Bob Riley is not an abutter but lives on Pinnacle Springs Rd. He asked if private roads and Town roads both have the same standards for development. He was advised that the same standards apply.

Mike Bentley, representing abutter Brad Chesley, stated that the private road is owned by Chesley. Bentley presented a letter from the Select Board dated 12/18/03 advising that Pinnacle Springs Ext is a private road.

Bentley presented a copy of the registered 1987 subdivision of the area creating the lots now owned by Chesley and Leet. This subdivision was approved with the condition that no further subdivision be permitted. This condition is Note #5 on the plat. Minutes from the October 5, 1987 Planning Board meeting were submitted showing the condition placed on the subdivision.

Bentley stated that the Zoning Board has authority to hear appeals and variances. They have no jurisdiction over this application because of the condition placed by the Planning Board

in 1987. It was noted that Kwader knew of the restriction that had been placed on this lot. Bentley submitted a copy of the registered BLA approved by the Planning Board in October 2006. He also submitted minutes from that meeting. Those minutes noted, "At this time they are seeking to add onto an existing buildable lot; they are not creating a new buildable lot". Bentley stated that the BLA does not remove the restriction of the 1987 subdivision. Hall had no right to add a 5th player on the private road. Bentley stated he did not know why 55 ft was given along the private road. Bentley read the RSA 674:41 I (b) (2) regarding erection of buildings on streets. This RSA notes streets on a subdivision plat approved by the Planning Board. He differentiates between the BLA plat and the Subdivision plat.

Bentley stated there is no question that Hall has the right to access his lot on Pinnacle Springs Ext. He stated that the deed, drawn up by Atty. Bragdon, from Hall to Kwader that a ROW conveyance is deeded but he questions the legality of this conveyance to Kwader and believes there is no legal access for Kwader.

Bentley stated that until the restriction note #5 is gone the ZBA has no jurisdiction to rule on this variance. This Board cannot disregard the Planning Board restriction. Photos were submitted showing the clearing of the area. It was noted that the stipulation in the BLA was that it wouldn't go through unless it was merged to Kwader's property.

Don LaFontaine, abutter, asked about the frontage requirement change and if those other lots were conforming now. It was noted that the lots that had been established were legal non-conforming lots of record.

Brad Chesley, abutter, stated that he owns the private road and the abutting lot. He stated that when he purchased the property it was with the knowledge of the condition placed on Hall's property. Chesley has allowed Hall to access the back of his lot to log his land. Chesley stated that in order for Kwader to gain the 55 ft he would have to cut trees on the cul-de-sac, which is Chesley's land.

Riley stated there is a deeded ROW for Kwader to log. Bentley stated that the deed shows a ROW but that doesn't mean it's a valid ROW.

Ron Algeni stated if the ROW was to Dave Hall's land it seems the ROW is still just for Hall and not Kwader.

Mitchell Leet, abutter, advised he purchased the property knowing of the restriction for further subdivision. Hall had Leet sign a form saying he would not use 4 wheelers on the road. Leet knows that Chesley owns the road. Horses were also restricted.

Bragdon stated that when Hall sold the land he reserved the right of way for himself, his heirs and assigns. Kwader is an assign. Riendeau asked if this is in writing and Bragdon stated it is on the deed to Kwader.

Bergeron presented a letter from Bragdon & Berkson dated 1/7/08 regarding the enforcement of covenant against further subdivision Tax Map 4 Lot B1. He stated that the reason Note #5 restricting further subdivision was due to the Planning Board's concerns with having additional homes onto that road as a long dead end street. At the time the entire

length of Pinnacle Springs was a dead end. In 1989 Friedsam Rd was established and caused Pinnacle Springs Rd no longer to be dead end. Only 2,000 ft of Pinnacle Springs Ext was dead end. He stated that if the Planning Board put the condition on the subdivision, they could remove it. He is confident that the Planning Board would remove that restriction. They thought getting the variance was more important to pursue. The Planning Board could still say no but he doesn't think they would.

Cay stated that any approval from the ZBA would be contingent upon the Planning Board's condition being removed. He advised that it was wrong not to disclose this restriction to the ZBA. Bergeron stated they had just learned of this restriction.

Cay stated the Board should bring this matter to a close until the property owner goes before the Planning Board. Bergeron stated they had gone to the Planning Board for 2 consultations and the PB directed them to the ZBA.

Cay moves to close the public portion. Perkowski seconded the motion, which carried unanimously.

Riendeau advised the public would not be allowed to make further comment as the Board will not continue with this application this evening. He did, however, give Bragdon an opportunity to speak.

Bragdon stated they had gone for a consultation with the Planning Board and they PB sent them to the ZBA. He has looked at the rules regarding variances and he asks that the ZBA continue the meeting for a month to give them a chance to look at the application.

Cay stated the Board needs to deny the application or continue it. Perkowski stated we won't know any more than we know now. The restriction remains and there is only 55 ft available for frontage.

Cay moved to deny the application tonight and we do that on the basis that there was bad faith in the presentation to the Board in terms of lack of disclosure that is very material information. It would have had a bearing procedurally on how this case would have been administered. It is incumbent on the applicant to go back to square one and reevaluate what they need to do to resolve the issues and what they need to do with the Planning Board before they come back to the ZBA if they choose to for a variance.

Perkowski seconded the motion.

Perkowski stated he didn't even think the Board should recommend going to the Planning Board. Cay stated this is a procedural denial.

Vote called: The motion carried unanimously.

2. Review 12/11/07 Meeting Minutes

Cay moved to approve the December 11, 2007 meeting minutes. Fales seconded the motion, which carried. (Yes: Fales, Cay & Riendeau)

3. Other

- Riendeau reviewed Greenwood's letter to Hodgkins regarding the buffer condition for the parking area.
- A copy of the brief for Supreme Court re: Nine A v Town of Chesterfield and Chesterfield Zoning Board of Adjustment.
- The Board asked that Ross ask Greenwood the status of the Norton property that was conditioned upon building their home and the Kowal property on Castle Rd.

4. Adjournment: The Board adjourned at 9:00 p.m.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burton Riendeau
Chairman, Zoning Board of Adjustment

Date:_____