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

**THURSDAY, JUNE 10, 2021 6:30
P.M. PUBLIC HEARINGS BEGIN:
NO EARLIER THAN 6:45P.M. VIA
ZOOM REMOTE MEETING**

Kristin McKeon opened the meeting at 6:30PM. Also in attendance were Joe Hanzalik, John Zannotti, Joe Brodbine, Lucky Evans, Casey Schanckenberg, and Jim Barey.

Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are:

- *Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means;*

We are utilizing the Zoom platform for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the Zoom platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone # **1-646/876-9923**, **1-301/715-8592** or **1-312/626-6799**. Meeting ID **891 5882 7295** and passcode **434949**, or the following website:

<https://us02web.zoom.us/j/89158827295>

Meeting ID: 891 5882 7295

Passcode: 434949

b) Providing public notice of the necessary information for accessing the meeting;

We previously gave notice to the public of how to access the meeting using Zoom, and

instructions are provided on the Town of Chesterfield website at: <https://chesterfield.nh.gov/>.

c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access; If anybody has a problem, please **text** 603/398-6712 or email at: kmckeonzba@gmail.com.

d) Adjourning the meeting if the public is unable to access the meeting.

In the event the public is unable to access the meeting, we will adjourn the meeting and have it rescheduled at that time.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Please note that this meeting has been continued from April 08, 2021 due to the public not having access to the meeting.

Introduction of Board Members & Selectboard Representative to ZBA

McKeon introduced the Zoning Board members; all were present.

Review: meeting minutes 05/13/2021-McKeon passed chair responsibilities to Hanzalik for certain lines.

KMcKeon seated Brodbine as a voting member.

Joe Hanzalik moved to accept the 05/13/2021 meeting minutes as amended. The motion was seconded by John Zannotti and passed unanimously by roll call vote.

Site visit minutes 05/25/2021-

Joe Brodbine moved to accept the Bernbach Site Visit 5/25/2021 minutes as amended. The motion was seconded by Kristin McKeon and passed unanimously by roll call vote.

Meeting Procedure:

Return to in-person Meetings 06/12/2021-McKeon stated this would be the last meeting done on Zoom since the Emergency Order 12 is done as of June 12, 2021. McKeon noted that she is not sure what the Board of Selectmen will do about allowing the public access to the meetings through Zoom going forward. Brodbine stated that the Planning Board will probably not attempt including Zoom going forward but the Board of Selectmen will be discussing this topic further at their Wednesday meeting. Winn noted that the Board of Selectmen had not had any further discussion yet but they are in favor of maintaining some means to the public to attend but to participate remotely with a half and half situation may not be the route they take as it is difficult for the chairman to operate the screen and continue in person conversation.

Rules of Procedure-the board discussed the suggested amendments to the ZBA Rules & Procedures, noting changes to the timing listed for meetings and the receipt of abutter certified mail return receipts.

Joe Hanzalik moved to accept the suggested amendments to the Zoning Board Rules & Procedures, Section 10 C. The motion was seconded by Kristin McKeon and passed unanimously by roll call vote.

The board tabled further discussion to later in the meeting.

McKeon passed chair responsibilities to Hanzalik.

Rehearings:

Rehearing on an application heard at the March 11th, 2021 ZBA meeting for **Marilyn George** who requested and was granted a variance from **Article II, Section 203.6 Spofford Lake District, part 203.6b Setbacks, Part C Lake Setback** of the zoning ordinance to permit construction of a single-family residence 41 feet from the lake where 50 feet is required. The new residence will replace an existing nonconforming residence in the same location. A second existing residence and an existing garage will be removed. The properties are located at 14 Tyler Road, Spofford NH 03462 (Tax Map 5M-A006), and 16 Tyler Road, Spofford NH 03462 (Tax Map 5M-A005).

Hanzalik stated the Zoning board has received several letters from the abutters (LSFR Inc.); and asked if the board had received the letter from counsel for Marilyn George.

Zannotti stated he had comments on letters from Saturley, noting that nowhere in the application does it state that he is representing the applicant. Zannotti stated he would dismiss this input because counsel is not recognized in the application. Zannotti also asked that the June 7th submission from the Board of Directors of LSFR Inc, be dismissed as it is not signed and it is on a blank sheet of paper; anyone could have written this claiming to be the Board of Directors. Zannotti stated regarding Phippard's letter, point number five, he does not recall anything that shows post septic installation drainage confirmation.

Broadbine stated Marilyn George is present at the meeting tonight; if she were to speak up and state that Saturley is representing her, that would go on record as being valid representation.

Hanzalik stated he would like to add to the record, the previous meeting minutes and all presentations preceding the motion to grant the variance so nothing is repeated. Hanzalik continued, stating he spoke with John Ratigan regarding the George's attorney letter: Ratigan stated the Zoning Board are in the right to do so, taking this meeting to review and ask those represented to make any additional comments but not rehash any comments made at previous meetings.

Hanzalik opened the meeting to whomever would like to speak on behalf of the Beach Club (LSFR Inc.) to introduce or discuss any information sent to the Zoning Board.

Kristin McKeon stated she submitted quite a bit more information to the board, attempting to be as clinical as possible. KMcKeon stated she agrees, that the Beach Club (LSFR Inc.) does not necessarily disagree that the variance be granted but they would like further conditions in the motion: the lots need to be merged; the house currently has a seasonal septic and it should be put back subject to the approval requirements; the applicants did not receive a variance to create more impervious surface, and it should be disallowed as it is. KMcKeon continued, noting that the five Zoning Board criteria need to be followed when deciding on a variance. KMcKeon noted the knotweed and how it is relevant as it would decrease the property values of the Beach Club (LSFR Inc.) and other abutters. KMcKeon noted she never saw a drainage study and would like to see it. KMcKeon stated in addition the retaining wall behind the blue cottage is

falling down and there is no assurance that water will not be diverted from the Beach Club (LSFR Inc.). KMcKeon stated the other buildings should come down before any other construction goes up, noting she included enough evidence to be considered reasonable that property values will be decreased should the motion proceed as is.

Zannotti asked if KMcKeon were speaking her own thoughts rather than acting on behalf of the LSFR Inc. Board of Directors. Hanzalik responded that it seems like the Board of Directors is not in support of this reaction. Barey noted to Hanzalik that the current LSFR Inc. president Glen Allis submitted the letter to him personally. Zannotti noted that all documents submitted as supplemental information should be signed and dated.

Jon McKeon attended to state that he is a member of the LSFR Inc. Board of Directors, and he has the power to speak on behalf of that body. JMcKeon confirmed that the note was from the current president of the board, although the appeal itself did not come from the board as there was not enough time. JMcKeon continued, stating the Board did discuss the appeal and in respect to Chairman Hanzalik's wishes to not rehash previous comments, there is one thing that he will reiterate about the yard drain that ran the outlet piping across the Beach Club's property. JMcKeon stated Mr. Hellus had installed this work on the word of an individual who was not authorized to make decisions for the board. JMcKeon stated he would request that the berm that was installed outside the permit parameters be removed and that the grade be returned to what was on the drawings submitted to the state for the state permit. JMcKeon continued, stating the LSFR Board of Directors would like to see the results of a drainage study for that property. Zannotti stated he would like to ask Saturley if he had a document stating he was representing Marilyn George. Saturley responded he does have a letter, but his word should be enough. Saturley stated he accepts the incorrect date oversight.

Hanzalik stated in speaking to Ratigan, he found sufficient representation with that letter.

Jim Phippard attended to state he has several issues including no authorization from the LSFR Inc. Board of Directors to submit an appeal to this variance Phippard stated he would like his objection to the appeal being accepted by the Zoning Board to be clearly noted on the record. Phippard noted that several thousand dollars were spent in creating a sufficient drainage plan and this is not the first time this has happened with this board. Phippard stated a detailed drainage report and plan were submitted in response to Zannotti's request. Phippard stated he also wants it to go on the record that it is unfortunate that the Zoning Board is allowing itself to be put in the middle of a disagreement between abutters. Phippard stated Kristin McKeon documented several other items that are matters between two abutters and noted that there is not a lot of credibility that the McKeon's are acting as representatives of the LSFR Club. Phippard suggested that LSFR Inc. take the George's to court where the George's will prevail since the DES permit was approved by the state which has stringent requirements. Phippard continued, stating if the George's were building anything other than what was submitted the state would not have allowed the project to proceed and he does not feel there are legitimate grounds to re-hear the case. Phippard stated KMcKeon is trying to abuse her position on the Zoning board and write the conditions for their decisions which would imply that the members are not capable of performing this job.

Zannotti stated he takes offense with Phippard's comments about KMcKeon controlling the board. Zannotti stated that he would like to see the drainage plan again. Hanzalik stated that was fine and he thinks Phippard did a great job to provide and exhibit what the project entails, noting that the motion for rehearing was granted, and it is an opportunity to verify that the

board covers all its bases. Zannotti stated his only interest is to understand the post septic installation; asking if the grade level was at the designed level or was it in fact higher. Phippard shared his screen to answer Zannotti's question.

Phippard stated his intent was not to insult the members of the board, noting he was offended by KMcKeon's abuse of her position. Phippard continued, stating he is relying on the board to do its job correctly.

Phippard noted the plan was submitted on March 5th and was prepared by Ron Bell, a licensed professional.

Zannotti asked if the impervious calculations are post the voluntary merger. Phippard confirmed they are.

JMcKeon stated he would like to clarify what Zannotti was asking and would like to speak to the point of the septic and state inspections. JMcKeon stated the State only inspects the system itself; neither he nor KMcKeon stated there was anything wrong with the septic system, but the area outside the system. The elevations, issue the LSFR club has is the area between the leach field and the parking area. On the drawing that Bell did for Hellus on 05/02/2015 there is an elevation drop from the top of the septic leach field out to the gravel parking area of the beach club going from 98 feet to 90 feet; a decrease of eight feet. JMcKeon stated what is out there today does not drop eight feet, there is a berm erected which does not allow the water to continue to run where it has historically. JMcKeon reiterated he is the Vice-President of the LSFR Inc. board, and it was voted by majority that he represent that board.

Phippard reiterated that this is a matter between Marilyn George, Steve Hellus, and the LSFR Inc. Beach Club and the Zoning Board does not need to be in the middle.

KMcKeon stated that in the packet she included the numbers and what they were supposed to be and what was approved; the elevations were shot after the berm was installed and they are significantly higher than what they were supposed to be.

Saturley stated he would observe without repeating, the Zoning Board have walked into the problem that local officials warn of by accepting a request for rehearing that was not authorized and allowed the abutter to exacerbate and pile on issues that have already been dealt with.

Saturley continued, stating none of this is new evidence of recent occurrences. Saturley stated he would ask that the Zoning Board deny the request for rehearing and move forward with granting the variance.

Hanzalik seated Schnackenberg as a voting member.

Evans stated his concerns about the knotweed that has been planted, asking what process will be employed to eradicate it. Hanzalik noted that this would be a condition at voting, but it was not relevant at this time.

Brodbine stated the discussion for the past hour have revolved around the septic where the variance was requested on setbacks. Brodbine stated he believes the Zoning Board is being sucked into the middle of something they do not belong in. Hanzalik noted that whatever Brodbine's decision may be, the board will continue with the rehearing and vote whether to continue to grant the variance as supported by the five criteria, or to continue further discussion. Barbara Girs stated from an outside perspective that the Town fell down on the job back when the septic was put in because a berm went in after everything was approved and it seems that would be part of something the town should have taken care of. Girs suggested it might be a good idea to put conditions on this time so that problems are taken care of. Girs noted she does not think that is outside of what the Zoning Board should be hearing.

John Zannotti moved to close the public portion of the hearing. The motion was seconded by Casey Schnackenberg and passed unanimously by roll call vote.

Hanzalik suggested going through the five criteria before making a final decision.

Zannotti stated his purpose in supporting a re-hearing was to find more information about the drainage; Phippard has provided new information that Zannotti found informative. Zannotti stated he would suggest that the Zoning Board are not hear to correct historical mistakes, they are here for the variance application in front of them.

Brodbine stated since it has been contentious enough, the board should probably go through the criteria one by one.

Hanzalik began with the first criteria: the variance is not contrary to the public interest.

Brodbine stated there will be a nicer building on the lake than is there currently. Hanzalik noted Phippard reduced impervious surfaces by 29%; seeing two current buildings be demolished would be beneficial to the lake. Zannotti agreed.

Hanzalik noted the second criteria: the spirit of the ordinance is observed. Zannotti stated the spirit or intent was to not allow increased density, and he is not sure that this criterion is met.

Zannotti continued, stating if it were to go to 50 feet they would be more in compliance.

Brodbine stated that as they are building within the footprint they are not encroaching further on the lake. Zannotti responded that a very nice breaker wall was installed so that the applicants are not encroaching, and they appear to be very good stewards to the lake.

Hanzalik stated the third criteria: substantial justice is done. Brodbine stated the property will be improved and will not hurt anyone in the process. Hanzalik stated it brings that cottage up to code.

Hanzalik noted criteria number four: the values of the surrounding properties are not diminished. Brodbine stated this variance being requested does not diminish the value of either property. Evans stated the knotweed was introduced and has significant effect on the properties in the area; not in the purview of this issue but something should be done to mitigate it.

Brodbine stated the knotweed has nothing to do with the issues today. Zannotti stated as Phippard suggested, there are communications between the applicants and abutters and they could work out the knotweed problem privately and without the adjudication of the Zoning Board.

Hanzalik asked about criteria five: literal enforcement of the ordinance would result in unnecessary hardship. Zannotti stated it would be the same as any other property on the lake.

Brodbine noted that all the properties on the lake are special circumstances.

Hanzalik noted that there is a consensus among the board and asked if there were a motion to be made.

Joe Brodbine moved that the variance be approved on the George property, noting that the official end of the previous motion should be included. Zannotti noted that the answers to the five criteria should be included in the motion.

Hanzalik stated that Brodbine move that Marilyn George be granted a variance from Article II, Section 203.6 Spofford Lake District, part 203.6b Setbacks, Part C Lake Setback of the zoning ordinance to permit construction of a single-family residence 41 feet from the lake where 50 feet is required.

Brodbine asked if the five criteria answers should be included as part of the motion. Hanzalik

stated yes.

Zannotti asked if there were any conditions to add to the motion, any pre-construction conditions. Hanzalik stated he would like to see the drainage plan carried out and the berm in discussion be removed or redesigned in a way that it carries water to the plan that Phippard had provided; signed and dated. Zannotti asked if there were any conditions to apply to the retaining wall. Brodbine stated he does not believe that any part of this plan calls for any disturbance to the existing retaining wall. Zannotti stated he thought there was additional retaining wall to be put in place and asked if that should be documented. Brodbine stated it was covered as shown in Phippard's plan. Zannotti asked about documenting the plan that is being approved so that there is a plan of reference for the approval. Hanzalik stated yes, Brodbine noted a condition that the drainage plan be carried out fully in accordance with the plan signed and dated March 5th, 2021. Evans stated vegetation is part of the drainage plan and it would be a good idea to include the removal of the knotweed in a fashion that is not detrimental to the lake. Zannotti disagreed since the ZBA are not performing historical remediation. Brodbine agreed, the motion should not contain knotweed.

The motion was seconded by John Zannotti.

Hanzalik stated the motion was made to accept with the five criterium already discussed and the condition is that the drainage plan submitted on the date to be determined by Barey, is executed.

The motion passed unanimously by roll call vote.

Hanzalik stated the variance has been re-granted.

Hanzalik asked if the 30-day period was re-set. Barey stated he would verify with the RSA.

Hanzalik passed chairperson responsibilities to KMcKeon.

Phippard and Saturley left the meeting.

Continuations

Continuation from May 13th, and May 25th, 2021: **Michael S & Joan H Bernbach Revocable Living Trust** with Fieldstone Land Consultants/Christopher Guida representing, are requesting a variance from **Article V Non-Conformities, Section 503 Non-Conforming Buildings & Structures, part 503.1 Expansion** of the zoning ordinance to permit the restoration of a portion of a three-bedroom dwelling. The property is located at 168 North Shore Road Spofford, NH 03462 (Tax Map 5D Lots B031 & B032).

KMcKeon noted that the Bernbach's have asked to continue to the next meeting to compile information that the board asked for.

Zannotti asked if the representatives know what information the board are asking for. Barey noted that Guida had a conflict this evening and asked to be contacted if the board decided to discuss and hear the case.

KMcKeon opened discussion on the Bernbach hearing, noting that the board asked for an improved elevation plan. Zannotti stated he had asked for sketches to be made to scale, signed, and dated.

Zannotti continued, noting the lot coverage and calculation sheet is missing, assuming that it is a merged lot. KMcKeon asked if the board were assuming the lots were merged.

Evans noted comments on the setbacks; stating that it almost looks untenable when viewing the setbacks. Zannotti noted that if the lots were merged it would be more tenable.

Zannotti stated he would like something that shows lot 30 has access through lot 31. KMcKeon stated if you look at it, there is only eight or 10 feet on lot 31 between the edge of the garage and their lot line, only place for a Right of Way.

John Zannotti moved to forward this information, and have it received by Barey one week before the meeting so the board has an opportunity to review; also continuing this hearing to the Jon McKeon meeting room on July 8th, 2021 at 6:45PM. The motion was seconded by Joe Brodbine and passed unanimously by roll call vote.

The board returned to discussion on amendments to the Rules and Procedures. Zannotti noted that the chairperson may declare the public portion closed rather than the board voting each time.

KMcKeon noted she would be forwarding information from Ratigan that she had received earlier on this subject.

KMcKeon noted the Rules and Procedures is a living document and should be clarified and questioned on occasion.

Zannotti opened discussion on member attendance. Zannotti stated it is not his purview to question the Board of Selectmen's decisions on placing members, but when attorneys are attending meetings and the Zoning Board cannot field a quorum, it is embarrassing for the Zoning Board.

Zannotti noted that he believes they are doing the applicants and attorneys a disservice by continuing as they have been.

The board noted further discussion on the Board of Selectmen distributing further applications for alternates to various boards based on need.

Reconsideration: Perrin/Samson motion-KMcKeon opened discussion on whether the board wanted to amend the motion made to include a due by date.

Zannotti noted he thought the motion that was made was well written, to him both neighbors have come to a mutual agreement. KMcKeon and Brodbine clarified Reconsideration versus Rehearing.

Zannotti noted the letter from the Samson's attorney, stating it makes good sense to have the Perrin's sign the document for agreement, or continue with reconsideration but there is nothing in Carroll's letter that says the Perrin's agree with everything. Hanzalik agreed with Zannotti, noting he wants to see a signature that all parties agree.

Kristin McKeon moved that the board is in agreement that they are open to reconsideration, and they need information from the Perrin's at the next meeting on July 8th, 2021 in the Jon McKeon meeting room after 6:45PM. The motion was seconded by John Zannotti and passed unanimously by roll call vote.

Other Business


Next Meeting Schedule – July 08, 2021

Kristin McKeon moved to adjourn the meeting at 10:21PM. The motion was seconded by Joe Hanzalik and passed unanimously by roll call vote.

Respectfully submitted,


Jim Barey
Zoning Board of Adjustment Secretary

Approved by:


Kristin McKeon, Chairperson

7/15/21

Date


Joe Hanzalik, Vice-Chair

July 15, 2021

Date