

**Town of Chester
Zoning Board of Adjustment
January 15, 2019
Town Hall
7:00 pm
Approved Minutes**

Members Present:

Vice-Chair Kevin Scott
Matt Gelinias, Alternate
Jean Methot, Alternate
Jack Cannon
Chair Billie Maloney

Members Absent:

Richard Snyder, Alternate
Joseph Hagan, Selectman Liaison
Adam Maciaszczyk
Courtney Cashman

Guests:

Anthony R. Massahos
Eric C. Mitchell
Attorney Peter M. Solomon
Selectman Stephen D'Angelo
Penny Williams, Tri-Town Times
Realtor Joseph Scattergood
William Gregsak
Amber Ragnarsson
Sara Martino
Matthew Legner
Liz Richter
Bob Packard
Leslie Packard
Gene Charron
Dianna Charron
Bonnie Hunter
Catherine Trainor
Janet Boyden
David Rivard
Attorney Brian Germaine
Sara Sidel
Willamina Coroka
Barbara Suech

Dan Nutton
Manette Pacheco
Sergio Rubio
Stephanie Moses
Tod Himmer
Dan Gillen
John Kilroy

And other persons unknown to the minute taker

Agenda

- 1. Call to Order/Roll Call**
- 2. Correspondence – Letter from Scott Marsh, CNHA, MRI
Regional Notification – Town of Bedford, NH telecom facility
Raymond Zoning Board – Ridgewood Commons, 41 Chester Road**
- 3. Approval of Minutes – December 18, 2018**
- 4. HB 1533; Training Workshops – Tabled, Ordinance Inserts, Rules of Procedure -
Tabled**
- 5. Hearings:**
**Eric C. Mitchell & Assoc. on behalf of 21st Century Development, Inc. for two
variances: Article 5, Section 5.3, Subsection 5.3.4 (permitted use in the R1 zone)
to construct and operate a 16-bed assisted living facility; and
Article 4, Section 4.4, Subsection 4.4.2.1 (signage in the R1 zone) for a sign less
than 30 s.f. where 6 s.f. are allowed in the R1 zone
On the property to be known as Map 2, Lot 70-1, 254 Haverhill Road
Matthew Legner for a variance from Article 5, Section 5.3, Subsection 5.3.5 Table 1
to permit a small 96 sf shed to exist 53' from the wetlands where 75' are required
On the property known as 26 Wilcombs Way, Map 006, Lot 012-109.**
- 6. Adjournment**

- 1. Call to Order/Roll Call**

Vice-Chair Scott called the meeting to order at 7:00 pm. By Roll Call were present: Matt Gelinias, Vice-Chair Kevin Scott, Chair Billie Maloney, Jack Cannon and Jean Methot

Vice-Chair Scott indicated alternates, Matt Gelinias and Jean Methot, would be voting actively tonight.

Vice-Chair Scott indicated all administrative items except approval of the minutes would be moved to the end of the meeting.

- 2. Approval of Minutes**

Chair Maloney asked if the Board had reviewed the minutes of the December 18, 2018 meeting – yes; and to indicate if there were any changes – none.

Mr. Methot motioned to approve the December 18, 2018 minutes. Mr. Gelinas seconded the motion, with Mr. Cannon and Mrs. Maloney abstaining due to absence from that meeting, approved 3-0.

3. Hearings

**1. Eric C. Mitchell & Assoc. on behalf of 21st Century Development, Inc. for two variances: Article 5, Section 5.3, Subsection 5.3.4 (permitted use in the R1 zone) to construct and operate a 16-bed assisted living facility; and Article 4, Section 4.4, Subsection 4.4.2.1 (signage in the R1 zone) for a sign less than 30 s.f. where 6 s.f. are allowed in the R1 zone
On the property to be known as Map 2, Lot 70-1, 254 Haverhill Road**

Chair Maloney instructed the order of the meeting will be first, for the applicant to present a brief overview with facts and questions from the Board, second, for those of the public in favor to speak, then those of the public opposed will have a chance to speak, followed by an opportunity for rebuttal.

Chair Maloney reminded everyone to come to the microphone, state your name and address and address questions through the Chair.

Chair Maloney advised the applicant that two of the members who were present at the previous hearing were not here tonight, Mr. Maciaszczyk and Mrs. Cashman.

Vice-Chair Scott read the Public Hearing Notice and Denial Letter of the Building Inspector out loud and asked Mr. Mitchell if he had submitted any new plans – no.

Attorney Solomon thanked the Board for the opportunity to speak and added that Joseph Scattergood, the realtor who provided the opinion letter was also present here tonight.

Attorney Solomon stated that he received a copy of the Chester Assessor's Opinion from Scott Marsh of Municipal Resources, Inc. dated December 20, 2018 which was consistent with Mr. Scattergood's opinion. Vice Chair Scott read the letter out loud.

Attorney Solomon noted both opinions had the same conclusion which was there would be no affect to values of surrounding properties.

Attorney Solomon stated he received a copy of the list of businesses in the vicinity of the proposed facility prepared by ZBA Administrator, Hoijer. Vice-Chair Scott read the list out loud. Mr. Cannon questioned how many of those were home occupations. Ms. Hoijer responded that only one was without a sign, indicating that it was likely a home occupation (confirmed by Building dept.).

Attorney Solomon reminded that his Memorandum entitled "Tranquility Farms Argument in Support of" detailed the five points and did not have much more to add.

Mr. Methot asked Mr. Mitchell if he had an opportunity to check the lot size and soil and percentage of impervious cover with the Town. Mr. Mitchell stated they will meet with Planning and make it so that it does not require an additional variance for impervious surface.

Mr. Mitchell reminded that if approved here, they will be required to go before the Planning Board to discuss the lot size, appearance, look, blend with the neighborhood, setbacks and

buffering. A lot of issues that people are afraid of will be addressed at the Planning Board. A Zoning Variance is not Planning Board approval. The Community will have a chance to be at those Planning Board meetings. If it gets too expensive, maybe not build it.

Vice-Chair Scott stated Mr. Massahos testified at the last hearing that the water usage was 2700 gallons, which seemed low, so he requested a copy of the water bill. While the bill doesn't say how the Town of Derry sells its water, it is sold by the cubic foot. The Derry Beaver Lake Facility used 16,000 gallons per month during the period reflected on that bill.

Mr. Gelinis asked Attorney Solomon to speak to the hardship. Attorney Solomon reminded the five requirements were those addressed in his Memorandum. In addition, the Supreme Court tells us what is required. In Simplex, in 674:33 RSA, applicants must no longer show reasonable, and uniqueness in Rancourt, 149 NH 51, 53-54, 2003. When it is appropriate for a variance to be granted. Reasonable use is codified #1 by NH Legislation, no fair and substantial relationship exists. In Simplex, that the use would not injure the rights of others. It is unlikely the property values will be affected.

Vice-Chair Scott reminded the facility is not permitted anywhere in Chester. The applicant would have to come before the ZBA in any zoning district.

Attorney Solomon stated he is familiar with the C-1 District in Chester. Where would they put this? Anywhere they put it, people would oppose it. The C-1 District is not pleasant. Wouldn't want to build where unattractive.

Vice-Chair Scott held up a zoning map of the Town of Chester and indicated the C-1 zone and the pink area along Dump Road which is light industrial C-2.

Dianna Charron, a resident of 297 North Pond Road

Mrs. Charron stated that several people who spent their entire lives in Town had to leave because we didn't have a place like this. On Facebook so many people said they were not in favor. So many in favor have been ignored. Mrs. Martino has brought a petition with a lot of signatures. "Give me two weeks and I can get more signatures than they have." "Give this guy a chance to give us something we need." "We need this facility." "We need to keep people in Town."

Bob Packard, a resident of 445 Lane Road

Mr. Packard stated those like himself with limited mobility continue to be more dependent and there are no facilities that will permit him, or others to stay in Town without a major remodel. Mr. Packard has lived in Town for over 35 years. Many don't want this in their backyard, but anyone can see the benefit to the Town of not having excessive noise. Ambulances won't be coming in and out all day. "It befuddles me to think of leaving Town." "Everyone here will reach that point too." "The Town will benefit." "Want to live life peacefully and end my life with family and friends near, not in a major facility, out of Town where no one will hear of it."

Janet Boyden, a resident of 318 Halls Village Road

Mrs. Boyden stated she has lived in Town for 39 years, is now retired and would love to stay here but no place to go. Have to get out of a big house. At 70 years old, its going to happen. There is no assisted living. Senior Housing is not affordable to anyone. "Being forced out." The impact of this is nothing compared to what could go there. There is no impact to schools or traffic. This is a State road, maintained by the State, not the Town. "Florida is the only place can afford and don't want to go there."

David Rivard, 40 North Shore Road, Derry NH

Mr. Rivard stated he is the neighbor of the Beaver Lake facility. "Tony is a great neighbor, considerate and meticulous." There have been no impacts to traffic or ambulance issues. "It is a great facility and will be great here too." Tony has put in trees, dug holes, mowed my lawn, allows our chickens to roam. The residents love feeding them.

Vice-Chair Scott asked if Derry lowered his taxes or property values? Mr. Rivard stated the values increased, the other place was old and needed a complete rebuild. The facility has helped the Town of Derry.

Gene Charron, a resident of 297 North Pond Road

Mr. Charron stated 20 years ago the old Mossman property would have been a solution. Remember where we are heading. "We are all on the same conveyor belt." We need something in Town. "We are older, not old." "We still function, pay taxes." The whole process will go before the Planning Board and the public can weigh in. Came to Chester in 1970 and don't want to leave town. "My kids went to school here." "Have been a Selectman here." Don't want to go to a big bed facility where no one knows where we are. "Remember who you are leaving behind." "A lot of youngsters have a Mom or Dad here." "Thank you."

Bill Gregsak, an abutter, and a resident/owner of 243 Haverhill Road

Mr. Gregsak stated that he brought Attorney Germaine with him. Mr. Gregsak submitted a Memorandum in opposition to the project. Mr. Gregsak stated the variance would be contrary because the property is zoned residential. It will increase traffic and emergency vehicles and light pollution and detract from the rural character of the neighborhood. It is a large commercial building in R-1 where they are single family homes and farms. It is a State Scenic By-Way since 2014. This belongs in the Commercial District or the Residential District in the center of Town or near the school where the old daycare is where there are wide shoulders and can walk to the church and library. There are 10 other assisted living facilities, two in Derry, one in Sandown, two in Salem and two in Raymond. The spirit would not be observed. The R-1 agricultural area is intended to recognize the unique scenic, rural neighborhood. "There is nothing but residences and agriculture there." The site for an 11,000 s.f. facility would need substantial site work. Work to the driveway, drainage, the land slopes, excavating and filling to put a building of that size. "Would have to look at that every day." "It would always be commercial and never return to residential." Substantial Justice, the location not facility, is not amenable to walking to amenities. The speed limit is rarely observed or enforced. There are safer locations. Values would be diminished. Disagreed with the opinion of a real estate broker who is not a licensed appraiser. There is just a letter with no data. The large building is out of scale with other single-family homes and farms. The surrounding values would be devalued.

There is no hardship. The landowner could make reasonable use as a residential home or farm. It is no different than surrounding properties. It is self-created when purchased he knew it was located in R-1. It would affect the character of the neighborhood where there are only single-family homes and farms. There is no evidence there is a need for this facility in Chester.

Vice Chair Scott stated, "If it is a hardship because he knew the property was zoned R-1 when he bought it, then wouldn't that preclude hardship on everyone?"

Attorney Germaine stated this is profitability not hardship.

Vice-Chair Scott asked to leave the Memorandum so that it could be copied.

Mr. Methot added that these are residents, not hotel stayers. Attorney Germaine disagreed, it is a commercial business.

Attorney Solomon requested a copy of Mr. Gregsak's Memorandum be emailed to his office.

Sara Saidel, 47 Wells Village Road

Mrs. Saidel stated she has been a physician for 30 years and sees products and services marketed to the elderly for profit. There may not be one single Chester resident ta this facility.

Attorney Solomon stated Mr. Massahos offers a 10% discount to Chester residents. Mr. Massahos stated he will set aside space for Chester residents.

Sara Martino, an abutting resident of 270 Haverhill Road (owned by Nicholas Martino)

Mrs. Martino stated she had a petition with 80 signatures on it opposed to the variance. Chair Maloney instructed Mrs. Martino to read the petition out loud. "We, the undersigned, are opposed to the application(s) for variance by Eric C. Mitchell & Associates on behalf of 21st Century Development, Inc., and/or by Anthony (Tony) Massahos, and would also be opposed to any proposed commercial use on the property known as Map 2, Lot 70-1, 254 Haverhill Road in Chester, New Hampshire." Chair Maloney accepted the petition and asked if there were reasons cited why the signers were opposed? - Mrs. Martino stated no. Note: The petition contained the names of 9 of 13 listed abutters, 17 in the neighboring area of Haverhill Road, #193-328 which included 9 of the said 13 abutters, 6 of whom appeared to speak to this application, 5 of which speakers are property owners.

Mrs. Martino stated that she lives 35' from the proposed facility. Chair Maloney asked if she were here for a variance a few months ago? Mrs. Martino responded that was her husband, it was 5', nothing compared to this."

Willamina Coroka, a resident of 135 Haverhill Road (owns as Gillen)

Who stated she is not here on behalf of the Agricultural Commission but sits on the Board. She joined Agriculture because she loves the country, meadows, horses, the beauty of Town, rolling hills and meadow lands. "The idea of seeing a commercial facility there hurts my heart." It belongs in another location. This is a scenic bypass. If change to commercial, why not have commercial everywhere in the rest of Town?"

Barbara Suech, an abutter, property owner and resident of 232 Haverhill Road

Stated she lives next door and agrees with Willa. Moved here 25 years ago. Drove up 121 from Hampstead. "The Ragnarssons built a big house and barn." "My house looks like the servant's quarters." "They had horses, gorgeous property, pool, pond, coyote, deer, etc." "The big building doesn't fit." "What happens when the Massahos don't live in the house anymore?" "Who is going to want to buy a house attached to a big commercial facility?" "804 is unskilled workers." "It is not 24-hour licensed nursing staff."

Dan Nutton, a resident owner of neighboring 298 Haverhill Road

Mr. Nutton stated he has lived in Chester for 28 years. Mr. Nutton cited Article 11.3.1 and stated the public interest of families, two houses down, changed to a commercial use property....

Chair Maloney advised the use would be commercial, the property would remain residential. "We can't rezone." Chair Maloney stated Stone Machine is an example. It is on East Derry Road, the use is commercial, the property is residential.

Manette Pacheco, a resident of 141 Haverhill Road

Ms. Pacheco read a letter out loud from her phone that she stated was to the Branders from Four Seasons International, Karen Logan. The letter advised the Branders to wait until the proposed facility was resolved as it would need to be disclosed to potential buyers who are interested in a nice quiet community. The price would need to be marketed lower than the appraised value. There are no sidewalks and can not safely walk to Halls Village. Ms. Pacheco did not provide a copy of the letter.

Tod Himmer, a resident of 150 Haverhill Road

Mr. Himmer stated the slope and property and road were conditions that would affect first responders. Until the property is built you can't get a proper assessment. It is unreasonable to put a commercial use in area zoned residential.

John Kilroy, a resident owner of neighboring 328 Haverhill Road

Stated he has lived in Chester 15-16 years. No one is against providing housing for the elderly or disabled. It is the precedent that will be set by providing a commercial entity in scenic, rural road. This doesn't compare to the commercial businesses that are already there, a piano repairman, a pond creator. It is grossly in contrast with the setting of the neighborhood. It is a misguided notion that the Planning Board will put hurdles in place.

Sergio Rubio, a resident of 57 Halls Village Road

Mr. Rubio stated it is not a great location to have a commercial facility. 11,000 square feet building would be out of character.

Bonnie Hunter, an abutter and resident owner of 187 Halls Village Road

Ms. Hunter cited concerns about the wetlands and Wilson Brook, water and septic issues which were addressed by Mr. Mitchell who advised the septic and well must meet State criteria and they are half mile from where the building will be. Attorney Solomon reminded these concerns would be addressed by the Planning Board.

Ms. Hunter stated she sees a huge building that will affect the view of a scenic road and the quality when purchased. Doesn't see the hardship – is self-created. It is non-conforming to what is in area.

Dan Gillen, a resident of 46 Deep Hole Road

Mr. Gillen stated, "You are the gatekeepers." "This is a commercial activity." "It doesn't fit the neighborhood area." "The other businesses are occupied by the homeowner." "This is a separate piece, a commercial entity and is not going to be charged as a commercial tax rate."

Stephanie Moses, a resident of 57 Halls Village Road

Ms. Moses stated she moved in 2002. This will impact the neighborhood, housing and scenic bypass. This is one of the most scenic of the area. The new facility will significantly change the area.

Tony Massahos reminded that while people love the view, it is his property. He and his wife purchased the property for 1.4 million dollars, the house and barn are 11,000 sf. Mr. Massahos stated he did not purchase the property with this in mind. He looked at the other properties that were for sale, including the old daycare and Senator Bell Farm, and there was no way he could purchase them at that excessive price and offer an affordable price to his residents. The facilities are never at full capacity. Residents get moved when dementia or Alzheimer's set in. This is for two acres of the property. Want to preserve those paddocks and maintain the access neighbors have. This allows me to build inexpensively at a rate, a resident can afford. Will I hold back rooms for Chester residents? – Yes! There are no areas in Town. They would have the same problem anywhere else. Could never afford to go out and buy some parcels you recommended. There will be no traffic impact. Someone else could subdivide. 804 is a small bed facility. The State is not approving any new nursing homes these days. The Seniors will not be walking 121. The hardship is there is no place for this to go. Everyone says they want this, think its necessary and would do the Town good but all say, "not in my backyard!"

Tod Himmer, 150 Haverhill Road

Stated the hardship has to do with dimensions, there are other alternatives.

Mr. Nutton, 298 Haverhill Road

Stated this is an 804 facility. Is it possible to further develop in the future? Next there will be two 16-bed facilities.

Chair Maloney urged the public to stay focused on the application before us.

Vice-Chair Scott reminded the Zoning Board of Adjustment does not set precedent. Every application has to satisfy the five points of law. Any new application would have to come back and satisfy those points of law.

Jack Cannon stated the Planning Board needs to open its eyes and put forth ballot questions to the Townspeople and change the ordinances.

Janet Boyden reminded that use and area variances are considered by a different hardship criterion. Mrs. Boyden lives off Halls Village Road and it is a pretty road with farmland and

agriculture. Other business occupations were listed here. Just granting a variance does not make the property commercial. Its always "not in my backyard."

Attorney Solomon reminded the five criteria, including the hardship were addressed in his memorandum, not in the statements made just now by Mr. Massahos who is speaking from his heart. This is advantageous to the Town and will cause no harm.

Chair Maloney closed the hearing to the public at 9:30 pm and advised there will be no further comments from the public. The Board will deliberate at the next hearing.

Mr. Methot motioned to continue the applications of 21st Century Development to February 19, 2019. Vice-Chair Scott seconded the motion, with all in favor, so moved.

Vice Chair Scott read out loud the 30-day Notice.

**2. Matthew Legner for a variance from Article 5, Section 5.3, Subsection 5.3.5 Table 1 to permit a small 96 sf shed to exist 53' from the wetlands where 75' are required
On the property known as 26 Wilcombs Way, Map 006, Lot 012-109.**

Mr. Legner read his application into the record verbatim and provided pictures of the property which is 1.35 acres in a cluster neighborhood. The property is encumbered by slopes and this is the only place he can put this shed. The shed exists. It will be a hardship to remove it.

Vice-Chair Scott asked Mr. Legner if he built the shed. Mr. Cannon asked if a permit were pulled. Mr. Legner advised it sits on cinder blocks and was delivered and set up by the shed company. Vice-Chair Scott opined the ZBA is seeing a lot of these and the shed companies that sell them should be held accountable.

Vice-Chair Scott advised that he went out and looked at the property and this is the only place it can go. Mr. Methot agreed likewise.

Mr. Methot raised concerns about items stored in the shed, such as gasoline that could leak into the wetlands. Chair Maloney asked what was stored in the shed. Mr. Legner responded seasonal items, snowblower, gasoline, bikes. Vice-Chair Scott recommended a spill pad.

Mr. Cannon asked how it got on the radar? Mr. Legner explained the Building Inspector was called out to inspect a neighboring property.

Mr. Gelinas stated it is not contrary to the spirit or public interest. It does substantial justice by permitting the homeowner to store hazardous materials outside of his personal home, having a garage under. It won't diminish property values. It is reasonable to have a shed, yes on all five.

Vice-Chair Scott agreed he was in favor of all five. This is a small cluster development. There is no visual impact. Mr. Legner should provide a spill container. Substantial justice, values will not be diminished. The topography is a hardship. Yes, to all five.

Chair Maloney agreed. Yes, on all five. Does not alter the character, there is no harm to the public, doesn't affect surrounding values. The hardship is the special condition of the property.

Mr. Cannon stated it was not contrary, not an eyesore, the spirit is observed. There are no other locations, zero impact. The hardship is finding another spot is troublesome.

Mr. Methot stated it was not contrary, the spirit is observed, does substantial justice to not have to pick up and move. It is the only place, no effect on surrounding values. Vote yes on all five.

Mr. Methot moved to approve the Variance for Matthew Legner to allow a variance from Article 5.3.5, Table 1 for the shed to exist 53' from the wetlands where 75' are required. Mr. Cannon seconded the motion, with all in favor, so moved.

4. Correspondence

Ms. Hoijer provided the Board with copies of regional notice correspondence received from Town of Bedford, NH and Town of Raymond, NH.

5. Proposed Training Workshops – Tabled

6. Ordinance Inserts

Ms. Hoijer provided the Board with replacement inserts for their Zoning handbooks which reflected the changes to Ordinance passed at Town Meeting.

7. Update Rules of Procedure – Tabled

8. ADJOURNMENT

Vice-Chair Scott motioned to adjourn the meeting at 9:53 pm. Mr. Methot seconded the motion, with all in favor, so moved.

Respectfully submitted,

Nancy J. Hoijer,
Recording Secretary