

**Town of Chester  
Zoning Board of Adjustment  
July 20, 2021  
Town Hall  
7:00 PM  
Approved Minutes**

**Members Present:**

Chair Billie Maloney  
Vice-Chair Kevin Scott  
William Gregsak  
Rick Snyder, Planning Board Liaison/Alternate

**Members Absent:**

Jack Cannon

**Guests:**

Selectman Liaison Steve D'Angelo  
Ken Walsh  
Patrick Connelly  
Dr. Erika De Beckers, DVM  
Erwan De Beckers  
Mary Campbell  
Brandon Chait  
Tina Chait  
And other persons unknown to the minute taker

**Agenda**

- 1. Call to Order/Roll Call**
- 2. Financial Revenues/General Fund**
- 3. Approval of June 15, 2021 Minutes**
- 4. Public Hearings**
- 5. Additions**
  - Kevin Scott – Application question 261 Chester Street**
  - Election of Officers – Tabled to August 17, 2021**
- 6. 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, and Rick Snyder. Chair Maloney noted Alternate Rick Snyder was active. Selectman Liaison Steve D'Angelo was present.

## 2. Financial Revenues/General Fund – Selectman D’Angelo

Selectman D’Angelo reported that he checked with Finance and confirmed that ZBA revenues go into the General Fund and can be tracked.

## 3. Approval of Minutes – June 15, 2021

***Vice-Chair Scott motioned to approve the June 15, 2021 minutes. Mr. Snyder seconded the motion. A vote was taken, Scott – aye, Snyder – aye, Maloney – aye, Gregsak – aye.***

Mr. D’Angelo voted yes on the minutes and Chair Maloney told him he was not a voting member. Mr. D’Angelo stated, “I can’t do a lot of things, but I can vote, I’ll show you the statute.” A discussion followed between Chair Maloney and Mr. D’Angelo concerning his voting ability as a liaison.

***With all in favor, the motion passed unanimously.***

## 4. Public Hearings:

1. The application of Kenneth Walsh on behalf of Robert George Swanson for a Variance from Article 5, Section 5.3, Subsection 5.3.4 of the Zoning Ordinance to permit a pre-existing lawful detached seasonal dwelling to be used as a bed and breakfast

On the premises known as Map 002, Lot 88, 504 Haverhill Road in the R-1 Residential zoning district

Vice Chair Scott read out loud the Public Hearing Notice and informed the applicant there were four members present to hear his application. Chair Maloney stated Steve D’Angelo was going to vote.

Kenneth Walsh presented the application for a variance for the detached structure located at 504 Haverhill Road, with access approved by the BOS off Jack Road for the proposed use, to be permitted to be used as a Bed & Breakfast, a commercial use in the R-1 zone. Mr. Walsh indicated the structure is a studio built in 1927 and has always been occupied. The parcel is over three acres in size. Mr. Swanson has owned the property for over 20 years. Mr. Walsh noted he himself has done work at the property as early as 1980.

Vice-Chair Scott noted that he had memory of that building being lived in back when he was in high school, 55 years ago. Mr. Gregsak agreed that the building originally housed the manager of the apple orchard there. Chair Maloney noted the Town records show it was built between 1927 and 1940 and was the parent lot of Jenkins Farm Subdivision. Mr. Walsh added that when the renovations were done, and the floor ripped up they found newspapers dating to 1927 under the floor.

Mr. Walsh stated that Mr. Swanson would like to derive income from the rental during his retirement years to help pay taxes. A Bed & Breakfast would be allowed by Special Exception if it were attached to the single-family residence according to the new ordinance passed earlier this year. Otherwise, it meets all of the criteria. The structure can’t be moved and already has a functioning septic system which Mr. Walsh inspected and provided a letter to the ZBA and Building Inspector. Ms. Hoijer noted that the Town Planner informed her, if approved, it would be conditioned at Site Plan Review with the Planning Board on all of the other criteria of Section 5.3.3.12 Bed & Breakfasts allowed by Special Exception.

86  
87 Mr. Walsh reviewed the five points of his variance application and noted that Mr. Swanson  
88 has kept up the maintenance of the structure in perfect condition and will continue to maintain  
89 it. Values will not be diminished. The structure known as the "Acorn" is a historical part of  
90 the property. Being a small studio only parking for two cars would be required.  
91

92 Mr. Walsh noted the hardship is that the structure was created before zoning and meets the  
93 Bed & Breakfast criteria except for its location on the property. The use is a reasonable one.  
94 The ordinance allows for rental 45 days per year per individual and no more than 30  
95 consecutively.  
96

97 Chair Maloney opened the hearing to the public for comments and questions at 7:17 PM.  
98

99 Selectman D'Angelo noted he has seen buildings all over Town with garages and illegal  
100 apartments above. Mr. Walsh stated those others may have been built and not complied  
101 with rules. Selectman D'Angelo asked when the last time the property was lived in and Mr.  
102 Walsh and Mr. Connelly indicated a couple of years ago, a homeless woman was given  
103 housing for a couple of months, and it was always used as a guest house. Selectman  
104 D'Angelo opined that there is no regulation to have these properties monitored or inspected  
105 or licensed.  
106

107 Mr. Snyder noted the septic system exists and sits apart from other properties. A letter was  
108 provided to the Building Inspector and the system is in good shape.  
109

110 Patrick Connelly of 522 Haverhill Road noted he is an abutter and has known Mr. Swanson  
111 since 2005 and he is a great neighbor. The property known as the "Acorn" is unique and he  
112 understands and supports Mr. Swanson's request to get some income in his retirement years.  
113 When the ordinance was established this year to get some control of it; it was a good  
114 framework. Chester, many years ago, was a vacation destination and cottages and boarding  
115 houses lined the street which is why the buildings are the size they are, some 4,300 SF. The  
116 application is in the spirit of the ordinance and the right thing to do.  
117

118 Chair Maloney closed the hearing to the public at 7:20 PM.  
119

120 Chair Maloney noted the application is for a variance from a prohibited use. The structure is  
121 a detached cottage with a grandfathered use by the applicant as a private seasonal dwelling  
122 for guests, and now he wants to change the use to a commercial use for a Bed & Breakfast.  
123 Under Section 4.2.1 of the zoning ordinance, a pre-existing non-conforming use may be  
124 continued provided it is not enlarged or changed. Under Section 4.2.2 a nonconforming use  
125 may be changed only to a use permitted, and a bed and breakfast must be attached to the  
126 single-family dwelling . Also 4.11 states only one single family home or one two family home  
127 per lot.  
128

129 Chair Maloney stated that the proposed change of use from a detached grandfathered use  
130 as a private cottage to a commercial use as a bed and breakfast conflicts with the purpose  
131 of the ordinance. She stated that in considering the "cumulative effect" of allowing such  
132 variances for detached bed and breakfasts or ADUs, the spirit of the ordinance in terms of  
133 wanting to decrease overbuilding is important because allowing many separate small houses  
134 on a single lot creates overcrowding. She could not vote yes on points 1, 2 and 3. It was  
135 contrary to the spirit of the ordinance, not in the public interest and substantial justice would  
136 not be done. Chair Maloney stated she did not know if it would affect property values in the

neighborhood. Chair Maloney stated she could not see any hardship. The property is not burdened by any zoning restriction that is distinct from others in the area. Not being able to make income from an old, grandfathered use, it is not a hardship. The property already has a reasonable use as a residence with a guest cottage.

Chair Maloney continued. The parcel is the parent lot of the Jenkins Farm Subdivisions and there may be restrictions on any commercial use on the three-acre lot. Vice-Chair Scott noted that is a civil matter between the owner and grantor. Chair Maloney agreed.

Mr. Snyder disagreed with the threat of cumulative effect and questioned how having guests use the cottage is different from use as a B&B where he would be compensated. The BOS has given permission for access of Jack Road. Mr. Snyder noted he would be in favor of it. Every case is taken on its own merits and is different. Mr. Snyder stated the cottage is there.

Mr. Gregsak noted he had a hard time saying no. It has been a dwelling unit all these years, most recently for Mr. Swanson's guests and he would just be renting it now and then as a B&B. Mr. Gregsak stated that he found it a hardship that it was detached and been there for 80 or 100 years in that location. Mr. Gregsak noted he would have a hard time saying no to any of the criteria. It is an unusual circumstance.

Vice-Chair Scott referenced the new B&B ordinance which was passed in March. Mr. Swanson's use of the property as a B&B meets all the requirements of a B&B except for being attached to the home. The structure is detached and there is no way to attach it. The homeowner's restrictions are not the purview of the ZBA. Vice-Chair Scott felt the variance request for a detached B&B met the five points and he would vote yes.

***Vice-Chair Scott motioned to approve the application for a variance from Article 5, Section 5.3.4 of the zoning ordinance to permit a pre-existing cottage to be used as a Bed & Breakfast subject to the following conditions:***

***1. Excepting the requirement that the B&B be attached, use will be subject to all other provisions of Section 5.3.3.12;***

***2. Site Plan review with the Planning Board; and***

***3. Any other conditions the Planning Board may deem necessary.***

***Mr. Snyder seconded the motion. A vote was taken, Snyder aye, Gregsak aye, Scott aye, Maloney nay and D'Angelo abstained. The motion passed 3-1-1.***

2. The application of Kenneth Walsh on behalf of Robert George Swanson for a Special Exception allowed by Article 5, Subsection 5.3.3.12 of the zoning ordinance to permit a pre-existing lawful detached seasonal dwelling to be used as a bed and breakfast

On the premises known as Map 002, Lot 88, 504 Haverhill Road in the R-1 Residential zoning district

Mr. Walsh withdrew his application for a Special Exception.

Vice-Chair Scott read out loud for the benefit of all the applicants present, the 30-day Notice of Appeal.

188  
189 3. The application of Erika De Beckers & Erwan De Beckers d/b/a Ark Animal Homecare,  
190 PLLC for a Variance from Article 5, Section 5.3.4 of the ordinance to expand the commercial  
191 use in the residential zone to increase the number of Ark Trucks and number of employees  
192 allowed by existing Variance dated March 23, 2018  
193

194 On the premises known as Map/Lot 009-037-001, 112 Towle Road in the R-1 Residential  
195 zoning district  
196

197 4. The application of Erika De Beckers & Erwan De Beckers d/b/a Ark Animal Homecare,  
198 PLLC for a Variance from Article 5, Section 5.3.5, Table 1 (Table of Dimensional  
199 Requirements) of the ordinance to construct a 2000 SF clinic on the property which results  
200 in increasing the maximum impervious surface area to 18% in the R1 zone where 15% are  
201 allowed  
202

203 On the premises known as Map/Lot 009-037-001, 112 Towle Road in the R-1 Residential  
204 zoning district  
205

206 Vice-Chair Scott read out loud the Public Hearing Notice.  
207

208 Erika De Beckers presented the applications for a variance from Article 5, Section 5.3.4 for a  
209 commercial use in the R-1 zone to increase the number of vans and employees allowed by  
210 the Variance granted in 2018 and for a variance from Article 5, Section 5.3.5 Table 1 to  
211 construct a 2,000 SF veterinary clinic on the property which results in an increased  
212 impervious surface area to 18% where 15% are allowed.  
213

214 Mrs. De Beckers stated the business has grown due to demand and one of the trucks is  
215 always broken. She now has three mobile veterinary trucks with an increase in employees  
216 to two more in the additional truck and another in the office. The garage they have been  
217 using as a small veterinary clinic needs to be bigger to provide flow, storage. A new barn is  
218 proposed which would provide a second exam room and waiting room for customers and a  
219 safer way for patients to access the clinic. The garage attached to the home would not  
220 continue to be used by the veterinary clinic. An architect was hired to design a barn that  
221 would be aesthetically pleasing to the neighborhood and would be located behind the existing  
222 parking lot. Mrs. De Beckers stated they don't sell food and have an on-line pharmacy.  
223

224 Mr. De Beckers provided one plan and sketch from the architect.  
225

226 Chair Maloney asked how many employees she has now and Mrs. De Beckers replied that  
227 she was unsure and guessed there were 16 that were not all on site at the same time.  
228

229 Mr. Gregsak asked about the building to the left and Mrs. De Beckers indicated that is another  
230 barn.  
231

232 Chair Maloney asked if the Building Inspector had calculated the impervious surface (not  
233 answered).  
234

235 Chair Maloney expressed concerns with the parking lot which is already loaded with cars and  
236 asked where the extra people will park? Mrs. De Beckers stated there will be two more  
237 employees and they are moving what they already have into the space, not a massive change  
238 in volume. One exam room will become two exam rooms.

Vice-Chair Scott asked if the existing square footage of the veterinary clinic and Mr. De Beckers estimated it was 19'x20' or 380 SF. Vice-Chair Scott noted that is an increase of five times the square footage. Vice-Chair Scott asked their long-term plans and Mrs. De Beckers noted they could separate out the mobile part of the clinic outside of Chester.

Chair Maloney noted the clinic is serving 17 Towns and that she thinks this business has outgrown the two-acre lot and asked how much bigger they thought it could get in a residential zone. The Town granted a variance for a small veterinary clinic with two mobile vans in March 2018 with conditions. She stated you have disregarded those conditions by increasing the number of vans allowed, increasing the number of employees, and increasing hours of operation. Growth has exploded and will keep growing. She stated they can't keep coming back for variances, it isn't fair to the other residents in the area to have such a massive business with parking spilling out into the road. Mrs. De Beckers stated that Chester was built on agriculture, and she feels her business is part of that community. Mr. De Beckers added that without the variance they would be forced to move and the ability to expand on their existing property enables them to not charge Chester residents so much.

Mrs. De Beckers read the application supplement out loud. The supplement prepared by her attorney stated that the hardship was the variance granted by the Board in 2018 with expansion anticipated. Mrs. De Beckers stated that almost everyone in Chester has a barn. She works with animal control and helps with injured wildlife and animals no one knows who the owner is at 10:00 at night.

Vice-Chair Scott read out loud the letter received from realtor Kati Ofcarcik of KW Metropolitan dated July 14, 2021. Ms. Ofcarcik stated she saw no reason why the addition of this new clinic would have a negative impact on the values of the surrounding properties, and she assumes there have been no complaints concerning her current practice and the service she provides to the public as a whole.

Mr. Gregsak asked when the business began, and Mrs. De Beckers explained that she moved here in 2004 and was working as an E.R. vet. She wanted to be able to spend time with her children and opened the business with the mobile truck in 2011. Mr. De Beckers noted that working for someone else doesn't enable you to set your own rates.

Chair Maloney opened the hearing to the public at 8:23 PM.

Selectman D'Angelo stated that they offered a valuable service to the community and D'Angelo asked why she didn't consider purchasing either of two properties in Town on Raymond Road. The former Edwards Mill Cabinetry location had a variance for their business. Mrs. De Beckers noted that the realtor told her it wasn't zoned commercially, and the property further down would cost too much to renovate. Selectman D'Angelo stated there is no doubt they offer a valuable service to the community including offering rabies clinics so people can get their dogs licensed. She has done a tremendous marketing job and he opined that he wished they could find a way to stay in Town that was less impactful. Property values could be impacted. Try selling your home when it has a large business next door. The hours should be limited. It is not a hospital it is a clinic. Mrs. De Beckers stated it would never be a hospital.

288 Selectman D'Angelo noted they have three trucks now and the parking lot is filled but she  
289 says she sees one person at a time. Mrs. De Beckers noted four of their personal vehicles  
290 are parked there and an old SUV formerly used for business.

291  
292 Mary Campbell of 130 Towle Road stated she lives next door and her dogs have been  
293 patients. She expressed concerns about the addition of a 2,000 SF commercial building in a  
294 residential area and asked what happens when they move and who will move in to use that  
295 2,000 SF barn and huge parking lot. She stated that she came here wanting to know more,  
296 what the building would look like. She asked what makes it commercial. Chair Maloney  
297 stated the lot is residential and has a commercial use as a small veterinary clinic.

298  
299 Brandon Chait of 117 Towle Road stated that he lives across the street and keeps guinea  
300 hens and a donkey. Several of his hens have already been hit by cars. The De Beckers are  
301 great neighbors, but the property is too small and the parking lot is packed. Customers are  
302 parking on the road on his side, in front of his house, turning around in his driveway in addition  
303 to delivery trucks coming in and out. Customers stop to pick up and drop off medications.  
304 The road becomes one lane and speeders hit a congested area. Spring Hill Farm is next  
305 door, and they are open to the public and are a farm and have parking. He moved there  
306 because he wants to live on an agricultural road. He doesn't care about the building but  
307 congestion and parking.

308  
309 Mr. De Beckers described how he feels people are fighting for spots in front of the garage  
310 and having the barn behind the parking lot will improve that flow.

311  
312 Chair Maloney asked how many parking spaces they have and reminded that a commercial  
313 business is required to have adequate on-site parking.

314  
315 Mr. De Beckers stated that they have 11 spots for cars and three for the trucks. Four cars  
316 are theirs and they could be moved somewhere else.

317  
318 Mr. Chait asked why then hadn't those cars already been moved so that no one would be  
319 park on the street now. A bigger building is going to require more parking too. Mr. Chait  
320 stated that he did not want to live in a commercial zone and paid \$400,000 plus for his home.  
321 He stated he did not want to live in a commercial zone. What if the barn becomes two stories,  
322 4,000 SF. He asked what stops him from opening a three-bay repair garage and Vice-Chair  
323 Scott replied, "we do." Mr. Chait stated exactly.

324  
325 Tina Chait of 117 Towle Road stated it was nothing personal, but she doesn't want to live  
326 where all this commercial stuff is happening, they have livestock across the street from this  
327 busy commercial business. She is worried when the trucks back out in the winter on the ice.  
328 She doesn't want a big business across the street.

329  
330 Mr. Snyder stated the original expectation was that the business would be self-limiting, and  
331 the self-limiting aspect has not come to pass. They have outgrown the property and at some  
332 point, will have to move. The variance goes with the land. Mr. Snyder asked what would  
333 happen if they didn't do this? Mrs. De Beckers stated they don't have the space and can't  
334 stay there. Mr. Snyder stated that many providers reach a point where they can't take any  
335 more customers and he has experienced that with his own veterinarian.

336  
337 Mrs. De Beckers asked whether she could do 1,000 SF.  
338

Chair Maloney stated that is not what you are applying for here. It is a residential agricultural area. They started with a small business, and it is growing into a nuisance for its neighbors. Mr. Snyder noted they have deviated from the mobile business model.

Vice-Chair Scott asked about the barn formerly used as a work shop on the premises and why they did not expand there. Mrs. De Beckers stated that it is across from the Chait's and they didn't want them to have to look at it. Mrs. De Beckers asked if the barn was an option. Selectman D'Angelo reminded that expansion of a business in a residential zone requires Site Plan Review and recommended she consider hiring a consultant to help her plan growth.

As there was no further comment Chair Maloney closed the hearing to the public for deliberations at 8:55 PM.

Vice-Chair Scott stated that this was very involved, and he was not prepared to go over the five criteria tonight. The thought of moving this business out of Chester saddens him but abutters here tonight have made valid concerns. He would like to take the time to address each point thoughtfully for the record and noted he most likely has at least one that he will vote no on.

Mr. Snyder agreed. Hearing what he has heard tonight, he is distraught about this. The Board doesn't usually find applications contrary to the spirit of the ordinance, but this poses congestion. The hardship is brought on by the growth of the business and while he is hesitant to say that is self-inflicted, that is what it comes down to. He applauds their service to the community; however this Board has to adhere to the laws of the State of New Hampshire and follow the guidance for which we have been trained.

Chair Maloney stated that she feels it alters the character of the neighborhood. The benefit to the applicant should not be outweighed by the harm to the general public. There is no hardship. There is a reasonable use with a small veterinary clinic and residence. A lot of the conditions already put on the 2018 variance have already been exceeded. The business has grown way too much and is too big for the two-acre lot in the R-1 zone and that is not fair to the neighborhood.

Vice-Chair Scott stated that denying them the ability to grow will cause them to move out of Chester and do considerable harm to many customers in Chester who use that service which will no longer be closely available.

Chair Maloney stated it is a nuisance to the neighborhood and challenged the Board to put themselves in the neighbor's place.

Vice-Chair Scott stated he spoke to the Chief of Police and there have been no complaints however the expansion may grow traffic to a problem and cause the police to have to go there. Mr. Snyder stated there are problems existing now that need to be addressed without building new structures. He is moved by the testimony that has not been presented and is concerned by the future impact of expansion.

Mr. Gregsak stated it is a great business, very successful, I give them a lot of credit. There is a huge demand, and it is great having it in Town but where do you draw the line. Chair Maloney stated "here" and held up the 2018 decision. Mr. Gregsak stated he is concerned with how the neighbors feel with parking, trucks, cars, traffic and the second floor could



become another 2,000 SF, a 4,000 SF building. They are going to need bigger parking. It is a little country road that is barely used. He agreed he would like more time to take this all in.

***Vice-Chair Scott motioned to continue the application to August 17, 2021 at 7:00 PM in deliberations. Mr. Gregsak seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.***

Mrs. De Beckers questioned when the Town of Chester could chime in and Chair Maloney noted the public hearing had been the time for that to happen. They are in deliberations now and cannot accept any letters or new information. Ms. Hoijer asked if she received a cease and desist from the Building Inspector and asked her to please notify the Board if she receives one.

Vice-Chair Scott stated that if she meant a Warrant Article there were steps to take with a petition for the Town to vote on to change zoning. Ms. Hoijer noted that may not solve their impervious surface issue, however. Selectman D'Angelo noted there is an appeal process and a process for changing a zoning district.

## **5. Additions**

- **Kevin Scott application question 261 Chester Street**

Mr. Scott asked about filing an Appeal of Administrative Decision. He received a denial for his driveway on 261 Chester Street. It is 800' to house site and exceeds Article 9.9.1.3 10 percent grade longer than 100.' He deeded a portion of the four-acre parcel to conservation reserving a two-and-a-half-acre house lot to himself which the BOS approved. He provided the Building Inspector with a driveway profile and has an elevation of 11.6' at one point. One and a half feet at the top of the hill. He got his State driveway permit. He has access and exit off 121 which is DOT. The purpose of RSA 236:13 is access to public highways. Driveway regulations are not a zoning ordinance. Ms. Hoijer noted for administrative appeal the interpretation has to be wrong. Mr. Snyder noted it was subdivided long ago, the Planning Board should be his next step to ask Mr. Hadik whether he qualified for the waiver process.

- **Election of Officers – Tabled to August 17, 2021**

## **6. Adjournment**

***Mr. Gregsak motioned to adjourn the meeting at 9:24 PM. Chair Maloney seconded the motion. A vote was taken, all were in favor, so moved.***

Respectfully submitted,

Nancy J. Hoijer,  
Recording Secretary