

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

**MINUTES  
April 14, 2009**

**Present:** Chairman Burt Riendeau, Andy Cay, Harriet Davenport, Renee Fales, Alternates Jim Larkin and Lucius Evans, Selectman Cliff Emery. **Absent:** John Perkowski and Charles Reilly. David Tower, Town attorney, was present for the Kwader deliberation.

The Zoning Board of Adjustment met at the Chesterfield Town Office on April 14, 2009 at 7:30 pm. Riendeau called the meeting to order at 7:42 pm. He introduced the Board and the following agenda items were heard.

**1. Scott Samson** requests a Variance from Articles 203.4 C, Lot Coverage and 203.6b A&B, Front & Side Setbacks to permit construction of a 2 level, 4-car garage. The property is located at 60 South Shore Rd, Spofford (Map 5A Lot A41) Spofford Lake District.

Ron Bell, Bell's Engineering, was present with Scott Samson. The Board viewed the plot plan and proposed garage. The existing garage sits at the center of the lot with the existing driveway. Now there is limited parking, often having to park in the road. The proposal for the 28 x 22 ft 2 level garage would allow for the existing driveway to go directly into the garage and an additional driveway would be established to access the upper level of the garage. The proposed garage would need to be pushed very close to the property line, 4 ½ ft from the side property line to allow for the elevation needed to access the lower level of the garage. The garage would be 17 ft from the pavement and 50 ft from the lake. He expects the total height of the garage to be 20 ft with a shallow pitch roof to keep down the height.

Samson presented pictures of the site from the perspective of across the street toward the lake and from the Immekus property on the east. He advised that they would have to remove trees and that should enhance the view of the lake from the house across the street. The lot coverage would increase to 39% of the lot.

Riendeau asked that they answer the points to grant a variance. Bell advised that having a 2 level parking would eliminate visual clutter. He stated that the existing houses and garages are tight to the property lines so this proposal is not out of character with the neighborhood. Samson advised that the difficulty with the topography and the sloping driveway makes parking difficult. It was noted that the house is not conforming on the site.

Samson stated that the one car garage is only used for storage and stairs had been constructed to create a second means of egress from the bedroom above the garage. He advised they have a 2 bedroom septic with a shared leachfield across the road.

Maureen Dunham, abutter, had sent a letter in opposition to the proposal. Riendeau read the letter and a copy was given to Bell. She stated that any building would obstruct their view of the lake, diminish the aesthetics and negatively affect their property value.

David Bean, west abutter, advised that 6 or 7 years ago the garage had been converted to office space and the owners at that time had requested a variance to put in dormers to make the bedroom above larger. The dormer variance was denied. He stated the application is contrary to the intent of the ordinance, would diminish property values and there would be no hardship to the owner as he bought the property that way. He expressed his concern that there were no details or specifications on the plan presented. He thinks the height will be 2 ft higher than the proposal. He stated this plan would make the drive too steep to access the garage. He presented a drawing he had done.

Bean stated that this proposal would cause water problems. The east side of the roof would fall between the existing neighboring garage causing a gully, undermining the cottage foundation.

Suzanne Immekus, east abutter, advised that she was required to get a building permit and approval from the ZBA for the extension and lattice work that the previous owner had not had opportunity to finish. She has been there 10 years and is concerned as the direct abutter. She hopes to be protected by the ZBA to protect the laws around the lake and their investments. She believes the proposed garage would hurt their property. She presented a copy of the survey done by David Mann when Dunham had sold the property.

Immekus stated she was concerned with the drainage as the area between the lots is very wet. She was also concerned with the massing next to her tiny cottage. She stated that this proposal is not in character with the neighborhood.

Samson stated they had Mann also survey the property. He advised that as year round residents parking in the winter months is the hardest.

Mrs. Bean asked what the side setback was. Riendeau advised it is 20 ft but this could be varied, as requested today, if the criteria are met.

Bell advised that they plan on a 7'6" ceiling instead of 8 ft to keep the roof line down and get the cars off the street. Samson stated that in answer to Maureen Dunham's letter, his proposal would enhance their view and it would not hamper their parking on the front lawn but would help because their cars won't be in the road.

Bell stated he knows they would need DES permit to address the storm water issue.

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

#### Board discussion

The Board did not feel that they needed to view the site and were familiar with the lot. It was noted that a dormer expansion had been denied by the ZBA previously. The proposal was entirely within the side and front setbacks and would increase coverage. It was testified to that water and drainage issues were a concern and would impact abutting property. Fales stated she didn't think DES would approve it even if the ZBA granted the variance.

Larkin stated he cannot see that any of the 5 criteria have been proved. Fales advised that having a 2<sup>nd</sup> egress from a bedroom to the rear of the garage is not necessary. These stairs could be removed and they could have use of the garage.

Davenport noted safety issues with access onto South Shore Rd. The Board discussed the Boccia analysis. There were no special conditions on the property. Fales noted that the lot is small and had been meant for a camp. The house is already 20% building coverage, 10% over the conforming coverage allowed.

Spirit and Intent were discussed noting density, encroaching so far into the setbacks to the grandfathered neighboring lot. Now there is still a visual down to the lake with the trees. The Board noted they are trying to make lots more conforming, not less.

Public Interest was discussed. A 20 ft side setback is required but the proposal is for 4.5 ft from the side requiring 14.5 ft of relief.

Injustice was discussed. When you buy a property it is important to know what the zoning ordinances are to know what your expansion possibilities are. It was noted that there is still reasonable use of the property.

Diminish values – There had been no professional input however, there was a letter from an abutter noting diminishing values and an abutter present stating this large addition would impact the value of her property as well. It could diminish property values in that area.

Davenport stated that as Fales had already noted, the Shore Land Protection would come into play. There would also be an issue with removing the trees. Evans stated there is just not enough room for it. Davenport noted that the building at 1900 sq ft footprint was probably the largest on the lake built at that time.

*Fales moved to deny the application as there is no hardship found. The applicant has reasonable use of the property. This lot was originally for a camp and not a year round home.*

***Criteria for approval:***

***A. The variance is in the public interest. No, the granting of the variance would increase density and may also create watershed problems for the lake and direct abutters.***

***B. Denial of the variance would result in unnecessary hardship for the property owner seeking it. Boccia analysis for hardship:***

- ***An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. No, there are no special conditions except that the lot is very small and already built beyond the allowable coverage requirements.***

***And;***

- ***The same benefit sought cannot be achieved by some other method reasonably feasible for the applicant to pursue. No, the applicant can reestablish an existing garage that had been used for storage.***

**C. The granting of the variance would not be contrary to the spirit and intent of the ordinance.** *No, as one of the intents of the ordinance is to control density. As abutters have testified this would be an extreme increase in density in an already congested area affecting the aesthetics of the area.*

**D. The variance will not diminish the values of surrounding properties.** *No, the granting of the variance would take away views per abutter testimony and further encroach on neighbors.*

**E. Denial of the variance would result in injustice.** *No, the applicant has reasonable use of the property.*

Davenport seconded the motion, which carried unanimously.

2. The Superior Court has ordered the Zoning Board of Adjustment to reconsider **Alex Kwader's** request for 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.

**Note: There was no public input at this meeting. The Board deliberated on the existing record and the Court decisions.**

Larkin excused himself from the Board as he is an abutter to the Kwader property.

Riendeau advised that March 18, 2008 was the rehearing for this application. The Board will use all testimony from the meetings of January through March 2008 and the court decisions. The Board was given opportunity to review the meeting minutes. Riendeau wanted to make sure that the Board understood the request and the testimony given by Kwader and his representatives.

Cay reviewed the request. Kwader was seeking a variance to allow a building lot with 55 ft of frontage where 400 ft is required. Cay reviewed the 5 points of a variance.

**In respect to the variance being in the public interest,** the public interest in regard to frontage is not being respected. He stated this is a significant deviation from the ordinance. He asked for discussion from the board as to what the public interest is and what the intent of a 400 ft frontage is. He stated that it helps determine density, aesthetics, and neighborhood access. Density is controlled in 2 ways, through acreage and frontage; both of them being important. Character of the neighborhood is important. Fales stated it also helps with setbacks because a driveway has to be 20 ft from each side property line. If you can only have a driveway every 400 ft it certainly changes the situation from an access point of view. Safety was considered.

The zone is R/A so unlike the village district where houses may be concentrated closer together in this zone 400 ft is required so that density is reduced and development is pushed further apart. Otherwise it was noted there could be pie wedged lots all over. Riendeau noted that when the Boundary Line Adjustment was done initially, Hall kept 400 ft of frontage on his lot. This 55 ft of access or ROW was not intended for a building lot. The 55

ft was so that a lot could not be created. The owner, Hall, was previously well aware of the 400 ft requirement which is why he kept the 400 ft for his lot. It was noted that the 55 ft frontage was due to a boundary line adjustment (“BLA”) and was added to an existing lot now totaling 150 acres.

Evans noted that keeping traffic to a minimum to discourage over-development. Cay stated that Pinnacle Springs Ext measures approximately 2,000 ft as was testified to previously. The Town standard maximum length for a dead-end road is 1,200 ft thus the road is in violation of the Town ordinance in its length. The end of Pinnacles Springs Ext as has been testified to, is not built to Town standards, it is owned privately by Brad Chesley so this road is in deviation from the Town ordinance in several respects: the fact that it extends beyond 1,200 ft and the fact that it is not built to Town standards. A lot with access off this cul-de-sac was not part of the original layout and was not contemplated in the subdivision. There is an argument that the applicant has created his own hardship through the process they have been through. When the BLA was done it was represented that they did not intend to subdivide the land further and it was so noted on the subdivision plot plan. It seems there is also deviation from the spirit and intent of the ordinance related to the public interest given the deviations from the road length and road improvement requirements.

**Denial of the variance would result in unnecessary hardship for the property owner seeking it.** This is a two pronged criteria under the Boccia analysis with respect to hardship. The first prong: **An area variance is needed to enable the applicant’s proposed use of the property given the special conditions of the property.** In our previous discussion we agreed there were not special conditions that warrant a hardship claim. However when the ruling was written up it was inadvertently written up as “Yes” to that question, which went counter to the Board’s decision. We want to make sure we clean up that error.

The second prong of the Boccia analysis is that **the same benefit sought cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** In response to this prong the applicant has argued there is a financial hardship coming in from Poocham Rd at an approximate cost of \$300,000 to get across the lot to the back of the lot to the area they wish to develop.

**Prong one:** are there special conditions on the lot that demonstrate hardship; i.e.: steep terrains, wetlands, lot configuration. Riendeau stated that none of those were demonstrated in the previous meetings. He stated that when this was originally heard it was an area variance so the Boccia analysis applies. That is why we used this analysis but no special conditions were found after reading the previous minutes with applicant’s arguments numerous times and he still hasn’t found any special conditions that would require a variance. Fales stated except that this is such a large piece of property and to access that it would have to be a long drive. Cay stated that is address under prong #2.

**Prong two:** It is a large parcel of land and has access off Poocham Rd. Large parcels of land can be developed in this Town but need to respect coverage, frontage and minimum acreage requirements. In this case the applicant could certainly build a road, they could develop a home or multiple homes with access from Poocham Rd, and they could do a large or small development. A road that is relied on for frontage would have to respect the 400 ft frontage requirement. It seems that the applicant’s desire is to get to the back of the parcel;

perhaps that is a more valuable piece of the parcel. If that is the case then the applicant has the ability to do a subdivision and to develop a road to get in there, which may or may not cost \$300,000. If it were to cost \$300,000 the lots could help to pay for that as you work your way into the land.

Fales stated she remembered that the Poocham Rd side the frontage was not conforming, less than 400 but over 200 ft. Cay stated the lot is a legal preexisting lot as it stands there with 150 acres, what they do with that access and land is up to the property owner. Our ordinances and Master Plan for the Town states how development is encouraged and directed. There is direction to a developer suggesting which way one might go, such as cluster housing development. Those possibilities are available here. In our ordinances we do not have a provision for special leniency to get to a back parcel because it's expensive to get there. Certainly if we granted leniency on the basis of a \$300,000 driveway to deviate from a 400 ft frontage it would be opening the door for many other back parcels to get special dispensation for financial hardship.

We find there are reasonable uses of the property that any financial hardship does not raise to the level of warranting concessions on the frontage requirement.

With regard to the spirit and intent of the ordinance: we touched on this with respect to the public interest. Clearly it is the spirit and intent of the ordinance to prevent overcrowding, to prescribe density and how it occurs and to provide for emergency access. It is the spirit and intent of the ordinance to define aesthetics of a neighborhood, density and in this case to minimize traffic. So the spirit and intent goes to when this ordinance was passed by Town vote. What was written in the ordinance was what was approved and that is what we have to go by. That is what we have to respect and stand by.

Riendeau stated we do give relief where it makes sense to and where it doesn't, we don't. The court has upheld some of our decisions previously where we have been allowed to enforce our zoning ordinances as written. That is the nice thing in having ordinances, it gives us a guide line on what to achieve. The zoning ordinance is here to maintain what was voted in and approved by the Town's people and at the same time when an applicant comes forward with a request where it makes sense to give relief, we are able to give that relief. It's not perfectly black and white but we try to make these lots as conforming as possible going forward to the current zoning ordinances. That is why when we look at a requirement of 400 ft with a request of 55 ft, it is really working hard against the Zoning Board with an extreme request. It is extreme and if they were asking for relief because of a ravine or a host of special conditions that would ask to reduce that frontage with a minimal impact on abutters that is when you want to do it.

The public interest portion of this that we talked about earlier, we had abutters who had testified what the impact was going to be to their properties and they do not see it as in the public interest to create a lot with such minimal frontage. As an abutter had stated earlier this evening on the other request the ordinance is there to protect other Town's people from development that shouldn't happen in a particular area and that is in the public interest.

Cay stated that it is the feeling of the Board that this request is severely in conflict with the spirit and intent of the ordinance. That it is far out of step with what the ordinance provides

for; asking for relief of 86% of the frontage requirement which is 345 ft of the required 400 ft.

**The variance will not diminish the values of surrounding properties.** There was an opinion of an appraiser submitted, Powers Appraisal, which asserted that in his opinion that the granting of the variance in the development of this lot with 55 ft of frontage would not diminish the values of the surrounding properties. We have had testimony from abutters that expressed concern about traffic, access, aesthetics, a lack of a road built to Town standards, the fact that the road exceeds the 1,200 ft length maximum already set aside in the ordinance and testimony of the increased use and cost of maintenance of the road.

Riendeau stated that this is hard to define apart from putting the property on the market. The Board does not have to rely on professional input as noted by the court decision. Mr Powers had asserted that it would not diminish property values and they would not impact the abutters. We had testimony from abutters that is contrary to that. In order for this variance to be granted all criteria must be met. If this item is a maybe it doesn't grant the variance because we don't come decidedly that it may or may not diminish values. Davenport stated that there were abutters who had testified that it would diminish values.

Cay stated, to wrap up the diminishing of the surrounding property values, all the things that we are talking about in regard to respecting the ordinance and Master Plan related to property values. If you egregiously go against the Ordinance then you are violating the public's trust of what the rules are and if you change the rules in a neighborhood then you are changing values with all the things that we spoke about, aesthetics, density issues and traffic issues. The expectation by the public of those things protected in the Ordinance and Master Plan directly builds value.

**Denial of the variance would result in injustice.** In this case the applicant must demonstrate that the loss by the individual applicant is not outweighed by the public interest gain if the variance is denied. You have to weigh the private land owner's interest and the public's interest and determine on balance which outweighs which. In this case there was a BLA that established this 55 ft along the end of the road. Two years later the applicant apparently changed his mind and decided he would like to develop it and subdivide it. So the ZBA can consider whether this is a self made hardship or not. But we are not in the business of policing that per se. It is really our job to weigh the property owner's interest and the public's interest.

Riendeau stated that looking at denial would result in injustice, when the applicant bought that property he knew what the limitations were of that property. He does not think that an injustice is happening to the property owner in a case where he knew that the BLA provided a lot access of some sort but specifically not a building lot access and there was no other intent for that access.

Cay read from the NH ZBA Handbook for Local Officials and that states, "for the variance to be contrary to the public interest it must unduly and to a marked degree violate the basic objectives of the zoning ordinance. To determine this, does the variance alter the character of the neighborhood or threaten the general safety and welfare of the public?" So we have spoken to the issue of it altering the nature of the character of the neighborhood. Does the

granting of 55 ft of frontage in a 400 ft requirement significantly deviate from the zoning ordinance? Does it violate the basic zoning objectives? Davenport stated it is an extreme deviation.

Riendeau asked to go back to injustice. Cay noted that a lot of these prongs have overlap because it comes down to this question of spirit and intent and what is the objective of the ordinance and is it causing harm to the property owner or is it respecting the public's interest and at what cost to each. Riendeau stated he does not see that the denial would result in injustice.

Fales noted that in the court decision it was noted by the judge, "It is reasonable that the ZBA considered the burden of a potential increase in traffic along Pinnacle Springs Ext, which is more like a driveway than a road, Also Pinnacle springs Ext is a private road owned by an abutter. It is reasonable that the ZBA considered the potential burden to the abutter that they would have to maintain the privately owned right of way for the petitioner's benefit." The Board agreed that this was still a valid argument.

The Board agreed that the denial of the variance does not result in injustice.

A motion was made with the following findings on each of the 5 points.

A. **The variance is in the public interest.** We find that the variance is not in the public interest but is contrary to the public interest. The frontage requirement is 400 ft and the request is for 55 ft, a deviation of 345 ft or 86% of the requirement. We feel that it is severely in conflict with the frontage requirement; that the objective of the ordinance is to control aesthetics, density, access, traffic and many things in the public interest through different instruments such as frontage. We find that this variance request is very far out of step with the public interest. It does not adhere to the intent of the ordinance. This is the Rural/Agricultural district and differs significantly from other districts in the Town such as the Village district where density would be higher than would be in the R/A area.

B. **Denial of the variance would result in unnecessary hardship for the property owner seeking it.** We turn our attention to the Boccia analysis for hardship:

➤ **An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** We do not find any special conditions that would warrant a variance in this case.

**And;**

➤ **The same benefit sought cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** The argument has been put forth that this prong of the Boccia analysis is met by financial hardship by an approximate \$300,000 driveway to get to the back portion of the lot. We do not agree that that constitutes a financial hardship or significant hardship in this case. We look to the Zoning Ordinance for its direction and the Master Plan as to what can be done with a large lot such as this lot, which is 150 acres in size. We find there are many development possibilities that are consistent with the ordinance and the Town plan that would allow for the development of a road into this site for the development of various building lots. If the owner chooses to gain access to the

back area, it could be reasonably achieved through that kind of development approach. We believe it would be inconsistent with the Town's ordinance to allow for such a significant deviation from the frontage requirement - just on the basis that access to back land area is being sought by the applicant.

- C. The granting of the variance would not be contrary to the spirit and intent of the ordinance.** In this case we find the spirit and intent of the ordinance would not be respected by this variance. This variance would be in conflict with the ordinance for various reasons such as overcrowding, emergency access and the things spoken of previously; aesthetics, density and minimizing traffic. As a Board we seek to make developments more conforming, not less conforming to the ordinance. This variance would constitute a very significant deviation from the ordinance. Other factors related to this are that Pinnacle Springs Extension is more than 1,200 ft in length which is the requirement by Town ordinance for dead-end roads. Pinnacle Springs Ext. is 2,000 ft long. Pinnacle Springs Ext is a private road; it's not built to Town standards; it's privately owned and maintained by its residents. Burdening that road with further development would be inconsistent and contrary to the spirit and intent of the ordinance.
- D. The variance will not diminish the values of surrounding properties.** We have received testimony from an appraiser that this development and the granting of this variance would not diminish surrounding property values. We have had abutters' testimony that is contrary to that. Abutters feel that for reasons of density, aesthetics, access, overcrowding, maintenance burden on the road, all the above things that the increased use of this land area would potentially diminish surrounding property values. We find that this variance would diminish surrounding property values.
- E. Denial of the variance would result in injustice.** Here we find that the public's interest trumps any loss by the individual. The individual has an opportunity to develop the lot and has many different ways that can be pursued. We find that the individual knew what they bought when they bought it. They have gone through various processes with the Town to address the Boundary Line Adjustment that was done with representations that it would not be further subdivided. Two years later now there seems to be a change of heart that doesn't seem consistent with what was represented previously. We find, as we found previously, this variance would be in violation of the basic zoning ordinance; the abutting land owners have come forward to us mentioning that the road was not up to town standards, that there would be additional potential traffic increase on the road which is more likely if a driveway is added. So in making our determination that denial of the variance will not result in an injustice, we look to the testimony that has been given to us by the property owners and our judgment regarding the balance of public gain versus loss by the individual property owner; so we come out on the side of public gain. An injustice will not result due to the denial of this variance request.

In conclusion, we find that all 5 tests of the variance have not been met and we therefore deny the request for the variance.

Fales seconded the motion, which carried unanimously.

**3. Review January 13, 2009 and January 17, 2009 Meeting Minutes**

- **January 13, 2009** – Fales moved to approve the meeting minutes. Davenport seconded the motion, which carried unanimously.
- **January 17, 2009 Site Meeting Minutes** – Evans moved to approve the meeting minutes. Larkin seconded the motion, which carried unanimously.

**4. Election of Officers**

- Riendeau moved to elect Cay as the Vice Chair. Evans seconded the motion, which carried unanimously.
- Cay moved to elect Riendeau as the Chair. Fales seconded the motion, which carried unanimously.

**5. Other**

- Jim Larkin expressed interest in participating on a Zoning Ordinance Review Committee and being the liaison for the ZBA. Ross will get the information to Steve Pro.
- **Attendance Criteria** – Riendeau advised that Brockmann had given him a copy of the attendance criteria used by the Planning Board. The criteria noted that members cannot have 3 consecutive unexcused absences annually. Riendeau stated that he wants to make sure there are 5 committed members he can count on to attend the meetings. He asked that if you cannot make it to contact Ross so we are not waiting to rely on your presence.
- **Greenwood's letter to Pierre Saba regarding Riverside Hotel Site Plan**

**6. Adjournment:** The Board adjourned at 10:20 pm.

Respectfully submitted,

Carol Ross  
Secretary

Approved:

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

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