

**Town of Chester
Zoning Board of Adjustment
August 17, 2021
Town Hall
7:00 PM
Draft Minutes**

Members Present:

Chair Billie Maloney
Vice-Chair Kevin Scott
William Gregsak
Jack Cannon
Rick Snyder, Planning Board Ex-Officio Liaison

Members Absent:

Guests:

Kyle G. Salie
Elizabeth Salie

And other persons unknown to the minute taker

Agenda

- 1. Call to Order/Roll Call**
- 2. 2021 Update Rules of Procedure**
- 3. Rick Snyder – Appointed as Regular Member/PB Liaison**
- 4. Approval of June 20, 2021 Minutes**
- 5. Public Hearings**
- 6. Budget FY22**
- 7. Election of Officers**
- 8. Adjournment**

1. Call to Order

Chair Maloney called the meeting to order at 7:01 PM. By Roll Call were present: Billie Maloney, Kevin Scott, Bill Gregsak, Jack Cannon and Rick Snyder.

2. Rules of Procedure Update 2021

Chair Maloney reviewed the updates to the Rules of Procedure dated 2021.

Vice-Chair Scott motioned to accept the Rules of Procedure as amended. Mr. Snyder seconded the motion. A vote was taken and passed unanimously 5-0-0.

The Board Members signed the amended Rules of Procedure for 2021.

Ms. Hoijer reported that the Building Inspector informed her that he had attended a seminar recently concerning the Housing Appeals Board and it was his understanding that while they have concurrent jurisdiction with the Superior Court in matters of appeal that the Housing Appeals Board limits its jurisdiction to matters of appeal relevant to housing. Ms. Hoijer provided a copy of RSA 679:5 which Mr. Snyder read out loud. Mr. Snyder did not agree with that interpretation and recommended visiting their website to get more information. The Board did not feel their notice concerning the Appeals Process needed updating at this time.

3. Appointment of Rick Snyder as Regular Voting ZBA Member/PB Liaison

Chair Maloney reported she attended the Board of Selectmen's meeting Thursday with Mr. Snyder, and he was appointed a regular voting member of the ZBA for one-year as Liaison to the Planning Board. Mr. Snyder has been faithfully attending the ZBA meetings as an active alternate for many years and throughout COVID-19, has training and experience, proven reliable, prepared, dependable and engaged. Mr. Snyder may have to recuse himself from voting in matters which he may have a dual vote with the Planning Board. The Board thanked Mr. Snyder for accepting and congratulated him.

4. Approval of Minutes – July 20, 2021

Mr. Gregsak motioned to approve the July 20, 2021 minutes. Chair Maloney seconded the motion. A vote was taken, Mr. Cannon abstained. The motion passed 4-0-1 in favor.

5. Public Hearings:

1. The continuation of the application of Erika DeBeckers & Erwan DeBeckers d/b/a Ark Animal Homecare, PLLC for a Variance from Article 5, Section 5.3.4 of the ordinance to expand the commercial use in the residential zone to increase the number of Ark Trucks and number of employees allowed by existing Variance dated March 23, 2018

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

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

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

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

Ms. Hoijer reported that she spoke with Erika De Beckers earlier today and she wished to withdraw. Mr. Cannon indicated he heard from her at the end of last week. Chair Maloney noted this was when the offices were closed. Ms. Hoijer provided the Board with a copy of an email received earlier today from the De Beckers asking to withdraw their application for the Towle Road property.

Vice-Chair Scott questioned whether acceptance by the Board of their request should be tabled until the next meeting concerned that until their new application is presented they are operating their veterinary clinic and mobile vans at Towle Road in violation of the existing home occupation variance and will not be protected from enforcement by the Building Inspector. The Board discussed the matter and all but Mr. Scott agreed it was the De Becker's decision to make and this is what they had requested. The Board was not in a position to offer alternative advice and the applicant could still reapply if a problem arose.

Mr. Snyder motioned to accept the request of the De Beckers to withdraw their application for variances for the veterinary clinic and mobile vans at the Towle Road property. Chair Maloney seconded the motion. A vote was taken, Vice-Chair Scott voted nay. The motion passed 4-1-0.

3. The application of Kyle G. Salie and Elizabeth Salie for Variances from Article 9 to permit an 28'x32' Accessory Dwelling Unit on the second floor of a proposed garage not attached to a single-family dwelling which does not meet the requirement of Subsection 9.4.1 setback requirements or Subsection 9.4.2 Interior Door and a Variance from Article 5, Subsection 5.7.8 Table 2 (buffers and setbacks in the Wetlands Conservation District) to construct the structure comprised of the unattached garage and 28'x32' ADU within 59' of wetlands where 75' are required

On the premises known as Map 002-049-001, 15 Town Farm Road in the R-1 Residential zoning district

Vice-Chair Scott read out loud the public hearing notice.

Mr. Salie handed out copies of his supplemented application to the Board.

Mr. Salie notified the Administrative Assistant that he did not receive his green certified mail card notifying of the hearing. Ms. Hoijer checked the receipts and found them to be stamped by the Post Office received August 3, 2021 however she reported none of the return receipts had been returned. Vice-Chair Scott recommended the AA take the receipts to the Post Office tomorrow morning and have them tracked.

Chair Maloney summarized the application for an ADU to be built over a garage attached by a breezeway to the dwelling's existing garage; to be built within 59' of the wetlands where 75' are required. She noted the ADU did not meet the requirements of the criteria allowing an ADU by Special Exception because there was no interior door per 9.4.1 and it did not meet the setbacks per 9.4.2. Chair Maloney noted the denial per 9.3.1 is a definition of Accessory Dwelling Unit "within or attached to a detached single-family dwelling..." Ms. Hoijer asked if the Board had a chance to review the opinion of Town Counsel; and the copy of RSA 674:72III provided which states: "An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but a municipality shall not require that it remain unlocked."

Ms. Hoijer also asked the Board to review Section 9.4.13 which states “Detached accessory dwelling units are not authorized or permitted by this Article.” Ms. Hoijer provided the Board with guidance dated 2017 from the state which only indicated a breezeway “might possibly” be considered. **Mr. Snyder recommended searching for updated information.** Ms. Hoijer questioned whether the intent of Article 9 was to provide criteria for allowance by Special Exception; this is an application for a variance.

Vice-Chair Scott read out loud Section 9.1 Purpose and noted Section 9.4.2 states only that “An interior connecting door shall be provided between the principal dwelling unit and the accessory dwelling unit.”

Chair Maloney directed that the first question the Board would need to answer is whether the proposed ADU is attached or isn’t.

Vice-Chair Scott noted the garage door to the garage ADU and that he thought it needed a full wall. Nowhere does it talk about garages; garages are not considered living area. Mr. Cannon agreed, noting that they are taxed differently. Mr. Salie indicated he would have a connecting door via the garage.

Ms. Hoijer asked the Salies who would have use of the garage under the ADU or if it would be a common area. Mr. Salie noted it would be used by their elderly parents who would occupy the ADU. Ms. Hoijer questioned if the square footage of the garage would be required to be added to the square footage of the ADU and it would the allowed square footage then be exceeded.

Chair Maloney questioned whether the ADU could be attached, and Mr. Salie indicated he was building a sunroom, had two children and just found out a third is on the way.

Mr. Salie read his applicant into the record. Mr. Salie stated the ADU would raise property values and tax revenue and there were no other options that would be aesthetically pleasing. He stated that he had an opinion from a realtor to that effect (not provided). His project would mirror the structures in the rest of the neighborhood.

Chair Maloney opened the hearing to the public for comments and questions.

Chair Maloney asked about the septic system and Mr. Salie noted a new septic system would be built for the ADU; the pipe was extended underground. There would be two leach fields.

Mr. Snyder asked if it met the Spirit of the Ordinance and questioned why the ordinance required an interior door. Vice-Chair Scott referenced 9.2 which states “Approval Process” “The addition of a single-family dwelling unit within or attached to a detached single-family dwelling (**emphasis on existing**) at the time of application shall be permitted by special exception issued by the Zoning Board of Adjustment in any residential district, if the requirements of Article 9.4 and Article 11.4 of the Chester Zoning Ordinance are satisfied.

Mr. Snyder read out loud the purpose under 9.1 “to offer a diversity and range of affordable housing, in recognition of the growing necessity for and societal benefits of: households where adults which to give care and support to their parents in a semi-independent living arrangement, elderly and disabled citizens in need of independent living space for caregivers, recent college graduates saddled with significant student loan debt, persons or families of low and moderate income, where these regulations shall provide additional housing opportunities, without the

requisite for further land development, additional buildings, and increased roads and infrastructure in the Town of Chester.”

Chair Maloney reminded that the application is for a variance because the applicant does not meet the Special Exception criteria.

Mr. Salie questioned what qualified a garage from living space because he was not using the existing garage as a garage and could board up the doors.

Mr. Gregsak questioned where else the applicant could put this? Chair Maloney cautioned that the Board could not offer specific advice to the applicant concerning alternatives for their project but could ask if the applicant could build it and be in compliance with the Zoning Ordinance and thus, not need a variance.

Mr. Gregsak questioned if the breezeway between the ADU and the dwelling unit did not fall within the criteria for the ADU. Mr. Salie noted the breezeway would be approximately 8.’ The Board discussed whether the breezeway is no more than a covered path. Mr. Salie questioned what would make it considered living space and also noted there is irrigation out back. Mr. Salie noted his neighbors had breezeways and Vice-Chair Scott clarified those are not ADUs. Ms. Hoijer asked what made it an ADU and Vice-Chair Scott noted the presence of the additional kitchen; sink and stove.

Vice-Chair Scott and Mr. Gregsak noted they believed there are other ways around this without needing a variance. Chair Maloney reminded the Board must utilize the five criteria for granting variances. Chair Maloney noted she had no problem with the request for a variance from the wetlands and Vice-Chair Scott agreed. However, Chair Maloney noted the application is tied to the ADU via the applicant’s answer to the last hardship question. If Mr. Salie wanted the Board to make a decision on the wetland’s setback variance on its own merits, the last paragraph would need to be amended to separate the language tying it to the request for a variance for the ADU.

Chair Maloney again questioned the Board as to whether they feel the ADU is attached or not.

Mr. Snyder stated he did not think the breezeway met the standard of being attached. Chair Maloney noted ADUs are allowed by Special Exception if they are attached and that is why they are here for a variance. She does not believe the harm to the applicant in denying the variance is outweighed by benefit to the public. Property values would probably not be affected. There are special condition of the property that relate to hardship. Is the use reasonable as an apartment over a garage? Chair Maloney noted the breezeway is not 300’ long it is 8.

Vice-Chair Scott stated that the Building Inspector’s denial did not line up with the ordinance.

Ms. Hoijer asked when the existing dwelling was built and Mr. Salie stated in 2017.

Chair Maloney recommended continuing the hearing until next month.

Chair Maloney motioned to continue the hearing until September 21, 2021 at 7:15 PM. Vice-Chair Scott seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.

226 **5. Budget FY22**

227 Ms. Hoijer indicated that she hasn't received anything from Finance yet but believed budgets
228 would be due soon as the attempt to move Town Meeting until May had failed the ballot vote.
229 This would mean Town Meeting is in March. Ms. Hoijer asked Mr. Cannon if he would present
230 the ZBA budget for FY22 to the Selectmen. Mr. Cannon will find out when the budgets are due.

231 **6. Election of Officers**

232 *Mr. Gregsak motioned to nominate Billie Maloney as Chair for one year. Mr. Snyder*
233 *seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.*

234 *Mr. Gregsak motioned to nominate Kevin Scott as Vice-Chair for one year. Mr. Cannon*
235 *seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.*

236 **7. Adjournment**

237 *Chair Maloney motioned to adjourn the meeting at 8:55 PM. Vice-Chair Scott seconded*
238 *the motion. A vote was taken, all were in favor, so moved.*

239 Respectfully submitted,

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242 Nancy J. Hoijer,
243 Recording Secretary