

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

**MINUTES
September 9, 2008**

Present: Chairman Burt Riendeau, Andy Cay, John Perkowski and Alternate Carol Ross.
Absent: Harriet Davenport, Renee Fales, Lucius Evans, Tony Souza, Jim Larkin.

The Zoning Board of Adjustment met at the new Chesterfield Town Office on September 9, 2008 at 7:30 pm. Riendeau introduced the Board and the following agenda items were heard. He advised the applicants that because there was only a 4 member board they could choose to wait to have their requests heard until there is a full board present. If they choose to go ahead this evening and are denied they cannot appeal the decision based upon not having a full board. Both applicants agreed to be heard this evening.

1. Mark Lathrop requests a rehearing of the Variance request from Article 204.4 B, Lot Frontage to permit one lot to be subdivided from Map 2 Lot D17.7 allowing 150 ft road frontage. The property is located at 44 Chamberlain Way, W Chesterfield (Map 2 Lot D17.7) Rural Agricultural district. He had waived the 30 day ZBA response to this meeting. This was denied at the July 8, 2008 meeting.

Lathrop advised he would go ahead with the 4 member board but he would like them to come and see the site and neighborhood. He would like to make it like the rest of the area. Riendeau explained that a rehearing request would be based on the application presented in July and that application requested 150 ft of frontage. Lathrop stated that it wasn't noted in the minutes but at that meeting he had said he could go to 180 ft of frontage.

Cay stated that he could subdivide the land but he couldn't without putting in a road. Lathrop stated he is looking to build a green house being energy efficient. He wants to sell a lot and pay off his mortgage.

Cay stated that the hardship must be met under Boccia as this is an area variance and the criteria are not met. He has other alternatives to accomplish this subdivision.

Perkowski stated that 150 or 180 ft is still less than half of what is required. He stated there may be some unique aspect to the property that we may see if we went for a site visit. Riendeau explained the reason to grant a rehearing would include new information was given that hadn't been presented or to correct the record.

Riendeau stated that it is the obligation of the board to uphold the zoning ordinances in place even though there are other properties that have less frontage. The Board has never granted a variance to create a new lot. He has the acreage and ability to put a road in. That alternative may not be how he wants it to be done.

Cay stated that when Ranger Curran subdivided the lot it was left like it is for a reason. Perkowski stated that if there were hardship in the land i.e. ledge then it may require a

variance. Cay stated that Lathrop bought the property as it is and he has reasonable use of the property.

Ross asked if an undue financial burden would come into play with Boccia. Cay stated that case law notes that financial hardship is not a controlling influence under Boccia. Reading from Loughlin, §24.16: "Although financial hardship may be one consideration in determining whether there is any reasonable use of property, under an ordinance, it certainly is not controlling..." Reading further "...the fact that the uses (in Rowe v. North Hampton) available to the landowner may not have been economically viable was not determinative in dealing with whether hardship exists."

Cay stated that we could go out to look at it to give him more assurance that the Board means what it says. We must look at what does the ordinance say and does this meet the test of hardship. This may give him peace of mind or may just delay the decision.

Perkowski stated it doesn't meet hardship. To make it financially feasible he could put in 3 or 4 lots. Cay asked Lathrop if he wanted the board to look at it. Lathrop advised he did.

Cay moves to rehear the application and as part of the rehearing go to the site at 6:00 pm on October 14th prior to meeting at the Town Offices. Perkowski seconded the motion which carried.

Ross explained to Lathrop this would require his submitting the filing fees as all abutters will need to be notified.

2. Jason & Jamie Thompson request a Variance from Articles 208.5 A & D Setbacks to permit the addition of dormers to the existing house. The property is located at 1968 Route 9, Spofford (Map 8 Lot C1) Office/Retail/Service district

Bill Cormier was present with Jamie Thompson. He is the contractor for the project. They propose putting in 2 dormers on the front of the house. The house is 39 ft from the Route 9 property line. The regulations require 75 ft in O/R/S. The reasons they would like to do it is the house will be reroofed and they want to do the work during that time. The rooms are very small with slanted ceilings and there is poor ventilation. The footprint of the house will not change. The lot is small and they cannot expand in another location.

Rian Peloquin, former owner of the property, advised that when Clarkson had rezoned the area around this lot, the O/R/S was removed from all properties surrounding this lot. The abutting properties became part of the Chesterfield Heights cluster development. There would be no other use for this property as it is such a small lot. There had been 2 Route 9 takings cutting further into the lot.

Cormier advised that when they came in for a building permit, Greenwood required that they go to the ZBA for a variance.

Perkowski moves to approve the application citing ventilation and safety concerns. It is a reasonable use of the property. It is not encroaching further into the setback than the original house and the size of the expansion is minimal.

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;
- B. *The same benefit cannot be achieved by some other reasonable feasible method that would not impose an undue financial burden. Yes*
- C. *The granting of the variance would not be contrary to the spirit and intent of the ordinance. Yes*
- D. *The variance is in the public interest. Yes*
- E. *Denial of the variance would result in injustice. Yes*
- F. *The variance will not diminish the values of surrounding properties. Yes*

Cay seconded the motion which carried unanimously.

3. Review 7/8/08 Meeting Minutes

Cay moved to approve the July meeting minutes. Perkowski seconded the motion, which carried.

4. Adjournment: The Board adjourned at 8:40 pm.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burton Riendeau
Chairman, Zoning Board of Adjustment

Date:_____