

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

**MINUTES
April 6, 2010**

Present: Chairman Burt Riendeau, Andy Cay, Harriet Davenport, Renee Fales, John Perkowski, Alternate Jim Larkin, Selectboard representative Cliff Emery and Code Enforcement Officer Chet Greenwood and his deputy Steve Dumont. Lucky Evans was absent.

The Zoning Board of Adjustment met at the Chesterfield Town Office on March 6, 2010. They participated in a joint meeting with the Planning Board regarding the PDD proposal at 7:30 pm. Moving to the OEM meeting room Riendeau called the ZBA meeting to order at 8:45 pm and explained the ZBA process. The following agenda items were discussed.

1. Paul Saba requests a Variance from Articles 203.5A, Front Setback and 502.1, Expansion of non-conforming use, to permit the existing gas pumps be moved to a more conforming location, expanded and add a canopy. The property is located at 1474 Route 9, Spofford (Map 11A Lot B1) Residential zone. Continued from 3/2/10.

The voting members on this application will be Riendeau, Cay, Davenport, Fales and Larkin.

Michael Bentley was present representing Saba. He stated that in an unrelated matter he is representing Jim Larkin and wanted to make the Board aware of this possible conflict. Riendeau asked Larkin if he could be impartial in this application review. Larkin stated that he could and Riendeau kept him as a voting member on this application.

Bentley advised that the proposed canopy is 12 ft from the Route 9 ROW. They couldn't go back further than the existing paving as not to increase the impermeable surface. The pre-development impervious area is 24,347 sq ft. They will be losing the 569 sq ft for the existing pumps, the 286 sq ft diesel pad, the 583 sq ft concrete pad and the light pole by the existing diesel pump.

The proposed pump area has 8 pump stations, 2 of which are diesel fuel. The canopy is 1,728 sq ft. The concrete pads and canopy in the parking area will be 2,112 sq ft and the asphalt is 12,169 sq ft. There will be no increase in the impervious coverage with the post-development plan. It will remain 24,347 sq ft.

Bentley advised that Riendeau had called him regarding DOT concerns to question if their approval would be necessary for this change. Bentley advised that the entry to access would stay the same; however, DOT would like a driveway permit submitted to them for their files.

Bentley stated that with the current set up there are safety issues and the proposed set up will be a safer situation and a more up to date system with the new technology.

Vincent Brophy, abutter, stated he was concerned with the diesel tank underneath and contamination to his well and endangering the wildlife in that area. Scott Oeschger, oil company representative, advised that the new technology of a double wall tank, electronic monitoring system and the wells to catch spill in the canopy area would increase the safety factor to the environment. There is also an auto shut off to stop filling. Saba stated that the tanks that are there are 25 years old.

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

Riendeau stated that after the last meeting he called the Town Attorney to ask questions regarding the use of the property. The attorney directed him to see what DOT considered about this change. Kevin from DOT advised him that the State was on site when a canopy over the existing pumps was proposed putting it into the Route 9 ROW; so this plan came about. Riendeau stated he was informed that the State would be concerned about safety with the increase in accessing this site.

Riendeau stated that Sherman's got special consideration during the Route 9 taking and he hadn't heard from Bentley that the Davis' got this same consideration. Riendeau stated that the traffic flow would increase in and out of the site and according to what he heard from DOT the existing parking spaces in the ROW would be lost. Where would those parking spaces go to accommodate patrons?

Bentley asked to clarify. He advised that the islands were constructed by the State in 1980 or '81. He had a discussion with DOT today and got a very different impression. He was advised that under no circumstances would a scoping meeting be called. They just wanted their file documented changing the old pumps to new pumps. Since the islands were put in DOT would not revisit it now.

Bentley stated the State limited access to every lot on Route 9. This parcel has 3 curb cuts and there won't be 4 and unless another taking is done they won't go to 2.

Riendeau stated this will clearly change the look of the property, would have higher intensity of use and increase safety concerns. Cay stated that the safety issues would be looked at in the site plan review. Davenport stated she sees it making it more safe taking the pumps away from the entrance to the store.

Fales stated the environment would be protected too with the canopy over the pumps to shed water from the contained area and the old tanks being replaced.

Riendeau stated he is struggling with this and is concerned with precedence being set. We still have Khybers and another lot along Route 9.

Larkin stated that if this is turned down we would be left with what we have. He has almost gotten hit twice leaving the store and is concerned with the safety of children or the elderly. He stated the pumps in the front of the store need to go and this addresses the safety concerns. Fales stated this would remain a non-conforming use if we grant this application or not.

Cay moves to approve the application as the site plan has been amended. We find that the test of hardship is satisfied given the existing site development, the wet area on the lot, the sloping topography in the back and the limitation of the new development. There is hardship in the land. We find that the proposed canopy solution is the best fit given the set of safety issues and area restriction issues. We also find that granting of the variance is not contrary to the spirit and intent of the ordinance; is in the public interest; denial of the variance would result in an injustice and the variance would not diminish the value of the surrounding properties.

Criteria for approval:

A. Denial of the variance would result in unnecessary hardship for the property owner seeking it.

Literal enforcement of the ordinance would result in unnecessary hardship.

(I) Because of the special conditions of the property that distinguish it from other properties in the area:

(a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. Yes

And

(b) The proposed use is a reasonable one. Yes

B. The granting of the variance would not be contrary to the spirit and intent of the ordinance. Yes

C. The variance is in the public interest. Yes

D. Denial of the variance would result in injustice. Yes

E. The variance will not diminish the values of surrounding properties. Yes

Fales seconded the motion, which carried by majority vote. (Yes: Davenport, Cay, Fales, Larkin No: Riendeau)

2. Thomas Chase requests a Variance from Article 503.1 Expansion of non-conforming structure to permit removing the existing porch and replace with foundation and living space. The property is located at 345 Stage Rd, Chesterfield (Map 12 Lot A24) Rural Agricultural zone.

The voting members for this application will be Riendeau, Cay, Davenport, Fales and Perkowski.

Chase advised they want to remove the porch and put in a full foundation to replace the deteriorating stone foundation. Using the same footprint they want to extend their living room into the existing porch area. They will not replace the porch. They are expanding the basement area and the roof line would change.

Chase stated they are 51 ft 2 in from the front property line. The porch and house at the closest point is 11 ft from the side property line. There would be a door entry similar to what is there now accessing the porch. There will be a stairway in the proposed living area to access the basement. The basement will not be finished living space.

Rosemary Chase stated they were concerned with the stone foundation collapsing and thought this would be a reasonable fix.

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

Perkowski stated this seems pretty straight forward to him; replacing the rock foundation for the stability of the house. There is no expansion but the roof line and basement which will not be used for living space. There were no abutters who spoke to this application.

Perkowski moves to accept the application as presented. We find that the 1,041 sq ft is a modest size house and this is a reasonable addition to the full time living space and repair the crumbling foundation.

Criteria for approval:

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Literal enforcement of the ordinance would result in unnecessary hardship.

(I) Because of the special conditions of the property that distinguish it from other properties in the area:

(a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. Yes

And

(b) The proposed use is a reasonable one. Yes

B. The granting of the variance would not be contrary to the spirit and intent of the ordinance. Yes

C. The variance is in the public interest. Yes

D. Denial of the variance would result in injustice. Yes

E. The variance will not diminish the values of surrounding properties. Yes

Davenport seconded the motion.

Discussion: Riendeau asked wasn't there another basement expansion the Board had denied. The lot was on the lake. The Board noted the applicant had doubled their living space, expanded cubic space upstairs and it had a postage stamp of useable area. It was an egregious increase. This request is to replace the foundation and increase living space in the existing footprint. It is not going to have finished space in the basement and it seems a minimal approach to address those desires. This is a reasonable modest request and there is no other way for him to address these issues.

Vote is called. The motion passed by unanimous vote.

3. Elwin & Betty Higley request a rehearing for a Variance from Articles 401.2 B, Sign area, to permit a 2 sided 4 x 4 ft sign with total of 32 sq ft of surface area for a Home Occupation. The property is located at 19 Higley Rd, Chesterfield (Map 4B Lot A28) Residential zone. This was denied March 2, 2010.

Larkin will be voting in place of Perkowski as he was at the last meeting when this application was denied.

The Board reviewed Higley's request for a rehearing. Photos were presented of the site looking down Route 9 showing the gift shop on one side of the Higley property and Khybers on the other. Their post where a previous sign was located was noted in the pictures.

Riendeau asked if there was enough information or new information presented to grant a rehearing. Cay stated that at the previous meeting it was noted they were using the internet to do their advertising and this is not the case. Davenport stated that the statement is much clearer that people must pick up the product, it is not sent.

Perkowski asked about the signage post that is there now was granted or was it prior to zoning. It was noted that the post was prior to zoning.

Fales moves to grant a rehearing of the application. Davenport seconded the motion, which carried.

Ross advised the Higleys that the payment for rehearing and noticing would be required by April 22nd for the May 11th ZBA meeting.

4. Ralph & Christina Carbonaro requests a Variance from Article 204.5 Sections A&D to permit a garage within the Route 9 front setback. The property is located at 2090 Route 9, Spofford (Map 8 Lot C4.1) Rural Agricultural zone

Perkowski will be voting on this application.

Carbonaro advised he owns two lots on the south side of Route. The driveway crosses the easterly lot to access the house lot. The grayed area on the site plan shows the area taken by the State for a slope easement. He advised this was the most convenient location because the well is in front of his house and the septic is in the rear. There are also wet areas in the lawn.

The proposed garage would be on an Alaskan slab. There is a steep grade up to the house. Carbonaro presented pictures and noted that the structure would not be clearly visible from Route 9. He also submitted elevations and a depiction of the proposed garage.

He proposes building a 24 x 36 one story garage. He would like to store his camper. There is 10 ft between the proposed garage and the existing attached garage. He has no intention on attaching the structures.

There were no abutters present.

Perkowski noted that before the State took the land he would have had enough for the setback area.

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

Fales stated she would like to see the site. Cay agrees stating it is never clearer then when you look at it.

Fales moves to continue the meeting to the site on Saturday, April 17th at 9:00 am. Larkin seconded the motion, which carried unanimously.

5. Review March 2, 2010 Meeting Minutes and March 6, 2010 Site Meeting Minutes.

- *Cay moves to approve the March 2, 2010 meeting minutes. Larkin seconded the motion, which carried.*
- *Cay moves to approve the March 6, 2010 site meeting minutes. Fales seconded the motion, which carried.*

6. Other

- Planning & Zoning Conference May 8, 2010 in Nashua
- The Board reviewed the proposed amendment for the variance portion of the ZBA application to include the current standard for hardship and a page from LGC that explains each criterion. The LGC explanation page is used by permission of LGC.
- Ross passed out the individually addressed envelopes to the Board from Phil Goulet. She advised that the Selectboard have received this also.

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

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date:_____