**Town of Chester**

**Zoning Board of Adjustment**

**December 19, 2023**

**Town Hall**

**7:00 PM**

**Approved Minutes**

**Members Present:**

Chair Billie Maloney

Vice-Chair Kevin Scott

Jack Cannon

William Gregsak

**Members Absent:**

Jason Walsh

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

Gary Chesney

Joseph Hanna

Paul Chisholm, Keach Nordstrom

Bryan Richter, C&I Design, Inc.

Darren Jones

Oliver Ford and Mary Ford

Dr. Joseph Hagan

**Agenda**

1. **Call to Order/Roll Call**
2. **Non-Public Session 91-A:3(II)(c),(e) if needed**
3. **Approval of Meeting Minutes: November 21, 2023 and December 4, 2023 Site Walk**
4. **Public Hearings**
5. **Correspondence – Virginia Rioux, abutter Busch Academy**
6. **Updates**

**1. Budget FY 2024 - Jack**

**2. Financials**

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

**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, and Bill Gregsak. Vice-Chair Scott explained to the applicants that there were four members present and the vote of three members were required to take any action. He asked them to consider if they would like to continue.

**2. Approval of Meeting Minutes**

**November 21, 2023**

Chair Maloney recommended an edit.

Vice-Chair Scott noted that he spoke out of turn when he said that Conservation easements were negotiated. He clarified that they can be discussed with abutters but not negotiated.

***Vice-Chair Scott motioned to approve the November 21, 2023 meeting minutes, as amended. Mr. Cannon seconded the motion. A vote was taken, all were in favor, the motion passed 4-0-0.***

**December 4, 2023 Site Walk**

***Mr. Cannon motioned to approve the December 4, 2023 Site Walk minutes. Mr. Gregsak seconded the motion. A vote was taken, all were in***

**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 recapped the last meeting. She noted requesting the variance was the first step in Fairwinds plan for an open space subdivision. All lots require frontage on a Class V road. There are two lots proposed to be subdivided before that happens, from the 118 acre parcel which currently has access with 40’ of frontage on Pulpit Rock Road, an 18-acre lot with existing home which continue to have the 40’ of frontage granted in an earlier variance; and the 100 acre lot which will be used to calculate density for the open space subdivision and which needs a variance to be subdivided because it does not have the required access on a Class V road. There is a large utility easement and the Exeter River. There is no bridge. The 100-acre parcel will join with a large lot to the south owned by Fairwinds. The proposed easement will provide a wildlife corridor and protection of the Exeter River. The intention is for the current owners to convey the 100-acre parcel to Fairwinds after receiving subdivision approval for these first two lots.

Attorney Eli Leino noted he was present with Bob Lamontagne from Fairwinds. He noted they understood the Town wanted assurance that the conservation easement would be placed on the parcel. He provided handouts of RSA 674:41 and again posed that no building permits could be issued without further relief.

Attorney Leino explained that there is reassurance in his opinion by filing for an open space subdivision which would require the easement.

Vice-Chair Scott asked if this 100-acre parcel would be deeded to the Town. Attorney Leino explained that the intent was to use the 100-acre parcel for density calculations and merge the parcel into one.

Chair Maloney stated they would have to have subdivision approval from the Planning Board before they could deed an easement to the Town. Attorney Leino stated that he could not give a yes or a no right now. Chair Maloney explained that in the event the Board imposed conditions they wanted to make sure those conditions were fair.

Mr. Lamontagne stated that if the Town wants all of the open space deeded to the Town, he was willing to do so. Mr. Chouinard, Chair of the Conservation Commission stated their position is that we absolutely prefer that the Town hold the deed.

Vice-Chair Scott recommended a condition that upon final approval and recording of the subdivision plan that the applicant could sign the deed to the Town. Mr. Cannon questioned why it would have to be so quick and recommended 90 days. Vice-Chair Scott noted that things dissolved in the past, but he was not dead set on two weeks. Mr. Cannon noted that negotiations dissolved with a different party.

Selectman Charles Myette stated that Attorney Leino represented both parties, the MacLeans who own the property now and Fairwinds who wish to purchase the property from them. He noted that the Town prefers the deed go to the Town because there have been lawsuits with towns and other parties. Attorney Leino stated he was clear about who he represented. He noted that if this domino doesn’t fall into place, then none of the rest of them do. Selectmen Myette noted that they created the domino effect representing both parties. He noted the property already has a variance on it.

Vice-Chair Scott asked if a Purchase & Sales Agreement was signed, and Attorney Leino indicated yes.

Chair Maloney reviewed the proposed timeline. First the sale, then subdivision approval with the Planning Board, then Fairwinds would own the property and go to the Planning Board for the open space subdivision approval while they could be working with Conservation or deeding the easement property to the Town. Vice-Chair Scott asked how long until shovel and dirt and Mr. Lamontagne indicated it would be about two years.

Gary Chesney indicated there was already a road on the property Mr. Lamontagne owns. Mr. Lamontagne indicated they constructed a gravel road in order to dig some wells. Chair Maloney noted it was his property he could do what he wanted.

Chair Maloney recommended talking about proposed conditions prior to going into deliberations so the applicant could give their feedback.

Vice-Chair Scott noted that this was a rare case where the applicant has gone before the Planning Board for a conceptual prior to coming here and so they knew what was coming next. He referenced the August 23rd Planning Board minutes. He asked if there were workforce or low- income housing proposed. Mr. Lamontagne responded that the numbers didn’t work. Vice-Chair Scott asked about ADA and senior housing. Mr. Lamontagne noted he could do ADA, but the other was eliminated. Selectmen Myette noted it was substituted for workforce housing. Vice-Chair Scott asked if some of the units could be designed for seniors, and he responded yes. He asked about solar, and Mr. Lamontagne indicated that would be up to the buyers. He asked about having adequate setbacks were buyers to add Accessory Dwelling Units. Attorney Leino stated that this was the first domino of the project and did not have all of the engineering yet, so it was too early to discuss what was going to be built.

Chair Maloney discussed possible conditions:

1. Convey a conservation easement over the 100-acre lot within a specific time following recording of the subdivision plans.

Attorney Leino stated that he wondered if the condition would be necessary. Chair Maloney noted there should be a time frame. Vice-Chair Scott noted the easement could not be put on until the Planning Board approves and records the subdivision plans.

Vice-Chair Scott read his comments out loud.

Chair Maloney recommended the ownership will transfer to the Town of Chester within a certain period after approval of the plan. Attorney Leino expressed concerns that the subdivision of the 118 acres into the 18-acre and 100-acre lot would be confused with the open space subdivision approval they needed density for. He wanted to be incredibly careful.

Chair Maloney noted the Board could impose the condition no further subdivision of either the 18-acre or 100-acre lot because the 18-acre lot only has 40’ of frontage.

Chair Maloney recommended stating that this approval can only be used as open space subdivision in conjunction with the abutting Fairwinds property once the cluster is approved for density calculations and then deed the proposed conservation property to the Town.

Mr. Hanna expressed concerns with the 100-acre lot and potential of the Fairwinds project dissolving and developing the Abenaki/Wells Village side.

Chair Maloney recommended asking Town Counsel if the condition no further subdivision were imposed whether the lot could no longer be used for density calculations. Attorney Leino stated that he worried about any restrictions and preferred that it not be restricted.

Vice-Chair Scott indicated that when the plan is recorded Fairwind will transfer ownership of all of the open space land to the Town of Chester.

Chair Maloney recommended setting up a meeting with Town Counsel ASAP in person or via Zoom and recommended a continuance to January 9th at 7:00 PM.

Mr. Chesney recommended that Fairwinds buy the property first.

***Chair Maloney motioned to continue the application of Fairwinds to January 9th at 7:00 PM to confer with Town Counsel. Vice-Chair Scott seconded the motion. A vote was taken, all were in favor, the motion passed 4-0-0.***

2. The continued 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 variances A-F. He read out loud correspondence from an abutter, Virginia Rioux dated December 4, 2023.

Chair Maloney recapped the last meeting. She noted Mr. Chisholm and Mr. Richter presented the application on behalf of Busch Academy who wants to build a 120’x170’ sports dome and requested six variances for wetland buffer encroachment and no cut buffers. She noted there was encroachment by the building, walkway, parking lot and another walkway. There was a site walk on December 4th. Mr. Chisolm marked the pavement in orange where the corners of the building would be on existing pavement and showed where the building would go a little ways into the woods. At the site walk the Board looked at the wetlands and following the site walk Mr. Jones floated a balloon at the height of the proposed dome. Mr. Chisholm passed out pictures which were provided showing the height of the balloon.

Mr. Chisholm handed out revised architectural plans. He showed that the peak of the dome would fall below the peak of the existing administration building. Mr. Richter reviewed changes made to the plans since the last meeting. He showed walls in front and noted the color of the fabric of the dome would now be gray. Mr. Gregsak noted the handicapped parking was moved and a tower will be constructed which Mr. Richter noted would define the entryway. Mr. Cannon asked if the changes materially changed the variance request. Mr. Chisholm noted the impact to the parking lot was lessened but the tower is considered a structure.

Conservation Commission Chair Chouinard stated that he appreciated the site walk because it helped him to understand the existing conditions. He brought the matter up at the last Conservation Commission meeting and generally the Commission supports the setbacks. He noted however the area was already disturbed, and the Commission voted not to oppose the variances at this time.

Selectmen Myette explained the role of the wetland buffer to remove sediments and nutrients. He noted there would be more impervious areas and buffers would be reduced. He noted man made drainage ditches and a well field. He expressed concerns with drainage into neighboring North Pond which has sensitive species. He noted the buffer zone would be reduced and expressed the importance of the drainage calculations and having additional infiltration basins and a stormwater treatment compensating somewhere else and not having runoff onto other properties. He noted he would not be opposed to the setbacks so long as there was compensation for lack of infiltration. The Planning Board would review that as part of their site plan review and Conservation Commission would review that.

Mr. Chisholm indicated the stormwater management report would be addressed with the Planning Board.

Joe Hagan stated the presentation was excellent, but the world has changed, and he is against this. He stated it was not the obligation of Busch Academy to ensure what the downtown would look like.

Vice-Chair Scott questioned whether the building could be moved to the left or if any of the setbacks would be eliminated by pushing the building out. Mr. Chisholm noted he was amenable to reducing impact but pushing the building to the left would generate more impact than the area that was already impacted from an environmental standpoint while staying out of the well radius for the community well which is 5’ already.

Mr. Cannon stated that he would be concerned with the viability of the operation without this infrastructure, and should the school become abandoned and deteriorated, he questioned how that would look. Vice-Chair Scott agreed that the Town almost had that happen before Busch Academy came along.

Mr. Gregsak stated he was concerned with the tower. Mr. Chisholm noted there would be less impact.

Mary Ford agreed that the presentation was wonderful and asked what the next steps would be. Chair Maloney noted there would be site plan review by the Planning Board.

Darren Jones, Director of Operations, stated that one of the goals is to try to keep the campus enclosed and to grow it. He noted the focus is no longer on being an all Chinese school but pointing to athletics and academics with participation in baseball, basketball, hockey and soccer domestically and internationally.

Chair Maloney closed the hearing to public comment and questions at 8:45 to enter deliberations. She noted she liked to see the high school/college atmosphere thrive and believed the proposal would be good for the community.

Mr. Cannon stated he supported granting the variances and would vote yes on all five points.

Chair Maloney felt public interest and spirit of the ordinance have been met with the building situated on existing parking lot and the ground already disturbed. She noted the benefit to the college would not be outweighed by harm to the public. She noted that anyone who purchased property there would know they were buying next to a college. She noted there are special conditions of the property, the campus setting and would vote yes on all five points.

Mr. Gregsak stated that he agreed with Chair Maloney. He noted the hardship is in the parcel itself with all of its finger wetlands and the wetlands get worse out back. He noted the standing water ruins what could be a nice soccer field.

Vice-Chair Scott stated that he was in agreement with all of the criteria except for property values being diminished and would ultimately have to vote no on that point and therefore on the application itself.

***Chair Maloney motioned to grant the variances stated on the public notice and with the tower shown on the latest design. Mr. Cannon seconded the motion. A vote was taken, Vice-Chair Scott voted nay. The motion passed 3-1-0 in favor.***

Chair Maloney clarified that the decision would add letter G for the Tower within 20’ of wetlands.

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

**4. Updates**

Chair Maloney indicated that she could attend the Selectmen’s meeting to present the budget in February.

**5. Adjournment**

***Vice Chair Scott motioned to adjourn the meeting at 9 PM. Chair Maloney seconded the motion. A vote was taken, all were in favor, the motion passed 4-0-0.***

Respectfully submitted,

Nancy J. Hoijer,

Recording Secretary

