

**Town of Chester
Zoning Board of Adjustment
June 15, 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

Members Absent:

Guests:

Tim Peloquin, Promised Land Survey
Nick MacLean

Agenda

- 1. Call to Order/Roll Call**
- 2. Welcome new BOS Liaison**
- 3. Public Hearings**
 - a. Rehearing of the application of the MacLean Family Revocable Trust of 2018 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 short frontage on the premises known as 82 Pulpit Rock Road, Map 2-82 in the R-1 zoning district**
 - b. Request for an extension of the time to exercise a variance and special exception, as amended 9-2020 granted for 118 Sandown Road, Map 5-96 in the R-1 zoning district.**
- 4. Approve May 18, 2021 Meeting Minutes**
- 5. Amendments to Application Form and New Checklist**
- 6. Review Financial Reports**
- 7. Adjournment**

1. Call to Order

Chair Maloney called the meeting to order at 6:59 PM. By Roll Call were present: Billie Maloney, Kevin Scott, Bill Gregsak, Jack Cannon and Rick Snyder. Chair Maloney noted Alternate Rick Snyder was active. Chair Maloney noted the Governor did not extend the Emergency Order and a quorum of the Board is required to be physically present at public meetings.

Chair Maloney tabled the election of officers to the July meeting so that Mr. Scott can be reappointed on Thursday.

2. Welcome new BOS Liaison

The Board welcomed their new Board of Selectmen Liaison Stephen D'Angelo and reviewed the Rules of Procedure for participation in meetings by the Liaison.

Vice-Chair Scott asked Selectman D'Angelo to recap some of the recent changes that were voted on at Town Election and Town Meeting. Chair Maloney noted Bed & Breakfasts are now now allowed uses with a Special Exception, per Section 5.3.3.12. Chair Maloney noted the Town voted to return a portion of Carlin Street to the two owners and they may need to come in for frontage variances. Selectman D'Angelo noted one of the owners had concerns with the resulting effect on her property and has had discussions with the Road Agent. Chair Maloney noted the Administrator recommended the lot line adjustment be done with the Planning Board first so the Board had the exact dimensions for the frontage variance for their hearing. Ms. Hoijer has spoken with both Ms. Bechtold and Mr. Quintal.

Selectman D'Angelo reported that the donation of 75 Raymond Road had been tabled. Cost of renovation of the existing building versus value of the building and lack of a plan for the building's use were notable concerns.

3. Public Hearings:

1. Rehearing: MacLean Family Trust of 2018 M/L 2-82, 82 Pulpit Rock Road

A request for rehearing from Promised Land Survey, LLC on behalf of the MacLean Family Trust for a denial of a variance from Article 5, Section 5.3.5 Table 1 (Table of Dimensional Requirements) to permit an existing house lot with short frontage.

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

Vice-Chair Scott read out loud the Public Hearing Notice and 30-Day Notice of Appeal.

Chair Maloney read from an except of the Board's meeting minutes from December of 2020 and stated she believed the Board erred in finding that the variance issued in 2018 had expired due to not being exercised.

Chair Maloney noted she spoke with Town Counsel who could find no significant case law or similar direction and Mr. Buckley at NHMA provided a written opinion on exercise of a variance, generally speaking, which Ms. Hoijer handed out.

Chair Maloney noted the ZBA can determine if the variance had in fact expired. The RSA refers to the local ordinance and the local ordinance is vague. The variance issued in 2018 was conditionally granted subject to Planning Board approval. The applicant was working with the Planning Board and had received conditional approval from the Planning Board. Chair Maloney noted she obtained a copy of that approval, the second page with the conditions were missing and she has since obtained a copy of that second page.

Chair Maloney reviewed the steps taken by the applicant since approval of the 2018 variance. Ms. Hoijer displayed the hand written display done by Mr. MacLean for the original approval in

2018. A professional survey was done months later in July. Chair Maloney noted the lot was surveyed and monuments set. DES was involved and a wetland scientist delineated the lot. Delays resulted from the untimely demise of the applicant. Chair Maloney noted she felt there was no need for a rehearing and recommended an extension if necessary could have been granted. Mr. Snyder noted he felt no extension was required because the applicant had demonstrated substantial investment and the variance had thus not expired due to lack of exercise. Mr. Snyder reviewed the dates from approval in October of 2018 to survey on July 25, 2019 with DES subdivision approval and conditional Planning Board approval on October 23, 2019, Planning Board waivers, iron pipes set. Mr. MacLean passed in 2019.

Selectman D'Angelo asked who the Trustees and Beneficiaries were and Mr. Nick MacLean who was present indicated himself and his siblings. Mr. N-MacLean will live on the house lot.

Vice-Chair Scott asked who decided it expired and Ms. Hoijer noted no one asked the Board that question. Mr. Cannon noted the Planning Board conditional approval had expired because the work was not done within their one year period. Mr. Snyder noted survey constituted a substantial investment. Chair Maloney asked with a house already on the lot what more could the applicant have done to exercise the variance on the lot which the variance was attributed to. Mr. Snyder noted monumentation could not be done without a survey. Chair Maloney noted in the past test pits were enough proof however things have gotten more complicated.

Vice-Chair Scott motioned that the Board find that the MacLean Family Trust of 2018 have exercised the variance granted to them in 2018 for Map 2-82, 82 Pulpit Rock Road, with a substantial investment made and there is no need for a rehearing or new application. Mr. Cannon seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.

Mr. Peloquin withdrew his application of March 2021.

Vice-Chair Scott motioned to accept the request of Mr. Peloquin to withdraw the March 2021 application on behalf of the MacLean Family Trust, Map 2-82, 82 Pulpit Rock Road. Chair Maloney seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.

2. Request for extension of time to exercise variance and special exception, as amended September 2020, 118 Sandown Road, Map 5-96.

Vice-Chair Scott read out loud the Public Hearing Notice and 30-Day Notice of Appeal.

Ms. Hoijer provided a copy of the email request, minutes and decisions, as amended to the Board and asked if the Board would like the Alizios to come in to present the request. Mr. Snyder noted the applicant did not have to come in. Ms. Hoijer noted the project which includes an addition has commenced work substantially but work on the ADU itself has not been completed so that a NOLO may not be issued by the Building Inspector in the next few weeks. They may be finished on time and may not but better safe than sorry. Much is dependent on the availability of materials and scheduling contractors which is so backed up due to COVID.

Mr. Snyder motioned to grant a one-year extension of the time to exercise the variance and special exception issued to Mr. and Mrs. Alizio, as amended September 2020, said extension to begin September 20, 2021 and expire on midnight of September 20, 2022. Mr. Gregsak seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.

4. Approval of Minutes- May 18, 2021

Mr. Snyder motioned to approve the minutes of the May 18, 2021 meeting. Mr. Gregsak seconded the motion. A vote was taken Mr. Cannon abstained, Maloney voted aye, Scott voted aye, Gregsak voted aye and Snyder voted aye. The motion passed 4-0-1.

5. Amendment of Application Form and New Checklist

The Board thanked Jack Cannon for reviewing the existing application form and for reformatting the one-page form for easier reading. The Board reviewed and approved amendments to the form and Vice-Chair Scott requested that applicants review, initial and turn in the checklist as part of their completed application.

The Board discussed instances that warranted a denial letter from the Building Inspector as part of the completed application. The Board agreed it is not required to go to the Building Inspector when a Special Exception is requested provided all criteria are able to be met. The Board agreed the process ran smoothly when a variance was requested to see the Code Enforcement Officer beforehand so the applicant had a better understanding of their project.

The Board discussed removal of language concerning review of the application by the Technical Review Committee which is comprised of representatives of Police, Fire and the Road Agent. Ms. Hoijer noted it is beneficial for larger commercial projects and events, one recent example was Edward Jones at 4 Haverhill Road.

Chair Maloney recommended sending a courtesy letter in accordance with RSA 674 to let owners know their decision may lapse due to lack of being exercised or abandoned in the time required by statute. Chair Maloney will draft a courtesy letter. The form letter would be reviewed by Town Counsel. Vice-Chair Scott noted the language can be found in the instruction form as to what constitutes "exercise." Mr. Snyder noted the time to exercise a variance or special exception is two years and abandonment is when nothing is done for a year with no efforts made to preserve the approval.

The Board discussed ways to track the projects and what constituted "exercise." Ms. Hoijer noted exercise of use variances would not be guided by the issuance of a building permit. Selectman D'Angelo noted most businesses will get going once they are approved. Ms. Hoijer noted an example of one applicant who had only just received her variance when COVID hit and the use was replaced by another business. Ms. Hoijer noted the spreadsheet of decisions could be easily used to track dates and recommended the Board may want to visit some of the completed projects. Vice-Chair Scott noted with the high cost of construction and delays applicants should reach out and let the Board know if they need more time before their approvals expire. Selectman D'Angelo asked if the Emergency Order may have stayed some of the deadlines. Vice-Chair Scott noted the cost of a building permit is a substantial investment. Mr. Cannon recommended the courtesy letter notify the owners if they had questions to call.

176 Vice-Chair Scott requested the applicants be made aware in the instructions that they will need
177 to present their application to the Board at their hearing. Many applicants show up unprepared.

178 ***Vice-Chair Scott motioned to approve the changes to the Zoning Board of Adjustment***
179 ***instructions and checklist effective July 1, 2021. Mr. Cannon seconded the motion. A***
180 ***vote was taken, all were in favor, the motion passed unanimously.***

181 **6. Review Financial Reports**

182 Ms. Hoijer recommended the requirement that applicants paying online provided a receipt not
183 be removed from the application instructions because she has to keep a receipt for the auditors
184 which is then copied to Finance. Selectman D'Angelo asked where the revenues go. Ms.
185 Hoijer stated she was not sure, but believed those revenues go to the general fund. Ms. Hoijer
186 provided a copy of the most recent revenue and expense report from Finance. The Board will
187 follow up on his question.

188 **7. Adjournment**

189 ***Vice-Chair Scott motioned to adjourn the meeting at 8:10 PM. Mr. Gregsak seconded the***
190 ***motion. A vote was taken, all were in favor, so moved.***

191 Respectfully submitted,

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194 Nancy J. Hoijer,
195 Recording Secretary