

Zoning Board of Adjustment Minutes
Tuesday, April 13, 2010

Present: Todd Page, Lewis Major, John Smith, Angela Schill. Excused: Dorianne Almann. The applicant, two abutters and one member of the public were present.

7:00pm Chair Todd Page called the meeting to order.

First order of business was election of officers for the board. Louis Major nominated John Smith for Chair, Todd Page seconded; unanimous vote in favor. John Smith nominated Todd Page for Vice-Chair, Louis Major seconded; unanimous vote in favor. John Smith nominated Angela Schill for Secretary, Louis Major seconded; unanimous vote in favor.

7:10pm Chair John Smith opened the public hearing. CDC Joan Morel read the public notice for the Application for an Area Variance submitted by Joseph Lott, Cambridge, Massachusetts, case #0410, seeking a variance from Article VII, Development of Rear Lots, in order to build a residential structure on a lot that lacks front footage on a Class V road, and is accessed over a deeded easement through tax map 37 lot 5, owners Charles and Nancy Butterfield .

Chair John Smith asked the applicant if he would like to defer proceeding because only four members of the Board were present. Joseph Lott confirmed that four members could make a decision, then asked to proceed.

Joan Morel read the application and a letter from the current owners of the lot, George and Mary Hastings, and indicated the location of the lot on the tax map.

Chair John Smith asked Joseph Lott to present his case. Mr. Lott explained that there will be temporary structures but only one living unit (a yurt with no foundation); no machinery needed for construction; will have a composting toilet; stream or carried-in water; he will live at the site possibly year-round; if weather is too bad he will seek other shelter.

Joan Morel read comments from Town Department Heads: Rod Lawrence, Building Inspector, Health and Code Officer, wrote that any outhouse or other structure must be built to code and applicant must apply for a building permit, also if water is to be piped into the building he must have a septic system. Robert Johnson, Fire Department Chief, wrote questions about heating the home, open fires, seasonal or year-round living, and emergency accessibility. Jill Collins, Town Administrator, wrote that if the variance is granted there must be a Notice and Release Deed releasing the Town from any liability due to accessibility.

Chair John Smith summarized the case, and asked if there were any members of the public in favor who would like to talk; no response. He asked if there were any members of the public opposed who would like to talk; no response. He closed the public portion at 7:20pm.

Chair John Smith asked for questions or comments from the Board. Board members asked Mr. Lott: What about fire or medical assistance inaccessibility (*not interested in burdening the Town*); how will you heat the yurt (*fire*); will this be seasonal (*possibly year-round*); how will you cook (*fire*); will you have an outhouse, if so it would need to meet specs and you would need a building permit (*plan to have a composting toilet*); how will you get water (plan to haul it in and there is also a brook that runs through the property). Richard Schill asked permission to speak, and then asked if plans are for one or several structures (*plan to have one residence and other structures for storage, would like to have more residences in the future*). Board members explained that only one residence per lot is permitted, and he would need to apply to the Board for a variance for any additional residences. Lewis Major asked if the yurt is a temporary structure and how long it will be up (*indefinitely*). John Smith commented that the arrangement is permanent in nature but with what is called a temporary structure with no foundation. Joan Morel asked what type of yurt it will be (*canvas*). Angela Schill asked would he be renting (*purchased the lot, closed on it just last Tuesday*), about the stream – does it dry up in the summer and if so what will you do for water, what is the terrain like, will the other possible yurts be rented, and wants Mr. Lott to understand that only one residence per lot is permitted per our zoning ordinance (*haul it in, and I don't know if the stream dries up I have never been on the property in the summer, the terrain is heavily wooded but has many open spots for a yurt, will not need to cut any trees, and in the future yurts would not be rented but would be for friends and family, and understands only one residence per lot and if he chooses in the future to have other residences that he would need to come before the Board and ask for a variance*). Chair John Smith asked for any more questions or comments from the Board and then began review of the Findings of Facts:

- (1) heating/cooking by fire (discussion of bans, permits)
- (2) no building permits can be issued until a Notice and Release Deed is presented for Town review before being recorded at the Cheshire County Registry.
- (3) Composting toilet will be used.
- (4) Water will be hauled in and obtained from the stream on the property.
- (5) Temporary canvas structure that will possibly be used permanently year-round.
- (6) The terrain is heavily wooded.
- (7) Any additional structures will need a building permit.
- (8) The type of heat is a wood stove.
- (9) There will be no electricity but he will have a cell phone at the property.

Lewis Major made a motion to adopt the Finding of Facts, seconded by Todd Page. Chair John Smith repeated the motion and call for a vote, Major-aye, Page-aye, Smith-aye, Schill-aye. Motion passed unanimously.

Next the Board addressed the Statement of Reasons, discussing “would” and “would not” for each, and voted on that aspect of each separately, based on the discussions: (1) Lewis Major motioned it *would not* diminish value of surrounding properties, seconded by Todd Page. Chair John Smith repeated the motion and called for a vote, Major-aye, Page-aye, Smith-aye, Schill-nay. Motion passed. (2) Todd Page motioned it *would* be a benefit to the public interest, seconded by Lewis Major. Chair John Smith repeated the motion and called for a vote, Major-aye, Page-aye, Smith-aye, Schill-nay. Motion passed. (3) Lewis Major made a motion to accept as presented, seconded by Todd Page. Chair John Smith repeated the motion and called for a vote, Major-aye, Page-aye, Smith-aye, Schill-aye. Motion passed unanimously. (4) Todd Page motioned substantial justice *would* be done, seconded by Lewis Major. Chair John Smith repeated the motion and called for a vote, Major-aye, Page-aye, Smith-aye, Schill-abstain. Motion passed. (5) Lewis Major made a motion to accept as presented, seconded by Todd Page. Chair John Smith repeated the motion and called for a vote, Major-aye, Page-aye, Smith-aye, Schill-aye. Motion passed unanimously.

The Statement of Reasons was then read again in full:

1. There would not be a diminution in value of surrounding properties as a result of the granting of this variance because of the remote location of the proposed structure.
2. The granting of the variance would be a benefit to the public interest because there would not be an impact on municipal services.
3. Since: (a) the following special conditions of the property make an area variance necessary in order to allow development as designed: inadequate road frontage on a Class V or better road,

and (b) the same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because: the survey required for, and acquisition of, property for the purpose of meeting front footage requirements for this remote lot would be very costly to the applicant,
4. By granting this variance substantial justice would be done because the applicant could use the land for permitted purposes on this non-conforming, pre-existing lot with deeded access.
5. The use contemplated by petitioner as a result of obtaining this variance would not be contrary to the spirit of the ordinance because granting of the variance would be subject to and predicated upon the following conditions being met:
 1. Notice and Release Deed, reviewed by the Town before recording at the Cheshire County Registry of Deeds and before any permits granted.
 2. Land to be used solely as a single residential unit.
 3. Applicant must consult with the Building Inspector and Fire Chief and meet any applicable regulations and code requirements.
 4. This variance is subject to a review in ten (10) years.

Todd Page made a motion to approve the Statement of Reason as read in its entirety, seconded by Lewis Major. Chair John Smith repeated the motion and called for a vote, Major-aye, Page-aye, Smith-aye, Schill-abstain. Motion passed.

Lewis Major made a motion to grant the variance based on the approved Statement of Reasons, seconded by Todd Page. Chair John Smith repeated the motion and called for a vote, Major-aye, Page-aye, Smith-aye, Schill-nay. Motion passed to grant the variance.

8:25pm Chair John Smith informed Joseph Lott the variance was granted, and closed the hearing.

Lewis Major made a motion to approve the minutes from March 16, 2010 as printed, seconded by Angela Schill. Chair John Smith repeated the motion and called for a vote, motion passed unanimously.

8:30pm Lewis Major made a motion to adjourn, seconded by Todd Page, motion passed unanimously.

Respectfully submitted,

Kathryn Lynch

Joan Morel

Draft of minutes until approved and signed