

TOWN OF CHESTERFIELD, NH
PLANNING BOARD
MINUTES

Monday, October 1, 2012

Present: Brad Chesley, Chair, Jon McKeon, Selectmen's representative, James Corliss, Bob Del Sesto, John Koopmann Rolland Vohlber and Susan Lawson-Kelleher

Call to Order

Chesley called the meeting to order at 7:28 PM

Review of the Minutes

September 17, 2012

Lawson-Kelleher motioned to accept the September 17, 2012 minutes as amended. Koopmann seconded the motion which passed unanimously.

Appointments

- **Charles A Donahue, Trustee of the Charles A. Donahue Revocable Trust of 1988** – Continuation of an application for a Major Subdivision, and an application for Major Site Development of property located on Route 63 (Map 12A, Lot A-2) consisting of approximately 75.66 acres in the Residential zone. It may be followed by a review to grant or deny approval of the applications.

The board reviewed the email from Attorney Rattigan regarding the Condominium Documents.

James motioned to make the email communication from Attorney Rattigan regarding the Donahue application public. McKeon seconded the motion which passed by majority with Del Sesto abstaining.

Bergeron noted that their attorney had looked over the suggestions Del Sesto made regarding the condominium documents. Bergeron indicated that the applicants' attorney did not have a problem with Del Sesto's suggestions. Del Sesto would like to take time to go through each point one by one with the attorney comments.

Bergeron noted that the applicant cannot submit the document to the Attorney General until they have conditional approval.

Lawson-Kelleher asked if the snowmobile trail is still being handled later. Bergeron noted that the snowmobile trail is on the plans. Del Sesto asked if it had been surveyed in. It has not been surveyed in to date.

Del Sesto noted that he has some concerns with Gateway Lane not conforming to town standards. The board discussed the width and details of the proposed private drive.

Del Sesto regulations do not allow private driveways for this kind of density. Bergeron noted that the zoning regulations do allow for this.

Del Sesto asked Bergeron if a Cul-de-sac is not possible or not desirable? Bergeron noted that it is not possible.

McKeon noted if the waiver is granted, the road will not be made a town road because it is not up to town standards. Bergeron noted that they did it this way because they are aware it is not up to standards. It will be maintained by the association.

Del Sesto asked why if the road area is so tight why should we allow it and why the road cannot be made up to standards. Where is the necessity of putting in another private road? Sometimes private roads do cost the town money. Bergeron noted that the reason for clusters is to preserve land. By clustering this land, Bergeron said more land can be preserved. There would be an increase wetland impact, the houses would have to move more toward Route 63, more environmental impact. Undue hardship, less impact, trying to reduce impact, granting waiver will make this possible.

McKeon Concern if this all goes bust – we will have to plow – plow with wing – Chesley eliminating a dwelling make enough room? Bergeron – I don't think one would do it. Corliss asked if the applicant planned to make certifications under 674:41. This addresses some of these questions. Bergeron stated that we can look at that. Corliss noted that he believed that it is mandatory and conditional approval would also require 674:41.

The board reviewed a waiver request provided by the applicant. The waive contains three points.

Point number 3 requests a waiver from 602.2 B 3 requiring a 230 foot horizontal curve. The purpose of radius was discussed as to slow traffic and for line of sight. The board agreed that even if the radius is not met, the line of site will not be an issue.

Point number 2 requests a waiver from 602.2 B 1 to allow a street without a 50 foot right of way. It was noted that there are no separate owners of any of this property, therefore there is no need for a right-of-way. It was noted there will be 20 foot of pavement plus 2 foot gravel on either side.

Point number 1 requests a waiver from 602.2 A 7 to allow a dead end street with a hammer head turn around instead of a Cul-de-sac. There was discussion regarding the hammerhead (Bergeron showed the hammerhead with a drawing). McKeon stated he would like the hammerhead to be 25 feet including the 2 foot shoulders on each side, instead of the 24 feet as stated on the plan. Bergeron will make the change.

Corliss moved accept the waivers as discussed with the addition that as a condition of final approval the applicant will satisfy 674:41 and obtain vote from the selectmen to authorize building permits on Gateway Lane. Lawson-Kelleher seconded the motion. Unanimous.

Del Sesto wants more information on the Forestry Plan.

Del Sesto noted he does not want the applicant to receive conditional approval and then to use this as an issue or hardship in the future. Del Sesto noted that there are still things that need to be worked through. Bergeron noted that they are aware they still have to work through these issues. Conditional approval will just allow them to go the next step.

Chesley asked if the public had any more comments or questions. Jeff Scott (resident) asked about the two bedrooms vs. three bedroom comment. Bergeron noted that they are committing to the two bedrooms. The septic system will be for two bedrooms.

Corliss moved to close the public hearing on the application for Charles A Donahue, Trustee of the Charles A. Donahue Revocable Trust of 1988. Koopmann seconded the motion which passed unanimously.

Board discussion on conditions necessary for approval.

Lawson-Kelleher motion to conditionally approve under the following conditions:

- Phasing*
- Vesting*
- Satisfactory Condominium Documents*
- Surveyed Snowmobile Trail*
- Satisfactory Bond(s)*
- Vesting*
- Satisfactory Land Use Management plan*
- Private road/public access*
- Compliance of 674:41*
- State subdivision approval*
- Alteration of Terrain permit*
- State wetlands permit*
- DOT driveway permit*

James Seconded the motion which passed unanimously.

- **Alex & Laretta Kwader** – This is a continuation on an application for a Minor Subdivision for property located off Pinnacle Springs Extension (Map 4, Lot B-1) consisting of approximately 150 acres in the Rural/Agricultural Zone. It may be followed by a review to grant or deny approval of the application.

Chesley and McKeon recused themselves as abutters to the property and joined the public.

James Corliss took over as acting chair.

Mr. Kwader, Mr. Phippard, Mr. Dowd present for the applicant.

Lachenal provided the board with information from Attorney Rattigan. This information is not public record as is it attorney client privilege information.

Jim Phippard noted that this is a 2 lot subdivision taking 15.7 acres from 150 acres. He noted that access is gained from end of Pinnacle Springs extension. The applicant has done a traffic study and the Phippard noted that the study was conducted by Laurie M. Rauseo and she noted that for a lot for single family home generates about 10 vehicle trips per day and this will cause no significant impact on Pinnacle Springs Extension.

Phippard noted that at previous hearing a member of the public expressed concerns with runoff to Spofford lake. Phippard noted that he looked on Bing Maps and the property 3000 feet away from Spofford Lake – straight horizontal distance. Given distance and the fact that they are looking for a subdivision which will not cause disturbance, he does believe it will cause issues with Spofford Lake. Phippard noted that an appraisal had been done in 2007 by Powers and Smith Associates –

They were asked if it would have negative impact on nearby property values. Conclusion was it will not have negative impact. Copy of appraisal provided to the board. Corliss noted putting a house at the end of the road would affect property values.

Kelly Dowd – No new information.

Corliss noted that the Supreme Court dealt only with 55 feet as frontage for the lot. They (The Supreme Court) believed the variance should have been granted and instructed the ZBA to accept the variance.

Del Sesto noted the court noted Special conditions in a couple places and there is nowhere where does it explain what the special conditions were. Dowd noted that 150 acres is a very large tract with the only issue being inadequate frontage. There is already in existence an accessible road.

Kwader would like access for son to have a lot. The regulations would allow a cluster development here, why not one family home. Frontage has two purposes, density and safety. This situation does not pose a threat to either.

Corliss noted that once the subdivision happens, the second lot becomes non-conforming because you do not have the frontage anymore.

Brad Chesley – (Abutter) Showed plan – Plan that Chesley looked at before purchasing his lot. David Hall's 1987 approval and Chesley provided the board with a sheet of concerns. Chesley noted that the intent and expectations when Hall bought property was indicated by the restriction – no more than three lots. Throughout the history of the land, this restriction has followed the land through all the transfers.

Chesley noted that the previous planning board asked for this restriction and Hall did not have issue with this because he had no intent of having the lot further subdivided. Corliss noted that Chesley is contenting this application stating that this application cannot be approved due to deed restrictions.

All three lots have 400 feet of frontage and required acreage. Chesley owns lot 2. Hall has been using that property for logging and recreation. Kwader was aware of subdivision restrictions and bought it with this knowledge. Lot 3 has two residences. Hall had lease agreement with his parents.

Chesley would like the board to review RSA 671:41 noting that Pinnacle Springs Extension was never brought up to town specifications. Corliss said yes it is narrow. Chesley noted that the Cheshire Superior Court notice of decision (page 10) – establishes that the road is not up to town standards and is more like a driveway than a road.

Corliss asked the relevance of decision since it was overturned. Chesley noted it was only overturned for hardship. Chesley noted that Dowd previously stated that the restriction was violated in 92 when the lot was created. However, a lot line adjustment not a subdivision. Same as Kwader had done in the past. The board at the time stated that it did not violate the restriction because no new lot was created. Chesley noted that there is a letter from Dowd's office stating that it was a lot line adjustment not a subdivision. Chesley stated that it can be argued that the planning board may or may not have accepted the lot line adjustment if they had known the final intent. It was stated several times that they did not intend to create a new lot. Chesley noted it has been said several times that it would be like taking Kwader's land if not approved – Mr. Kwader has all the rights Mr. Hall had and does not have to have a building lot to make money off this property. Not an issue of taking. A lot of abutters around that lot that would purchase this the property from Mr. Kwader. Chesley noted that one concern is wondering what is to stop him from adding a driveway and accessing the adjoining property through the side set back because the regulations now allow that.

Chesley noted that he owns the road and there is no maintenance agreement and he has all the liability. Chesley noted that he does not want to see the property developed. He stated that he is concerned if this one is allowed it could turn into two more lots.

Dowd noted that before the adoption of subdivisions there was a lot conveyed to Halls brother. Then the board allowed another 3 lot subdivision in the 1980's. Making the private restriction breach in 1987. In 1987 the PB restricted lot 3 to no more subdivisions. Lot line adjustments are considered subdivisions and there have been at least two subdivisions.

Dowd provided Trial Transcript of David Hall. Dowd noted that he read the transcript to say that the road was built to town specs at the time except the finish coat never put on road because the property was not developed and the town required so much development before the top coat is put on and the road can be put up for acceptance by the town.

Corliss noted that he did not necessarily read the transcript the same way that Dowd was reading it.

Jon McKeon (Abutter) noted that the developer/owner is the only one that stated that it was built to town specifications. The only person stating the road is up to town specs (minus the top coat) is the owner who would benefit from the statement.

Chesley provided the board with 1988 town meeting minutes affirming acceptance of Pinnacle Springs Ext by petition once it is brought up to specifications. Chesley also provided the board with a letter from Board of Selectmen to Michael Bentley stating that there is no agreement that they are aware of and it is a private drive. Chesley noted that RSA 674:41 all based upon building permits on roads that are less than category 5 or a private drive. Pinnacle Springs Extension is not up to standard for a buildable lot.

Del Sesto noted that bringing the road up to specs as a requirement is very questionable idea. Why are we talking about a road where we are being asked to approve a subdivision for two lots. Del Sesto noted that he is unsure why the board is spending so much time on this issue when he is not sure one buildable lot can affect this road.

Kristen McKeon (Abutter) noted that every couple years something different wants to be done with this property. She noted that logging roads were shown on the previous plans and she does not see the logging roads currently on the plans. Concerned about those being "roads" later in the future that gain access to something. Kristen noted that when Dowd made an argument using cluster housing as an example it concerns her with the remaining property and wondering if that will be an argument used again in the future for more subdivisions.

Phippard can add notation to plan where it states existing logging road – and make it say not a public road.

Chesley noted that previously Dowd stated that Kwader has approached Chesley regarding maintenance of the road, which is not true.

Dowd noted that any proposed road agreement would be looked at and any reasonable proposal would be signed. Mr. Chesley is encouraged to send one to Dowd.

Dowd states that the road is in compliance with 674:41. Chesley disagrees and suggests the board read the entire RSA.

Lawson-Kelleher noted the ZBA decision states a residential lot.

Del Sesto noted that the ZBA approved a variance for the entire lot, not the subdivision. The 55 foot frontage is for the 150 acre lot. Del Sesto noted from that point on it is the job of the Planning Board to look at the regulations. Del Sesto noted that currently it is a conforming lot. With the current application for subdivision one lot does not comply with lot frontage requirements. The planning board cannot waive or vary zoning regulations. All the discussion currently happening is the cart before the horse. We have no choice but to deny the application. The Planning Board is Prohibited from doing what the applicant is requesting.

Del Sesto moves to deny the Alex and Laretta Kwader – 2 lot subdivision application for Map 4, Lot 1, (4-B-1) dated July 5, 2012 for the following facts and reasons:

1. *Prior to this application, Lot 4-B-1 in the rural agricultural zone had separate property lines of 241.6 ft and 50.27 ft on Poocham Rd. (a town road) and 55 ft on Pinnacle Springs Extension (a private road). It was a non-conforming lot because it did not comply with Chesterfield Zoning Ordinance, Page 7, Article II, Use Districts, Para.204.4 B. "Lot frontage: Minimum of 400 ft"*
2. *Following the Applicant's appeal to the Cheshire County Superior Court, and the NH Supreme Court, the Chesterfield Zoning Board of Adjustment, as directed by the Court, granted the Applicant's appeal to have the 55 ft property line at the end of Pinnacle Springs Extension be the frontage for Lot 4-B-1.*
3. *Therefore, Lot 4-B-1 is now a conforming lot with its frontage at the end of Pinnacle Springs Extension and is permitted to be subdivided in accordance with the Chesterfield Zoning Ordinance and the Chesterfield Land Development Regulations.*
4. *However, one of the lots created by the Applicant's proposed subdivision (Lot 4-B-1 reduced in size but still called Lot 4-B-1) does not comply with the frontage requirement of Article II, paragraph 204.4B of the Chesterfield Zoning Ordinance.*
5. *The Chesterfield Planning Board can not waive or vary provisions of the Chesterfield Zoning Ordinance (see Chesterfield Land Development Regulations, Article VI, paragraph 601.1)*

Therefore, the Chesterfield Planning Board must deny the applicants subdivision application. Koopmann seconded for discussion

Dowd noted that 150 acre lot is non-conforming and there is nothing the ZBA can do will change that. It is prior non-conforming legal lot making it useless to get a variance to do something for which he does not need a variance to accomplish. Dowd noted that Kwader came to the PB and was told to go to ZBA. It is clear from the court records and information that the only reason for variance to create a new lot. Dowd noted that Kwader did not need a variance for the prior non-conforming lot. All involved parties knew this is what the intent of the variance was to create the new 15 acre lot. Dowd encouraged the board to consult with attorney. The board should think this motion through.

Del Sesto noted that neither the ZBA nor the Court ordered the creation of a lot. The Board cannot approve a subdivision that creates a non-conforming lot.

Chesley noted that you can listen to the audio from court and Mr. Dowd does not talk about the small property only a big property.

*Lawson-Kelleher moves to table the motion. Koopman seconded the motion
Unanimous*

Applicant agrees to continue to November 5th, 2012. Provided extension to Lachenal.

Del Sesto motions to continue the Alex and Laretta Kwader application to November 5, 2012 at 7:30 at the Town Office Building. Koopmann seconded the motion which passed unanimously.

Items for Discussion

- Planning Board budget – *Corliss motioned to approve the planning board budget as presented. Lawson-Kelleher seconded the motion which passed unanimously.*
- Zoning Boards’ approval for variance – Cota – board reviewed – No action required from the board at this time

Items for Information

- Town and City – September/October 2012
- DES Permit – Brehm, Donald No action required
- 2012 Law Lecture Series

Other Business

Del Sesto would like the board to read regulations regarding non-conforming uses and when they turn into conforming uses for discussion at the next meeting.

Items for Signature

- Approved amended minutes 8/20/12

Adjournment

McKeon motioned to adjourn at 11:56 Lawson-Kelleher seconded the motion which passed unanimously.

Respectfully Submitted by:
Patricia Lachenal
Planning Board Secretary
Approved by:

Brad Chesley, Chairman

Date