

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

**MINUTES
April 8, 2014**

Present: Chairman Burt Riendeau, Andy Cay, Harriet Davenport, Renee Fales, Alternate Lucky Evans

Absent: John Perkowski and Alternate Kristin McKeon

The Zoning Board of Adjustment met at the Chesterfield Town Office on April 8, 2014. Riendeau opened the meeting at 7:35 p.m. and explained the process of the meeting.

1. Nine A LLC request a variance from Article II, Section 203.6a, to allow a five (5) unit cluster subdivision in the Spofford Lake District. The property is located at Route 9A, Spofford (Map 5K Lot B3, Map 5N Lots B1, B2, and B9) Residential/Spofford Lake District.

Present: James Phippard (Brickstone Land Use Consultants) and Attorney James Saturley

Saturley requested a point of order. He stated that the Zoning Board had accepted a request for rehearing from the Board of Selectmen at the February 11 meeting and requested clarification on how the Zoning Board would like the applicant to proceed. Riendeau stated that the process requires a rehearing with this being a new application.

Saturley presented documents on the history and supporting evidence of the Nine A LLC application for a variance. Saturley asked that all of the deliberations and testimony be used as evidence for the requested variance. Riendeau asked if there is any new material in the application documents that had not already been presented to the Zoning Board. Saturley replied that he added a copy of the Supreme Court Order issued in June of 2008.

Saturley stated that Nine A LLC began construction of Spofford Hall approximately in 1977. The property building and property was leased from 1977 until approximately 1995, in which Saturley reported that the owner had no reason to enter the property. He added that the lease expired approximately 2001, in which Nine A LLC regained access and from 2001 to 2005 Nine A LLC explored options for reusing the building or selling the property. Saturley stated that in March of 2006 Nine A LLC applied for two area variances, seeking to subdivide the property into seven (7) single family lots. In June 2006 Nine A LLC applied for a variance of seven (7) single-family lots on the six-acre parcel and three (3) duplexes on 24 acres. Saturley added that the ZBA indicated it would approve the concept of six (6) single-family homes on the lakefront and (3) single-family homes on the remaining acreage, but otherwise denied the variance, of which Nine A LLC appeals. Superior Court Order was in May of 2007 and Supreme Court Order in June 2008. In August 2013 a new application for five (5) single-family lots on the lakefront, with the rest of the subdivision (24 acres) preserved as open space was submitted. The variance was granted by the ZBA in January 2014 and in February 2014 a rehearing was requested from the Board of Selectmen.

Evans asked if this presentation is being presented from the August 2013 application. Saturley responded that it is.

Phippard stated that the property in the application consists of approximately 95 acres of land, located within the resident district. All land within 500 feet of the shore land of Spofford Lake is located in the Spofford Lake District, consisting of 11 acres. He added that it consists of 6.18 acres on the lake side of Route 9A. The applicant needed a variance for lot size and frontage. The road frontage on the property adjacent to the lake is 380 feet along Route 9A, with the Resident District requirement of 200 feet of frontage per lot, with the land area within the Lake District uses the same restriction. Phippard stated that the applicant has 30.78 contiguous acres of land that would be controlled by the cluster. The application is for five (5) single family houses on the lakeside on Route 9A along a short private road with a cul-de-sac, with no other proposed uses. He is proposing to create the lots to be sold as part of a homeowners association. Phippard added that the remainder of the land would become an open space, with the exception of a leach field area that would be utilized by the residents. In order to control the impact of building new houses around the lake, Phippard realizes the concerns of septic loading.

Phippard stated that Carl Hagstrom's report indicated that the soil is adequate for development in the proposed area. He added, to address the septic loading would be to collect the on-site sewerage, generated by the five (5) single family homes to a privately owned pump station located on site. It would pump the sewerage across the road to an existing leach field well outside the Lake District, more than 900 feet from the lake. Phippard stated that two consultants were hired to perform a video examination of the concrete chambers that were used in the existing leach field area, which was submitted to the board. A professional septic system designer, Tom Forest, was hired to attend the inspection during the examination on the leach fields. Phippard added that there is some work to be done with the trees and vegetation that has grown on top of the leach field. The chambers are in great condition.

Phippard stated that the storm water runoff was considered, which is generated from the activities with the house lots. The lot coverage report was given to the board on January 14, 2014. He added that the current lot coverage, including the employee parking area across Route 9A, drains into a drainage swale that discharges directly into the lake, which is a concern for storm water runoff. The total of impermeable surface is 132,720 sq. ft. of pavement and buildings. The proposal for a private roadway, of approximately 400 feet in length to the end of a cul-de-sac, would have road coverage generated by that roadway is 12,510 sq. ft. The proposed lots with 20% maximum coverage is 47,479 sq. ft. with a total proposed maximum permitted of 59,989 sq. ft. Phippard stated that the total lot coverage within the Spofford Lake District on this property would be reduced by at least 55% if the proposed 5 lot cluster subdivision is approved. He added that the reduction of water runoff should help to improve the water quality in the lake.

Riendeau asked what would happen with the storm water. Phippard responded that the storm water would be collected on site and discharged into grassy areas through level spreaders and grassy swales. Phippard added that State permits are required in this process, not just local planning boards.

Phippard reported that two State permits will be required to demolish Spofford Hall, one being an Alteration of Terrain Permit, for not allowing disturbance of more than 50,000 sq. ft. of area within the protected shoreland area, including building, parking and lawn area. A Shoreland permit will be required from DES because the activities fall within 250 ft. of the lake.

Phippard stated that a consultant was hired to do a microbial analysis to determine the mold issue in Spofford Hall building and how to address it. The cost of eliminate only the mold in the building was over \$1.3 million dollars, if saving the building was being considered. Phippard added that much of the floor tile, caulking, window sealants and pipe breeching on the heating system all contained asbestos. There is a reduced level of treatment that could be done to prepare the building for demolition at a cost of over \$700,000 to get to the point tear down the building. These issues were presented to potential buyers, who then turned away from purchasing the property. That lead to finding a way to justify the work by redeveloping the property, which lead to the applications to the Zoning Board.

Phippard stated that the storm water would be a Planning Board issue. Following the demolition of the building and the property is stabilized and everything is removed, including the underground pump station, the area would be reloamed to establish vegetation. He added that many of the trees would be saved in the area as possible. Phippard reported that portions of the property consist of ledge and some blasting of ledge would be required, which allows clean sands and gravels.

Phippard stated that each site would have its own drinking water well. The fire cistern storage tank will be installed on the property and will be available to the fire department.

Laurie Rauseo performed a traffic analysis in 2005, based on fifteen residential units, indicating there would be 65 vehicle trips per day. Phippard added that the road is level and has good line of sight in both directions.

Phippard stated that the applicant will be preserving 24.6 acres of the land, with 6.18 acres will be utilized for the roadway and the development. The former parking lot across the street will be removed. That area will be restored, replanted and left as open space. The road to get to the leach field area will remain in place.

This preservation space area contains steep slopes in excess of 15% and 25% with soils that are classified as severe under the Natural Resources Conservation Service soil classification. Phippard provided soil data from NRCS on the Nine A LLC property. He added that Tom Forest verified the soil conditions.

Phippard stated that there will be a deed restriction to prevent further development and no more units can be added on the open land space.

Phippard stated that the lake frontage on the property is very stoney and not deep and will be difficult to put in docks.

Phippard added that reducing lot coverage allows reduction of storm water runoff from the property. Riendeau asked if there was any storm water control currently on the property. Phippard replied that there are vegetation areas and catch basins, which runs into the lake.

Cay asked what the current rules are for establishing new lots on the lake. Phippard answered that the State required a minimum of 150 ft. of lake frontage and 30 ft. of linear beach front is allowed. It is determined upon the condition of the lake frontage. Phippard added that there is a stone wall along a portion of the property at the lake frontage.

Riendeau asked when the cluster development was taken out of the Spofford Lake District. Evans replied that in 1999 the Spofford Lake District was created, which prohibited cluster housing. The area was considered a residential district prior to 1999.

Evans asked what the return on the original operation of Spofford Hall or what was realized from the benefit. Evans asked if there was a plan to remove the building or sell it in the original purpose. Saturley responded that he didn't know. Evans asked if there was any connection between Chakalos and his enterprises in the leasing company from Canada. Saturley and Phippard responded "no". Evans asked if there was any inspection clause in the original lease. Saturley responded that he didn't know. Evans stated that the applicant gave an estimated figure, at the January 2014 meeting, of \$500,000 potential gain with a five houses. Evans asked for a figure on number for three or four houses on that lot. Saturley answered that the applicant can't make it work economically. Phippard replied the cost to remove the asbestos from the building, demolish the building and water treatment plant, which needs to be abated for asbestos, special requirements for equipment, stabilizing those areas and reestablishing the natural grade, sediment control, state permits required with the figure of approximately \$1.3 million cost. If four houses were proposed, the applicant would be in the red.

Fales asked if a fire cistern was required. Phippard replied that the town fire chief will determine if a cistern will be required. He added that sprinkler systems in the basements or have a fire pond or a cistern, which will be part of the \$350,000 for the road. It would be privately owned and maintained by the association, which will require an annual inspection. Until all the lots are sold, Nine A LLC will be the one responsible, as a unit owner until all lots are sold.

Valerie Starbuck asked if two single houses on the lake side and twelve single houses on the opposite side of the road were built, would that not cover the cost for demolition of the Spofford Hall building. Starbuck thanked the Zoning Board members for volunteering to serve on the board. Starbuck also shared her concerns to why the Spofford Lake District and restrictions were established in 1999 and her concerns for approval to this variance and she presented a letter with specifics earlier in the week. Starbuck feels that Nine A LLC could use other resource options of their property to support the remedy the Spofford Hall situation. Phippard responded that the slope on the opposite side of Route 9A has a slope of between 18% and 24%, depending on the location of the lot, would not allow a road to be passable during the winter time.

Cliff Emery expressed his desire to allow the variance. Emery also added that between 2008 and 2013 that the town abated three or four years of taxes for the Spofford Hall building because a court case concluded that the building was deemed contaminated and unsafe.

Ken Walton stated that a precedents for future requests if this variance is passed and request that the board does not approve the variance request. Walton added that the condition of Spofford Hall building is a self-inflicted harm. The owner had the right to inspect the building while the tenant was there.

Dave Copeland questioned whether this was the only solution. Copeland added that Spofford Hall was vacant prior to 1993 and not 1995, as presented by Saturley. He also added that the landlord could have protected his property. Riendeau responded to other solutions in that the ZBA is responding to the application as what has been presented of the applicant currently. The ZBA is not a design group table and can only take applications that come before the ZBA and ask what they want to do with their property and the ZBA makes their judgment, based on the application. Copeland stated that he feels the financial situation is clouding the issue.

Charlie Paquette expressed his concerns with a prior economic situation. He added that the town was right in the decision created an ordinance to prevent cluster development. Paquette was satisfied with the presentation given by the applicant and he felt that the decision of the ZBA in January was a right decision.

Doug Dreyer stated that Spofford Hall was functional in 1992. After the security guard was removed, the property was abandoned and went into disarray. He added that sediment and fertilizer runoff will be introduced. He also expressed his concern with the boats in the cove as needing to be moored. He also added that multiple boats will create navigation problems. Dreyer felt that the lots should be evenly distributed amongst the 11 acres and not cluster together on the lake shore. Dreyer is against approval of the variance.

Steve McGrath, President of Spofford Lake Association, stated that SLA has joined up with the NH Lake Association to improve the quality of Spofford Lake and to preserve the water shed area. McGrath provided maps to the ZBA members and the applicant, identifying the water sources that feed Spofford Lake, which specifically targets the land which Nine A LLC is looking to develop. He added that this could be a concern for the water shed area. Another map provided information with areas of shallow to bedrock, specifically in the development of Nine A LLC. Another map showed the slope and where the drainage flows into the lake at the Nine A LLC location, which could cause contamination into the lake. The polled decision of the SLA executive board was to request the ZBA not to vote for allowing the cluster housing application.

David Thomas expressed his approval of the application presented as a reasonable use of the property. He is not in favor of development in the woodland area.

Lynn Thomas expressed her approval of the Nine A LLC application.

Tim Butterworth stated that the word “hardship” should not interpreted as the developer would need to make a profit.

Elizabeth Gusofski reported that the Spofford Hall wooden fence has collapsed between the two properties and is concerned about having poor neighbors in the future. Phippard responded that their responsibility is building the lots only and has no control over who purchases the lots.

Jeff Scott stated that he wanted substantial justice for the citizens of this town for their vote in 1999 for not allowing cluster housing in this town. He added that no substantial justice was given to the citizens of this town when the ZBA voted to approve the variance in January 2014.

Attorney John Ratigan, representative for the Board of Selectmen of this appeal, thanked the ZBA for granting the rehearing. Ratigan stated that Jon McKeon, Chairman of the Selectboard, wrote a letter to the ZBA. In the letter McKeon talked about the status of the Spofford Hall building weighing heavily on the board and the Board of Selectmen does have a means to address the condition and has begun this process. Ratigan added that the ZBA does not go beyond reconcile economic problems, as presented by this application. He stated that the ZBA does not have financial considerations that are part of the criteria and they shouldn't be part of the deliberations in this matter, as he referred to the Simplex Technologies v. Town of Newington case. Ratigan stated that the ZBA stated that the Town of Chesterfield passed the Spofford Lake overlay district in 1999 specifically to preserve the lake. The testimony presented was about the willingness and desire to develop the land in a way that is economically feasible to allow the removal of the building. Ratigan stated that the purpose of the ordinance was to avoid overcrowding and undue concentration of overpopulation. He added that these are the things that are being proposed by this application.

Ratigan stated that the traffic study done for the seven houses on the parcel on the lake side of Rt. 9A reads "such as traffic impact in the neighborhood and on the lake and the affect on the surrounding natural environment". He continued in stating that the 2005 traffic study isn't on the now abandoned Spofford Lake use. It cannot come back; it's illegal nonconforming use. It's been abandoned for many years and they can't resurrect it again. He added that the measure of traffic increase is over and against of what is allowed on the right of that lot in your district. Ratigan said that findings can be made on what the traffic is today.

Ratigan proceeded to discuss his letter to the ZBA, dated April 4, 2014 regarding the public interest. He instructed the ZBA to look at the purposes of the ordinance. He added that one of the goals in the residential district is "to promote the preservation of the natural land and rural character by encouraging primarily residential land uses at densities compatible with the development capacity of the land; the limited availability of community facilities and services, and the limited capacity of the road network." The residential densities exclude cluster housing.

Ratigan continued to quote his April 4 letter and asked that particular attention be noted on the Chesterfield's Master Plan goals. He added that the applicant owns a lot of land and there are multiple development plans that could be proposed for that land that would not go against the spirit of the ordinance for the purpose of the ordinance. The only thing different in this application and the decision made by the 2008 Supreme Court decision is the subtraction of a few units. Ratigan added that a decision to approve this application is a powerful argument about whether the purposes and the public interest standard of the ordinance are being observed.

Ratigan stated that a property owner in New Hampshire cannot create the circumstances that give rise to a hardship and be entitled to a hardship. Ratigan cited Loughlin, in his book on NH Planning and Zoning, discussing the self-created hardship rule, as written in Ratigan's letter dated April 4 to the ZBA. Ratigan added, knowing is disputed, that the property, once upon a time functioned and was allowed to fall to disrepair. It is in the existence of the disrepair that is the principal claim of hardship. That is what the application says. He added that there was a conscious decision not to maintain that property, not to repair that property. If conscious choice in disrepair allows something to become dilapidated, is the standard for anyone getting a barn, shed or an old house around this lake can just let it go and then they can come back in and claim some sort of hardship, based upon this reason. This was an economic decision to let this building go into disrepair that was made by a prior owner. Ratigan added that it's not the responsibility of the Zoning Board to bail people out of those economic choices. Ratigan strongly suggested that hardship be rejected.

Ratigan stated that the hardship standards, there has to be special conditions of the property to give rise to a hardship. Special conditions are usually in the nature of slopes, wetlands, soil conditions. None of these are present. Ratigan added that Carl Hagstrom, of Monadnock Septic Design, performed a soils analysis on the Spofford Hall property. Hagstrom's report stated that there are no special conditions of the property that are different with others in the area.

Ratigan continued on the requirements for the hardship in that the applicant needs to prove that the proposal is a reasonable one. Reasonable has to be measured against something and it is not the fairness test that was suggested by the applicant's attorney. He added that reasonable is, can you put this property to other uses as of right under the ordinance. Ratigan stated that there are plenty of other options for a parcel of this size, as of right. It was heard that they could put many houses on the other side of the road. Those are rights that other people have outside of this district and simply because they are restrained in developing land within the district, doesn't mean that you have to put on blinders with respect to other things allowed outside the district.

Riendeau asked Ratigan to explain how precedence effects on zoning board decisions. Ratigan responded that is useful to go back to the ordinance, look at the requirement, find out the health and safety welfare basis requirement is. Ratigan added that the flip side of no precedence is that it can be very difficult to defend a similar application. Riendeau replied, while he has served on the ZBA, the precedence issue has come up many times and have very rarely been challenged on a precedence situation that's gone to court. Riendeau added that the Zoning Board has the ability to grant relief where it makes sense.

Cay asked Ratigan if it was a determination of self created hardship, is it a despositive factor. Rattigan responded that if this board determines that this is a self created hardship here, based on the failure to maintain a building, to allow it to fall to disrepair, that the board would likely determine that it does not constitute as a hardship and you can lawfully make that determination. Cay asked what did Kwader suggest? Ratigan replied that Kwader didn't have improvements on the land. Riendeau added that they said that that was not a depository. Ratigan said that under those facts it wasn't but under these facts where you have a building that hasn't been maintained. The property owner and their predecessors entitle; a landlord who lets a property go or a subsequent landlord doesn't do anything about it, you can't make a facially credible claim that

that's not a self created hardship. Riendeau stated that this town has granted variances to this property that allowed this property owner to expand that existing building. He asked if the town holds any liability through allowing expansion of a nonconforming use and building on a lot over the years as they have expanded that building. The owner got a variance just to put the building on that property. Does the town hold any liability by allowing a property owner to develop a piece of property out of the realm of what is allowed there in the first place. Ratigan replied that you allowed someone to have a use that wasn't in the zone, the people thought that it was a good use at the time and you are entitled to do that. To the extent that you might have given them dimensional relief to build something that was bigger, but that those variances don't, in any way, oblige you to grant the next application, any more than it would oblige you to deny the next application.

Phippard said that he has already talked about the steps being taken to improving lot quality, from what it is today at this location by reducing the amount of lot coverage, reducing lot cover runoff and putting land in permanent open space. He added that the water shed study was done and the protective measures to be taken. Phippard stated that he didn't introduce the economic aspect of the case as a hardship, but did provide testimony answering questions from board members about economics on the project, but did point out the costs to the landowner to address remediation of the building, because that's what brought him to this direction; to redevelop the property, rather than restore the building as it sits today. Phippard added on the hardship issue, with unique features to this property with enough frontage for one house lot, enough land area for at least three house lots, under the existing zoning and enough lake frontage for seven house lots, making this a unique characteristic to this property. He added that he feels that asking for a five house lots is a good balance, based on the restriction solely on road frontage which only allows one, so we think that that is unreasonable and the board has enough evidence to find a hardship in this case. Phippard stated that redevelopment, of the highly developed area of the property, is the best solution for this and is the best solution for the lake, which is what the Spofford Lake District is all about.

Fales asked if logging will allowed in the conservation portion of the property. Phippard replied that there should be a forestry management plan for forested areas, which would become part of homeowner association. Phippard added that the plan was to keep the forest areas as forest areas, but there may be a timber cut, if there is marketable timber that should be thinned. He added that dead trees of diseased trees should be removed.

Saturley stated that, regarding the 2008 opinion from the Supreme Court that the opinion affirmed the authority that the Zoning Board to make the decision on whether the spirit and intent of the ordinance has been met. He added that the court noted that the board approved six single family lots on that property.

Riendeau stated that letters were received from residents and property owners on this case and the letters will be part of the decision process.

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

Fales stated that the substantial justice is done when any loss of any individual is not outweighed by gain by the general public is an injustice. Glen Associates v. Chichester, 155 N.H. 102 (2007). Fales asked what would the loss of the individual be when it's outweighed by a gain of the general public; what is the gain by denying this to the general public. Evans replied density, population, spirit and intent of the lake itself with fewer houses. He added that the applicant bears the burden of proofing for following conditions and we don't have the numbers. Fales responded that the board can't use the financial information for hardship and what we have is reasonable use of the property. Davenport asked if the lack of the road frontage an issue.

Evans added that the applicant has said that the burden of proof of removing the building is so great that they must accommodate that with five houses, plus a margin of reward or benefit derived from the land, where they may have already had a benefit from the land. Riendeau stated that the applicant didn't present a financial hardship.

Evans stated that there was a question on dock, boat and silt issues. Riendeau stated that those issues would be a Planning Board concerns with site development.

Davenport stated that everyone knows the history of the property, dating back to 1889 when Pine Grove Springs Hotel was there, and has been large commercial pieces there for a long time. Spofford Hall had to address the septic issues on the property. She added that the topography would support two houses with a design septic on the lake side. She added that she would rather see the septic not be near the lake, as it's being proposed.

Cay stated that he likes the proposal and feels it is properly planned. He added that the town gets to protect 24 acres across the street and sewage is pumped across the street. The Town Plan promotes preservation of the land and rural character, and this plan is doing that. He added that this plan promotes Chesterfield's valuable natural resource areas, provides recreational activity, protects Chesterfield's aesthetics and historic values and manages growth.

Riendeau asked the board to address the spirit and intent of the ordinance. Davenport felt that the people have concerns about the welfare and protection of conservation of the lake. She feels that the development plan has addressed those concerns of the sewerage, septic and runoff issues.

Regarding the spirit and intent, Fales stated that the industrial development and replacing it with single family homes is putting that area back in character of the lake. She added that the maximum permeable coverage is being reduced by 55% from 132,720 sq. ft. to 59,989 sq. ft. with 20% lot coverage and all the setbacks are in place. She said that the septic system will be located outside of the Spofford Lake District. The build construction will have to comply with Shore Land Protection and provide adequate storm runoff and a fire cistern is being provided. The steep slope will be put into conservation, which will protect the lake from runoff.

Riendeau stated that the cluster housing was restricted when the Spofford Lake District was created. He compared the Namaschaug steep slopes being greater than on this property. He added that this property is unique, in that it is divided by a road and the deed is one contiguous lot, which was clarified by town counsel.

Cay moved to grant a variance as applied for. Cay would like to accept Attorney Saturley's submitted evidence of Section II supporting the granting of the variance verbatim. Cay would like to document the motion with all those points plus the amended add ons.

Criteria for approval:

II. EVIDENCE SUPPORTING THE GRANT OF THE VARIANCE

A. Variance is not contrary to the public interest. Yes, Granting the Applicant's Variance Will Not be Contrary to the Public Interest. (Chesterfield Zoning Ordinance Section 601.2(C); RSA 674:33, I(b)(1))

1. The existing vacant building has been severely vandalized, contains toxic mold, is a non-conforming use, and is not compatible with the neighborhood. Removing the building and replacing it with five single-family homes would benefit the public health, safety and welfare.
2. The immediate neighborhood around the Lake generally consists of single-family dwellings.
3. The proposed cluster subdivision has a density of one dwelling unit per six acres.
4. The proposed single-family home lot sizes vary from 0.88 acres to 1.37 acres, which is larger than 63% of the existing 422 lakefront properties.
5. The proposed lots fully conform with the setbacks and lot coverage requirements of the Spofford Lake District.
6. Septic waste from the proposed house lots will be pumped to an existing leach field outside of the Spofford Lake District.
7. Traffic from the proposed single-family lots will not create a hazard. Far less traffic will be generated as compared to the prior Spofford Hall use. (Report from Laurie Rauseo, P.E., P.T.O.E., December 16, 2005.)
8. Five single-family homes will result in overall lot coverage will decrease impermeable coverage by 55%.
9. The proposed cluster development will preserve over 24 acres of open space near Spofford Lake, thereby having a positive impact on the water shed. The steep slope undeveloped areas will also be included in this protected area.
10. The preservation of open space is an intent of the Cluster Development Regulation. Section 301.3. The Cluster Development also promises "greater land development flexibility for larger parcels of land."

B. The variance will not be contrary to the spirit and intent of the intent of the ordinance will be observed. Yes, Granting the Variance Will Not Be Contrary to the Spirit and Intent of the Ordinance. (Chesterfield Zoning Ordinance Section 601.2(B); RSA 674:33, I(b)(2))

The requirement that a variance be consistent with the spirit of the ordinance is closely related to the requirement that a variance not be contrary to the public interest. On this topic, all of the bullet points set forth above (1-10) are relevant. In addition:

1. The proposal is for single-family detached residences in a district where single-family residences are permitted as a matter of right.
2. Permitted uses in the Spofford Lake District include:
 - Single-family dwellings
 - Municipal buildings and uses

- Public utility buildings
 - Outdoor recreation facilities
 - Farming
 - Golf courses, and
 - Forestry and wildlife preservation
3. Single-family residences do less offense to the zoning ordinance than many of the other uses that are allowed in the Residential District but not allowed in the Lake Spofford District (such as two-family dwellings, multiple-family dwellings, manufactured housing parks, and schools).
 4. The proposed development will be a substantial improvement from the prior institutional use in terms of the character of the neighborhood and the effect on the public health, safety and welfare.

C. Substantial justice is done. Yes, granting the Variance will do substantial justice. Chesterfield Zoning Ordinance Section 601.2(D); RSA 674:33, I(b)(3)

Denying the variance would cause harm to the individual owner which outweighs the harm to the public by **granting** the variance:

1. The proposed cluster subdivision would have a density of one dwelling unit per six acres (compared to one dwelling unit per two acres, as permitted in both the Spofford Lake District and in cluster subdivisions).
2. There will be little harm to the public by locating single-family dwellings in an area consisting primarily of single-family dwellings, and on lots that are larger than the majority of existing lots on Spofford Lake.
3. There will be little harm to the public by locating single-family dwellings on this property, as septic waste from the proposed lots will be pumped to an existing leach field outside of the Spofford Lake District.
4. Traffic from the proposed lots will not create a hazard or other harm to the public, as set forth in the traffic report prepared by Laurie Rauseo, P.E., P.T.O.E. dated December 16, 2005.
5. The lots will be developed in full conformance with the setback, lot coverage and other requirements of the Spofford Lake District (CZO 203.6).
6. The proposed lots will be developed in full conformance with the setback, lot coverage and other requirements of the cluster subdivision provisions (CZO Section 301).
7. The existing building is deteriorated, subject to vandalism, and is a detriment to the area.
8. The cost to remediate the mold in the building, remove asbestos, and raze the building makes it economically unfeasible for the owner to develop the property with only one single-family lot, which is all that the owner is permitted as of right.
9. The lot coverage within the Spofford Lake District will be reduced by at least 55% if the cluster is approved.

D. The variance will not diminish the values of surrounding properties. Yes, granting the variance will not diminish the values of surrounding properties. (Chesterfield Zoning Ordinance Section 601.2(E); RSA 674:33, I(b)(4))

1. Evidence submitted by the applicant (letter from Monadnock Appraisal Company dated August 22, 2013, and report from Capital Appraisal Associates dated December 22,

2005), demonstrates that the allowance of single-family lots, in place of existing Spofford Hall, will actually enhance property values.

2. Single-family homes will be on lots larger than the majority of lots on the Lake, and the cluster subdivision will preserve over 24 acres of open space.

E. Literal enforcement of the ordinance would result in unnecessary hardship. Yes, Literal Enforcement of the Ordinance Would Result in an Unnecessary Hardship. (Chesterfield Zoning Ordinance Section 601.02(A); RSA 674:33, I(b)(5))

Because of the special conditions of the property that distinguish it from other properties in the area, there is no fair and substantial relationship between enforcing the general ordinance provision and its specific application to this property.

1. The property is encumbered with a 90,000 sq. ft., deteriorating institutional building, unlike any other property in the Lake District.
2. Replacing the existing building will restore views and enhance the feel of the neighborhood within the area.
3. The project includes 24 acres of other land in common ownership that will remain undeveloped, accomplishing an interest of the cluster subdivision.
4. The 24 acres will be permanently burdened as open space in the manner determined by the Planning Board and Town Counsel. CZO 301.4.
5. The property has its sewer capacity and leach field located outside the Lake District, a unique opportunity which avoids the hazard of overloading any leach fields adjacent to the Lake.
6. The particular size and shape of the lakefront lot, with its extensive shoreline and area relative to the amount of its road access, is a unique characteristic of the property compared to other lots in the Lake District.
7. As demonstrated by the report submitted by the Board of Selectmen, the lakefront property is appropriate for building. The topography and soils of the remainder of the proposed subdivision are less suitable.

The proposed use is a reasonable one. In addition to the above factors:

1. The proposed use is for single-family homes, which are a permitted use.
2. Single-family homes are more compatible with the area than the prior institutional use.

Fales seconded the motion.

Davenport moved to add

Section II, add to A #8: overall lot coverage will decrease impermeable coverage by 55%.

Section II, add to A #9: thereby having a positive impact on the water shed.

Cay moved to add

Section II, add to A #9: The steep slope undeveloped area will also be included in this protected area.

Fales moved to add

Section II, Under D Create #3. That the houses and development will be built per all the Federal, State and local Shore Land Protection laws will be abided by, thereby insuring protection of values around Spofford Lake.

Cay moved to add

Section II, add to B. This residential use is more in conformity with the neighborhood in the area uses and is compliant with all development conditions for residential housing in the area, provided that the eleven (11) acres in the Spofford Lake District are allowed in the calculations in the acres per lot.

Cay moved to add

Section II, add a #8 to E: Lot 5K B3 and 5N B1 are contiguous lots, even though they are divided by the road. They are one legal lot and as such, qualify to be considered for a cluster development in accordance with the town ordinance.

Cay moved to add

Section II, add to B as #1: The protection of critical water shed and steep slope areas, equaling 24 acres across the street, is a critical decision of granting this cluster housing development.

Fales seconded the motion.

Davenport moved to add

Section II, add to A #8: overall lot coverage will decrease impermeable coverage by 55%.

Section II, add to A #9: thereby having a positive impact on the water shed.

Cay moved to add

Section II, add to A #9: The steep slope undeveloped area will also be included in this protected area.

Fales moved to add

Section II, Create under D Create #3. That the houses and development will be built per all the Federal, State and local Shore Land Protection laws will be abided by, thereby insuring protection of values around Spofford Lake.

Cay moved to add

Section II, add to B. This residential use is more in conformity with the neighborhood in the area uses and is compliant with all development conditions for residential housing in the area, provided that the eleven (11) acres in the Spofford Lake District are allowed in the calculations in the acres per lot.

Cay moved to add

Section II, add a #8 to E: Lot 5K B3 and 5N B1 are contiguous lots, even though they are divided by the road. They are one legal lot and as such, qualify to be considered for a cluster development in accordance with the town ordinance.

Cay moved to add

Section II, add to B as #1: The protection of critical water shed and steep slope areas, equaling 24 acres across the street, is a critical decision of granting this cluster housing development.

Cay moved to accept the amendments to the motion. The amended motion was seconded by Davenport, which carried by majority. (4-Yes: Cay, Davenport, Fales, Riendeau, 1-No: Evans)

Fales seconded the motion.

The vote was called.

The motion carried by majority vote. (4-Yes: Cay, Davenport, Fales, Riendeau, 1-No: Evans)

2. Michael A. Kray requests a variance from Article II Section 204.2 to construct a portable carport. The property is located at 880 Route 9, Chesterfield, NH 03443 (Map 12 Lot A2.4) Rural/Agricultural

Kray stated that he request to put up a temporary storage shed on his property to store his equipment and tractor while he was clearing the land, building his road and building his home. The shed will be built of canvas with a metal cover. The size of the portable shed would be 24 ft. x60 ft. The shed will be set up approximately 50 ft. from the setback. Kray is requesting to be allowed to leave the shed set up at this location for approximately two years.

Cray stated that he could not get a septic or building permit before a well can be installed.

Fales made a motion to close the public portion. The motion was seconded by Evans and passed unanimously.

Cay suggested the portable shed to remain in place for one year and to be compliant with the setback. After one year, if the applicant needs to have the shed up longer, he should return to the Zoning Board for an extension.

Fales moved to grant the variance for Michael Kray from Section 204.2 to construct a portable carport on his property located at 880 Route 9, Chesterfield, NH, to be compliant with setbacks and any other requirements for a duration of one year.

Criteria for approval:

1. The variance is not contrary to the public interest. ***Yes, the applicant is going to be building a house on this property and this would be considered an assessor use to the house and it would be permitted, once he receives his house permit applied for.***
2. The spirit of the ordinance is observed. ***Yes. It is a residential lot. The accessory storage building is a customary use for this property.***
3. Substantial justice is done. ***Yes. There is no benefits to the property owner or outweighed to any detriment to the public.***
4. The values of surrounding properties are not diminished. ***Yes. There is no detriment by placing a storage structure within the setback of a property that is going to have a house.***
5. Literal enforcement of the ordinance would result in unnecessary hardship.
(A) Because of 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, the applicant has to build a road to go to where his house it going to be sited before he can obtain a house permit. He has to build a road, get the***

septic design and the well in. The storage building will allow him to store his tools and supplies to keep them from being damaged from the weather.

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

The motion was seconded by Davenport.

The vote was called on the motion.

The motion carried unanimously.

3. Walter & Patricia Goad request a variance from Article II Section 203.6b of the zoning ordinance to allow a 96 sq. ft. shed 8x12 ft to be built within a 50 ft. front set back. This property is located at 2B Dompier Drive, Spofford, N.H. 03462 (Map 5F Lot A1) Residential/Spofford Lake District

Goad is requesting to be allowed to build a 12 ft x 18 ft. shed on the front of their property. Their home is not located on the road. The frontage is overage 150 ft. to North Shore Road and the shed will be approximate 100 ft. from Dompier Road. Goad would like to build the shed into the rocky area, which will be located behind the house and will not be obstructing the view from view of the lake.

There were no abutters present at the meeting.

Cay made a motion to close the public portion. Evans seconded the motion, which carried unanimously.

Fales made a motion to grant a variance for Walter and Patricia Goad from Article II Section 203.6b of the zoning ordinance to allow a 96 sq. ft. shed 8x12 ft to be built within a 50 ft. front set back as presented.

Criteria for approval:

- The variance is not contrary to the public interest. *Yes, the shed is within the permeable coverage. The shed will not block the abutters view.*
- The spirit of the ordinance is observed. *Yes. By adding the shed, the applicant is within the permeable coverage limits.*
- Substantial justice is done. *Yes. This will allow the applicant to have storage for his tools and lawn mower.*
- The values of surrounding properties are not diminished. *Yes. The shed will not be obstructing anyone's view.*
- Literal enforcement of the ordinance would result in unnecessary hardship. Because of 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. This is a small lot with not a lot of area for the applicant to put the shed.*

(b) The proposed use is a reasonable one. *Yes. It is a reasonable one for the applicant to be able to the building to protect his tools.*

Davenport seconded the motion.

The vote was called on the motion.
The motion carried unanimously.

4. Review Meeting Minutes

- **February 11, 2014** – *Cay moved to approve the minutes as presented. Davenport seconded the motion, which carried. (Voting: Riendeau, Davenport and Fales)*
- **March 8, 2014** – *Fales made a motion to approve the minutes. Davenport seconded the motion, which carried. (Voting: Cay, Davenport and Fales)*

5. ZBA Rules of Procedure

Riendeau suggested that the draft be reviewed and discussed at the May 13 meeting.

Adjourn: The meeting adjourned at 12:40 a.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date_____