

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

**MINUTES  
March 18, 2008**

**Present:** Chairman Burt Riendeau, Andy Cay, Harriet Davenport, John Perkowski, Renee Fales, Alternates Lucius Evans and Jim Larkin (abutter to application) and Select Board representative Bob Brockmann.

The Zoning Board of Adjustment met at the Chesterfield Town Office on March 18, 2008 at 7:30 pm. Riendeau introduced the Board and explained the evening's procedures. The following agenda items were heard.

**1. A rehearing for 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.

Dave Bergeron was present representing Kwader. He advised that Kwader owns a 150 acre lot with 2 frontages on Poocham Rd and 55 ft of frontage on Pinnacle Springs Ext. They propose subdividing 15 acres on Pinnacle Springs Ext for Kwader's son to build a house. The proposed house location would be 450 ft into the property from the cul-de-sac and about the same to the nearest house. There are two houses that take access on Pinnacle Springs Ext.

Bergeron covered the criteria for the variance. In regard to hardship, a variance is necessary to enable the applicant's proposed use given the special conditions of the property and the benefit sought cannot be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance. It would be cost prohibitive to bring a road to that site from Poocham Rd, approximately 5,000 ft away. They cannot extend the road because it already exceeds the maximum length of 1,200 ft for a dead end road in the Chesterfield ordinances.

The intent of the ordinance is to provide safe access. There would be a strait site down the drive onto the road. This lot meets all ordinances except the frontage. Bergeron also stated that the appraisal report submitted at the last hearing indicates that there would be no loss in property values.

A submittal dated today was presented from Bragdon. Bergeron notes page 3 of the submittal on private restrictions:

1) A 1987 restriction set by the Planning Board against further subdivision, Note 5 on the 1987 subdivision plan. This restriction was illegal. At the time Pinnacle Springs was a long dead end road. In 1989 Friedsam Dr was created giving another access point for Pinnacle Springs Rd. This restriction is no longer valid due to the Friedsam Dr access. Bergeron

stated they will be going to the Planning Board to get the restriction resolved. Bragdon stated that it is more an issue of clearing the restriction in the event of a future title search. Riendeau asked if they believe they can remove the conditions if it is not valid without having the Planning Board remove the restriction. Bergeron advised they feel it is best to resolve it now with the Planning Board.

Riendeau stated that the restriction was placed in 1987. There were 30 days to appeal the decision and no appeal was submitted. Bragdon stated there were 3 issues brought up at the last ZBA hearing; the restriction to further subdivision, a valid ROW for Kwader and no more than 3 lots from the parcel. These are all relevant but not to the ZBA. They intend to apply for the subdivision with the Planning Board and at the same time ask to have the restriction removed. If there is an issue regarding access between private parties, it is not an issue the ZBA would have to decide.

Riendeau asked if there is an issue with Kwader having legal access to the lot. Bentley, Chesley's attorney, advised that the deed of ROW was to Hall and his heirs and assigns. Bergeron stated that the deeded restriction was for no more than 3 house sites. There have been 5 house sites created (Kwader's being one). The restriction is in the deed from Hellus to Hall. The issue is between easement holders.

Hall owned 455 ft of frontage on Pinnacle Springs Ext. When the Lot line adjustment was done between Hall and Kwader, Kwader kept 400 ft for himself and gave 55 ft to Kwader. Hall knew at the time of the BLA that 400 ft were required in the R/A zone and so did Kwader.

Bergeron stated the Pinnacle Springs Ext is a private Rd. 400 ft frontage is required on a Town road. Bergeron noted RSA 674:41. Cay advised that they do not meet this RSA. Bergeron stated that in 1987 Hall's intention was to have a Town Rd. Either Hall changed his mind or the Town didn't want the road. Hall sold the road to Chesley. It is a gravel road. Cay asked if it was Hall's thought that the Planning Board would approve the road as it was built. Bergeron stated that the road surface was for the amount of daily traffic and at that time gravel would have been sufficient.

Bentley reviewed the 2006 Planning Board plat that was presented at the last meeting. He stated that Hall and Kwader came up with the plan; 37.1 acres was given to Kwader with the BLA. He presented the Planning Board minutes and the notice of decision dated October 9, 2006. The Lot line adjustment was approved in 2006.

Bentley stated that these facts are important because this hardship is a smoke screen created by Kwader and Hall. They knew the zoning requirements. This property is in the R/A zone requiring 5 acres and 400 ft of road frontage. Hall kept 400.59 ft frontage and gave the remainder to Kwader. He didn't keep 399 ft or anything else. His keeping 400 ft was not a fluke.

Bentley stated that this is self induced hardship. He notes NH Land Use Planning & Zoning 2006 Cumulative Supplement page 121, § 24.17. "The basic self-created hardship doctrine is summarized by *Rathkopf* as follows: In order to be entitled to a variance, the hardship complained of must arise through circumstances or conditions uniquely affecting the

property. If the conditions affecting the property have been caused or created by the property owner or his predecessor in title, the essential basis of a variance, that the hardship be caused solely through the manner of operation of the ordinance upon the particular property, is lacking. In such a case, a variance should not be granted because the hardship will be regarded as having been self-created thus barring relief.” Bentley stated that this is exactly the case you have here. In 2006 when the BLA was done, why didn’t they ask for the subdivision at that time?

The 1987 map of the BLA was included for the record. In 1992 a revised plat was done showing the leased land (leased to Constance and Robert Hall recorded in deed Bk 1404 Pg 190 dated May 1977. This deed was submitted). The 1992 BLA the previously subdivided lot 4A/A7 was moved, reconfigured and combined with the lease lot belonging to Constance and Robert Hall. (Note 7 on the 1992 BLA plat) Steven and Barbara Hall conveyed to David Hall 2.13 acres in 1992 (Bk 1415 Pg 27), now owned by Hudson.

At the 9/14/87 Planning Board initial meeting for the Hall subdivision David Mann discussed access being needed. Bentley stated that any second means of access for this lot is not related to the access mentioned in the 1987 minutes as it is far removed from the area of discussion. The restriction is as much a restriction today as it was then.

Bentley stated that Kwader bought the 37+ acres for \$105,000. Kwader was knowledgeable of the 400 ft frontage requirement. Bentley asks that the Board deny the request.

Kwader’s legal access over the road is in dispute. If Hall had conveyed all the land there is no question that the ROW would have also been conveyed. Hall cannot, however, turn 1 ROW into 2. Presently Leet, Hall, Hudson and Chesley have the ROW’s allowed. Hall retained his ROW and transferred another ROW.

Kristin McKeon, abutter, advised that the Local Official’s Handbook states that the ZBA does not have to accept expert opinion. She is concerned that granting relief for 55 ft frontage would set a precedent and the Board would be bound to give access to the 250 ft frontage on Poocham Rd. This application would devalue properties. It is contrary to the public interest. He has not met hardship because he knew the laws when he bought the property. He has reasonable use of the property because it was supposed to have been purchased as a logging lot. If he wanted to build he could have found property he could build on.

Mike LeClair, for David Milne (abutter), advised that Milne is serving in the Middle East. He has no representation and will not be back until June.

Jon McKeon, abutter, advised that Bergeron stated that Friedsam Dr was put in to give relief to Pinnacle Springs Rd. It only gives relief to homes on Friedsam Rd. Pinnacle Springs Ext. wasn’t and isn’t up to Town standards as it was proposed to be.

Brad Chesley, abutter, stated that when the first BLA was done the Planning Board considered the land as back acres and not as frontage. It was noted in the minutes of the October 9, 2006 Planning Board meeting that Chesley disputed the application. His

representative suggested that Kwader not have the 55 ft frontage on the cul-de-sac but Kwader would not give that up.

Bragdon advised that the hardship was there with Hall. Bentley noted that Hall had 450 ft frontage and a large lot, all conforming.

Amy Milne stated that 345 ft relief was requested. Kwader only has 13% of the required frontage.

*Perkowski moves to close the public portion. Davenport seconded the motion, which carried unanimously. Voting: Cay, Perkowski, Davenport, Fales & Riendeau*

### Discussion

The Board will make a decision based on the application and the variance criteria. Riendeau stated that there are some issues that are not the Board's decision i.e. the ROW. The ROW would have to be decided apart from this application and not by this Board.

Cay asked why grant a variance for a lot needing 400 ft frontage when there is only 55 ft. Granting relief of 345 ft would be the first time for Chesterfield. The Board has denied for much less. Cay reviewed the criteria under Boccia.

*Cay moved to deny the variance as requested. We do not find hardship as suggested by the applicant. We look to the Boccia analysis and find that yes an area variance would be needed to create this lot but it is not necessary to grant this variance in order for there to be reasonable use of the lot. We also find in fact that the applicant in the prior transaction where this lot was created effectively created his own argument for hardship. In any event we do not find hardship.*

*Granting of the variance would be contrary to the spirit and intent of the ordinance. The spirit and intent of the ordinance is to do precisely this, thereby requiring the 400 ft of frontage. We find that the variance is not in the public interest. The denial does not constitute an injustice and in fact would diminish values in that area by violating the 400 ft requirement.*

### *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. 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*

*Perkowski seconded the motion, which carried unanimously.*

**2. Review 2/12/08 Meeting Minutes**

*Davenport moved to accept the February 12, 2008 meeting minutes. Evans seconded the motion, which carried. Yes: Riendeau, Davenport, Evans.*

**3. Other**

- Non-Public RSA 91-A:3 II (e).

*Cay moved to enter Non-Public RSA 91-A:3 II (e). Fales seconded the motion, which carried unanimously. A roll call vote was taken.*

*Perkowski moved to close the non-public session. Davenport seconded the motion, which carried unanimously.*

- Nomination of Officers

*Perkowski nominates Riendeau to remain as Chairman and Cay to remain as Vice Chair. Davenport seconded the motion, which carried unanimously.*

**4. Adjournment:** The Board adjourned at 9: 30 pm.

Respectfully submitted,

Carol Ross  
Secretary

Approved:

\_\_\_\_\_  
Burton Riendeau  
Chairman, Zoning Board of Adjustment

Date:\_\_\_\_\_