

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

**MINUTES
November 13, 2012**

Present: Chairman Burt Riendeau, Harriet Davenport, Renee Fales, John Perkowski and Alternates Lucky Evans and Kristin McKeon

The Zoning Board of Adjustment met at the Chesterfield Town Office on November 13, 2012. Riendeau explained the process of the meeting. Evans will be the voting alternate.

1. Denny & Betsy Immergut's request that the Zoning Board consider removing the conditions placed on the main house at the September 11, 2012 meeting. The property is located at 384 Streeter Hill Rd, West Chesterfield (Map 2B Lot A4) Rural/Agricultural zone

Betsy Immergut advised that after the meeting when the apartment was approved with the conditions they thought about it and if they wanted to make any changes to the main part of the house the decision of the Zoning Board would require that the house would revert back to a single family house. They didn't have an issue with the restriction placed on the apartment not to expand but it is very limiting with the restriction on the main house. They went to the bank to consider refinancing and were told there are 3 designations used by the bank; single family, 2-family and single family house with an attached in-law apartment.

The Immerguts went to the Planning Board about having the in-law apartment designated in the ordinances. The Planning Board advised them they would consider this ordinance change.

They would like the conditions be lifted for the main house. Fales asked if with the restrictions on the apartment hurt them when they went to the bank to refinance. Immergut stated they don't plan to refinance.

Fales stated that the acreage requirement was just short of 5 acre requirement for Rural/Agricultural zone. Currently the living space is 1,638 sq ft; the land slopes down to accommodate a walkout basement for the apartment. Immergut stated they don't want to invest in the apartment with the restrictions on the main house with a chance they could lose their investment if it were to revert back to a single family house; as noted in the conditions.

Immergut advised that the purpose of the apartment would be to have a space for a caretaker for the property. There would be only 1 or 2 people in the apartment.

Joe Brodbine, abutter, stated that if the conditions remained on the apartment he was alright if the restrictions were removed from the main portion of the house.

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

Fales stated that there were a lot of abutters at the original hearing. She wasn't for the restrictions but went along with them because it appeased the abutters. Perkowski stated that both parties appeared to be happy with the restrictions until the clear light of day. Riendeau stated if you relieve the expansion condition they would not have to revert back to a single family dwelling.

The Board reviewed the Special Exception requirements. It was noted that R/A requires 5 acres per lot; the Immergut's lot is 4.92 acres, just shy of that. The frontage requirement is 400 ft of frontage

and the lot has approximately 303 ft of frontage; approximately 97 ft short of the required frontage. It was noted that the ZBA did not address this at the original meeting.

Perkowski stated that what the Board granted in September 2012 is what they have. Riendeau asked how much weight the Board has to relieve the conditions knowing the frontage doesn't meet the requirement. Fales noted that the conditions were placed to keep the rural character of the neighborhood. Riendeau suggested that if the owners want to expand require that they come back to the ZBA. This would allow the Board to make sure it is a reasonable request.

Davenport moved to reopen the public portion. Perkowski seconded the motion, which carried unanimously. It was noted that the abutters were still present.

Betsy Immergut asked is any of the Board wants to change your home do you have to go to the ZBA? The answer was no, only if you didn't comply with the ordinances. The Immerguts do not comply with the ordinances for Special Exception because they do not have the required 400 ft frontage. Denny Immergut stated if it were required that we revert back to a single family home if changes are made they would lose the investment they made in the apartment. Riendeau state no, if the Board changed that condition in the motion.

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

Board discussion: It was noted that a variance was granted in 2006. The Board reviewed the variance and meeting minutes. The Immerguts were approved to connect the garage to the house. It hasn't been done yet but is a legal decision; variances go with the property. The variance was granted prior to the variance limitation of 2 years requiring that substantial completion be made.

Evans moved to lift the restriction placed on the property that states that any expansion in footprint or cubic space of the building, the dwelling will revert back to a single family dwelling. The restriction that the apartment cannot be expanded beyond 750 sq ft maximum stays in effect. If the owners want to expand the main portion of the house they must go before the Zoning Board of Adjustment at that time; excepting the variance that was granted in 2006 to permit the connection of the house with the garage would still be allowed.

Davenport seconded the motion, which carried unanimously.

2. Richard & Jeanny Aldrich request a rehearing of their appeal of the Administrative Decision of the Code Enforcement Officer's decision requiring a driveway permit under Building Code Article 16:03: Driveway Permits. The property is located at 89 Winchester Rd, Chesterfield (Map 16 Lot C19) Rural/Agricultural zone. The Code Enforcement Officer's decision was upheld by the ZBA at the October 9th meeting.

Riendeau asked if there is any new information from last month. Aldrich stated he gave 12 pages of information last month and he doesn't think anyone read it. Aldrich stated that Agricultural uses are exempt from Town ordinances. He noted Land Development Regulations Article 201.3C A. Exempt site developments #4 Farming and agricultural uses in the Rural Agricultural Zone shall be exempt from site development requirements for b. Driveways, parking, and outside storage areas accessory to existing or new structures. It was noted that the Article continues, "Nothing contained in the above paragraphs shall be construed to exempt farming and agricultural uses from the

building ordinance and the applicable are, coverage, setback, and yard requirements of the Zoning Ordinance...”. Aldrich stated that the article specifically provides exemption and virtually in the same breath removes the exemption just doesn’t make any sense. Ross stated the exemption is from site development with the Planning Board and not an exemption for any agricultural use. Aldrich disagreed with that statement.

Riendeau asked if there is enough information for the Board to rehear this application. McKeon stated that Article 207.4 Driveways A. Front Yard: Driveways may cross the front yard spaces established by the front setback requirements. She advised article states the driveway may cross not necessarily shall cross the front yard spaces; leaving it open to interpretation. Riendeau stated that the ordinances were created by lay people and not lawyers. He asked what the intent of the ordinance was.

Riendeau asked again if there is any new information to warrant a rehearing. Dutch Walsh asked if the connector has always been there; Aldrich said it was. Walsh stated then it is grandfathered. Walsh stated he thinks there is new information and the Board should rehear it. Riendeau stated that Walsh was not present at last month’s meeting. The Board has spent a lot of time going over this application. Walsh stated the Board did not read his application; and it seems the members are confused about the issue. Davenport stated she takes exception to the accusation that the Board didn’t read the application. She read all the material. The Board was given this application to review ahead of time because it was lengthy and just because you didn’t see them read it doesn’t mean they didn’t.

Ross stated that Aldrich could be eligible for the driveway with a permit and making sure the driveway does not travel along the front setback. There is room to do this.

Riendeau stated we were here to determine if the Code Enforcement Officer was in error in requiring a driveway permit. This may be confusing to the public. Fales stated she would like to get the LGC attorney’s opinion.

Perkowski moves to close the public portion. Evans seconded the motion, which carried unanimously.

Fales moved to grant the rehearing of the Appeal of Administrative Decision of the Code Enforcement Officer’s decision requiring a driveway permit under Article 16:03: Driveway Permits. Davenport seconded the motion; which carried unanimously.

3. State of NH – Liquor Store represented by Barlo Signs request Variances from Articles 401.1 Sign Setbacks & 401.2 C & D Sign Area to permit a two sided internally illuminated sign (total 240 sq ft) at zero setback. The property is located at 100B Route 9, W Chesterfield (Map 14C Lot C22) Commercial zone

Tim Sullivan, Barlo Signs, was present representing the State. He advised that the internally lit sign would be 120 sq ft on each side and 15 ft to the top of the sign to allow safe access into the site. They request “0” setback where a 10 ft setback is required. The sign would be lit during the hours of operation.

Sullivan presented pictures of the road to the site from the east and from the west. He stated that coming from the west it would aid in visibility. McKeon noted they are asking for 4 times the

signage allowed in the zoning ordinances. She also noted with a sign like that you would not be able to see Pete's sign.

Denny Immergut stated that one of the nice things about Route 9 in Chesterfield is not having the signs like a large city would have. He is opposed to the proposal as a resident of Chesterfield. Bob Del Sesto stated he was speaking for himself and not as a member of the Planning Board. He stated that he can't see this being allowed without changing the ordinances. When asked about the signage for Pete's Tire Barn site plan review Del Sesto advised they would be complying with the zoning ordinances. He asked that the ZBA turn down the application.

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

Perkowski noted that the sign is 4 times what is allowed and the request is to be right on the boundary line. The Board has just denied a lesser increase in signage across the road. He stated the only thing the Board can do is deny it.

It was noted that the speed limit is 35 mph in that area.

Perkowski moved to deny the application for the sign as it is 400% larger in area than the Town's sign ordinance allows. The sign is requested to be at "0" setback where a 10 ft setback is required. Other businesses in the same area live by the zoning rules and have been denied signs that are smaller. This proposed free standing sign is 400% larger than the allowed cumulative signage of 64 sq ft allowed by zoning.

The Board recommends that the State come back with a more reasonable request that is in-line with our ordinances and other businesses in that area.

The criteria were reviewed.

Criteria for approval:

- *The variance is not contrary to the public interest. **No***
- *The variance will not be contrary to the spirit and intent of the ordinance. **No***
- *Substantial justice is done. **Yes***
- *The variance will not diminish the values of surrounding properties. **No, the other businesses could be affected by the larger signage.***
- *Literal enforcement of the ordinance would result in unnecessary hardship.*

(A) 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. **No, the speed limit there is only 35 mph and the liquor store would be readily seen.***

And

*(b) The proposed use is a reasonable one. **No.***

Fales seconded the motion, which carried unanimously.

McKeon suggested it might be a good idea to ask the Selectboard to send a letter to the Liquor Commission with cc's to the State representatives.

4. Review October 9, 2012 Meeting Minutes

Perkowski moves to approve the October 9, 2012 meeting minutes. Fales seconded the motion, which carried.

5. Other

- Riendeau addressed Del Sesto regarding speaking at the Zoning Board as an individual but you are also an Planning Board member. It may be construed that he is not able to be objective if he has expressed a judgment at the ZBA. He may need to recuse himself from voting on an application before the Planning Board. McKeon stated it would be his individual call whether to recuse himself or not.
- The Board discussed the LGC training on the procedural Basics for Planning and Zoning Boards.
 - You cannot discuss legal advice under a non-public meeting unless the attorney is present in person or via a conference call with a quorum of the Board. If a member brings back to the Board his discussion with the attorney, it then becomes public information.
 - After a public hearing is closed we can't take any more testimony unless we reopen the public session and all the abutters that were still present. It would be better to continue the meeting to the following month.
 - Expert opinion is not required if the board finds the evidence to be credible. If an expert provides an opinion and it is uncontroverted, the board should accept the opinion. The board can also request an independent expert at the applicant's expense.

Respectfully submitted,
Carol Ross
Secretary

Approved

Burton Riendeau
Chairman, Zoning Board of Adjustment
Date _____