**Town of Chester**

**Zoning Board of Adjustment**

**January 9, 2024**

**Town Hall**

**7:00 PM**

**Approved Minutes**

**Members Present:**

Chair Billie Maloney

Vice-Chair Kevin Scott

Jack Cannon

William Gregsak

Jason Walsh

**Members Absent:**

Rick Snyder, Alternate and Planning Board Liaison

Selectman Dick Trask, Select Board Liaison

**Other Persons Present:**

Attorney Eli Leino

Robert Lamontagne, Fairwind Properties

Conservation Chair Victor Chouinard

Selectman Charles Myette

Attorney Stephen Bennett

Tim Peloquin, Promised Land Survey

Cheryl Maclean

**Agenda**

1. **Call to Order/Roll Call**
2. **Approval of Meeting Minutes: December 19, 2023**
3. **Public Hearings**
4. **Correspondence**
5. **Updates**

**1. Budget FY 2024**

**2. Financials**

**3. Rules of Procedure – Jason (Tabled)**

**6. Adjournment**

**1. Call to Order**

Chair Maloney called the meeting to order at 7:00 PM. By Roll Call, voting members were present: Chair Maloney, Vice-Chair Scott, Jack Cannon, Bill Gregsak and Jason Walsh.

**2. Approval of Meeting Minutes**

**December 19, 2023**

***Chair Maloney motioned to approve the December 19, 2023 meeting minutes. Vice-Chair Scott seconded the motion. A vote was taken, Mr. Walsh abstained, the motion passed 4-0-1.***

**3. Public Hearings**

1. The continued application of Fairwind Properties, Inc. c/o Bernstein, Shur, Sawyer & Nelson, P.A. on behalf of the MacLean Family Revocable Trust of 2018

For a Variance from Article 5, Section 5.3.5 Table 1 (Table of Dimensional Requirements) to permit a 100+/- acre lot to be subdivided from the existing 118+/- acre lot known as Map 2 Lot 82, where the proposed 100+/- lot will lack frontage on a Class V Road, where 290’ of frontage on a Class V road are required.

The intended use for the parcel is as conservation/open space land as part of a larger development with no intended construction contemplated on the 100+/- acre lot. The parcel would abut Class VI Mill Road for 578.’ Mill Road is a Class VI road, subject to gates and bars.

Pursuant to ordinance definition 2.30 Frontage is defined as: “The distance along a lot line dividing a lot from a Town approved road.”

Pursuant to ordinance Article 5, Section 5.3.5.3 Frontage and Article 5, Section 5.3.5 Table 1 “Every lot shall have the minimum required frontage on a Class V or better Town-approved highway.”

On the premises to be known as and numbered Map 002, Lot 082-006, in the R-1 Residential zoning district.

Vice-Chair Scott read the public hearing notice out loud.

Chair Maloney summarized the last meeting and noted that the Board would like to discuss proposed conditions if the application were approved. She noted the end goal is that the parcel is subdivided and 100-acres will be deeded to the Town.

Chair Maloney asked if a purchase and sales agreement was signed and Attorney Leino indicated yes.

Chair Maloney opened the hearing to the public for comments and questions at 7:07 PM.

Victor Chouinard spoke on behalf of the Conservation Commission and expressed its interest in conserving the land.

Chair Maloney read out loud proposed conditions:

1. The owner/applicant shall convey a conservation easement or fee simple deed to the Town, of the 100-acre parcel to be created, in a form acceptable to the Planning Board within x days of the Planning Board’s approval of the owner/applicant’s “open space” subdivision.

2. The 18-acre parcel with existing dwelling shall not be further subdivided that would further reduce the frontage of the remaining 18-acre parcel which has 40’ of frontage.

3. The ZBA’s decision granting the request for relief from Article 5.3.5 Table 1 is not intended to supersede the requirements of RSA 674:41 I & II or Article 4.10 of the zoning ordinance.

Chair Maloney recommended that the Findings of Fact state that this variance approval is expressly subject to the incorporation of the promises made by the applicant and evidence presented to satisfy the five variance criteria.

Attorney Bennett clarified that the ZBA does not want a separate company to come in and say “I wasn’t part of that” in regard to the condition that a conservation easement be conveyed to the Town upon Planning Board approval of the Applicant’s open space subdivision.

Selectmen Myette indicated that the Town preferred the property not be deeded to an HOA. Vice-Chair Scott reminded of the earlier testimony of Mr. Lamontagne who indicated he was happy to deed the Town all of the open space.

Mr. Peloquin noted the lot could not be merged with the lower parcel owned by Fairwinds because the Class VI Road closed in 1959, subject to gates and bars, ran between the two parcels.

Chair Maloney closed public comment at 7:20 PM.

Vice-Chair Scott indicated he was satisfied that the applicant met the criteria for public interest and the spirit of the ordinance and master plan. He noted that the benefit to the applicant was not outweighed by any harm to the public. He indicated no impact to values and noted he was a yes on hardship and would vote yes on all five criteria.

Chair Maloney indicated she would vote yes on both public interest and spirit of the ordinance. The proposal is the best use of the large property. There would be no building on the 100-acre lot and not permits issued. She indicated the subdivision would benefit both the applicant and the public. She noted the use was reasonable and the large size of the lot and its ecological significance were unique, and no development is planned. She noted she would vote yes on all five criteria.

Mr. Gregsak indicated he would vote yes on public interest and benefit to the public with the Town-owned conservation easement. The lot would not become a buildable lot, values would not be diminished. He noted the location bordering a Class VI Road was a unique hardship and stated he would agree on all five criteria.

Mr. Walsh stated he had no issue with public interest or spirit of the ordinance and substantial justice is done with benefit to the Town from the 100-acre parcel. He did not see any impact on the values of surrounding properties. He noted the unique qualities of the parcel and benefit to all parties. He noted he would vote yes on all five points.

Mr. Cannon agreed and stated that the condition on the 18-acre piece of no further subdivision would support public interest and no development on the 100-acre parcel would be used to satisfy density and is a good deal for both parties as far as substantial justice. He saw no impact to values and noted he would vote yes on all five points.

Chair Maloney reread the proposed conditions and finding of fact. The Board discussed the number of days following Planning Board approval in which the conveyance of the 100-acre parcel would be made to the Town and agreed on 90 days.

***Vice-Chair Scott motioned to grant the request of Fairwinds Properties, Inc.. c/o Bernstein, Shur, Sawyer & Nelson, P.A. on behalf of the MacLean Family Revocable Trust of 2018***

***For a Variance from Article 5, Section 5.3.5 Table 1 (Table of Dimensional Requirements) to permit a 100+/- acre lot to be subdivided from the existing 118+/- acre lot known as Map 2 Lot 82, where the proposed 100+/- lot will lack frontage on a Class V Road, where 290’ of frontage on a Class V Road are required.***

***The intended use for the parcel is as conservation/open space land as part of a larger development with no intended construction contemplated on the 100+/- acre lot. The parcel would abut Class VI Mill Road for 578.’ Mill Road is a Class VI Road, subject to gates and bars.***

***Pursuant to ordinance definition 2.30 Frontage is defined as: “The distance along a lot line dividing a lot from a Town approved road.”***

***Pursuant to ordinance Article 5, Section 5.3.5.3 Frontage and Article 5, Section 5.3.5 Table 1 “Every lot shall have the minimum required frontage on a Class V or better Town-approved highway.”***

***On the premises to be known as and numbered Map 002, Lot 082-006, in the R-1 Residential zoning district subject to the conditions read out loud by Chair Maloney. Mr. Cannon seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.***

Vice-Chair Scott read out loud the 30-Day Notice of Appeal.

**4. Updates**

Chair Maloney read out loud the proposed budget to be presented to the Selectmen in February. Selectmen Myette explained the payroll line, COLA and step increases.

Ms. Hoijer noted that both she and finance were spending a lot of time dealing with the Derry News on accounting issues to do with their invoices, and a lack of response from them, which reduced any savings they might have otherwise seen. She recommended advertising with the Union Leader.

**5. Adjournment**

***Vice Chair Scott motioned to adjourn the meeting at 7:55 PM. Chair Maloney seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.***

Respectfully submitted,

Nancy J. Hoijer,

Recording Secretary

