**Town of Chester**

**Zoning Board of Adjustment**

**November 21, 2023**

**Town Hall**

**7:00 PM**

**Approved Minutes**

**Members Present:**

Chair Billie Maloney

Vice-Chair Kevin Scott

Jack Cannon

William Gregsak

Jason Walsh

Rick Snyder, Alternate and Planning Board Liaison

**Members Absent:**

Selectman Dick Trask, Select Board Liaison

**Other Persons Present:**

Attorney Eli Leino

Tim Peloquin, Promised Land Survey

Robert Lamontagne, Fairwind Properties

Carrie Weiland

Conservation Chair Victor Chouinard

Selectman Charles Myette

Gary Chesney

Joseph Hanna

Cheryl MacLean

Paul Chisholm, Keach Nordstrom

Bryan Richter, C&I Design, Inc.

Darren Jones

Li Wang

Oliver Ford and Mary Ford

Kevin Branley

Jesse Lufkin

Brian Juliano

**Agenda**

1. **Call to Order/Roll Call**
2. **Non-Public Session 91-A:3(II)(c) if needed**
3. **Approval of Meeting Minutes: October 17, 2023**
4. **Public Hearings**
5. **Correspondence – request of Robert Gerry, Lot 3-3, Haverhill Road 2007 Variance**
6. **Updates**

**1. Budget FY 2024**

**2. Financials**

**3. Fall Conference – Saturday, October 21st**

**4. Rules of Procedure**

**7. Adjournment**

**1. Call to Order**

Chair Maloney called the meeting to order at 7:00 PM. By Roll Call were present: Chair Maloney, Vice-Chair Scott, Jack Cannon, Bill Gregsak, and Jason Walsh who were designated to vote and non-voting Alternate Rick Snyder.

**2. Approval of Meeting Minutes**

**October 17, 2023**

***Vice-Chair Scott motioned to approve the October 17, 2023 meeting minutes. Mr. Cannon seconded the motion. A vote was taken, Chair Maloney abstained, the motion passed 4-0-1.***

**3. Public Hearings**

1. The 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 out loud the Public Hearing Notice and denial letter from the Building Inspector.

Tim Peloquin gave a brief history of the parcel and noted there was a variance done to subdivide a two-acre lot leaving 118 acres remaining with the existing house. He noted Mill Road was discontinued in 1959 subject to gates and bars. Vice-Chair Scott noted that in 1959 there were no homes, just a path to the rock.

Cheryl MacLean indicated the intent is to sell 100 acres to Fairwind Properties and put a conservation easement nearby and there is no intention at this time to build on the property.

Mr. Snyder, who is the Planning Board liaison indicated the applicant had a conceptual review with the Planning Board and that Conservation holds an easement on land that abuts the property.

Attorney Eli Leino presented the application on behalf of Fairwind Properties, Inc. He noted that surveyor Tim Pelloquin and Robert Lamontagne of Fairwind Properties were present along with Cheryl MacLean.

Attorney Leino reviewed RSA 674:41 concerning building permits on a Class VI Road and noted that additional relief would be needed from the Select Board in order to build on the property and they were not asking for any building permits right now. Attorney Leino reviewed the criteria of the application into the record. He noted the property is to be subdivided into two parcels, one with 18 acres and existing house which has access (40’ on Pulpit Rock Road), and the 100 acres with no access. He noted nothing visually will change and not affect the character, public health, safety or welfare and the spirit of the ordinance is upheld because of the sheer mass of the lot not posing a risk of overcrowding. Attorney Leino noted the size of the parcel is overwhelming and is bounded by conservation land in Chester and Sandown and has habitat and abuts the headwaters of the Exeter River watershed. He noted values would not be diminished as there will be no change visually. He noted special conditions of the property, neighboring other conservation lands, is in size 50 times greater than a buildable two-acre lot and large Eversource utility easement. He noted the use is a reasonable one as open space developments and a home on 18 acres are both allowed in the zoning district.

Chair Maloney asked about the conservation easement and whether the applicant had discussions with the Conservation Commission yet or whether they had gone to the TRC as recommended by the Planning Board. She clarified that the Board needed to know what facts will be presented to show this easement will happen. Mr. Peloquin noted informal discussions with the Conservation Commission under the same proposal presented to them years ago. The property will abut Map Lot 3-6-3 owned by Fairwinds on Route 121 across from the Jenkins Farm subdivision. Chair Maloney indicated that an easement was promised before and nothing happened. She asked if the easement would be owned by Fairwind or deeded to the Town. Attorney Leino asked that the variance meet the five criteria. Chair Maloney reminded the applicant that they had made the easement part of those criteria. Mr. Cannon asked how the Board was expected to reach a decision without the facts.

Attorney Leino reviewed the location for access to the proposed 100-acre lot which he described as on Class VI Mill Road with 587 feet of frontage. There would be pedestrian access only.

Chair Maloney recommended continuing the application to consult with Town counsel on whether any approval could be conditioned on no further subdivision given the applicant’s future plans to combine the lot with 3-6-3 and do an open space cluster development.

Chair Maloney opened the hearing to the public for comments and questions at 7:40 PM.

Conservation Chair Victor Chouinard spoke to the types of Conservation easements and the differences between them. He noted currently the Commission favors easements deeded to the Town with an additional separate easement document. He noted deeds can change and prefers land deeded to the Town and what drives that is enforcement and he noted the Commission would look for stewardship fees to be paid by the donor as enforcement and monitoring are expensive. SELT and RCCD are not accepting the number of easements they used to. He noted the Class VI road is rough, and there is no bridge over the Exeter River.

Vice-Chair Scott noted the intent is for the density bonus so the developer could build more houses. He likened the application to a beautifully gift-wrapped basket of fruit that when you open it has a bite taken out of each piece.

Selectmen Myette noted he would also like to see the easement open to the public for access and cautioned that the timing of the subdivision would be important. He noted the complicated piece is if the Town were deeded the easement before the development project the developer could not use it as part of the project. It would not be subdividable. He reviewed the reasons the easement fell through before, changes in price, size of the lot, snowmobiles and four-wheelers and timbering. He noted the Commission does not like to see that. He asked if the prior variance had any contingency and Chair Maloney indicated there were no conditions.

Bob Lamontagne of Fairwind Properties noted the intent is to add the whole piece and have common land as a cluster all around the subdivision and that couldn’t be subdivided again.

Chair Maloney noted the proposed project has nothing to do with it but noted the easement was used to satisfy the five criteria and the Board needs fact-based assurances. Vice-Chair Scott agreed the applicant brought the conservation easement to the table by putting it in their application document.

Gary Chesney of 63 Pulpit Rock Road expressed concerns with the developer not having to follow the ordinance like others have to. He expressed concerns with the proposed development and its effect on his water, his well drying up, the quality of water, the wetlands and habitat such as turtles and trout. Mr. Snyder explained the benefits of the large conservation easement. Chair Maloney noted she believed the conceptual proposal brought to the Planning Board indicated public water from Sandown.

Carrie Weiland of 70 Wells Village noted she is an abutter and met Mr. (Ian) MacLean years ago. She questioned the location and effect on her property and its 50’ right of way. She approached the table and was shown the plan. She noted her property would not be affected at all. Mr. Peloquin indicated there may be trails.

Joseph Hanna of 71 Pulpit Rock Road expressed concerns with having a guarantee the property won’t be subdivided in the future. He emphasized this needs to be in writing, that it can’t be subdivided by anyone.

Vice-Chair Scott questioned whether the abutters could participate (not dictate) in the drafting of the easement to give input and ideas. Attorney Leino noted there would be a noticed public hearing. Vice-Chair Scott noted Lamontagne has the ability to build roads.

***Chair Maloney motioned to continue the application of Fairwind Properties to December 19, 2023 at 7:00 PM. Mr. Gregsak seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.***

Chair Maloney will contact Town counsel after the Thanksgiving holiday.

2. The application of C&I Design, Inc. c/o Bryan Richter on behalf of Busch International, Inc. for Variances

 from Article 5, Section 5.3.5 (Table 2) and Section 5.7.5.4 to permit:

1. To construct a 120’x170’ multipurpose building with the southwestern edge of the building approximately 16’ from the edge of wetlands where 75’ are required;
2. To construct a 120’x170’ multipurpose building with the southwestern edge of the building approximately 16’ from the edge of wetlands where structures are required to maintain a 25’ no-clearing buffer from the edge of wetlands;
3. To construct 372’ of walkway, at the southwesterly edge of the parking lot approximately 1’ from the edge of wetlands where 75’ are required;
4. To construct 372’ of walkway at the southwesterly edge of the parking lot approximately 1’ from the edge of wetlands where structures are required to maintain a 25’ no-clearing buffer from the edge of wetlands;
5. To construct a 18648 SF parking lot to the right of Wadleigh Hall 40’ from the edge of wetlands where 75’ are required; and
6. To construct a 6’x116’ walkway along the northwesterly edge of the parking lot to be built to the right of Wadleigh Hall and a connector walkway above to the existing walkway beside Wadleigh Hall 35’ from the edge of wetlands where 75’ are required.

On the premises known as and numbered Map 005, Lot 015, in the R-1 Residential zoning district.

Vice-Chair Scott read out loud the Public Hearing Notice and referenced the denials of the Building Inspector. He asked what the proposed building would look like and noted an aerial photo would be helpful as well as photo shopping in what they neighborhood would be looking at.

Paul Chisholm of Keach Nordstrom presented the application on behalf of Busch Academy. He noted that Bryan Richter of C&K Design was also present. He reviewed the location of the campus on Chester Street and adjacent parcels owned by the same owner. He reviewed the use of the Academy as a private school with sports intertwined with academics, basketball and hockey. He noted the students go off-site to train, in Exeter for hockey which they will continue and to Derry and other places, for basketball. He reviewed the size of the proposed 21,000 SF athletic center which the existing outdoor hoops are over the parking lot. He noted some existing parking will go away and another parking lot will be added with stormwater treatment proposed. There will be impacts to the wetland buffers for the new parking area, walkways, and connectivity.

Mr. Chisholm reviewed the proposed new stormwater management and noted a small new septic would be installed. Mr. Richter noted the applicant utilized the least impactful area. Mr. Chisholm added that the area was already disturbed. Mr. Richter noted the topography and wetlands challenges on the property and that the design would be screened from adjacent properties. He indicated a benefit to the Academy by allowing the teams going offsite to train to train on site, bringing an improvement to campus life, and therefore there would be less traffic. Mr. Richter noted some of the wetlands were man made. He noted values would not be diminished as the design would not be adjacent to abutters or the street and there would be no light pollution and any existing noise from playing outdoors would be mitigated by playing indoors. He described the structure as an air supported domed structure with fabric (white) to match the existing structures. He noted special conditions of the property being the wetland buffers covering most of the site. He noted the use was reasonable and will improve recreation uses and campus life.

Mr. Gregsak asked about dredge and fill and Mr. Richter indicated there are no direct wetland impacts and they are not grading the slope into the wetlands.

Darren Jones, Director of Operations described the Academy as a preparatory school with a nationally ranked NCAA basketball program. The student ages are 9-12 currently but accredited for ages 6-12. They would like to offer middle school sometime down the road and will need to build another building for housing. There are approximately 160 students, some online, the majority live on campus. Once a year there may be an event or conference. He welcomed the Town to be involved in running games at the facility.

Mr. Snyder asked the permitted maximum enrollment and Mr. Jones indicated he would find out.

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Vice-Chair Scott indicated he visited the premises and questioned the height of the proposed air-supported dome. Mr. Richter indicated the height would be 35.’ Vice-Chair Scott questioned that homes on Chester Street would not view this building and affect their values.

Chair Maloney opened the hearing to the public for comments and questions at 8:40 PM.

Mary Ford of 67 Chester Street stated she was thrilled to hear what they proposed to do. She recommended having a public presentation.

Oliver Ford noted he was the previous academic dean of White Pines (formerly at the location) and he recommended taking steps to make the building as safe for the students as possible, especially for fire response to the dormitories. He also recommended a more muted color for the dome noting it was important to keep the rural character of the community.

Gary Chesney expressed concerns with so many wetland variance applications.

Selectman Myette spoke to the role the 75’ wetland buffers play in allowing runoff to infiltrate and this will impact the wetlands. He expressed concerns with increased runoff. Mr. Richter noted there will be stormwater treatment which will improve the water quality.

Kevin Branley of Chester Street indicated the Academy was an excellent neighbor and there have only been minor issues. He his concerned with ages of students now high school and beyond and potential traffic for tournaments. He also commented that the community was not aware of the future changes.

Jesse Lufkin noted he lived across the street. He noted a lot of water encroachment already and expressed concerns with runoff and already saturated property. He stated that he had seen a similar structure in Goffstown and Hooksett and they are cheap buildings he doesn’t care to look at. He noted one fell down last year and they are inexpensive for a reason. He stated he would prefer brick and mortar in keeping with the character. He doesn’t want to look at a “marshmallow.” He was concerned with precedents being set with others feeling justified to get more wetland variances.

Chair Maloney noted the Planning Board would be responsible to undertake site plan review and deal with runoff concerns. As far as precedents are concerned every variance application is taken on its own merits and that doesn’t mean they have to be granted to others. She recommended doing a site walk. She indicated it would be of value to include the Planning Board and Selectmen. The site walk would be open to the public. She asked that the areas in question be marked.

***Vice-Chair Scott motioned to do a site walk on Monday, December 4th at Noon at Busch Academy and to continue the hearing until the December 19th meeting at 7:00 PM. Mr. Gregsak seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.***

Chair Maloney called for a few minutes recess before proceeding to the next application.

3. The continued application of Nadia Wright d/b/a Juliano’s Pools on behalf of Mark Marcon and Lynda Marcon

For a Variance from Article 5, Section 5.7.5.4 and Article 5, Section 5.7.8, Table 2 (Table of Dimensional Requirements - Wetlands) to permit an 18’x36’ in ground pool located 40’ from the edge of wetlands where 75’ are required

On the premises known as and numbered Map 011, Lot 53, 491 Lane Road in the R-1 Residential zoning district.

Vice Chair Scott read out loud the Public Hearing Notice and Building Inspector’s denial for the pool. Chair Maloney clarified that an application was never submitted for the denied fence area so the Board could not notice that. Vice-Chair Scott questioned why the original application was denied for a fence and Mr. Juliano indicated it may have been on the site plan they submitted.

Brain Juliano of Juliano Pools presented the application. He noted they didn’t believe they needed a fence because code had changed and now allows the automated pool cover to satisfy the criteria. He noted the pool failed and it was replaced. The original pool was kidney shaped and now it is a rectangle but a direct, in-kind replacement.

Mr. Snyder asked if the pool had been permitted originally and Vice-Chair Scott questioned if the present work was completed. Mr. Juliano answered that the walls, liner and concrete floor were done but not the backfilling or grading and the footer is now left exposed to frost. There is water in the pool. He noted the filter they were using did not discharge or back wash and was self-contained. Chair Maloney asked if the stone wall was moved out and Mr. Juliano answered no. The Board questioned how the original pool could have been approved without a fence and whether the stone wall was substitute for the required fence.

Vice-Chair Scott expressed disappointment that the work went ahead after being denied. He noted he would vote yes on the variance with a condition recommending there be a penalty imposed by the Select Board but noted he did not know the reasons why the application for a variance had been withdrawn last summer. He indicated it would have been good to have the owners present and they knew they needed a permit and proceeded.

Chair Maloney noted there was no public present and entered deliberations at 9:35 PM. She asked if anyone felt a site walk was necessary and all were in agreement that one was not necessary. She stated she would vote yes on all five criteria as the pool is a replacement in kind. There should have been a variance when it was originally put in.

Mr. Gregsak agreed.

Mr. Walsh agreed it would be better if the owner were present. There could have been an absent-minded decision to go ahead with the project. He indicated he would vote yes because the pool was a direct replacement.

Mr. Cannon agreed that tearing out the pool would be unreasonable but that there should be a middle ground in the form of some penalty. Both Chair Maloney and Mr. Cannon agreed the Select Board would not likely impose such a penalty. Chair Maloney called for a motion to approve without the condition that a penalty be recommended to the Select Board.

***Mr. Cannon motioned to grant the application of Juliano Pools for a variance from Article 5, Section 5.7.5.4 and 5.7.8 Table 2 of the Dimensional Requirements (wetlands) to allow a 18’x36’ inground pool located 40’ from the edge of wetlands where 75’ are required. Chair Maloney seconded the motion. A vote was taken, Mr. Cannon voted aye, Mr. Walsh voted aye, Mr. Gregsak voted aye, Chair Maloney voted aye and Vice-Chair Scott voted nay. The motion passed 4-1-0.***

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

**4. Correspondence – request by Robert Gerry, Lot 3-3 Haverhill Road 2007 Variance**

The Board reviewed a written request from Robert Gerry and Helene Gerry for their opinion on whether the variance obtained by them on January 25, 2007 for the property at Tax Map Lot 3-3 Haverhill Road was implemented. The variance is to permit a single-family dwelling on a lot unable to meet the minimum 290-feet frontage requirement and is conditioned that no residential structure be constructed within the tower fall zone of the adjacent property, that any construction not obstruct or impeded the existing right of way on the property.

Ms. Hoijer provided a copy of the decision dated January 25, 2007 recorded at the Rockingham Registry of Deeds in Book 4763, Page 1367 and letter from the ZBA dated February 23, 2007 determining that the approval condition to provide a plan showing the tower fall zone was satisfied, by providing the plan to the Building Inspector and ZBA. Mr. Gerry provided the Board with a copy of a plan dated November 29, 2006 showing the requested fall zone of the existing communication tower on adjacent property and a copy of a plan dated July 27, 2007, #D-34902.

Chair Maloney stated that the applicant provided a copy of the plans, the property was surveyed and monuments were set which satisfied the requirement that there be some investment made. She noted there is language concerning expiration of variances and special exceptions in the application form, although it may not have been in 2007. Ms. Hoijer noted the language is in the decision.

Mr. Snyder agreed the variance had been implemented. Mr. Gregsak and Vice-Chair Scott agreed. The Board determined that in their opinion, despite the single-family home not being built yet, that the applicants had demonstrated sufficient investment, and the variance was implemented.

***Mr. Gregsak motioned to write a letter approving the vested interest. Vice-Chair Scott seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.***

**5. Updates**

Chair Maloney reviewed the Fall Conference in October that were attended by herself, Vice-Chair Scott and Mr. Walsh. She noted that they clarified there could be a variance in combination with an application for a Special Exception. Vice-Chair Scott noted the Board could not waive any condition of a special exception, but the applicant can seek the variance. Ms. Hoijer noted they recommend those being done at separate hearings.

Chair Maloney asked Mr. Cannon to assist with the proposed FY 2024 budget which he agreed but indicated he was unable to attend the meeting with the Selectmen.

Chair Maloney asked Mr. Walsh to assist with the proposed updates to the Rules of Procedure.

Chair Maloney asked Mr. Snyder if he would bring the concern to the Planning Board of whether a zoning ordinance amendment should be done to clarify frontage, especially the double imposition of frontage on a corner lot. Asst. Assessor Packard provided extensive research on how other towns treat frontage as where the mailbox and road is.

**6. Adjournment**

***Vice Chair Scott motioned to adjourn the meeting at 10 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

