

**Town of Chester
Zoning Board of Adjustment
January 19, 2021
Town Hall
7:00 pm
Approved Minutes**

Members Present:

Chair Billie Maloney
Vice-Chair Kevin Scott
Jack Cannon
William Gregsak
Rick Snyder, Planning Board Liaison/Alternate (remotely)

Members Absent:

Guests:

Corinna Reishus
William Reishus

Agenda

- 1. Call to Order/Roll Call**
- 2. Hearings**
- 3. Approve Minutes for December 15, 2020**
- 4. Updates**
- 5. Hearings**
- 6. Other Business**
- 7. Adjournment**

1. Call to Order

Vice-Chair Scott called the meeting to order at 6:59 PM. By Roll Call were present: Billie Maloney, Kevin Scott, Jack Cannon with Rick Snyder remotely. Vice-Chair Scott noted Alternate Rick Snyder was active.

2. Hearings

The continuance of a request of William W. Reishus and Corinna L. Reishus d/b/a Triad Winery for a Variance from Section 5.3.4 of the Ordinance (Prohibited Uses in the R-1 zoning district) to permit a commercial use in Zone R-1. Said use would allow construction of an approximately 12'x16' building on the premises with outdoor seating for a wine tasting area with ancillary uses, the sale of wine products, including the sale of bottles of wine for off-site consumption.

On the premises known as Map 011-054-002, 413 Lane Road, in the R-1 Residential zoning district.

Vice-Chair Scott indicated Mr. Gregsak had represented the applicants in the design of their plan and is recused.

Chair Maloney read out loud the public hearing notice and noted the hearing was closed for deliberations at the November meeting, continued to the December meeting so that Vice-Chair Scott could consult with Town Counsel, and continued to this meeting so that a Right to Know Request could be filled.

Vice-Chair Scott noted he would be running the meeting tonight and explained there will be no further testimony. Mr. Cannon indicated that he had two questions for the applicant. The Board considered whether to reopen public comment and decided to proceed with deliberations.

Vice-Chair Scott indicated he had prepared a statement and requested permission to read it out loud. Vice-Chair Scott read the statement and provided the statement entitled "Deliberation of Variance Request from Triad Winery" to the Administrative Assistant who dated it 1-19-21 and entered it into the record. Vice-Chair Scott noted that he had prepared the statement without any communication or collaboration with any other ZBA member. The statement contained a copy of Article 1 – Purpose and Authority of the Chester NH Zoning Ordinance and objectives of the Master Plan as well as a copy of NH RSA 674:17 Purposes of Zoning Ordinances. Vice-Chair Scott reminded the Board the reasons the Town has Zoning Ordinances...

Vice-Chair Scott clarified the request of the applicant is for a Variance from Section 5.3.4 of the Ordinance (prohibited uses in the R-1 zoning district) to permit a commercial use in Zone R-1.

Vice-Chair Scott noted that the Reishuses currently operate Triad Winery under a Home Occupation Permit dated September 11, 2018 which allows them to make wine that is only sold off premises.

Vice-Chair Scott provided a history of the applications with the Planning Board prior to submitting this application to the ZBA. On August 26, 2020 Triad Winery had a conceptual discussion with the Planning Board as to their new business plan. Correspondence from Town Counsel to the Planning Board indicated the applicants would require a variance from the ZBA prior to their application being heard at public hearing.

Vice-Chair Scott noted on November 3, 2020 the ZBA received an application for a variance from Triad Winery from Article 5, Section 5.3.4 to erect a 12'x16' shed, outdoor seating and parking to be used for wine tasting and the retail sales of wine products on the premises.

Vice-Chair Scott reviewed the five criteria:

Questions #1 and #2 Public Interest and Spirit of the Ordinance

Vice-Chair Scott provided the overview stating the requirement and explanation of each question on the variance application.

Vice-Chair Scott read the question and the applicants' answers to those questions and noted that in neither answer does the applicant indicate what the public interest or the spirit of the ordinance really is. The spirit of the ordinance involves keeping R-1 zones commercial free. Introducing agriculture uses to the community is already permitted in the R-1 zone and has nothing to do with the spirit of the ordinance. Likewise providing tourism to benefit other agricultural and commercial opportunities seem unrelated to public interest.

Vice-Chair Scott provided the overview and requirements for Question #3 Substantial Justice and the applicants' answer to those questions and noted moving from a home occupation to a commercial venture would completely undermine Chester's Home Occupation Ordinance, Article 4, Section 4.9, and alter the general character of the neighborhood. If this operation were located in the commercial zone it would still require a variance because a winery is not listed as a permitted use. Goals of the applicants would be to increase production and sales requiring additional space and work force. Testimony on August 18, 2020 indicated the next phase would include erecting another building. Vice-Chair Scott stated he believed the harm to the public and neighborhood would be outweighed by the benefit to the applicant.

Vice-Chair Scott provided the overview and requirements for Question #4 Values of Surrounding Properties and the applicants' answer to those questions. The applicant stated there would be new landscaping, additional vines and an agricultural footprint. Vice-Chair Scott noted no landscaping plan was submitted with the application and the plan to have no on-street parking would be completely unenforceable with three employees resulting in the neighbors having to call police and the residents would tire of additional traffic. Vice-Chair Scott noted this commercial activity would impact surrounding property values.

Vice-Chair Scott provided the overview and requirements of the prongs of hardship for Question #5 and the answers of the applicants to those questions. Vice-Chair Scott noted no testimony was received to indicate any special conditions of this property that would distinguish it from other property in the neighborhood. A copy of the tax map bears this out. On November 17, 2020 the applicant was asked to clarify special conditions and the response was "they will have vines growing that people will be able to see." The argument that the ordinance prohibits the commercial enterprise for which it seeks a variance is not a special condition nor one that distinguishes it from any other residential property in the neighborhood. The integrity of the residential area is of "paramount concern" and to preserve this we have adopted Zoning Ordinance Section 4, Section 4.9 Home Occupations which provides for no external evidence of the enterprise and preserves the character of this neighborhood.

Vice-Chair Scott noted the 2.2-acre house lot supports a residence, a garage, an above-ground swimming pool and a Home Occupation Winery. No argument can be made that this is not a reasonable use of this property or that denial would create a hardship for the applicant.

Vice-Chair Scott noted this is an abbreviated timeline and does not include discussions concerning agribusiness or agritourism or other applications that were withdrawn. No argument can be made that growing a small patch of grape vines makes a "FARM."

Vice-Chair Scott stated in conclusion it is not up to the ZBA to create answers to the five points for the applicant. Those answers must be supported by testimony. Vice-Chair Scott stated that he has not heard such testimony on any of the five points for this application.

Mr. Cannon reviewed Public Interest and noted he did not believe a small boutique winery would create a terrific set of issues in the neighborhood for the public. Mr. Cannon stated based on his opinion a unique set of folks seek that type of entertainment out and he doesn't see by his own experiences that the neighborhood would be overrun and the public interest would be somewhat protected if we granted the variance.

Mr. Cannon reviewed Spirit of the Ordinance stating it is a thin line that he is walking on and noted the limited amount of parking would control crowds but the questions that he had is if

130 conditions could be imposed based on his research of other boutique wineries revenue driving
131 activities. Mr. Cannon stated that with conditions I think Spirit of the Ordinance could be
132 observed.

133 Mr. Cannon reviewed Substantial Justice and noted he did not see how not granting this
134 variance would create an injustice so significant It would be outweighed by gain to the general
135 public. "Question #3 is a very difficult one for me."

136 Mr. Cannon reviewed Values and noted he did not see any negative impact on the values of
137 surround properties as there are other businesses in our town that have operated over the years
138 and not aware of any negative effect to surrounding properties and I don't believe that will be
139 the case here.

140 Mr. Cannon reviewed the prongs of Unnecessary Hardship and noted he did not find the
141 property distinguishable as different from others in the neighborhood, granting this variance
142 would do that, and have not heard any testimony to support question #5.

143 Mr. Cannon reviewed whether the use was a reasonable one and noted the applicants have a
144 viable business through their home occupation and are trying to grow this business, but it is a
145 square peg in a round hole.

146 Mr. Snyder thanked Vice-Chair Scott for doing a good job with the findings of fact and stated he
147 is in substantial agreement with him. Mr. Snyder reviewed the criteria for Questions #1 and #2
148 Public Interest and Spirit of the Ordinance and noted he is "somewhat equivocal," "you could
149 agree it's not against the public interest but would not want to base everything on that." The
150 spirit of the ordinance, the applicants have a home occupation, and this fits the spirit of the
151 ordinance in the residential zone in which the property is located, in general it is to prevent
152 congestion. Mr. Snyder cited parking situations that get out of control on a Sunday afternoon,
153 as an example a local sugar house.

154 Mr. Snyder reviewed the criteria for Question #3 Substantial Justice and noted the applicants
155 have a home occupation and want to grow their business. An option available to them to do this
156 is to find another more suitable location.

157 Mr. Snyder stated that he could go either way on Question #4 Values could go either way.

158 Mr. Snyder addressed the prongs for Question #5 and stated we have only Option A to look at,
159 Option B is clearly off the table as there is already a reasonable use made by the property which
160 includes a dwelling and a home occupation. Mr. Snyder stated that he does not see any fair
161 and substantial relationship between general public portion of the ordinance and what they're
162 trying to do because of conditions of their property. Mr. Snyder stated that he did not see
163 hardship on Section 1 or 2 of unnecessary hardship. "For me to support this I would need to
164 agree with all five points and I'm equivocal on a couple of them and I'm in disagreement of three
165 of the five."

166 Chair Maloney noted that she went over the five points of the application and the handbook and
167 looked at the applicants' argument for each of the five points and the arguments were pretty
168 bad, a lot of people don't get what the arguments are, but the Board has granted variances
169 when some others have not answered completely. Chair Maloney noted she is not against a
170 winery in town, but it is up to the applicant to convince us that we should vote yes on each one
171 of the five points and it is not our job to make the argument for them. As far as public spirit and

172 substantial justice a winery could go in there if it was small and quiet and had trees around it
173 and didn't really make a problem for the neighborhood. It wouldn't change the character of the
174 neighborhood unless it turned into a three-ring circus over there with wine festivals and beer
175 festivals and all the other stuff that goes on.

176 Chair Maloney noted she could not find a hardship. There has to be something in this piece of
177 land that makes it different from the neighbors that they could get a variance from the ordinance
178 that other people wouldn't be able to get. Getting a special request to do something because
179 their property is different than others in the neighborhood. The applicants have a two-acre
180 house lot. They have a home occupation to make wine and to sell wine off premises. Placing a
181 tasting building and another building with additional parking would cause this lot to become
182 overcrowded. It could alter the character of the neighborhood. Chair Maloney stated she is
183 kind of yes or no at this point.

184 Mr. Snyder noted the applicants have a winery. They make wine there. That's already
185 happening. "We're talking about expanding the business." "There are other ways, more
186 reasonable ways to expand a business and give them even more opportunities without coming
187 back to the board for more variances, if they want to grow the business that much, they could
188 find a commercial property to set up shop."

189 Mr. Cannon noted the point Chair Maloney made about the property being unable to support
190 additional growth, parking and growing additional grape vines would make further expansion
191 difficult.

192 Vice-Chair Scott noted it is not up to the ZBA to create the answers for the five points, but it is
193 our job to evaluate the criteria and testimony we have heard and to vote.

194 Vice-Chair Scott asked that Board Deliberations be closed. Mr. Cannon agreed.

195 ***Vice-Chair Scott motioned to deny the application of William W. Reishus and Corinna L.***
196 ***Reishus d/b/a Triad Winery under Section 5, Section 5.3.4 of the Zoning Ordinance***
197 ***(prohibited uses in R-1 zoning district) to permit a commercial use in the R-1 zone. Mr.***
198 ***Cannon seconded the motion. A vote was taken Snyder – aye on the motion to deny,***
199 ***Maloney – nay, Cannon – aye, Scott – aye. The motion to deny passes 3-1-0.***

200 Vice-Chair Scott indicated to the applicants that a decision would be submitted in five days and
201 read out loud the 30-Day Notice concerning appeal.

202 Vice-Chair Scott closed the hearing at 7:35 PM and Mr. Gregsak returned to the meeting.

203 ***Vice-Chair Scott motioned to prepare copies of all presentations to Triad Winery as soon***
204 ***as possible. Mr. Cannon seconded the motion. A vote was taken all were in favor, the***
205 ***motion passed unanimously.***

206

207 **3. Approval of Minutes**

208 **Public Hearing December 15, 2020**

209 Mr. Snyder recommended edits.

210 ***Vice Chair Scott motioned to approve the December 15, 2020 minutes as amended. Mr.***
211 ***Cannon seconded the motion. A vote was taken, all were in favor, the motion passed***
212 ***unanimously.***

213 **4. Updates**

214 Chair Maloney provided the Board with handouts from Town Counsel concerning the new
215 Housing Appeal Board for the State of New Hampshire. Chair Maloney noted it gives people a
216 choice they can either go to Superior Court Judge or this three-member Housing Court. Mr.
217 Snyder noted it was discussed at the law lecture he and Ms. Hoijer had attended and probably
218 doesn't change anything that we do. It is a way of settling disputes and unburdening the court.
219 The court appoints the members. Mr. Gregsak, who also attended the law lecture, noted that he
220 believed one of the members appointed to the Housing Board is an attorney.

221
222 **5. Other Business**

223 **Non-Public Session pursuant to 91-A:3(II)(c) reputation of someone other than a**
224 **board member.**

225 ***Mr. Cannon motioned to go into non-public session under 91-A:3(II)(c) reputation of***
226 ***someone other than a board member. Vice-Chair Scott seconded the motion. A roll call***
227 ***vote was taken Maloney – aye, Scott – aye, Snyder – aye, Gregsak – aye and Cannon –***
228 ***aye. The motion passed unanimously.***

229 The Administrative Assistant departed the meeting, and the meeting room was closed to the
230 public at 8:11 PM.

231 The meeting room was reopened to the public at 8:20 PM.

232 ***Mr. Snyder motioned to come out of non-public session and seal the minutes of the non-***
233 ***public session indefinitely. Vice-Chair Scott seconded the motion. A vote was taken all***
234 ***were in favor, the motion passed unanimously.***

235 Vice-Chair Scott noted the MacLean Family appeared before the Planning Board for a
236 conceptual discussion of subdivision approval.

237 Vice-Chair Scott discussed impact fees and what triggers them. Mr. Snyder noted they were
238 triggered by a building permit and the fees were not out of line with other towns. Vice-Chair
239 Scott asked Mr. Snyder to explain where the impact fees are applied, and Mr. Snyder noted
240 they are applied to roads, fire, police, schools, library and recreation.

241 Ms. Hoijer will contact Block 5 to see if Vice-Chair Scott and Chair Maloney can get a loaner
242 laptop.

243

244 Meeting Dates:

245 Ms. Hoijer noted the Selectmen are looking for members of the Planning Board and ZBA to
246 attend their virtual meeting on Thursday evening to discuss the petition of Mr. Quintal relative to
247 discontinuance of a portion of the Carkin Street cul-de-sac if anyone can attend. A NOD and
248 meeting minutes were provided for the March 2019 hearing in which Mr. Quintal was granted a
249 variance for front setback and an equitable waiver for his garage.

- 250 • March 3, 2021 – Connelly/Field to Fork Farm Public Hearing with the Planning Board
- 251 • March 24, 2021 – MacLean Family Trust Public Hearing with the Planning Board

252

253 **6. Adjournment**

254 ***Vice-Chair Scott motioned to adjourn the meeting at 8:22 PM. Mr. Gregsak seconded the***
255 ***motion. A vote was taken, all were in favor, so moved.***

256 Respectfully submitted,

257

258

259 Nancy J. Hoijer,
260 Recording Secretary