

**Town of Chester  
Zoning Board of Adjustment  
March 22, 2021  
Town Hall  
6 PM  
Approved Minutes**

**Members Present:**

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

**Members Absent:**

**Guests:**

Jacob Josef  
Steven Moore  
Jill Moore  
Patrick Connelly  
Selectman Joseph Hagan (arrived at 6:35 PM)  
Corinna Reishus (until 6:34 PM)  
Tim Peloquin, Promised Land Survey  
Matt Weiland

**Agenda**

- 1. Call to Order/Roll Call**
- 2. Meetings:**
  - Consideration of Motion for Rehearing Reishus/Triad Winery M/L 11-54-2**
  - Consideration of Request for Rehearing Connelly/Field to Ford Farm M/L 2-91**
- 3. Correspondence**
- 4. Public Hearings**
- 5. Approve Minutes February 23, 2021**
- 6. Adjournment**

**1. Call to Order**

Chair Maloney called the meeting to order at 6:00 PM. By Roll Call were present: Billie Maloney, Kevin Scott, Bill Gregsak, Jack Cannon and Rick Snyder remotely. Vice-Chair Scott noted Alternate Rick Snyder was active and appearing electronically due to medical concerns/quarantine.

## 2. Meetings:

### Consideration of Motion for Rehearing–Reishus/Triad Winery, M/L 11-54-2

A request for rehearing from William R. Reishus and Corinna L. Reishus d/b/a Triad Winery for a denial of a variance from Article 5, Section 5.3.4 (prohibited uses in the R-1 zone) to permit a commercial use in the R-1 zone including construction of an approximately 12'x16' building on the premises with outdoor seating for a wine tasting area with ancillary uses, for the sale of wine products, including the sales of bottles of wine on the premises for off-site consumption.

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

Vice-Chair Scott read the meeting notice out loud and noted this is a meeting and not a public hearing. This is for the Board to consider the applicant's Motion for Rehearing dated February 18, 2021. There will be no additional comments accepted from the public.

Chair Maloney asked if all members had the opportunity to review the Motion for Rehearing and whether there were any comments regarding the issues raised in the Motion for Rehearing.

Vice-Chair Scott stated that he spent a lot of time reviewing the application and Motion for Rehearing. He balanced his statements in deliberations against the minutes and did not err or do anything unlawful and is firm on his grounds for denial.

Chair Maloney reviewed the comments made in the Motion for Rehearing concerning three specifically named businesses located on Lane Road. These businesses are located a considerable distance from the applicant's location, approximately 1 ½ miles. The nature of those businesses are that Cashmere Gardens is an agricultural use, Olympia Kennels had a variance in 1991 for an indoor kennel and training facility and the Menards were granted a variance in the 1970s for an auto repair shop and is now considered a grandfathered use. In 1991 a variance for an office was granted next to the garage.

Chair Maloney reviewed the comments made in the Motion for Rehearing concerning bias and noted that she did not feel there was any bias by the Board. Any comments made by the Board members to the applicants regarding the content of their application were for the purpose of assisting the applicants and not evidence of bias. Further no additional "submissions" were accepted by the Board following the close of the public hearing. Members written thoughts and comments on the information submitted during public hearing and their opinions that an application satisfies or fails to satisfy the variance criteria is proper during deliberations and not an indication of bias.

The statement in the Motion for Rehearing that the applicants' State wine manufacturing license and the applicants' home occupation permit constitute "special conditions" of the property that distinguish it from other properties in the area, giving rise to an unnecessary hardship. are not conditions of the property. The license and permit are held by the applicants and are not conveyed with the property. The special conditions giving rise to an unnecessary hardship must

be related to the property and not be a matter or issue which relates solely to current owners of the property.

Mr. Cannon agreed and noted he had nothing additional to add.

Mr. Snyder agreed that the Board acted lawfully and stated he has reviewed the Motion for Rehearing and finds no problem with what the Board did, no evidence of bias, did not act with bias and does not agree to grant a rehearing.

***Vice-Chair Scott motioned to deny the applicants' Motion for Rehearing on the denial of the application for a variance under Article 5.3.4 for William Reishus and Corinna Reishus d/b/a Triad Winery. Mr. Cannon seconded the motion. A vote was taken Mr. Gregsak abstained, Vice-Chair Scott voted aye to deny the motion for rehearing, Chair Maloney voted aye to deny the motion for rehearing, Mr. Cannon voted aye to deny the motion for rehearing and Mr. Snyder voted aye – to deny the motion for rehearing. The motion to deny the Motion for Rehearing passed 4-0-1.***

Vice-Chair Scott indicated a letter of decision would be sent to the applicants and their attorney by certified mail indicating their right to appeal the decision to the Superior Court of the new Housing Appeals Board.

### **Consideration of Request for Rehearing–Connelly/Field to Fork Farm, M/L 2-91**

A request for rehearing from Steven & Leokadia Castigno, Jason M. Holt, Erin L. Holt, Rob Varsalone, Charles and Nora Russek, of the decision to grant a Special Exception under Article 5, Section 5.3.3.9 to Patrick J. Connelly & Daniela Connelly, Trustees of the Connelly Family Trust to permit agritourism to host farm related education, health and wellness seminars, retreats and weddings to be held outdoors and/or under rental tents (not owned by the applicants) with rented portable toilets. Parking would be directed off street to a large former riding paddock.

On the premises known as Map 002-091-000, 522 Haverhill Road in the R-1 Residential zoning district.

Vice-Chair Scott read out loud the meeting notice and noted this is a meeting and not a public hearing. This is for the Board to consider the Motion for Rehearing filed by seven of the homeowners on Jenkins Farm Road (the petitioners). There will be no additional comments accepted from the public.

Chair Maloney asked if all members had the opportunity to review the Motion for Rehearing and whether there were any comments regarding the issues raised in the Motion for Rehearing.

Chair Maloney stated that under RSA 21:34-a Farm, Agriculture, Farming, Agritourism is defined as "attracting visitors to a farm to attend events or activities that are accessory uses to the primary farm operation", "being provided a meal, overnight stays, enjoyment of the farm environment, education." Under 5.3.3.9 of the Chester Zoning Ordinance Agritourism is allowed by special exception. The Zoning Board on Feb. 23, 2001 carefully reviewed all requirements

necessary to grant the special exception. The Board felt that the applicant met 11.4.1.1, 11.4.1.3 and 11.4.1.6 under conditions. To further insure the concerns of the residents in the area, the Board conditioned Site Plan Review with the Planning Board to address and place limits on amplified music, number of guests, and hours of operation. All SPR requirements address the parking issues.

Chair Maloney noted she did not believe the Board unlawfully or unreasonably granted the Special Exception for agritourism to Patrick & Daniela Connelly, Trustees d/b/a Field to Fork Farm on February 23, 2021.

Mr. Cannon noted the Board set conditions which the Planning Board attempted to meet and is not sure why the petitioners are coming back to us. If the applicants violate the conditions of approval there are enforcement options available through the Town.

Mr. Snyder who is the Board's Planning Board liaison noted 150 guests were allowed by the Planning Board and parking, amplified music and hours of operation were addressed, that the Planning Board went through the conditions very carefully with many of the Jenkins Farm homeowners in attendance at a very well attended meeting by the Jenkins Farm homeowners. All concerns expressed were met by the conditions the Planning Board set and Mr. Snyder agreed, there are enforcement mechanisms in place.

Vice-Chair Scott noted the homeowner's association of record had been noticed to Mr. Martel who is the agent of record however neither the homeowner's association or the seven petitioners for rehearing are direct abutters. The Board noticed the homeowner's association and Ms. McAlpine as a courtesy. Mr. Martel did not communicate to the residents. Vice-Chair Scott stated the petitioner's problem appeared to be with the Planning Board and agreed the Zoning Board did nothing unlawful or unreasonable.

Chair Maloney felt the Board did its job and Mr. Gregsak agreed adding that the cluster subdivision is set back and the direct abutters who are most affected were in support. Mr. Cannon noted support for the application.

Mr. Cannon noted he did not see how if the petitioners did not agree with what the Planning Board did it would loop back to us and indicated he is not willing to rehear that case.

Mr. Gregsak agreed the Board acted lawfully and did its job.

Vice-Chair Scott noted Special Exceptions are the simplest applications to hear. The applicants have only to respond true or false.

***Vice-Chair Scott motioned to deny the petitioners request for rehearing of the grant of Special Exception for agritourism for Patrick & Daniela Connelly, Trustees d/b/a Field to Fork Farm. Chair Maloney seconded the motion. A vote was taken Vice-Chair Scott voted aye to deny the request for rehearing, Chair Maloney voted aye to deny the request for rehearing, Mr. Cannon voted aye to deny the request for rehearing, Mr. Gregsak voted aye to deny the request for rehearing and Mr. Snyder voted aye to deny the request for rehearing. The motion to deny the request for rehearing passed unanimously 5-0-0.***

Vice-Chair Scott indicated a letter of decision will be sent by certified mail to the petitioners with a copy to the Connelys indicating that the decision can be appealed to Superior Court or the new Housing Appeals Board.

#### **4. Correspondence**

Chair Maloney reported she received an email letter from the Board of Selectmen at 5:50 pm this evening and has not had a chance to read it, it is relative to the hearing for the Moore application and cannot be accepted as the application is in deliberations with no further input can be accepted from the public.

#### **5. Public Hearings**

1. Continuance of the application of Promised Land Survey, LLC on behalf of the MacLean Family Revocable Trust of 2019 for a Variance from Article 5, Section 5.3.5, Table 1 (Table of Dimensional Requirements) of the Ordinance to permit an existing house lot with 40' of frontage where 290' are required.

On the premises known as Map 002-082-000, 82 Pulpit Rock Road in the R-1 Residential zoning district.

Vice-Chair Scott read out loud the Public Hearing Notice.

Mr. Peloquin provided the Board with an amended Plan and application. Ms. Hoijer objected on behalf of Mr. Snyder who appeared electronically that an electronic copy had not been posted or provided that he could view online and that the new application was not made part of the record and was noticed under the old application. Mr. Peloquin held the plan up to the monitor and Mr. Snyder noted he was able to read it. Chair Maloney noted the only change to the application was the subdivision was changed from three lots to two, but the Board is only concerned with the one lot which will have short frontage which is the one that was noticed in the Public Hearing Notice.

Chair Maloney noted the 100 acres were added to the 18-acre lot proposed to be subdivided which had the existing dwelling situated on it. Vice-Chair Scott noted the modification was 100 acres with 40' frontage and is a substantial change and noted he expected to see something different. Vice-Chair Scott noted the Board was led to believe the 100 acres were being conveyed to Conservation. Mr. Cannon noted the Conservation easement would have eliminated the development risk. Chair Maloney recommended taking the application on its own merit.

Mr. Peloquin noted the applicant could build bridges across the Exeter River for access and divide the 100-acre parcel up if they wanted to without a variance but they would not be able to complete the sale of the two-acre parcel.

Vice-Chair Scott noted if the applicants did not subdivide the parcel they would not need a variance, they have 330' of frontage now where 290' are required and a home on the property. They have a conforming lot now and want to create a non-conforming lot. Vice-Chair Scott indicated he had difficulty finding a hardship, subdividing does not create a hardship and the owners will likely return to subdivide the parcel again to be used for density calculations for a cluster subdivision. Mr. Snyder agreed that is what will probably happen, and the two-acre lot cannot be subdivided without the other.

Mr. Gregsak agreed he had a hard time finding the hardship.

Vice-Chair Scott noted he does not see any reason to grant the variance, there is no hardship, it is contrary to the public interest and a substantial difference between the original application and what is being applied for tonight. Surrounding property values would be diminished.

Chair Maloney noted in the past the Board has granted short frontage variances as a trade off with more benefit of open space. Vice-Chair Scott noted every case is individual.

Chair Maloney noted the hardship is the most difficult prong and this parcel is encumbered by the Exeter River, large power line easement and inaccessible backlands unless someone develops with access from Sandown and argued there are some special conditions of the property. Chair Maloney questioned whether the condition "no further subdivision" could be applied.

Mr. Peloquin stated the trade off may be for them to develop the back land but they can't do anything with the back piece without merging the lot with a parcel that has legal frontage.

Chair Maloney opened the hearing to the public for comments and questions at 6:59 PM and being none closed the hearing to the public.

Matt Wieland an abutter at 70 Wells Village Road asked if this was the same subdivision that came before the Board before – yes.

Chair Maloney noted there are special conditions as outlined and the use is reasonable, and she would also vote yes on public interest and the spirit of the ordinance.

Mr. Cannon questioned whether the spirit of the ordinance was being observed and noted it is contrary for the reasons indicated. The spirit of the ordinance is not observed with 40' of frontage for a 118-acre property. Mr. Cannon noted he is not comfortable granting this variance.

Mr. Snyder noted he reviewed the five points, and the hardship is the configuration of the land. There would be some protection given the constraints of the back lot and only 40' of frontage. The risk is the abutting parcel could merge to create a great open space and density in the future but doesn't think the Board should consider that at this time and felt it was not unreasonable to grant the variance. The applicants have met the criteria Mr. Snyder stated and wish to sell the 2-acre parcel. Vice-Chair Scott noted the role of the Planning Board is to look to the future and Mr. Snyder disagreed that the role of the ZBA is not to be strategic and serve a quasi-judicial function and look at what is on the ground. Chair Maloney agreed. Vice-Chair Scott noted the members of the Zoning Board are entitled to bring their own experience and knowledge and insight to the approval of an application.

***Vice-Chair Scott moved that the application from the MacLean Family Trust for a variance of Article 5, Section 5.3.5 Table 1 of the Ordinance to permit an existing house lot with 40' of frontage on a 118-acre lot be denied. Mr. Cannon seconded the motion. A vote was taken Vice-Chair Scott voted aye to deny the application, Chair Maloney voted nay to deny the application, Mr. Gregsak voted aye to deny the application, Mr. Cannon voted aye to deny the application and Mr. Snyder voted nay to deny the application. The motion to deny the application passed 3-2-0.***

Vice-Chair Scott read out loud the 30-Day Notice and offered the applicant a copy of the request for rehearing and appeal process.

2. The continuation in deliberations of the application of Steven J. Moore and Jill E. Moore for Variances from Article 9, Section 4.7 of the Ordinance to permit a 1,846.16 SF Accessory Dwelling Unit (ADU) where the maximum square footage allowed is 1,000 SF and from Article 3, Section 3.1. of the Ordinance to permit an ADU to omit a sprinkler system required per Chester Building Code which is not required by RSA 674:51 and a Special Exception permitted by Article 9, Section 4 of the Ordinance for an Accessory Dwelling Unit.

On the premises known as Map 002-063-000, 38 Hart Roberts Road in the R-1 Residential zoning district.

Vice-Chair Scott read out loud the Public Hearing Notice and noted the Board is in deliberations and no further comment will be accepted from the public including an email received this evening from the BOS that has to do with this application. Vice-Chair Scott noted this application was duly noticed and they did not appear at the last meeting when public comment was open.

Mr. Cannon noted he will abstain from voting as he was not in attendance at the last meeting.

Vice-Chair Scott noted at the last meeting the sprinkler requirement was given a variance.

Chair Maloney stated that the meeting was continued from March 16, in order to consult with the building inspector to confirm the correct square footage of the proposed ADU. Vice-Chair Scott stated the correct square footage was 1,846.16

Chair Maloney noted the Board is in deliberations concerning the variance to allow more than 1,000 sq feet. There are special conditions of the home which make this a unique and unusual request. The large eight bedroom home has more than 7,200 SF. The proposed site for the ADU is the end section of the home which encloses a large staircase to the bedroom upstairs, and quite a bit of excess wasted space around the balcony, and large windows which go from the first to the second floor. It would be a crime to rip out the windows, and staircase to reduce the sq footage. Chair Maloney noted she is willing to vote yes to grant the variance and proposed conditions that there be no parking in the road. All parking should be on their property. Vice-Chair Scott added so there will be no infringement with emergency vehicles. Chair Maloney agreed on all five points.

Vice-Chair Scott agreed, as did Mr. Gregsak and Mr. Snyder.

**Chair Maloney moved to grant a variance from Article 9, Section 9.7 maximum area of an Accessory Dwelling Unit to allow the ADU to be 1,846.16 SF. Mr. Gregsak seconded the motion. Vice-Chair Scott voted aye, Chair Maloney voted aye, Mr. Gregsak voted aye and Mr. Snyder voted aye. Mr. Cannon abstained. The motion passed 4-0-1.**

**Chair Maloney motioned to grant the Special Exception under Article 9 to allow the Accessory Dwelling Unit. Mr. Gregsak seconded the motion. A vote was taken Vice Chair Scott voted aye, Chair Maloney voted aye, Mr. Gregsak voted aye, Mr. Snyder voted aye and Mr. Cannon abstained. The motion passed 4-0-1.**

Vice-Chair Scott indicated the applicants would receive the written decision by certified mail and read out loud the 30-Day Notice of Appeal and provided the applicant with a written copy of the request for rehearing and appeals process.

3. The continuation of the application of Jacob M. Josef and Lauren R. Josef for a Variance from Article 5, Section 5.3.4 to permit limited short-term rental of the property.

On the premises known as Map/Lot 001-059-000, 87 Harantis Lake Road in the R-1 Residential zoning district.

Mr. Josef indicated his attorney could not attend due to a medical emergency at home and recommended he continue the hearing but Mr. Josef stated he felt comfortable presenting the application and wished to proceed.

Vice-Chair Scott read the Public Hearing Notice out loud and noted that while short-term rentals will appear on the ballot in May, this one is not owner occupied and that is a proposed requirement for the allowance by Special Exception.

Mr. Josef stated the variance is for short-term rental and would allow him and his wife to keep their property while they work at Phillips Exeter Academy. He and his wife are required to live on campus except for the summer months when school is not in session when they would occupy the premises. After seven years they would be allowed to live on their own property full-time, off the PEA campus. PEA is a boarding school. The property is a historic home built in 1765. Some of his neighbors appeared at the first hearing to show their support of the application.

Mr. Josef noted the application is not contrary to the public interest and there is no impact to the neighborhood. Mr. Josef described how Air BnB markets the property a certain way and the input the owners had on house rules, a written copy is provided to renters stating no parties or noise at certain times. Smoke detectors are installed. Mr. Josef noted the variance would allow them to maintain the character of the home. Mr. Josef noted substantial justice is afforded by attracting visitors to local businesses such as Hazeltons, the Center Scoop, and walking trails as they are near Bridle Path. Visitors enjoy the fall foliage and small town feel. Values would not be diminished and a statement of a realtor was provided. The use is indiscernable as anything other than a single-family use.

Mr. Josef reviewed the hardship criteria written in his application. Mr. Snyder noted Attorney Pasay had done a thorough and instructive analysis of the hardship criteria and he had no problem with it.

Mr. Gregsak asked how much of the year the property is rented and Vice-Chair Scott asked in an average year, how many nights? Mr. Josef noted in some months two out of four weeks.

Mr. Cannon questioned how much the property has been rented since the Building Inspector notified him of the violation in January and Mr. Josef noted he has not rented the property since then. The slowest months are March and April. A lot of visitors come at Christmas break in December and January. September and October are the busiest. In June, July and August the property is occupied by the Josefs.

Chair Maloney noted the use is burdened by the zoning ordinance which does not address short-term rentals which are commercial by definition because guests are not there long enough to be considered residents. Chair Maloney noted she would vote yes on all five points. Mr. Cannon agreed. Mr. Snyder agreed the purpose is to prevent commercial venues from building these exclusively to rent as Air BnBs.

Vice-Chair Scott he did not know Chester had some many Air BnBs and doubted it would cause any abuse to neighborhoods who didn't know they were there.



Chair Maloney opened the hearing to the public for comments and questions at 7:43 PM and being none closed the hearing to the public for deliberations.

Mr. Cannon commended Mr. Josef for stopping the rental use when he was noticed and taking such a financial cut. Chair Maloney added, and incurring attorney's fees.

***Chair Maloney motioned to grant the variance from Article 5, Section 5.3.4 to permit limited short term rental on the property. Mr. Cannon seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.***

Vice-Chair Scott indicated the decision would be sent by certified mail to the applicants and their attorney and read out loud the 30-Day notice of appeal. Vice-Chair Scott provided the applicant with a written copy of the procedure for requesting a rehearing or appeal.

Ms. Hoijer asked if Mr. Josef would need to return to the Building Inspector and Vice-Chair Scott instructed he should see the Building Inspector for a Commercial Use Permit.

## **6. Approval of Minutes – February 23, 2021**

Chair Maloney asked if all members had a chance to review the minutes. Vice-Chair Scott noted he had not and will abstain.

Chair Maloney recommended edits to Lines 416, 455 and 457 to correct the spelling of the word tent, to clarify Site Plan approval was recommended with the Planning Board as a condition of approval and to change hours to hours of operation.

***Mr. Cannon motioned to accept the February 23, 2021 minutes as amended. Mr. Gregsak seconded the motion. A vote was taken, Vice-Chair Scott abstained, Maloney voted aye, Cannon voted aye, Gregsak voted aye and Snyder voted aye. The motion passed 4-0-1.***

## **7. Adjournment**

***Chair Maloney motioned to adjourn the meeting at 7:50 PM. Mr. Cannon seconded the motion. A vote was taken, all were in favor, so moved.***

Respectfully submitted,

Nancy J. Hoijer,  
Recording Secretary