Town of Chesterfield, New Hampshire
Chesterfield Zoning Board of Adjustment (ZBA)
Meeting Minutes –July 21, 2022
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, Joe Hanzalik, John Zannotti, Alternate Joseph Brodbine, Alternate Deb Livernois, and Selectboard Representative Gary Winn. Also present was ZBA Secretary Jennifer Keating.

ABSENT: Nate Lachance.

Alternates Joseph Brodbine and Deb Livernois were seated tonight.

OTHERS PRESENT: James Corliss, Carol Corliss, Gary Kinyon, Celine LaCroix, Jeff Scott, Robert Folz (via Zoom)

MINUTES:

The meeting Minutes of June 16, 2022 were considered. **Motion** was made by Hanzalik to approve the meeting Minutes of June 16, 2022 as amended. There was a second to the motion by Zannotti and no further discussion. All were in favor by roll call. ***Motion passed.***

PUBLIC HEARINGS

Public Hearing opened at 6:45pm

Variance Application
James and Carol Corliss are requesting a variance under Article II, Section 204.4B Area Frontage and Coverage Requirements. The Property is located at 161 Streeter Hill Road, West Chesterfield, 03443 (Tax Map 2C, Lots 3.1-3.3)

James Corliss presented the application for James and Carol Corliss, showing that previously, the property had a right of way to Streeter Hill. In order to create a subdivision in the past, a private road was put in place to allow several lots. Corliss would like to combine all of the lots together again; this would make the new road frontage about 102'. Corliss stated that the Selectboard agreed to remove the maintenance of the road going forward.

Corliss commented that despite the "Westview Lane" designation, the town still calls his address Streeter Hill Road. Livernois asked if any other houses or properties were served by the lane; Corliss answered that he was the only house and property on the private road. Brodbine asked if it would make more sense to simply shorten the private road. Corliss repeated he would like to make it one piece of property if possible. Brodbine commented that Corliss would be giving up a saleable building lot. Brodbine asked if he had plans for building next to the road and asked if

the setback is part of the variance request. Corliss commented that he would like to own the contiguous piece of property and that is his main motivation. McKeon asked if anyone could drive on the property, Corliss said that access to private roads can be restricted.

Zannotti asked about the town's obligation to the road. Corliss explained that as part of the subdivision agreement, it was agreed that the owners would have to maintain the private road. McKeon commented that prior to the subdivision and the addition of the private road, it was not a buildable lot.

Gary Winn spoke to the history of the lot. Zannotti asked if the Right of Way still exists, McKeon noted the ROW was given up in the 1997 subdivision application. Winn commented that in front of the Selectboard, Corliss was very aware that after the properties was merged, it would be difficult to re-subdivide.

McKeon commented that she understood why Corliss wanted to do this. Corliss said that it would lower the density of lots on Streeter Hill.

McKeon read a letter from Damon and Kathryn Kindopp, the former owner of the lot, in support of the variance request.

Zannotti asked if there were any options to increase the 100 feet. Brodbine commented that each lot needs 400 feet of frontage, and that is the reason for the private road.
McKeon asked the board if they thought it was reasonable to give him the variance, knowing that it eliminates a lot.

Zannotti made the motion to close the public hearing, McKeon seconded the motion. All were in favor by roll call. ***Motion passed.***

Zannotti made the motion to accept the variance as written with the understanding that the James Corliss Map Dated June 22, 2022, is part of the record and that Westview Drive becomes driveway access only. Hanzalik seconded the motion.
All were in favor by roll call. ***Motion passed.***

Brodbine amended the motion to include that the approval is contingent to the Planning Board Voluntary Merger approval of the lots on the map. Zannotti seconded the amendment.
All were in favor by roll call. ***Motion passed.***

McKeon asked if the board would like to review the five criteria. The board felt that the application was well-thought out, well documented, and well explained.

The Board took a recess and returned at 7:30.

Variance Application
River Realty and MTG Holdings, LLC are requesting a variance under Article II, Section 204.4A Area Frontage and Coverage Requirements. The Properties are located at 182 and 214 Mountain Road, West Chesterfield, NH 03446 (Tax Map 25A, Lots A1-A2).

McKeon opened the public hearing at 7:30. Gary Kinyon presented the application for a variance request from a 5-acre lot size requirement for the 182 Mountain Road property. He stated that the application is to reconfigure the lot line for the property so that five existing rental cabins would no longer be on 182 Mountain Rd. lot. There is also a septic system for a cabin on 214 Mountain Road that is currently on 182 Mountain Road. The properties together include a 2-family home, a 3-family home, 7 rental cabins, and a single-family home. Kinyon said that he believes that the key fact is that they will be keeping the uses and the locations of the lot the same and will not be adding any additional buildings to either lot. Kinyon said that he thinks that the variance proposal would not change the conditions of either property.

Brodbine asked about the septic system on the 182 Lot. Celine LaCroix, a representative of the lot, showed the location of the leech fields on the map. Zannotti asked about the wells for the property. LaCroix commented that there are currently two wells (one per each existing lot), and provided the variance requested is approved, there will be another well drilled on 182 Mountain Road to serve just the 182 Lot.

Brodbine asked about the land in the properties, LaCroix answered that it is all lawn.

LaCroix commented that the house built on the 182 Lot was built in 2008. LaCroix explained that all of the rental lots were all similar in architecture and were built in the same time period.

McKeon stated that accepting the variance would be making two non-conforming lots more non-conforming. Kinyon commented that the uses of the properties would be the same and all that it would change would be the lot line moving. McKeon commented that it would be putting 10 units on one property and one unit on the other property.

Brodbine commented that going forward they would put a condition on the property that there could not be any additional expansion, that would protect the town. Kinyon stated that the cabins need to be upgraded, and the footprint may want to expand going forward. Brodbine commented that upgrades do not mean expansion.

Brodbine asked if the cabins were summer rentals, or year-round homes. LaCroix said they have been year-round.

McKeon states she understands the applicant's wishes; but she does not think that there is hardship. Kinyon stated that he does not think it is appropriate for the ZBA to hold it against the applicant that they knew about the lot configurations. McKeon stated that the ZBA is being asked to double the impact on the property by moving the lot line.

Kinyon said that there are already more than 5 residences on one lot, and they would be shifting the non-conforming use to the 214 Lot. Brodbine said that he understands the concerns but thinks that variance should include the fact that not only will the 182 Lot be non-conforming in size but also that the 214 Lot will be more non-conforming in terms of residences.

Zannotti confirmed that the Planning Board would be the one approving the lot line adjustment, if the variance was accepted. Brodbine read the Zoning Ordinance 403, which states that each BUILDING can only include up to 5 dwelling units. Brodbine said that the dwellings are existing, and the use and impact is not really changing. Brodbine stating that driving down Mountain Road and this was accepted, nothing would appear to be different to the public.

Zannotti commented that if the applicants were going to expand, they would need come in front of the ZBA again. Kinyon stated that the applicant would be willing to include that they would not increase the number of the cottages. McKeon said that she does not believe this can happen either way. Kinyon said that they are not changing the number of dwellings on either lot, but the applicant would not want to be unable to expand.

Brodbine said that he sees that there is a hardship by making the cottages stay with the single-family unit. Hanzalik commented that he believes that he thinks that the 214 Lot is becoming denser. Brodbine said that he does not believe that, because they are adding more area. Hanzalik commented that he is feeling comfortable with the variance but would like to include a restriction on the expansion of the property.

Zannotti stated he thinks this is a variance request for convenience, not a hardship. McKeon stated that applications can be a good idea, but if they do not meet the five criteria, the board cannot approve the variance. She does not think that the board should create two non-conforming lots without any conditions. Brodbine asked what the conditions should be.

McKeon stated that she does not believe that the property meets number 5 of the hardship criteria. She says that the board needs to acknowledge that they will be making the 214 Lot more non-conforming if the variance is accepted.

Kinyon believes that the new lot size in the 182 Lot would still be larger than the majority of the other single-family homes in the neighborhood.

Brodbine states that he thinks the applicant meets both 5A and 5B of the variance. He thinks that having five rental units on the property is a difficult situation. McKeon asked about the future of the property if the ZBA allows this variance. Brodbine said that he thinks that having 10 rental units owned by one landlord is not much different than having two landlords with 5 rentals units each.

Winn asks if the concern was expanding the bedrooms of the cabins or expanding the footprint. He suggested that a restriction that no more bedrooms will be added, which would still allow the

landowners to make the cabins more livable without adding more load to the property. McKeon commented that they were allowed to renovate without increasing the footprint of each building. Kinyon said that he thinks that Winn's proposal makes sense, and that improving the properties would increase the tax base for the town. McKeon said that if she was going to approve the application, she would say that the load cannot increase and any increase in size would need to come before the ZBA. Kinyon stated that that would not be an acceptable condition to the applicant.

McKeon asked if the board would like to confer with legal counsel, prior to making a decision. Zannotti said that because it is a non-conforming property, they would need to come back in front of the board anyway. Zannotti does not believe he needs to seek legal council in regards to this at this time.

Robert Folz, an abutter, asked if instead of a lot line adjustment, if the two lots could be broken up into three lots. Brodbine commented that a conforming lot in that area is 5-acres and that the total acreage of each property would then be under 5 acres each. Folz said he thinks it is a self-created hardship. Folz said he has potential issues with expanding the cottages. He said he is concerned about the renovation and expansion of the property. Livernois asked Folz what was his concern about one landlord owning 10 cottages. He said that based on the history of the cabinshe would like to see another landlord own the other 5 properties.

Kinyon stated that self-created hardship no longer has the same impact. Kinyon stated that they are seeking the variance for new unique factor – the demolition of one home and the construction of a new residential house. Zannotti asked who built the house, LaCroix answered that her late father did.

McKeon stated that the variance is looking to make two lots more non-conforming in a different way. Livernois asked why the 214 Lot would be non-conforming. McKeon stated that the number of dwellings on the property is non-conforming for the area it is in. Brodbine said that in the case of 182 Lot, it would be changing its non-conformity for another (number of dwellings to size).

Kinyon stated that in May, when the applicant was trying to change one non-conforming use to another non-conforming use, the board requested a variance. He thinks that now the Board is raising another issue regarding the load of the non-conformity. Kinyon asked what the Board would like to see as an application. McKeon responded that the board is unable to consult with with applicants and the board cannot tell the applicant which variance to apply for or how to properly apply for it.

Kinyon stated that he is looking for municipal assistance for the board and would like guidance. McKeon said the board cannot give opinions. Kinyon said the board is not being fair to the applicant. Hanzalik responded that it is not the ZBAs job to provide consultations and that it was the applicants responsibility to find counsel to guide them. Kinyon stated that he had been hired as representation for the applicant.

Jeff Scott, a member of the public, states that he does not think that the denial of the application would provide hardship to the applicant.

Zannotti stated that he thinks that ZBA needs to rule on the application before them. Brodbine said that if the ZBA was to grant the variance for the lot size, and that the Planning Board would be considering the load on the properties as well when they approved or denied the lot line adjustment. McKeon said she believes that the board needs to consider all of the non-conformities this application creates. Hanzalik asked if the board had the right to be asking about the non-conformities on the 214 Lot, when the application itself is for the 182 Lot. Hanzalik questioned if legal counsel should be conferred with in this matter.

9:03 – Recess was taken.

9:08- Meeting continued.

McKeon asked if the board had more questions or if they would like input from counsel. Livernois clarified that the variance application was for the non-conforming size of the lot, and asked if a change in non-conforming use would be more appropriate. Brodbine asked if not having enough area was considered a non-conforming use. Brodbine said he thinks he can make the argument that an under-sized lot is more appropriate than having 6 dwellings on one lot. Livernois asked what the differential was to make a property "more non-conforming". McKeon stated that the board is not supposed to make lots more non-conforming. Brodbine asked if the benefits were better than having the cabins split onto two lots. McKeon stated that she does not see how the board can do one action without considering the ramifications of the others.

The Chair reviewed the **Checklist for Granting a Variance** with the members of the Board:

1. *Would the variances be contrary to the public interest?*
   Brodbine said that if someone was trying to build this, he would be against it, but noting nothing is changing.
   Members said: No.

2. *Would the spirit of the ordinance be observed if the variances were granted?*
   Members said: Yes.

3. *Would the granting the variances do substantial justice?*
   Members said: Yes – it would not harm the public.

4. *Could the variances be granted without diminishing surrounding property values?*
   Brodbine is commenting that nothing is changing, so he does not believe it is changing the value. Hanzalik thinks that not allowing the lot line adjustment may decrease the value of the single-family home.
   Members said: Yes.

5. *Do special conditions of the property exist that distinguish it from other properties in the area?*

A.i. Owing to the special conditions of the property that distinguish it from other property in the area, there is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the provision to the property?
Members said: Difficult to ascertain. Hanzalik said that based on the specific application, he believes that the answer is yes. Zannotti does not think it does. Livernois said yes, she does, McKeon does not think it does.

A.ii. Is the proposed use a reasonable one?
Members said: Yes.

If the criteria in subparagraph a. and b. are not met, an unnecessary hardship will be deemed to exist if, and only if:

B. Owing to the special conditions of the property that distinguish it from other properties in the area the property cannot be reasonably used in strict conformance with the ordinance, and a variance is necessary to enable a reasonable use of the property:

Zannotti asked if a motion could be made without closing the public hearing. McKeon said a motion could be discussed, but the board could not make a motion without closing the public hearing and that after the public hearing has been closed, it has been closed.

Zannotti said that if it was appropriate to put a motion on the floor, he would make a motion to deny the application based on 5A. He does not see a necessary hardship and believes it is an application of convenience. Brodbine agreed that this is the most difficult piece in the application. Brodbine said he thinks there is a hardship because having rental properties on the residential lot is difficult and he thinks that moving the cottages to the other lot is reasonable. McKeon asked why the applicant shouldn't just remove the cottages. Brodbine thinks that this is a loss for the town with the loss of five rented properties. McKeon stated that she thinks that taking down the cabins would increase the value of 182 Lot. Brodbine said that he thinks the cottages do have value, especially if added to the 214 Lot.

Winn clarified that LaCroix did not actually purchase the property and inherited the property. LaCroix did not purchase the property and did not create the hardship herself.

McKeon asked if the goal was creating more value for the home – she believes that removing the cabins would make the lot more valuable. Kinyon said that the board can speculate to the values of the property but believes that the cottages will be staying.

Folz stated that he believes that he thinks that MTG Holdings has always owned the property. LaCroix directed the board's attention to the deed, and said that until her father passed away, it was in his name.

Livernois said that she is in agreement that the home site with the cottages does seem like a hardship. Additionally, she thinks that tearing down the cabins would cause a hardship to the people living in them. Livernois said that she thinks it should be considered that the application seems like the best possible solution.

Brodbine made the motion to close the public hearing. Hanzalik seconded the motion. No further discussion was had. All were in favor by roll call. ***Motion passed.***

Brodbine made the motion to approve the application from River Realty and MTG Holdings, LLC, for the lot line adjustment to make a 2.93-acre lot, based on the plan dated July 6, 2022, with the added condition that no additional bedrooms will be added to the cottages on 214 Mountain Road and that an additional well be added to 182 Mountain Rd so that there is no shared water or septic between the lots. Livernois seconded the motion.
McKeon asked about the expansion of the buildings and if that should be included in the motion. McKeon said that she thinks it should read no expansion without ZBA approval.

McKeon made the motion to add the amendment that no changes can be made in height or square footage on 214 Mountain Road without coming before the Zoning Board for variance on each individual building. Zannotti seconded the motion. All were in favor by roll call. ***Motion passed.***

Vote held by roll call, 3 yes, 2 no. ***Motion passed.***

McKeon reminded the board and the applicant that the public has 30 days to appeal the decision.

FOR DISCUSSION

Chesterfield Zoning Board Adjustment Building Coverage Calculation Sheet

John Zannotti presented a revised version of the coverage calculation sheet. He encouraged the board to review the sheet to discuss at the next meeting. Brodbine commented that he believes it captures many of the changes discussed previously. The ZBA will discuss the calculation sheet consider adopting it at the next meeting. McKeon thanked Zannotti for his work on this project.

OTHER BUSINESS

Site Visits

McKeon asked the Board if they felt they had permission to perform a site visit prior to the public hearing. Brodbine said he believes that an individual site visit is appropriate after the application is submitted. Zannotti said that he thinks that it could potentially prolong the process if site visits had to occur after the public hearing was opened. Zannotti questioned the board if it makes sense for the board to have a placard for their car to identify themselves. Brodbine said he thinks a copy of the authorization from the application packet is enough. McKeon said that she feels that prior site visits may be prejudging the application. Brodbine said that he thinks that he thinks that if that is the case, that the application should not be read ahead of time either. James Corliss, the Planning Board Chair, commented that from his perspective on the Planning Board, he thinks that gathering information is a core function of the board.

Next Meeting: August 18, 2022

Motion *to adjourn was made by Hanzalik. Brodbine was a second to the motion and no further discussion. All were in favor by roll call.* ***Motion passed.*** *Adjournment occurred at 9:45 pm.*

Respectfully Submitted,

Jennifer Keating
ZBA Secretary

Approved By:

Chair _____

Date Sept 30, 2022