



TOWN OF LITCHFIELD

LITCHFIELD ZONING BOARD OF ADJUSTMENT

Litchfield, New Hampshire

June 12, 2013

DRAFT

Regular meetings are held at the Town Hall at 7:00pm on the 2nd Wednesday of each month.

ZBA Members in Attendance (indent if absent):

Richard Riley, Chairman

Laura Gandia, Vice Chairman

John Regan

Albert Guilbeault

Eric Cushing

John Devereaux (alternate)

Greg Lepine (alternate)

Thomas Cooney (alternate)

I. CALL TO ORDER AND ROLL CALL

Richard Riley called the meeting to order at 7:09pm. He requested Laura Gandia to call the roll.

Alternates, John Devereaux and Greg Lepine, were appointed by the board to sit in for the missing board members.

II. ORDER OF TONIGHT'S MEETING

Rick Riley stated that a quorum for public hearings is five members. Only four members were present. To allow extra time for a 5th board member to arrive, he asked the board and the Applicant if they agreed that the board could start the meeting with other business. Everyone agreed.

III. COMMUNICATIONS AND OTHER BUSINESS

Approval of minutes for 5/8/13 meeting

The board members reviewed the minutes. Greg Lepine motioned and Laura Gandia seconded the motion to approve the minutes of 5/8/13. Motion carried 3-1-0 with John Devereaux abstaining.

Discussion of By-Laws regarding video recordings of ZBA meetings

Laura Gandia read aloud her suggestions regarding the By-Laws, Section 4.10, Video Recording. A certified transcript of any of the video recorded proceedings of the ZBA shall be made available to the public in accordance with New Hampshire RSA91-A with the provisions stated herein:

- A. All video recorded proceedings of the ZBA shall be kept for (blank) days.
- B. If any member of the public requests a certified copy **transcript** of any video recording proceeding, then that member of the public shall request in writing to the chairperson pursuant to the time listed in paragraph A, a certified transcript.
- C. Pay in full for said cost upon receipt. However, the chairperson may request an advance deposit. If the actual cost is less than the deposit, the balance shall be returned to the

member of the public within 7 calendar days. A copy of the video recording shall be made available to the public for \$_____.

- D. Only the certified transcript of any video recording obtained with the procedures listed herein shall be admissible in any further proceedings.
- E. An index of all recorded with the date, time, number of cases, and names of cases, the length of each recording shall be kept on file for a period of 12 months with the time to begin with the date of the recording.

Rick Riley stated that these are proposed edits to the current By-Laws, under a new Section 4.10. He said tonight is our second meeting where we have public broadcast of our meetings. He asked the board if this was something they want to pursue. If the board says yes, he said he would take this to the selectmen. Laura Gandia said she thought we would be remiss if we did not include some type of procedure for video recording. Greg Lepine asked if all other boards have something similar in place. Rick Riley said he could find out how other boards are handling this. Rick Riley said he agrees with Laura Gandia that it would be prudent for us to do so. He said he was willing to share this with the selectmen. He would like to get this going and would rather not wait. Laura Gandia says this sets a procedure for the town to have in situations where people are going to come in and request recordings; whether it's a certified recording, or just a copy. She said that's why she made the distinction between if someone wants a certified copy because the video recording could potentially be tried to be used in court. She said she thinks we need to have something in place so that the public has access to what they need, and the town has a procedure that will allow the public to have access. Greg Lepine thought the town attorney would probably want to read this too. Rick Riley said he would have no problem having the attorney take a look at it. Laura Gandia reiterated that she thinks there should be a difference in the fee for the certified transcript, compared to someone who just wants a copy. Greg Lepine asked what the difference would be. Laura explained that if someone wanted a certified copy of a transcript, the town would send it to someone like a stenographer who is certified by the state who would type everything in. Then, they would send it to us, and we would then produce it to the member of the public. Or if someone just wants a copy, that is something that could just be burned to a CD. The cost for a copy would be minimal. Laura stated that she thinks it's important to have this chain of command because you don't want to have stuff admissible in court that isn't a true reflection of what was actually recorded. John Devereaux asked why we would want to provide the service to provide a certified transcript. Laura stated that we're not providing it; we're acting as the middle man. Rick Riley asked if everyone was in agreement. John Devereaux said he agreed and recommended that this should be a town-wide policy. Rick Riley said he could ask if they're going to adopt something like this, but if they're going to take time to do it, we shouldn't wait. He believes that since we're broadcasting, we need something and we should not wait. Laura stated that ZBA is a quasi-judicial body; the Planning board is not. So, it's very important that we do implement something. Greg Lepine and John Devereaux agreed.

IV. PROCDEDURES FOR PUBLIC HEARING

By 7:25pm the 5th board member still had not arrived. Rick Riley explained to the Applicants that the quorum for public hearings could be reduced to 4 members if the applicant made a written request. The applicant chose to submit a written request to proceed with the hearing with 4 board members present.

Rick Riley stated that a Notice of Public Hearing for the following case was posted and published in the Hudson-Litchfield News. The abutters were notified by certified letter. Notice of the meeting and agenda were posted at town hall and public library.

Rick Riley explained the procedures for tonight's public hearing.

V. PUBLIC HEARING AND DELIBERATION – Case #2013-03

Rick Riley asked Laura Gandia to read aloud the application, as recorded below. Copies of the Application and the Denial Letter from Kevin Lynch, Code Enforcement Officer are on file.

Case Number: 2013-03

Name of Applicant: Richard & Jill Charbonneau

Owner of Property Concerned: SAME

Location of Property: 5 Colby Road, MAP 20 LOT 24

Description of the property is approximately 7.25 acres of land. It has a frontage of 294.54 ft.

Appeal Requested: The Applicant seeks a variance from LZO, article 800.00, §801.00; Permitted Uses. The existing Lot on record is in the Northern Commercial Zone as defined by LZO §800.01(b). The applicant is proposing to construct a single family residence which is not a permitted use.

Present is the applicant, Richard Charbonneau and Attorney Morgan Hollis, of Gottesman & Hollis of Nashua NH representing the applicants.

Rick Riley explained that because we don't have a full quorum, the applicant has submitted a written request to proceed with the hearing with 4 board members present. He then asked the board if they want to make a motion to move forward. Laura Gandia made a motion and seconded by Greg Lepine to accept the applicants request to move forward with a 4 member board. Motion carried 4-0-0.

Atty Morgan Hollis addressed the Board. He presented copies of a recorded plan of record with coloring on it, prints of Google Earth outlined with white tape, and prints of Google Earth without white tape.

Atty Hollis stated that as noted on the plan, it is a fairly large lot. If you look at the print of Google Earth outlined with white tape, you can see that it has frontage on Colby Road. The property has a series of abutters. It's in the northern commercial district. The immediate abutter on the left hand side is Map 20 Lot 26 is a residential property. If you were to head to the left which is easterly there is the Grace Free Presbyterian church. If you were to go around the back side of the property, Robin Ave is a residential area and a residential zone. The residences abut directly to the back of this property. Then working your way around to the westerly side, you again have some residential property owners. In the front as indicated on Map 20 Lot 22 is a single family residence. Directly across the street on Colby Road is a commercial owned property identified at Map 20 Lot 23, opposite the northwest corner of the property, but there is not a real commercial presence right there. There is a driveway, but the commercial presence is more on the Rt3A side. Then, adjacent to that is a single family home. Then, headed easterly Map 20 Lot 27 identified as Theroux Properties LLC is a major commercial business and industrial operation.

Atty Hollis explained that on the colored map, he colored the wetlands in green. He colored the buffer in pink (50ft wetland buffer). He colored in yellow the additional setback from the buffer. There's a total of 75ft from the wetlands, 25ft of which is this building setback, 50ft of which is the wetland buffer. Around the outside of the perimeter is the minimum building setback line. So, the area that is not colored is the area that is buildable on this lot.

John Devereaux asked how much white space was buildable space. Atty Hollis replied that he did not run a calculation but its 7 acres so maybe 1&1/2 acres. The front lot, Lot 26 is 1.56 so it might be closer to 2 acres. He stated that his Client feels that the highest and best use of this property, and the proper use of this property, is for residential. It is not well suited for a commercial use property because it has frontage on Colby and yet you'd be building in fact behind the residents. He stated that his Client would like to obtain permission to use it for residential property and in order to do so a variance is required.

Atty Hollis explained that on the Google map he outlined in white tape the rough area to give us a rough idea. The map shows the Presbyterian church but not as it's currently under construction. It also shows the single family residents. You can see how the residents in the back on Robin Lane back up to it. And it shows the marsh area on the right side.

Rick Riley asked Atty Hollis to point out where the church was on the Google Map and to also point out where the residential properties were. Atty Hollis pointed them out. It gives you a pretty good idea why the area is zoned commercial and then how it interacts with the residential zone and how we happen to fall in the middle. Greg Lepine asked where the boundary is for the commercial. He asked if it goes through it. Atty Hollis replied it does not go through it; it's behind it. Laura Gandia asked the board if we could label the maps as Exhibits. The Board agreed. Google Earth map without white tape was labeled "Exhibit A", Google Earth map with white tape was labeled "Exhibit B", and the Lot Line Adjustment Plan was labeled "Exhibit C".

Atty Hollis stated there are 5 points to the variance – five facts supporting the request. He went over all 5 points. Copy of Application is on file.

Rick Riley asked if there were any questions. Pertaining to Exhibit C, Greg Lepine asked if Richard Charbonneau and Attorney Morgan Hollis if they had any idea how much more land was wetlands. Attorney Hollis replied he was not sure. Richard Charbonneau explained where the wetlands are. Rick Riley asked if Exhibit C showed officially delineated wetlands. They replied that they were. They said if you went out there you would see the flags and the flags will match the plan. They said the plan was done by Keach-Nordstrom and a soil scientist went out and flagged the wetlands. Laura Gandia asked Richard Charbonneau if he had any conversations with any of the abutters. He replied that at the last meeting, Mrs. Durocher asked him some questions, which is Map 20 Lot 14. She was more concerned with his mother's property than this property. He said he answered her questions and she was fine. Atty Hollis pointed that on map, Exhibit C, listed as #6 it read "Onsite wetland delineation was performed by Schauer Environmental Consultants, LLC in December 2011 and surveyed by Keach-Nordstrom Associates Inc." John Devereaux asked regarding Exhibit C, Map 20 Lot 25 reads Marilyn P. Jewett . He asked if there was a house there, because when he looked at the abutter list, it was not listed. Richard Charbonneau replied she had sold the house since the time they did this plan. But, there is a house there. Greg Lepine asked if it was a duplex. Richard Charbonneau replied that it was an old farmhouse that was made into a duplex. Rick Riley asked Richard Charbonneau how long he owned the property. He replied he owned it since 2011. Rick Riley asked Richard Charbonneau if he has the frontage necessary to have a driveway off of Colby Rd. Richard Charbonneau said that it has about 400ft of frontage. He said he owned both properties at one time. Then, they delineated the wetlands and they did a subdivision to get this access without going through wetlands. So that's why this Map 20 Lot 26 originally was an acre and a half, and then we changed that to an acre and got to where a driveway could be out of the wetlands. Atty Hollis explained that the plan has the former lot line identification. Rick Riley asked if there were any more questions. John Devereaux asked for clarification regarding Exhibit B. He

asked if there was still a house near the Presbyterian. Richard Charbonneau replied that there was a house, it was torn down.

Rick Riley asked the Board members if there were any more questions. There were none. There was no one present for public input. Rick Riley asked the Board if they wanted to make a motion to close public input. Laura Gandia made a motion and John Devereaux seconded the motion to close public input. Motion carried 4-0-0

The Board entered the deliberation session based on testimony provided. Rick Riley asked the Board if they were ready to make a decision on the case, each member responded they were ready. Rick Riley asked for a motion to approve or deny the case. Laura Gandia made a motion to grant the Applicant's request for a variance to LZO, article 800.00, §801.00; Permitted Uses. The applicant's request to construct a residential home was granted. Greg Lepine seconded the motion. Laura Gandia made a motion to withdraw the motion to approve the construction of a residential home to make a new motion to specify that the request was granted for the construction of a single family residential use only. John Devereaux seconded the motion. Motion carried 4-0-0

Rick Riley explained to the Applicant that he should wait 30 days before starting construction to allow for the appeals process to occur.

Notice of Decision was prepared by the Board and will be mailed out. Copy is on file.

VI. OTHER BUSINESS

Discussion of ZBA fees

Rick Riley stated that on average (based on 2011) our cost for public notices in the HLN is \$126.27. Estimated cost for labor for creating the certified mail that needs to go out to all the abutters and postage for certified mail, labor for time spent hearing only the cases, labor for producing minutes and for producing Notice of Decisions document - the average cost to the town for a single case with a single letter to an abutter is about \$242.00. We're collecting \$107.00 – which means the Town/taxpayers are picking up \$135.00. Another issue that Rick Riley would like to discuss is that our By-Laws state that the applicant is to write a check to the postmaster for \$7.00 for every letter, but in fact it's \$6.11. So, the post office gives back the change in stamps. Then, he gives the stamps to the clerk or whoever will use them. Rick would like to change the By-Laws so they do not specify \$7.00 but instead read that the applicant is to write a check for the postmaster for the then current rates. The second issue is to discuss if we're collecting enough in the base rate of \$100.00.

Currently, we're collecting a check to the town for \$100.00 and \$7.00 for every letter to the abutter plus one to the applicant themselves. Greg Lepine asked if the fees were specified in the By-Laws. Rick Riley said the fees are listed as an attachment. John Devereaux made the comment that he doesn't want to pass any of the costs on to taxpayers. Greg Lepine stated that it's been a while since we updated these costs. Laura Gandia agreed with John that the town should not end up paying any of the costs. Rick Riley asked if the fees should be increased and if so, to what amount? Laura Gandia stated that the fee should be close to the actual final cost. Rick stated that the Public Notices are the larger portion of the cost. The Board discussed increasing the fee from \$100.00 to \$225.00. Rick Riley asked the Board if they were ready to make a motion. Greg Lepine asked if anyone knew how much other towns charged. Rick Riley said we could take time to think about it. Laura Gandia volunteered to take the action to find out what other towns charge. Rick Riley took the action to draft an addition to change the postal fees. Rick will also take the action to speak with the Selectmen about the By-Laws in regards to video recordings. Motion was made by John Devereaux

to table the discussion about increasing the fees. Rick asked if there was any other business for tonight. There was none. John Devereaux motioned and Greg Lepine seconded the motion to adjourn the meeting. Motion carried 4-0-0. Meeting adjourned at 8:10pm.

Respectfully submitted,
Gisele Mercier

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