

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

**MINUTES
July 14, 2009**

Present: Chairman Burt Riendeau, Andy Cay, Renee Fales, John Perkowski, Alternates Charlie Reilly and Jim Larkin, Selectman Cliff Emery and Code Enforcement Officer Chet Greenwood. **Absent:** Harriet Davenport and Lucky Evans.

The Zoning Board of Adjustment met at the Chesterfield Town Office on July 14, 2009 at 7:30 pm. Riendeau called the meeting to order at 7:35 and stated that the voting members would be himself, Cay, Fales, Perkowski and Larkin. The following agenda item was discussed.

1. Peter and Gwendolyn Smith request a Variance from Article 503.1, Expansion, to permit the vertical expansion to the basement area for approximately 250 sq ft. The property is located at 2A Dompier Dr, Spofford (Map 5F Lot B1) in the Spofford Lake District.

Peter Smith submitted a summary of the application. He advised that he had come to the ZBA in December of 2007 requesting an expansion and was denied. He used the comments from the Board members at this meeting regarding staying within the same footprint. Greenwood had advised him that he could rebuild the structure in the original footprint if he did not expand vertically. The building permit was issued. Upon inspection of the site Greenwood noted that bedrock was being removed creating a vertical expansion in the basement area.

Smith presented drawing showing the existing structure and the proposed. He submitted signatures from some abutters noting their support of his application request. He stated there were similar expansions of abutting properties. Smith presented pictures of the previous structure and a depiction of the proposed house.

Smith advised the basement would have an 8 ft ceiling height. He stated that the finished height of the building would be the same as before, 24 ft. It was noted that the lakeside elevation would be 24 ft instead of the 16 ft eave previously due to the rotation of the roof structure 90 degrees.

Perkowski asked about the proposed concrete pad on the plan. Smith said that will not be done. There would be a parking area from the lake side of the house. Smith stated there is a ROW over his property on a portion of Dompier Dr that allows access to the lake and the Goad property. The existing septic tank now ties in to a State approved septic system with leach field. He stated he also has a Protected Shoreland permit for construction.

Don San Souci, abutter, was present and stated he has no problem with this application. It would not be affecting the environment and would not be harming the neighbors.

Steve Dompier, abutter, stated that the blasting should have stopped until after the ZBA approval. He is concerned with where the septic is going as it is close to the road and the Town's ROW. He does not object to the project itself but how they proceeded without permission.

Greenwood advised that when he discovered the situation, most of the drilling was done. He issued a cease & desist order on June 25th. In meeting with the contractor, Rick Young, it was discussed that if only a portion of the ledge were removed the cease & desist order would be removed. Young advised that because the house is so small when he drilled the ledge came out. He stated they were down for 12 hours trying to resolve the situation.

Greenwood was not aware there was a partial basement in the original structure so he had issued the permit. When he saw the ledge he stopped the permit until it was resolved. Greenwood gave a copy of the building permit and the permit application. He stated that Smith has been upfront with him from the beginning.

Perkowski stated that the existing house had 564 sq ft of living space with an enclosed porch with utility storage in the basement area of 224 sq ft unfinished. Cay noted that the 2007 meeting minutes show that testimony was given that the existing cottage was 22 ft high and the proposed is 24 ft high.

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

Discussion

Fales stated she was more concerned with the expansion of the front of the house than the basement area. Larkin stated they are creating a structure that is more appealing by replacing the old cottage.

Cay stated they are going from 564 sq ft of living area to 1,625.5 sq ft of living area in the proposed structure. Perkowski stated he is concerned they didn't stop when they should have. It was noted that the 2007 application requesting an expansion of 1,488 sq ft living space that was denied by the Board.

Cay stated that Greenwood had issued a building permit with the expansion, clearly a different sq ft print than what was out there. The Board denied the expansion in 2007 and agreed it would be better as an undeveloped lot. He stated if this were a fresh application before the Board tonight this would have been denied. Because of the issuance of the building permit the Board should say yes or no to this application. Two wrongs don't make a right. It doesn't justify continuing if an error is identified. Riendeau asked even if a Town official approves a project. Cay stated it does not give carte blanche for the building to continue as designed. He stated that the ZBA needs to rule tonight and have Greenwood talk with Croker tomorrow to get direction of the Town's position.

Perkowski suggested going and looking at the site. Riendeau asked if it would be better to continue this to next month to give Greenwood the opportunity to speak with Crocker. Cay stated that the application is for expansion in the basement and not in the balance of the space. That would be a new application. A continuance doesn't change what is before the Board this evening.

Cay stated that he would choose to put Greenwood on notice regarding expansion of living space and that would give him clear direction from the Board's perspective. Cay stated the most expedient way to handle this is to rule on it tonight and have Greenwood contact Crocker tomorrow.

Cay stated if the building had the original cubic footage you'd have a smaller house. He stated that the total gross area was 1,158 including all spaces and deck expanding to 1,625 sq ft of living area plus the deck.

Cay moves to deny the application as applied for on the basis that this is a very nonconforming structure on a nonconforming lot as was evaluated in 2007 with a prior application. The expansion into the basement is not warranted based on evaluating the application with the Boccia analysis.

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. Relative to point #1, we find that the property had a nonconforming structure and lot that could continue to be used in that manner. In order to develop this new dwelling a variance would be required; however, we do not find that there are special conditions in the property that warrant the variance to allow that. We find that the applicant could use the prior demolished dwelling in its configuration for its prior use and do not find cause to justify the variance sought for this alternative use. We find there is no existing hardship in this application.*

And;

- *The same benefit sought cannot be achieved by some other reasonably feasible method for the applicant to pursue. 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, we do not believe the application is in the public interest.

D. Denial of the variance would result in injustice. No

E. The variance will not diminish the values of surrounding properties. No and as we found in 2007 we find that in fact the surrounding property values could be impacted by this type of development.

In summary we are denying the application that is before us tonight.

Now I will turn my attention to addressing other issues that we find related to this application and with this redevelopment. As we also found in 2007, and the intent of these points in the minutes are to clarify the Zoning Board's position relative to this development, we find that the proposed home constitutes a vertical cubic expansion beyond the existing structure. The ridgeline is being expanded; the cubic volume of space is being expanded. According to tax records the prior living space of the demolished dwelling was 564 sq ft and the building permit plan is 1,624.5 sq ft living space. We feel there is a significant deviation in this application and this project from the Town ordinance. We ask that the Building Inspector review the application to make sure that in moving forward the project is brought into compliance with the law.

Fales seconded the motion.

Riendeau opened the public portion to allow comments from the contractor. Young stated that you have a 28.5 x 28.5 footprint with the same ridge height. The structure is the same. Riendeau read Article 503.1, Expansion of non-conforming structures. Riendeau stated that Greenwood could come up with a differing view.

Emery stated that Greenwood would be leaving for a month in a week or so and this should be resolved while he is in Town.

San Souci asked what the purpose of this is and what the harm in allowing this project is. Riendeau stated that zoning is in place to protect the Town and are voted in by the Town at Town Meeting. The ZBA must look at the projects to see when it would make sense to vary these laws.

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

Fales stated she would like to discuss point 4 with regard to injustice. The applicant had already torn down the building based on approval from Greenwood. Cay asked if that was germane to this application. Fales stated that the applicant is in this perhaps because investigation wasn't done before issuing the permit. Cay stated he doesn't fault Greenwood for this and the burden is on the applicant and ignorance of the law is no excuse.

Perkowski stated there are a couple of errors; including the enclosed porch as living space, sq ft expansion in the basement and the cubic foot expansion upstairs. Larkin stated the application wasn't complete noting the expansion of living space. He stated that Greenwood acted on good faith and he has done a good job and improved the Building department from where it was before.

Larkin asked in denying the application, what does it do to the project. Riendeau stated that it goes back to Greenwood and the determination would be his. Perkowski noted that only the 250 sq ft expansion is before the Board tonight.

Vote: Yes: Cay, Riendeau No: Perkowski, Fales, Larkin. The motion is overturned.

Larkin noted that no abutters object to this expansion. He sees an injustice but agrees they should have come to the Board earlier in their project. His personal feeling is that this should be approved.

Cay stated that in 2007 when the application came in the Board agreed that it was an egregious violation of the ordinance and asked what is different now. Fales stated that this application has 2 stories and the 2007 application had 3. Larkin stated there would be less visual impact from the road, money has been spent and a permit issued.

Cay asked what precedent does this set in approving this application. Larkin stated they would be using space that is already there. Riendeau stated there was no existing space. Larkin agreed his is looking at this structure as it is existing and not it prior configuration.

Perkowski stated that with the change of living space and the cubic expansion he would like to continue it for a site visit.

Fales moved to continue the meeting to a site visit. Perkowski seconded the motion.

Discussion:

Riendeau asked what the Board thinks you will get at the site visit. Fales stated a better sense of the lay of the land. Larkin stated that regardless of how we got here there are positives to the project.

Vote: Motion passed by majority vote.

In setting a date of the site visit members were not available for 2 weeks. It was suggested that the applicant be asked if he would permit withdrawing the site visit if it is 2 weeks out. Smith went to ask Young. Young returned and stated he does not want to wait 2 weeks for a decision.

Fales moved to retract her motion for a site visit. Larkin seconded the motion, which carried.

Fales moved to approve the basement expansion as usable space due to the lay of the land. Using the Boccia analysis she sees the hardship in the lay of the land.

- 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, the special conditions being the ledge and grade of the lot.*
- And;**
- *The same benefit sought cannot be achieved by some other reasonably feasible method for the applicant to pursue. Yes, the foundation is there and space available.*
- B. The granting of the variance would not be contrary to the spirit and intent of the ordinance. Yes, as the spirit and intent would be to prevent massing and the foundation is done anyway where it was originally on piers.**
- C. The variance is in the public interest. Yes**
- D. Denial of the variance would result in injustice. Yes, because he has already done the foundation and basement area.**
- E. The variance will not diminish the values of surrounding properties. Yes, replacing old cottage with newer house.**

Larkin seconded the motion.

Cay noted that you don't have to blast ledge to get a foundation in. You can pin the foundation to the ledge. Riendeau stated that the motion didn't address the concerns about the Building Inspector.

Fales moved to amend her motion to include the concerns of the vertical expansion with the roofline change from 22 ft to 24 ft for the Building Inspector to address.

Vote – Yes: Fales, Larkin, No: Perkowski, Riendeau and Cay. Motion is overturned.

Perkowski stated that through the discussion more information was discussed and he moves to reinstate Cay's motion that had been overturned. Fales seconded the motion.

Cay's motion as given earlier:

Cay moves to deny the application as applied for on the basis that this is a very nonconforming structure on a nonconforming lot as was evaluated in 2007 with a prior application. The expansion into the basement is not warranted based on evaluating the application with the Boccia analysis.

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.*** *Relative to point #1, we find that the property had a nonconforming structure and lot that could continue to be used in that manner. In order to develop this new dwelling a variance would be required; however, we do not find that there are special conditions in the property that warrant the variance to allow that. We find that the applicant could use the prior demolished dwelling in its configuration for its prior use and do not find cause to justify the variance sought for this alternative use. We find there is no existing hardship in this application.*

And;

- ***The same benefit sought cannot be achieved by some other reasonably feasible method for the applicant to pursue.*** *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, we do not believe the application is in the public interest.*
- D. Denial of the variance would result in injustice.*** *No*
- E. The variance will not diminish the values of surrounding properties.*** *No and as we found in 2007 we find that in fact the surrounding property values could be impacted by this type of development.*

In summary we are denying the application that is before us tonight.

Now I will turn my attention to addressing other issues that we find related to this application and with this redevelopment. As we also found in 2007, and the intent of these points in the minutes are to clarify the Zoning Board's position relative to this development, we find that the proposed home constitutes a vertical cubic expansion beyond the existing structure. The ridgeline is being expanded; the cubic volume of space is being expanded. According to tax records the prior living space of the demolished dwelling was 564 sq ft and the building permit plan is 1,624.5 sq ft living space. We feel there is a significant deviation in this application and this project from the Town ordinance. We ask that the Building Inspector review the application to make sure that in moving forward the project is brought into compliance with the law.

Discussion

Fales stated that she is looking at Cay's motion as the structure was there. Cay stated that his motion makes no presumption on what is there. His motion shuts the door on the 250 sq ft of living space in the basement area.

Vote – Yes: Fales, Perkowski, Cay, Riendeau No: Larkin. Motion carries.

2. Review June 9, 2009 Meeting Minutes

Cay Moved to approve the June 9, 2009 meeting minutes. Perkowski seconded the motion, which carried.

3. Other

Perkowski asked about the Coburn and Samson violations regarding building without a permit. Ross will ask Greenwood what is the standing of these issues.

4. Adjournment: The Board adjourned at 10:20 pm.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date: _____