

**Town of Chester  
Zoning Board of Adjustment  
October 19, 2021  
Town Hall  
7:00 PM  
Approved Minutes**

**Members Present:**

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

**Members Absent:**

**Guests:**

Jennifer Sullivan  
Jason Walsh  
Ronald Cote  
Helen Murray  
Rob Brown  
Bill McLeod

And other persons unknown to the minute taker

**Agenda**

1. Call to Order/Roll Call
2. Non-Public Session pursuant to RSA 91-A:3(c) reputation of someone other than a Board Member
3. Correspondence Received (concerning hearings)
4. Public Hearings
5. Approval of August 17, 2021 and September 21, 2021 Meeting Minutes
6. Budget Presentation at 10-21-21 BOS Meeting
7. Training – Review of Housing Appeals Board and Right to Know Seminar/Workshop by Attendees
8. Rules of Procedure Update – Tabled
9. Other Business
10. Adjournment

**1. Call to Order**

Chair Maloney called the meeting to order at 7:03 PM. By Roll Call were present: Billie Maloney, Kevin Scott, Bill Gregsak, Rick Snyder and Jack Cannon virtually. Mr. Cannon stated why he was unable to attend in person and that he was alone in the room.

**2. Non-Public Session pursuant to RSA 91-A:3(c) reputation of someone other than a Board Member.**

***By Roll Call Vote Chair Maloney motioned to go into non-public session pursuant to 91-A:3(II)(c) reputation of someone other than a Board Member. Mr. Snyder seconded the motion. A roll call vote was taken Maloney – aye, Scott – aye, Snyder – aye, Gregsak – aye and Cannon – aye. The motion passed unanimously.***

The meeting room was closed to the public at 7:03 PM.

The meeting room was opened to the public at 7:32 PM.

***By Roll Call Vote Chair Maloney motioned to come out of non-public session and seal the meeting minutes. Mr. Gregsak seconded the motion. A roll call vote was taken Maloney – aye, Scott – aye, Snyder – aye, Gregsak – aye and Cannon – aye. The motion passed unanimously.***

**3. Correspondence received (concerning public hearings) - None**

**4. Public Hearings**

The application of Kevin C. Scott, David L. Scott, Theodore P. Scott and Martha Scott Chazanoff for Variances from:

1. Article 5, Section 5.7.8 Table 2 (Table of Dimensional Requirements – Wetlands Setback) of the ordinance to permit a driveway to be constructed within the 75' setback of wetlands of Map/Lot 001-084-000

2. Article 2.5.5 of the ordinance to permit a shared driveway to be located within the side setback of both the lots to be known as Map 001-084-103 and 001-084-104

On the premises known as Map/Lots 001-084-000 and 001-084-001 at 68 & 80 East Derry Road in the R-1 Residential zoning district.

Vice-Chair Scott recused himself and sat with the public.

Mr. Gregsak read out loud the Public Hearing Notice and noted there were four members present to hear the application. Mr. Scott indicated he wished to proceed.

Chair Maloney read out loud RSA 673:14 concerning disqualification of board members and polled the members asking if they had any gain or loss resulting from the disposition of this application, whether they were employed by the applicant or employed the counsel in this application, were related to the applicants or advised or assisted either party, had any prejudice or opinion formed concerning the application or any reason which would disqualify them to serve in a manner such as a juror under oath. Mr. Gregsak answered no to all. Mr. Snyder answered no to all. Mr. Cannon answered no to all. Chair Maloney answered no to all.

Chair Maloney stated that Mr. Gregsak, herself, Mr. Snyder and Mr. Cannon would be voting on these two applications.

Mr. Scott presented the application for a variance from Article 5, Section 5.7.8 Table 2 for Map/Lot 001-084. He posted the plan of the lot and showed the existing finger wetland noting that the lots would have frontage on Route 102. He noted the wetlands in question were

smaller than a two-car garage and did not runoff onto any other property. He showed the location of the DOT curb-cuts. He noted the location of the driveway is the only place which would satisfy the DOT. The lot is an odd-shaped lot. He noted it would not contribute to pollution of surface or groundwater or threaten public health, safety or welfare which is the purpose stated in Article One of the zoning ordinance – purpose and authority. He noted the State dumps 33 tons of salt per road mile on Route 102. He noted the spirit of the ordinance would be observed to reduce any adverse effect on the wetlands and wildlife habitat. The driveway while considered a structure would be the only structure in the wetland's setback. Mr. Scott noted the applicants abutted the property and future owners could determine if they want to buy the lot or not. He noted that he asked Assistant Assessor Jean Packard if wetlands encroachment ever affected the values of surrounding properties, and she knew of none. Mr. Scott noted the property had some extreme elevations and dips in the road. The property could not be used in strict conformance of the setback.

Chair Maloney asked how far from the wetlands the driveway would be and Mr. Scott noted at least 25.'

Mr. Cannon asked why couldn't he develop the subdivision without this lot and Mr. Scott noted he would develop the property to its potential with as few variances as possible. Mr. Cannon noted he has seen the property wet certain times of year. Mr. Scott noted the engineers DuBois & King reviewed any potential issues. Earl Sanford is an approved wetland scientist.

Chair Maloney indicated she went and looked at the lots. Each proposed driveway was marked by a stick with a blue flag, and she could see why the driveway would be located where it is but the area did not look wet to her.

Mr. Gregsak noted the culvert at the bottom of the hill is very wet and drains across the street. He noted he agreed with Chair Maloney and that the wetland is a remote, small wetland and it would be difficult to get a driveway permit with DOT.

Mr. Gregsak asked Mr. Scott if they had applied for a permit with DOT and he indicated yes, all three driveway sites are engineered with DOT.

Mr. Gregsak explained how the sight distance is determined 400' in each direction facing the travel lane. Mr. Snyder noted it is the last place you want to have a bad driveway.

Chair Maloney opened the hearing to the public at 7:53 PM.

Jennifer Sullivan of 75 East Derry Road indicated she was an abutter across the street. She expressed concerns about logging and DES permits. She asked when the permits were obtained and if a change of use form had been applied for. She noted seeing wetland delineation flags. Mr. Scott noted there was one vernal pool to the rear of the first lot. Mr. Scott noted that he relied upon a wetland scientist to map it out. She asked who supervised what was done.

Ms. Hoijer asked what time of year the logging was done, and Ms. Sullivan was uncertain. Ms. Hoijer noted DES permits are not in the purview of the application before the Zoning Board of Adjustment this evening. Mr. Snyder informed Ms. Sullivan that the subdivision would go before the Planning Board, and they would be informed of any DES applications and the public would be able to attend. Ms. Sullivan provided Ms. Hoijer with a copy of the contact information of the person she spoke to at DES and Ms. Hoijer noted she would follow up on their conversation.

122 Chair Maloney closed the hearing to the public at 8:06 PM for deliberations.

123 Mr. Snyder noted the applicants made convincing arguments on all five points and he is  
124 convinced that the application met all five. The wetland in question is small and isolated and he  
125 requested while expressly stating it is not a proposed condition or requirement but a request,  
126 that the driveway be a minimum of 25' from the wetland setback. He noted he was in favor of  
127 the application.

128 Mr. Gregsak noted he understood the sight distance issues and would also like to see the  
129 driveway and construction stay out of the wetland setback by a minimum of 25.' He noted he is  
130 in favor of all five points.

131 Mr. Cannon noted he would vote no on #2 that he feels the spirit of the ordinance is not being  
132 observed. He noted Ms. Sullivan made good points and Mr. Scott made a compelling case.

133 Chair Maloney noted as far as public interest and spirit of the ordinance she saw no conflict with  
134 the explicit purpose of the ordinance and that it would not alter the character of the  
135 neighborhood. The proposal encourages public safety and is the only place to put it that would  
136 be safe. She sees no harm to the public or negative affect to the values of surrounding  
137 properties. The hardship would be the special conditions of the wetlands and the difficulty  
138 having another location come out on Route 102 safely. She would vote yes on all five.

139 **Mr. Snyder motioned to grant a variance from Article 5, Section 5.7.8 Table 2 – wetlands**  
140 **setbacks to allow the driveway to be constructed within 75' of the wetland on Map/Lot**  
141 **001-084-000. Chair Maloney seconded the motion. A vote was taken, Mr. Cannon voted**  
142 **nay, Chair Maloney voted aye, Mr. Snyder voted aye and Mr. Gregsak voted aye. The**  
143 **motion passed 3-1-0.**

144 Mr. Gregsak read out loud the 30-Day Notice of Appeal.

145 Mr. Gregsak read out loud the Public Hearing Notice for the second variance requested.

146 Mr. Scott read his application into the record and showed on the plan where Lot 103 crosses to  
147 Lot 104 at a point and explained the DOT sight distance for this proposed shared driveway. He  
148 noted shared driveways are in the spirit of the ordinance and referenced a variance granted to  
149 the Cannatas on 7/11/17 on Lane Road where Chair Maloney and Mr. Snyder voted in favor.  
150 Mr. Snyder noted the Town has not voted to disallow shared driveways. Mr. Scott noted he  
151 asked the Assistant Assessor if shared driveways ever impacted the surrounding property  
152 values, and she knew of no instance where that had happened. He noted the hardship is based  
153 on the topography and safety concerns with the sight line a single curb cut is necessary. Mr.  
154 Gregsak noted the DOT prefers shared driveways because there are less curb cuts.

155 Chair Maloney noted that while she is not a fan of shared driveways, she did vote in favor of the  
156 Cannata variance because of special conditions. Every variance is different. In this case it  
157 would be safer for one driveway, than two, because of the line of sight.

158 Mr. Cannon noted he had no objection to this request.

159 Chair Maloney opened the hearing to the public at 8:20 PM for comments and questions and  
160 being none closed the hearing to the public for deliberations.

161 Chair Maloney noted Mr. Scott did a good job on all five points and she did not feel the proposal  
162 would alter public safety adversely but help public safety. The hardship is the unique character  
163 of the property and the sight distance on Route 102. The proposal is reasonable, and she noted  
164 she would vote yes on all five points.

165 Mr. Gregsak noted he did not feel there was any problem with the proposal and it was not  
166 contrary to the public interest. Safety is a big issue. He would vote yes on all five points.

167 Mr. Cannon noted Mr. Scott's arguments were well thought out and researched. He would vote  
168 in favor on all five points.

169 Mr. Snyder noted he also was not a big fan of shared driveways but there are times when it is  
170 appropriate. He would vote in favor on all five points.

171 ***Mr. Snyder motioned to grant a variance from Article 2.5.5 as presented for a shared***  
172 ***driveway for Lots 001-084-103 and 001-084-104. Mr. Gregsak seconded the motion. A***  
173 ***vote was taken, all were in favor, the motion passed unanimously.***

174 The application of Jason A. Walsh and Lisa A. Walsh for Variances from Article 4, Section 4.2.1  
175 to permit the existing driveway to be extended through the back property line setback in  
176 Sandown and from Article 5, Section 5.3.5 Table 1 to permit the existing non-conforming  
177 driveway located within the side yard setback and to extend to a proposed three-car garage with  
178 in-law apartment located in Sandown on the premises known as and numbered Map/Lot 009-  
179 021-006, 266 Fremont Road in the R-1 Residential zoning district.

180 Vice-Chair Scott rejoined the meeting and Mr. Gregsak read out loud the Public Hearing Notice  
181 and noted there would be five voting members, Chair Maloney, Mr. Gregsak, Mr. Snyder, Mr.  
182 Scott and Mr. Cannon.

183 Mr. Walsh read his application into the record noting the town line went through a portion of his  
184 deck. He went before the Sandown ZBA and got a Special Exception for an in-law apartment.  
185 Chair Maloney asked how far from where the existing driveway ends to the town line and Mr.  
186 Walsh indicated 33'. Mr. Walsh noted the proposed location was the best to avoid steep grades  
187 and bringing in fill. The driveway has existed since 1976. The proposal is not detrimental to the  
188 neighborhood. Building outside the setback would be impractical to overcome existing grades  
189 he would need to bring in a lot of fill. He noted the proposal is reasonable and the driveway has  
190 existed for 45 years in its current location. There would be no tree clearing with this proposal  
191 and minor grading. Grades on the easterly side are severe and would require too much  
192 modification of the earth. This proposal would be the least impactful.

193 Mr. Gregsak asked if he had received other approvals such as from the fire department or site  
194 plan review and Mr. Walsh indicated all had been met and Sandown granted a Special  
195 Exception for an ADU. The fire department would respond to the address which is 266 Fremont  
196 Road. Chair Maloney asked if Sandown allowed a detached ADU by Special Exception and Mr.  
197 Walsh noted that their ordinance did.

198 Chair Maloney opened the hearing to the public for comments and questions at 8:36 PM and  
199 being none closed the hearing to the public for deliberations.

200 Vice-Chair Scott noted the 33' extension to the driveway was the only way to go; the application  
201 was straightforward on all five points.

202 Mr. Gregsak noted based on the location of the house and existing driveway this is where it has  
203 to go through.

204 Mr. Cannon agreed. The non-conforming driveway has existed for 45 years and there is no  
205 harm to the public to allow the extension into a lot not even in Town. He agrees on all five  
206 points.

207 Mr. Snyder noted he is convinced on all five points and has no problem with it.

208 Chair Maloney noted it was a very reasonable use and would be yes on all five points.

209 Vice-Chair Scott stated the location is well buffered and the applicant's testimony was accurate.

210 **Mr. Gregsak motioned to grant the variances from Article 4, Section 4.2.1 to permit the**  
211 **extension of the non-conforming driveway and from Article 5, Section 5.3.5 Table 1 to**  
212 **permit the existing non-conforming driveway located at the side setback to be extended**  
213 **to the dwelling located in Sandown as presented. Vice-Chair Scott seconded the motion.**  
214 **A vote was taken, all were in favor, the motion passed unanimously.**

215 Ms. Hoijer returned the applicant's check as he paid online. Vice-Chair Scott read out loud the  
216 30-Day Notice of Appeal.

217 The application of Ronald M. Cote d/b/a Cote Electric, LLC on behalf of Helen Murray for a  
218 Variance from Article 5, Section 5.7.8 Table 2 – wetlands setback to permit a standby generator  
219 to be located 55' from the wetlands where 75' is required on the premises known as and  
220 numbered Map/Lot 0101-009-004 at 262 Jennifer Drive in the R-1 Residential zoning district.

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

222 Mr. Cannon departed the meeting. Vice-Chair Scott asked if the applicant would like to proceed  
223 with four voting members and he indicated he would like to proceed.

224 Mr. Cote read the application into the record and noted the single-family home is in a secluded  
225 neighborhood. The proposed location of the generator would be 5' from the house and would  
226 not pose a threat to groundwater contamination. The generator is run by propane and one quart  
227 of oil which would not travel 55' if there were a spill. The loss of power is frequent in the area  
228 and the owner works in MA and often is stuck at work when there are large storms. This would  
229 keep the pipes from freezing as the generator would automatically come on even if she is not  
230 home.

231 Mr. Gregsak noted the location is the same side where the utilities, electric and propane are in  
232 place.

233 Mr. Cote noted he applied for the two permits and had one in hand and the other applied for.  
234 The trenches were dug but not filled in. The project was halted when he received word of the  
235 denial. Vice-Chair Scott noted he looked at the site today and the generator would be installed  
236 on a bed of stone with 55' of lawn to get to the pond.

237 Chair Maloney opened the hearing to the public for comments and questions at 8:49 PM and  
238 being none closed the hearing to the public for deliberations.

239 Vice-Chair Scott noted he did not see any threat of pollution from one quart of oil 55' from the  
240 pond. He noted he would support all five points.

241 Mr. Snyder agreed he had no concerns with contamination and added that the crushed stone  
242 would provide another layer of protection.

243 Chair Maloney noted she would vote in favor of all five points.

244 Mr. Gregsak agreed he was in favor on all five points.

245 ***Vice-Chair Scott motioned to grant a variance from Article 5, Section 5.7.8 Table 2 to***  
246 ***permit the standby generator to be located 55' from wetlands where 75' are required at***  
247 ***Map/Lot 010-009-004, 262 Jennifer Drive. Mr. Gregsak seconded the motion. A vote was***  
248 ***taken, all were in favor, the motion passed 4-0-0.***

249 Vice-Chair Scott read out loud the 30-Day Notice of Appeal.

250 The application of Rob Brown (aka Robert Brown) for a Special Exception pursuant to the  
251 criteria of Article 11, Section 11.4 as specified in the zoning ordinance, Article 9, to permit an  
252 attached Accessory Dwelling Unit on the premises known as and numbered Map/Lot 009-083-  
253 000, 501 Fremont Road in the R-1 Residential zoning district.

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

255 Mr. Brown read his application into the record and noted he had an apartment, but the  
256 grandfathering status lapsed while he was remodeling the roof and electric. He noted there has  
257 been no expansion. He provided a handout showing the interior connecting door. He noted he  
258 has a new septic design done in the event the existing septic fails. There would be two  
259 bedrooms. Chair Maloney noted the sprinkler requirement no longer exists.

260 Vice-Chair Scott noted it was nice to have all of the answers to Article 9 and Article 11.4 in  
261 writing. All questions were answered, and conditions met. He drove by the property and the  
262 applicant's testimony is accurate.

263 Ms. Hoijer notified the applicant of the requirement that a Notice of Limited Occupancy be  
264 obtained and signed by the Building Inspector and signed and recorded by the applicant.

265 Mr. Brown asked if he needed site plan review with the Planning Board and will speak to Mr.  
266 Hadik.

267 Mr. McLeod asked about whether the property would be considered multi-family and Ms. Hoijer  
268 noted the State mandates homes with ADUs be treated as single-family dwelling units.

269 ***Chair Maloney motioned to grant the Special Exception in accordance with Article 11.4,***  
270 ***Article 9 for an attached Accessory Dwelling Unit at Map/Lot 009-083, 501 Fremont Road.***  
271 ***Mr. Snyder seconded the motion. A vote was taken, all were in favor, the motion passed***  
272 ***4-0-0.***

273 Vice-Chair Scott read out loud the 30-Day Notice of Appeal.

274

## **5. Approval of Meeting Minutes**

- **August 17, 2021**

*Chair Maloney motioned to approve the August 17, 2021 Meeting Minutes as amended. Mr. Gregsak seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.*

- **September 21, 2021**

Chair Maloney recommended edits.

*Chair Maloney motioned to approve the September 21, 2021 Meeting Minutes as amended. Vice-Chair Scott seconded the motion. A vote was taken, Mr. Snyder abstained, the motion passed 4-0-1.*

## **6. Budget Presentation to BOS on 10-21-21**

Chair Maloney indicated she would attend the Board of Selectmen's Meeting on Thursday to present the proposed FY 2022 budget and thanked Mr. Cannon for putting it together.

## **7. Training – Review of Housing Appeals Board and Right to Know Seminar/Workshop by Attendees**

Mr. Snyder reported that he attended the Housing Appeals Board Seminar and expressed concerns about their hearing of one Town's Board of Selectmen's decision concerning a Class VI road being reopened as a Class V road. Their jurisdiction in the matter pertained to the request to use the road for housing development. Mr. Snyder noted there is a link to their upcoming hearings on their website. Their next hearing is October 29, 2021 at 11 AM.

Ms. Hoijer noted that she also attended the Seminar and Mr. Buckley discussed the jurisdiction of the Housing Appeals Board using as an example a FROG or family room over a detached garage encroaching on the wetlands. He noted if the garage has an apartment over it then it would be subject to the jurisdiction of the Housing Appeals Board because it pertains to housing but would not if it were just a detached garage. She will forward the link to the video and slides.

Ms. Hoijer noted that she also attended the Right to Know and Records Retention Workshop. Mr. Buckley recommended having in the Board's Rules of Procedure language concerning the use of electronic devices (such as cell phones) during a meeting or public hearing be addressed, that a timeframe for making meeting videos be referenced. The Minutes are the official record of the meeting however an appellant could request them as part of the appeal record. Mr. Snyder and Ms. Hoijer agreed that Mr. Buckley did a nice job of outlining how a certified record should be submitted to the HAB including a certified copy of the ordinance appealed.

## **8. Rules of Procedure Amendment - Tabled**

Chair Maloney recommended tabling amendment of the Rules of Procedure.



311 **9. Other Business**

312 • **Appointment Times on Public Hearings**

313 Chair Maloney recommended having appointment times be listed on the Public Hearing  
314 Notice in 15-minute increments to keep the meeting room from being overcrowded during  
315 COVID however if someone wanted to be present earlier, they could certainly do so.

316 **10. Adjournment**

317 ***Vice-Chair Scott motioned to adjourn the meeting at 9:37 PM. Mr. Snyder seconded the***  
318 ***motion. A vote was taken, all were in favor, so moved.***

319 Respectfully submitted,

320

321 Nancy J. Hoijer,  
322 Recording Secretary