

Town of Chesterfield, New Hampshire
Chesterfield Zoning Board of Adjustment (ZBA)
Meeting Minutes –April 20, 2023
Town Offices, Chesterfield, NH

CALL TO ORDER:

The meeting of the Chesterfield Zoning Board of Adjustment (ZBA) was called to order at 6:30 p.m. by Kristin McKeon. Members present: Kristin McKeon, John Zannotti (via Zoom), Nate LaChance, Deb Livernois, Alternate Joseph Brodbine, and Selectboard Representative Gary Winn. Also present was ZBA Secretary Jennifer Keating.

ABSENT: Joe Hanzalik

Joe Brodbine was seated as a voting member.

Kristin McKeon made the motion to allow Zannotti to join via Zoom. Livernois seconded the motion. No further discussion. All were in favor by roll call. ***Motion passed.***

OTHERS PRESENT: Jim Phippard, Jon McKeon, Matt Beauregard, Marilyn George, Sam Bradley, Steve Hellus, Anthony Martini, Rick Flagler, Jeff Scott

MINUTES:

The meeting Minutes of February 16, 2023, were considered. **Motion** was made by Brodbine to approve the meeting minutes as amended. There was a second to the motion by Livernois and no further discussion. All were in favor by roll call. ***Motion passed.***

PUBLIC HEARINGS

Public Hearing opened at 6:45pm

Continued Hearing

The Eden Foundation is requesting a variance from Chesterfield Building Ordinance, Section 1, Part 13.03, Height of New Buildings. The property is located on 18.06 acres at 30 Farr Road, Chesterfield (Tax Map 13, Lot A4.1) in the Residential District.

At the last meeting, the hearing was continued so that the board could look at the intent behind the ordinances.

K. McKeon asked the board if the ordinance regarding the 15' of flat area around the building should be considered. Brodbine stated that it would need to be another variance because there is not enough level area, so they would both need to be included.

K. McKeon asked the board if they thought that they needed a variance.

Jim Phippard, on behalf of the Eden Foundation, said that the ground slopes two feet or under on all sides of the building, including off the face of the building onto the shore. Phippard believes that they are in full compliance with the height ordinance.

Zannotti said that the previous ordinance was difficult to understand, and this was an intent to try to make it more logical. However, he does not think that it anticipated the situation in front of us. He believes that the project meets the intent of the current ordinance. He thinks that not allowing it would be creating a new rule, which is out of the purview of the ZBA. He does not think that the ZBA can reject their approach to this.

K. McKeon disagreed that that was the intent of the rule, but she agrees that it is what is written

and that the Planning Board can discuss many of the other issues.

LaChance stated that nothing addresses a cantilever property.

Brodbine said that because there was not an ordinance regarding cantilever properties, the ZBA could not decide that cantilever properties were not allowed. He thinks it meets the requirements via a loophole, but still meets the requirements.

Livernois felt as though the application does not need a variance because it was 21' tall and was on reasonably level ground. LaChance agreed with Livernois.

Zannotti did not think a variance was required with the current application, but he would like to see the plans signed and dated included in the file.

Brodbine did not feel that a variance was required based on the way the ordinance was written.

Brodbine said that the motion should clearly state that Zoning Board does not require a variance for the height of the building, based on 13.03 in the current building ordinance.

Zannotti asked the board to confirm that everyone was looking at the same plan. He would like to have the applicant sign the plans.

Brodbine proposed the motion:

After reviewing the package submitted by Eden Foundation, it is the opinion of the ZBA, that a variance for the height of the building is not needed for the museum, based on the documents submitted 1/27/23, because the Chesterfield Ordinance 13.03 does not address cantilvered building. Additionally, the building has 15 feet of essentially flat land on the sides of the building where the building meets the ground. Therefore a variance would not be required.

Zannotti would like to add the words Building Ordinance.

Livernois would like to add Town of Chesterfield Building Ordinance, Part 1

The board discussed the following motion:

After reviewing the package submitted by Eden Foundation, it is the opinion of the ZBA, that a variance for the height of the building is not needed for the museum on 30 Farr Road, Chesterfield, NH, based on the documents dated January 25, 2023, because the Town of Chesterfield Building Ordinance, Part 1 section 13.03 does not address cantilevered buildings. Additionally, the building has 15 feet of essentially flat land on either end of the building where the building meets the ground in accordance with the Town of Chesterfield Building Ordinance, Part 1 section 13.03. Therefore, a variance was not required.

Zannotti made the motion to close the public input. McKeon seconded the motion. No further discussion. All were in favor by roll call. **Motion passed.**

Livernois made the motion:

After reviewing the package submitted by Eden Foundation, it is the opinion of the ZBA, that a variance for the height of the building is not needed for the museum on 30 Farr Road, Chesterfield, NH, based on the documents submitted dated January 25, 2023, because the Town of Chesterfield Building Ordinance, Part 1 section 13.03 does not address cantilevered buildings. Additionally, the building has 15 feet of essentially flat land on either end of the building where the building meets the ground in accordance with the Town of Chesterfield Building Ordinance, Part 1 section 13.03. Therefore, a variance is not required.

LaChance seconded the motion. No further discussion. All were in favor by roll call. **Motion passed.**

Phippard formally withdrew his application for a variance.

Lake Spofford Family Recreation, Inc. is requesting an appeal of an Administrative Decision made by the Code Enforcement Officer in relation to Article 203.4 Section C (Coverage), 503.1 Expansion, and 601.4, stating that the decision is contrary to the variance granted for this property by the ZBA for the Zoning Ordinances in question. The property is located at 105 South Shore Rd, Spofford, NH (Tax Map 5M, Lot A4).

K. McKeon recused herself from this public hearing.

Brodbine nominated Zannotti to be Chairmen Pro Tem. Lachance seconded the motion. No further discussion. All were in favor by roll call. ***Motion passed.***

Zannotti read the application aloud to the members of the board.

The applicant has waived the right to a full board, there is also a certificate allowing for site visits.

Jon McKeon presented the appeal for the Lake Spofford Family Recreation and turned the floor over to Sam Bradley.

Phippard asked if the appeal had been filed in a reasonable amount of time.

Sam Bradley, an attorney from Keene, NH, represented the Lake Spofford Family Recreation. Bradley said that he filed the appeal within days of learning that the barrier had been installed. He asked to have Phippard heard prior to addressing the application.

Zannotti said that he did not understand how a time limit affected the application; he believes that if it is violating the ZBA's decision, he would like to hear it.

Bradley has been a member of the "Beach Club" for over 60 years. He explained that they have been dealing with surface water drainage for many years. When the neighbor applied for a variance to tear down the buildings and build a house, the issue of drainage came up. Phippard had submitted an approved drainage plan with the Department of Environmental Services, but Bradley believes that the current plan was not being followed.

Bradley continued that the approved variance did not have conditions imposed and it did not discuss surface water drainage. Bradley stated that the ZBA never intended to approve a plan that would increase the surface water on the Beach Club, but the current conditions divert the water onto the Beach Club property.

Bradley stated that George and Hellus have installed a barrier wall that will not allow water to pass through it. When he discussed this with the Code Enforcement Officer about a Building Permit, CEO stated that the barrier wall was a fence. Bradley does not believe that it is a fence.

Bradley continued that during the last ZBA hearing, it was intended that the Georges and Hellus remove the berm. However, he stated, George and Hellus have added to berm and built the

barrier wall. He said that all the surface water on the George/Hellus property has been diverted to the Beach Club. He would like the ZBA to order George and Hellus to remove the retaining walls, lower the berm to the previous height, and loam and seed the old road that was an existing right of way.

Brodbine asked Bradley if the water on the road drained toward the Beach Club. Bradley said that the elevation of the road has been changed near the newly installed gate posts, which drains into the Beach Club.

Jon McKeon said that the Beach Club's position is not to rehash the variance. He presented the three approved drawings from the meeting that the ZBA had approved, including the approved drainage plans and elevation plans. He stated that topography on the beach front parking lot increases in a gradual manner, however he continued that the retaining wall that is there now is not gradual. He presented a Ronn Bell survey that showed water coursing, that highlighted how the water flowed between the two properties. This was originally from Phippard's original application for the Georges.

Beyond the retaining wall, Jon McKeon continued, there is an additional 6x6 pressure treated wall that has been built. He stated that this is diverting water in the event of a significant amount of rain. He also stated that there is an increase in impervious surface coverage. The property is already over the limit for impervious coverage, but this has added to it.

Zannotti asked Jon McKeon what he thought the impermeable coverage is currently. Jon McKeon stated that he believes this comes out to over 300 square feet more.

Brodbine looked at the original calculation from the original application. The original proposal cut the impervious coverage from 50% to 28.5%.

Jon McKeon said that in the original application, Phippard had stated that no additional retaining walls would be built. Jon McKeon noted that a fence or a wall could be built in the setback, but a retaining wall is not included in the zoning ordinance. Jon McKeon stated that the Beach Club only wants the variance to be followed.

Jon McKeon stated that he believes that is harmful to the Beach Club property. Zannotti asked if Jon McKeon had any video or photos of the water draining onto the property. Jon McKeon said that he did not, but he wants to ensure that George and Hellus are following the letter of the variance.

Brodbine stated that he does not have any questions for Jon McKeon.

Matt Beauregard, the Code Enforcement Officer, asked about the definitions of retaining walls and fences. Jon McKeon stated that they have come from several legal websites.

Phippard stated that he felt as though the appeal may not have been done in a timely manner. The appeal was filed five months after the property work started.

Phippard presented drainage plans that were presented during the variance application. He showed the infiltration areas that have been installed on the property, as well as a survey that was performed in 2015 that showed the drainage coming off of South Shore road. He showed that, in his opinion, George and Hellus have not redirected the drainage pattern.

Phippard said that run-off is a problem on many properties on the lake, but this property has infiltration systems that prevent run-off from occurring. He said, that in his opinion, it is probably one of the best drained properties on the lake.

Zannotti asked Beauregard if anyone had been notified regarding not needing a building permit. Beauregard said that no one needed to be notified. Zannotti said that he said that this makes him feel as though it is a timely application for appeal.

Steve Hellus, one of the property owners, said that he felt that many of the testimonies made were false. He said that there was always a berm on the property. Jon McKeon stated that he felt as though Hellus was incorrect.

Hellus also stated that he did not raise the elevation of the driveway in any way. He stated that the driveway has not been loamed and seeded because the project is not yet completed. Beauregard confirmed that no certificate of occupancy has been issued yet.

Hellus says that he feels as though the Beach Club is continuously raising the issue that their property is diverting water onto the Beach Club property. Hellus asked what the difference was between a retaining wall and a stone wall. He asked Jon McKeon and Bradley if there was a stone wall there previously. He said that when you take the square footage of the boulders that were there before, it is smaller than the ready-rock wall that is there now. He explained that it has porous stone under the wall and water can run through the fence if it would like to.

Hellus explained that he has spent a lot of time and money confirming that the water on his property stays on his property.

Brodbine asked Hellus when he contacted the Code Enforcement Officer. Hellus stated that he spoke with the CEO regarding the permit (or lack of need for one) in October 2022. Hellus said that the project started soon after that, in October as well.

Hellus said that there has been discussion about property lines, so he felt as though the fence was an appropriate way to delineate the property line and he has left the pins visible for this purpose. He also wanted a fence for his pets and for the security of his property. He said that the blocks by the chain link fence offers the fence protection. He has since planted arborvitae trees that he hopes will cover the chain link fence in the future.

Livernois asked why the retaining wall was not included on the original plan. Hellus stated that originally it was not part of the plan, but because a permit was not required, he did not think that he needed to return to the town.

Matt Beauregard said that felt that the town is now involved in an issue with two abutters. He said that on the NOD, it stated that an infiltration plan needed to be installed. He said that the NOD did not apply to the issue of the fencing, and this is a completely separate issue.

Beauregard brought up that Jon McKeon talked about the intent of the ZBA, but in fact, Beauregard is only supposed go off the actual NOD and that the minutes of the hearing do not have equal value.

Beauregard brought up the definition of a fence and a retaining wall from the International Residential Code, where a wall or retaining wall under 4 feet do not require a building permit and a fence under 7 feet does not require a permit.

Brodbine asked Beauregard if he had seen the wall. Beauregard said yes. He does not believe that the fence is diverting the water toward the Beach Club.

Zannotti asked if anything was done to increase the grade or the type of material. Hellus answered that he did not change anything other than adding the wall.

Jon McKeon said that he is not rehashing the variance, but he wants to know why the Code Enforcement Officer allowed George and Hellus to install a retaining wall.

Anthony Martini, an abutter to this property, asked if the Beach Club has done any remediation work on their own property and noted that he has noticed increased runoff on his own property due to the weather conditions. He stated every property owner has had to do remedial work in order to prevent excessive runoff.

Kristin McKeon said that this is about the CEO's decision and she questions whether or not he referred to the plans and the NOD. She stated that the retaining walls were not in the plans and the board approved plans that are not being followed.

Beauregard said that he has extensively referred to the NOD; however, he states that Jon McKeon and K. McKeon continue to state that the minutes are as important as the NOD.

Zannotti said that the variance was for the setback, and that it was in the context of the discussion. He does not think that other restrictions were included in the plan.

Bradley said that he is clear on the fact that Hellus created a berm in 2013.

Hellus read the copy of the NOD from the final hearing which stated that the drainage plan needed to be done.

Jon McKeon agrees that the drainage plan needed to be done, but he does not see the retaining walls on the plans.

Brodbine stated that he is hearing conflicting points. The LSFR is stating that there is additional drainage on the property, while Hellus and the CEO do not think that the water drainage has been changed.

Zannotti said that the board needs to make a decision on what they are being asked to do, which is support the CEO's decision or accept the appeal.

Brodbine stated that a fence does not require a permit, but changing the drainage plan would need a permit. He said that if they have not changed the drainage plan, they are not in violation. So, he thinks that the drainage characteristics of the lot are very important in this case.

Zannotti said that he thinks the board needs to decide if the CEO made the proper decision and needs to decide what has been asked of the board.

Zannotti repeated that the appeal is on the impervious coverage as well as the retaining wall as being called a fence.

Hellus said that there is 78 feet of wall that is two feet wide.

Jon McKeon said that he wants to remind the board that the Beach Club's appeal is on the impermeable coverage as well as the addition of the retaining wall that is not on the plan.

Beauregard said that he would approve a fence on any property and that is the right of the property owner, and that if it affects the property, it is a civil matter.

Livernois said that she is not sure how the cement block wall would be a fence.

Beauregard said that in Zoning 207.6, fences and walls are allowed in the setback.

LaChance said he was having a hard time deciding if it was a fence or a wall. Hellus repeated that there was a stone boulder fence on the property line.

Zannotti asked the board how they would like to proceed. He asked about entertaining a motion or going on a site visit.

LaChance said that he did not think a site visit would help him.

Livernois said that she was struggling with what additional information would help her make a decision.

Jeff Scott said that Matt mentioned 207.6, where structures except for fences and walls can be installed, but other items would require abutter permission.

Rick Flagler, a member of the Beach Club, said that he has heard a lot of RSAs, but he wanted to mention that there were other factors to consider. In 2013, he believes that the George and Hellus property elevation changed, and he says that the water is going differently than it used to.

Brodbine referred back to Scott and Zoning 203.5, 204.5, and 206.5, where fences and wall can occupy the setback.

Zannotti made the motion that the ZBA has reviewed the application for the appeal for the administrative decision that the Code Enforcement Officer has made the appropriate decision. Brodbine seconded the motion.

Livernois made the motion to close the public hearing. LaChance seconded the motion. All in

favor via roll call, motion passed.

Zannotti made the motion to amend the motion read: that the ZBA has reviewed the application for the appeal dated 3/27/23, signed by Jon McKeon, for the administrative decision that the Code Enforcement Officer has made the appropriate decision. Brodbine seconded the motion for the amendment.

Three in favor. Livernois opposed. Motion passed.

Kristin McKeon was reinstated for the rest of the meeting.

FOR DISCUSSION

Updated Rules of Procedure

The board did the second reading of the updated rules of procedure:

X. Public Notice

A. Public Notice of public hearings on each application shall be given on the Town Website and shall be posted in two (2) public places including the Chesterfield Town Office not less than five (5) days before the date fixed for the hearing.

*Zannotti made the motion to accept the updated Rules of Procedure. LaChance seconded the motion and no further discussion. All were in favor by roll call. **Motion passed.***

OTHER BUSINESS

Next Meeting: May 18, 2023

***Motion** to adjourn was made by Brodbine. Livernois was a second to the motion and no further discussion. All were in favor by roll call. **Motion passed.** Adjournment occurred at 10:07pm.*

Respectfully Submitted,

Jennifer Keating
ZBA Secretary

Approved By:

Chair

Date 6/26/23