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Chester Zoning Board of Adjustment

Approved Minutes of April 17, 2018

Members Present:

Chair Billie Maloney
Vice Chair Kevin Scott
Adam Maciaszczyk
Richard Snyder, Alternate
Matt Gelinas, Alternate
Selectman Jack Cannon, Liaison

Absent:

Courtney Cashman
Jean Methot, Alternate

Guests:

Attorney Liz Richter
Stephen DiRocco
Mrs. DiRocco
Mr. and Mrs. Palleo
Elizabeth Dobbins
Lynn A. Boutin
Brian Boutin
Nick Canzano

And other persons unknown to the minute taker

Agenda

1. **Call to Order/Roll Call**
2. **Welcome Matt Gelinas**
3. **Correspondence – Spring Seminar, Stone Machine**
4. **Approval of Minutes – March 20, 2018**
5. **Public Hearings**
 - a. **Map/Lot 006-017-013 41 Shetland Road, Stephen & Deborah DiRocco, for a variance from Article 4, Section 4.2.1; Article 5,**

Section 5.7.8 and Article 5, Table 2 to permit the existence of the home and three accessory structures that extend into the required 75' wetland setback on the property.

- b. **Map 005-080-012 74 Emerson Road, Lynn A. & Brian M. Boutin for a variance from Article 5, Section 5.3.5 Table 2 to permit the construction of a 24'x30' garage that will sit approximately 42' from the wetlands where 75' is required.**

6. Additions – 15 Chester Street - MOU/Temporary C/O

1. Call to Order

Chair Maloney called the meeting to order at 7:02 pm. By Roll Call, present were: Chair Billie Maloney, Vice Chair Kevin Scott, Adam Maciaszczyk, Richard Snyder, and Matt Gelinas.

2. Welcome Matt Gelinas

Chair Maloney welcomed and introduced the newest board member, Matt Gelinas.

3. Correspondence – Spring Seminar, Stone Machine

Chair Maloney reminded everyone that the Spring Seminar would be held on Saturday, April 28, 2018 at the Grappone Center and urged everyone who was considering attending to confirm their registrations with Ms. Hoijer.

Vice Chair Scott advised that the Board had received an email from Stone Machine letting them know that they testified in error concerning their number of employees at last month's hearing, they had 27 instead of 25.

4. Approval of Minutes – March 20, 2018

Mr. Snyder motioned to accept the minutes, as written. Vice Chair Scott seconded his motion, with all in favor, so moved.

5. Public Hearings

Vice Chair Scott read the Public Hearing Notice into the record and advised that it had been posted in two places in the town hall, the post office, the town's webpage, all abutters were noticed by certified mail on April 2, 2018 and it was published in the Tri-Town Times on April 5, 2018.

a. DiRocco, Stephen & Deborah Map/Lot 006-017-013 41 Shetland Road

Chair Maloney advised Attorney Richter who was present to represent the DiRoccas that there were restrictions recorded at the Registry of Deeds on the subdivision in which the property is located. Chair Maloney read the restrictions which included some language concerning a home owner's association having the right to approve plans and any compliance with variances and asked Attorney Richter to weigh in on that.

67 Mr. Snyder stated that the Planning Board can't approve a variance. Vice Chair Scott
68 agreed.

69 Attorney Richter presented that the problem is the homeowners association never got
70 going. Mr. DiRocco cited as an example that the documents called for street lights that
71 were never put in. Mr. Snyder advised that the developer, Turnagain Estates LLC was
72 to be before the Planning Board agenda Thursday night seeking the road acceptance.
73 Mrs. DiRocco added that when the economy was bad, it was slow to get off the ground
74 and never materialized. Vice Chair Scott asked who plowed the road in the winter? Mr.
75 DiRocco answered that the developer had. Vice Chair Scott asked the Administrative
76 Asst. if the Homeowners Association had been notified and Ms. Hoijer advised that it
77 had been. Attorney Richter presented that the neighborhood is comprised of lovely
78 antique colonial style homes and that she has done a thorough review of the Planning
79 Board minutes concerning the change in setback requirements.

80 Vice Chair Scott read the first part of the application into the record and referenced the
81 photos attached to the back. Attorney Richter offered some color copies that had a
82 better resolution than the b/w copies and posted a large map on the easel while pointing
83 out how the structures offered some prevention to the destruction of the wetlands in
84 question.

85 Attorney Richter stated that while the Building Inspector wants compliance the owner
86 did not realize that the lean-tos were structures.

87 Chair Maloney asked if they had a copy of their building permit. Attorney Richter did not
88 but testified that she had seen the permit in the building inspector's office. Chair
89 Maloney asked if she knew who issued it? Mr. DiRocco said that he believed it had
90 been the previous Building Inspector, Mr. Roy. Vice Chair Scott questioned whether the
91 owner had hired a builder or built the structures themselves. Mr. DiRocco stated that
92 they had done so themselves with help from friends and neighbors. Attorney Richter
93 added, "like an old-fashioned barn raising."

94 Chair Maloney asked if the structures were built on gravel. Mr. DiRocco advised that
95 they had used crushed stone. Mr. Snyder asked Mr. DiRocco to identify which photos
96 were which structures and to tell the board the sequence of construction. Mr. DiRocco
97 stated that the shed came first, the lean-tos thereafter, about a year or a year and a half
98 ago.

99 Mr. Snyder asked if he had secured a building permit for the different structures. Mr.
100 DiRocco advised that he had not gotten a permit for the shed.

101 Chair Maloney clarified the dimensions, as 14'x20' with an attached 10'x18' lean-to?

102 14'x20' with a 10'x18' lean to

103 18'x20' lean to attached to garage

104 Garage within the setback also

105 Attorney Richter added that part of the garage encroaches even though the home was
106 built some years after the wetlands setback dimension had changed from 50' to 75'.
107 The subdivision itself, according to the Planning Board minutes approved it in 2003, the
108 home was not built until 2012 and no one was notified of the change. Chair Maloney
109 added that you could have gone for an equitable waiver.

110 Vice Chair Scott asked what brought this all to light? Attorney Richter stated that the
111 assessor had gone out to appraise the property.

112 Chair Maloney asked Attorney Richter to read the DiRoccas application into the record.

113 Mr. Snyder advised that in 2003 the town was experiencing a building growth that
114 threatened prime wetlands. The state required 50' and the town increased it to 75' to
115 protect the sensitive wetlands knowing that relief could be sought here at the Board of
116 Adjustment and it has seen many of these requests. The prime wetland of concern
117 would be North Pond and he was not aware that there were any considered to be
118 sensitive prime wetlands or vernal pools near this property. "I would submit that #2
119 Spirit of the Ordinance is, the wetlands are, being protected."

120 Mr. Canzano identified himself and suggested that you don't want to set a precedent.
121 Mr. Snyder asked Chair Maloney to speak to the matter of adjustment boards and
122 setting precedents. Chair Maloney explained that each application had a unique set of
123 circumstances and was treated as such, taken on its own merits and so that no
124 precedents were set as a result at this level of the process, emphasizing however that
125 each application had to be considered by the board with consistency. Mr. Snyder
126 summarized that "ZBA decisions don't create precedents."

127 Vice Chair Scott stated that in his opinion the impact of the change to 75' on this lot
128 rendered it unbuildable, if it were to be in strict conformance.

129 Elizabeth Dobbins of 11 Hackney Road approached the microphone and identified
130 herself as an abutter. Mrs. Dobbins stated that she was pleased with the architectural
131 design of the shed in keeping with the style of the neighborhood.

132 Chair Maloney closed the hearing to the public at 7:45 and entered deliberations.

133 Chair Maloney stated that there were a lot of wetlands on this lot. "If today you wanted
134 to put structures, I would be unable to grant, there is not much you can do with the lot, it
135 is a hardship owing to the wetlands." "Denying would be taking away the rights to use."

136 Vice Chair Scott stated that he had no issues with any of the five points. Looking at the
137 typographical map, if he asked where else could he build this, there would be no other
138 place.

139 Mr. Maciaszczyk stated that the five points were not contrary, and he believed there to
140 be no threat to the wetlands. The spirit is observed and there are no hazardous

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materials. The value is not diminished. The Planning Board change from 50' to 75' since acceptance of the subdivision, creates a hardship, "it's unbuildable."

Mr. Gelinas indicated that this was a well thought out application and he had nothing to object to.

Mr. Snyder stated that he echoed no objection to the application.

Chair Maloney advised that she would like to see a condition that no further structures be built in the 75' setback requirement.

Chair Maloney motioned to grant the variance from Article 4, Subsection 4.2.1 (continuation of a non-conforming use) and Article 5, Section 5.7.8 and 5.3.5 Table 2 of the Dimensional Requirements to permit a 14'x20' shed with a 10'x18' lean-to and an 18'x21' lean-to attached to the garage that extends into the wetlands setback with the condition that no further structures be placed within the 75' wetlands setback. Mr. Snyder seconded her motion, with all in favor, so moved.

Vice Chair Scott recited the 30 Day Notice advising that any party who wished to object to the granting of the variance had 30 days in which to do so, and asked that the second applicant present also pay attention to this part because it also applied to them if their variance were granted.

Attorney Richter, Mr. DiRocco and Mrs. DiRocco departed the meeting room at 7:55 pm.

b. Boutin, Lynn & Brian Map/Lot 005-080-012 74 Emerson Road

Chair Maloney invited Mr. And Mrs. Boutin to the meeting table to present their application and asked if any abutter were here – none were present.

Chair Maloney advised that before we begin, we thought you would want to know about some title concerns and asked Ms. Hoijer to explain to them. Ms. Hoijer advised that while it has no impact on the application the restrictions and easements on the property were checked to be sure they did not and in doing so, they had come across two issues, one being that the abutting open space 005-080-006 (the one that there had been some question as to ownership in noticing the abutters earlier) was to be in Conservation easement as a requirement of the open space subdivision restrictions of the Planning Board. Ms. Hoijer advised that there was difficulty in finding a recorded copy but that did not mean that one did not exist, it may not have been indexed properly by the Registry of Deeds. They did have a copy of the proposed easement and she recommended a follow-up with Planning and Conservation after the Town Meeting next month, perhaps town counsel would have the recording information. In addition, Ms. Hoijer advised, that each of the four lot owners was to receive a 25% ownership in that open space lot, 5-80-6, and only two had, Ms. Miscioscia (with Mr. Whitman) and the Curries. Ms. Hoijer advised that she was not an attorney and could not advise them but

179 recommended contacting the attorney who had represented them when they purchased
180 to get a confirmatory deed. Mrs. Boutin explained that they were not the original owners
181 and Ms. Hoijer assured that they had checked the prior owners deed as well and they
182 had not gotten the 25% interest deeded to them either.

183 Mr. And Mrs. Boutin paid the additional \$20 fee for noticing the abutters, which included
184 the owner who was listed on the tax card, for 5-80-6, Abdallah Construction. Mr.
185 Snyder asked if any of this mattered. Ms. Hoijer advised that it did not other than they
186 thought they would want to know.

187 Chair Maloney asked the Boutins to go over their application which was for a variance
188 from Article 5, Subsection 5.3.5 to permit a 24'x30' garage 42' from the wetlands
189 setback and included the letter of denial from the Building Inspector. Mr. Boutin read
190 the application into the record.

191 Mr. Boutin indicated that the area where the garage to be built was cleared by the
192 previous owner on a flat surface at the bottom of the driveway, where he had placed
193 crushed stone and provided photos.

194 Mr. Boutin felt that the structure would not only add value but increase the tax revenue.

195 Chair Maloney asked if they had a garage with two bays already. Mr. Boutin said that
196 they did but the space was too small for storage and working in. Vice Chair Scott stated
197 that he was a stickler when it came to pictures, because of an earlier representation that
198 did not turn out to be as promised and wanted to know is this exactly what we'll see.
199 Mr. Boutin advised that other than the header, nothing fancy. Chair Maloney asked if it
200 was a two bay. Mr. Boutin stated that it would be two bays with one door.

201 Chair Maloney asked if there were any questions.

202 Mr. Snyder asked if there was a foundation. Mr. Boutin advised that it would be poured
203 with footings. Mr. Snyder asked what he planned to do in there? Mr. Boutin stated that
204 it would be used for regular maintenance of his vehicles and lawn care equipment. Mr.
205 Snyder asked if there would be any commercial use or vehicles other than those owned
206 by them and how spills would be mediated. Mr. Boutin answered that he would be
207 doing regular maintenance in the garage, have no vehicles beside their own, run no
208 commercial business or home business and spills would be contained.

209 Mr. Snyder asked if it could be narrower. 24' is standard. Mr. Snyder asked if they
210 could do gutters. Mr. Boutin answered, "I don't see why not." Mr. Snyder explained that
211 on impervious surfaces, rain goes down and would be concerned about the runoff from
212 the roof being directed into the stream. Mr. Boutin clarified that the culvert was not on
213 his property.

214 Chair Maloney asked if there were any additional questions and being none closed the
215 hearing to the public at 8:20 pm for deliberations.

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216 Vice Chair Scott stated that he had driven past, and the photos reflect what he had
217 seen. Vice Chair Scott stated that he couldn't find fault with any of the five points and
218 advised for the benefit of new members and the public that each application is different
219 and if you have a problem with any of the five points you would vote no.

220 Chair Maloney asked about whether the garage would go at the end of the driveway
221 and about the truck shown in the photo. Mrs. Boutin answered that the truck was being
222 sold and that the area at the end of the driveway was the most suitable as it was
223 already cleared and level.

224 Mr. Maciaszczyk stated that he was in agreement with Vice Chair Scott adding that
225 there was nowhere else to construct it and that it would be nice to have extra storage
226 and work space, voting yes.

227 Mr. Snyder stated that he was uncertain about the 42' encroachment, rather than 50'
228 and the runoff from the roof, not knowing where that is going to go and would like to see
229 the structure be smaller. Mrs. Boutin asked about whether a French drain would
230 alleviate those concerns. Mr. Snyder answered that he wasn't sure where it could be
231 directed to.

232 Mr. Gelinis stated that the spirit was to protect wetlands and water quality.

233 Chair Maloney stated that she doesn't like to see new buildings, but the driveway was
234 already there, next to the house, if the driveway wasn't already there she would say no.

235 Mr. Maciaszczyk added that they are already parking cars there so the garage would
236 only benefit that.

237 Mr. Snyder stated that he wished to withdraw his concern about the runoff.

238 Chair Maloney stated that the use was reasonable, and that the driveway exists, special
239 conditions, don't see anywhere else to put it, yes on all five.

240 Mr. Gelinis stated that they are going about this the proper way, they are not here
241 because they constructed this out of ignorance to the code and asked if that was
242 something to consider here and Chair Maloney advised that the five points should be
243 what is considered.

244 ***Vice Chair Scott motioned to approve the variance of Lynn Boutin and Brian***
245 ***Boutin from Article 5, subsection 5.3.5 to permit a 24'x30' garage to the left where***
246 ***it sits approximately 42' from the wetland on the left side resembling the sample***
247 ***shown to use in the presentation. Mr. Maciaszczyk seconded his motion with all***
248 ***in favor, so moved.***

249 Mrs. Boutin asked about the 30-day appeal period and whether they should wait and
250 Vice Chair Scott explained that it would be their risk to do so.

251 Mr. And Mrs. Boutin departed the meeting at 8:35 pm.

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252 **Correspondence**

253 **Stone Machine**

254 Mr. Snyder stated that they had received a letter from Stone Machine clarifying the
255 number of employees they had was 27, corrected from the 25 testified at their hearing
256 last month.

257 **Center Scoop**

258 Vice Chair Scott advised that the Center Scoop had received their Temporary
259 Certificate of Occupancy. Each of the Board members received a copy.

260 **Miscellaneous**

261 **Zoning Amendments**

262 Chair Maloney advised that there were copies of proposed zoning amendments in each
263 of the members' packets that would be voted on at town meeting, clarifying some
264 definitions and the language concerning application for accessory dwelling units. Vice
265 Chair Scott added and language to help farmers with signs in agricultural use areas.

266 **Adjournment**

267 ***Vice Chair Scott motioned to adjourn the meeting at 8:40 pm. Mr. Maciaszczyk***
268 ***seconded his motion, with all in favor, so moved.***

269 Respectfully submitted,

270

271 Nancy J. Hoijer

272 Administrative Asst.