

*These minutes are subject to possible changes and corrections during the approval process of a subsequent ZBA meeting.*

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

**Members Present:**

Chair Billie Maloney  
Vice-Chair Kevin Scott  
Bill Gregsak  
Richard Snyder, Alternate (until 7:09 PM)  
Joseph Hagan, Selectman Liaison

**Members Absent:**

Jack Cannon  
Adam Maciaszczyk, Alternate

**Guests:**

Penny Williams, Tri-Town Times  
Dana Massi Buckley  
Cass Buckley  
Rick Menard  
John Cassell  
Shayne Gendron for Edward N. Herbert Assoc., Inc.

And other persons unknown to the minute taker

**Agenda**

1. Call to Order/Roll Call
2. Review Correspondence
3. Updates
  - Budget FY 2020 – October 24, 2019 Appointment with BOS
  - Project – Scanning Decisions 1964-1997/"Zombie" variance legislation (HB 1533)
  - MacLean – survey conditions
  - Amendments to Rules of Procedure
4. Approval of Minutes – September 17, 2019 Public Meeting & Non-Public Meeting
5. Training – Fall Land Use Conference, Registrations – October 5, 2019
6. Hearings:

The request for a rehearing for public hearing of John Cassell on behalf of Ralph Cassell and Mylene Cassell  
To correct a decision made by the Board on August 20, 2019 to deny with prejudice the applicant's request

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**For Variances**

**From Article 5, Section 5.3.5, Table 1 (Table of Dimensional Requirements)**

**To permit subdivision of the property into two lots, both with 145' frontage where 290' are required for the construction of a new residential home**

**On the property known as 203 Lane Road, Map 12-10-6 in the R-1 zone**

**The request of Edward N. Herbert Assoc. Inc. on behalf of John J. Burke aka John Burke & Janice Burke**

**For a Variance**

**From Article 5, Section 5.3.5 Table 1 (Table of Dimensional Requirements)**

**To permit two lots to be merged and subdivided into three lots with frontage of 267.9', 290.3' and 290' where 290' are required by the Ordinance, for each lot.**

**On the property known as Map/Lot 001-057-001, 147 Harantis Lake Road owned by John J. Burke and Janice Burke**

**And the property known as Map/Lot 001-057-000, 159 Harantis Lake Road owned by John J. Burke**

**The newly created Lot 001-057-002, 137 Harantis Lake Road does not meet this requirement.**

**7. Adjournment**

**1. Call to Order/Roll Call**

By Roll Call, Chair Maloney called the meeting to order at 7:00 PM. Present were: Chair Maloney, Vice-Chair Scott, Mr. Gregsak and Mr. Snyder. Chair Maloney indicated the five regular members comprised a full-Board and there were only four sitting this evening for the first hearing and as Alternate Snyder would be active for the first hearing and indicated he would need to leave before the second hearing, leaving only three members available to hear that application. Chair Maloney explained the affirmative vote of at least three members would be required to approve or deny a request. Chair Maloney gave the option to the applicants to proceed or ask to continue.

**2. Review Correspondence**

**3. Updates**

**• FY 2020 Budget appointment at the BOS on October 24, 2019 at 7 PM**

Mr. Cannon forwarded the proposed ZBA operating budget to Finance before the deadline. The Board is scheduled to meet with the BOS to defend the proposed budget on October 24, 2019.

Ms. Hoijer addressed the administration line and thanked the Board for the vote of confidence by proposing an increase there but expressed concerns if the Board didn't use it and it's a bottom-line budget. Chair Maloney noted the ZBA's revenues cover most of its own costs and it would be good to have in the event more office support was needed at any point in the year. Selectman Hagan echoed that recommendation as the ZBA can never forecast how many applications it will have from one month until the next.

90       •   **Old Decisions**

91   Ms. Hoijer explained the new state legislation for unexercised variances prior to 2014 and the request  
92   from the Planning Board for the ZBA to provide a written opinion as to whether an ordinance is needed to  
93   extinguish those old unexercised variances. The new legislation gives municipalities the option to pass  
94   legislation to extinguish them or do nothing. Chair Maloney explained the RSA and the terminology used  
95   by the State to classify these unexercised variances as “zombies.”

96   Ms. Hoijer noted it would be challenging to explain such confusing legislation to the legislative body and  
97   once passed would require posting for another year for the process to complete itself. Discussions with  
98   the Building Inspector revealed that the Town had taken this up in some of its ordinances already and  
99   research would be needed to determine what, if any, unspecific range of dates need to be covered that  
100   were not addressed by the Town’s own ordinance. Ms. Hoijer noted she was concerned legislation  
101   passed to help owners was actually hurting them by reviving old conditions of approval that did not expire  
102   if the variances didn’t. Ms. Hoijer brought this up to the presenter at the conference who confirmed her  
103   concerns were valid ones. Additionally, there was an application that could be ready to go in November  
104   that had an old variance with conditional approval “no further subdivision” back in 1988. The burden of  
105   proof would be on the applicant to address whether the new legislation affected that old decision.

106   Chair Maloney noted that she remembered that Ordinance in 1986. Ms. Hoijer will follow up on that with  
107   Mr. Hadik to see which Town Meeting that Ordinance has passed.

108       •   **MacLean variance 2018**

109   The Board was provided with an update by Vice-Chair Scott who had concerns the proposed MacLean  
110   Easement to the Conservation Commission noted on the survey which was relied upon by the ZBA to  
111   grant the variance has not been negotiated. Vice-Chair Scott noted a new survey is being presented to  
112   the Planning Board by Promised Land Survey. Ms. Hoijer noted the ZBA’s plan checklist instructions,  
113   which are posted on the town webpage advise very clearly when a plan substantially changes after  
114   approval by the ZBA and prior to approval by the Planning Board the applicant’s need to notify the ZBA  
115   and provide a copy of the new plan. Vice-Chair Scott noted the Planning Board is scheduled to hold its  
116   public hearing on approval of the new plan on October 23, 2019 and he will attend that meeting. Vice-  
117   Chair Scott noted “it leaves a sour taste, had I known, I would not have voted in the affirmative.”

118   Mr. Gregsak asked what the application was for? Vice-Chair Scott noted it was for short frontage for a  
119   new lot on Pulpit Rock Road, Map 2-82. Vice-Chair Scott described the property and noted he always  
120   votes consistently when it comes to considering granting a variance creating a new non-conforming  
121   subdivision, but the benefit of the proposed Conservation easement swayed him. Mr. Gregsak  
122   recommended the Board review the plan that was submitted and compare it to the plan submitted to the  
123   Planning Board and review the minutes and reasons for granting the variance. Mr. Gregsak asked if  
124   there were any conditions attached to the decision? Vice-Chair Scott noted granting the Conservation  
125   easement was not a written condition of approval in the decision.

126   Selectman Hagan, the Board’s liaison, recommended checking with legal to see what the Board could or  
127   should do. Mr. Gregsak recommended conditioning approvals in these situations going forward “as  
128   presented” and/or “the plan presented.” Ms. Hoijer will contact the legal department prior to the October  
129   23, 2019 approval hearing.

130   Chair Maloney noted the Board did not know why the negotiations with Conservation had fallen through  
131   or if it was the fault of the applicant and this is something that also should be looked into further.

132   Chair Maloney instructed Ms. Hoijer to prepare and post a notice of working meeting for this Friday,  
133   October 18, 2019 at 9 AM so that the Board could meet in the ZBA office and review the contents of the  
134   file.

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• **Amendments to Rules of Procedure**

Chair Maloney provided the Board members with the amended Rules of Procedure adopted at the August 20, 2019 meeting which is reflective of the impact of HB 136 effective 7/9/19 and gives the ZBA 45 days to hold a public hearing after an application has been filed.

It was recommended to add to the Rules of Procedure that in the event an applicant failed to show for a hearing without just cause, the Board MAY vote to dismiss the application; and also, to add this language to the application instructions. "A simple phone call goes a long way."

***Chair Maloney motioned to amend the ZBA Rules of Procedure to include if the applicant does not show for a public hearing the Board MAY dismiss their application for failure to appear. Vice-Chair Scott seconded the motion, with all in favor, the motion passed unanimously.***

Chair Maloney asked that this be included in the application and explained the significance of the Board having the option to dismiss because they wouldn't know whether the applicant had a legitimate reason, such as a car crash on the way to the meeting (which has happened).

**4. Approval of Minutes – September 17, 2019 Public Hearing and Non-Public Meeting under 91-A:3(II)(a) consideration of compensation of a public employee – Tabled**

Vice-Chair Scott requested the approval of minutes be tabled until next month's meeting as he has not had a chance to read them.

**5. Training**

Fall Land Use Conference – October 5, 2019

Mr. Gregsak, Mr. Snyder and Ms. Hoijer attended the conference on October 5, 2019. A copy of the relevant slides from the Power Point presentations were provided to the Board. Chair Maloney asked Mr. Gregsak for an update. Mr. Gregsak noted he learned a lot at the conference which was separated by Planning speakers on one side and ZBA on the other. Mr. Snyder was able to attend presentations for both Boards. A lot of the updates were RSA based.

**6. Hearings**

**The request for a rehearing to correct the August 20, 2019 decision to deny with prejudice the application of John Cassell on behalf of Ralph Cassell and Mylene Cassell For Variances From Article 5, Section 5.3.5, Table 1 (Table of Dimensional Requirements) To permit subdivision of the property into two lots, both with 145' frontage where 290' are required for the construction of a new residential home On the property known as 203 Lane Road, Map 12-10-6 in the R-1 zone**

Vice-Chair Scott read out loud the Public Hearing Notice pertaining to this request. Chair Maloney noted the Board had voted unanimously to grant a rehearing for this application at its September meeting. Abutters were re-noticed as required. Chair Maloney advised this is a rehearing, like brand new, and instructed the applicant would be heard first and the public would have a chance to address the Board and then the public portion would be closed so the Board could deliberate.

Mr. Cassell approached the Board and notified them he was not prepared to present the application that was filed and explained the reasons why he was not present at the August hearing. He notified his attorney that the application had then been denied and received the Notice of Rehearing from the Board about tonight's rehearing and was not prepared to proceed. Mr. Cassell apologized for inconveniencing everyone and offered that he was willing to withdraw his application and come back with a new one sometime in the future.

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Chair Maloney opened the hearing to the public for questions and comments at 7:05 PM.

Cass Buckley of Lane Road stated that he objected to having a new hearing as this should only be an administrative change which the applicant did not request, the Board did. Mr. Buckley opined that Mr. Cassell was not a resident and should not be allowed to present the application.

Chair Maloney explained that the Board is required under existing RSAs to treat this as a rehearing.

Mr. Buckley expressed inconvenience to himself and his wife and other owners who had attended several meetings already which were continued again and again and believes at this point the applicant should be required to submit the whole thing from scratch.

Chair Maloney closed the hearing to the public at 7:07 PM for deliberations.

Chair Maloney noted she agreed many have been inconvenienced by these continuances, since April and as Mr. Cassell stated he was willing to withdraw his application,

***Chair Maloney moved to dismiss the application for failure of the applicant to appear to provide any evidence in support of his application.***

***Mr. Snyder recommended amending Chair Maloney's motion to deleting "to appear"***

The Board was unanimously in agreement to amend the motion by deleting "to appear."

Vice-Chair Scott clarified this allows the applicant to come back with a new complete application and explained that it did not matter if Mr. Cassell was a resident or not. Applicants are often represented by other people, indicating as an example Mr. Gendron who was here tonight presenting the next application on behalf of the Burkes.

Mr. Snyder agreed to support dismissal of the application. "It's been too many times." "The applicant intends to be withdrawn and provide another application in the future." Mr. Gregsak noted that he agreed completely with Mr. Snyder.

***Mr. Snyder seconded the motion. With all in favor, none opposed and no abstentions, the motion passed unanimously.***

Chair Maloney noted to the applicant "if you want to come to the Board with a new application, you can."

Mr. Snyder departed the meeting at 7:09 PM.

**The request of Edward N. Herbert Assoc. Inc. on behalf of John J. Burke aka John Burke & Janice Burke**

**For a Variance**

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234  
235 Vice-Chair Scott read out loud the Public Hearing Notice pertaining to this request. Chair Maloney  
236 noted she reviewed the notification to abutters and noted one had been missed so the hearing  
237 would need to be continued to next month to notify that abutter in the timeframe provided by the  
238 RSA. Mr. Gendron agreed to cooperate with renoticing the abutter and pay the additional \$10.00  
239 fee and noted that he would otherwise have requested a continuance himself because he prefers  
240 to have more than three Board members to hear the application.

241  
242 ***Vice-Chair Scott motioned to continue the public hearing on the application for John Burke***  
243 ***and Janice Burke until the ZBA's next meeting on the 3<sup>rd</sup> Tuesday of November. Mr.***  
244 ***Gregsak seconded the motion, with all in favor, the motion passed unanimously.***  
245

246 The public hearing was continued until November 19, 2019.  
247

248 **7. Adjournment**

249 ***Vice-Chair Scott motioned to adjourn the meeting. Chair Maloney seconded the motion, with all in***  
250 ***favor the meeting was adjourned at 7:50 PM.***

251  
252 Respectfully submitted,  
253

254  
255 Nancy J. Hoijer  
256 Administrative Assistant