**Town of Chester**

**Zoning Board of Adjustment**

**December 21, 2021**

**Town Hall**

**7:00 PM**

**Approved Minutes**

**Members Present:**

Chair Billie Maloney

Vice-Chair Kevin Scott

William Gregsak

Jack Cannon

Rick Snyder, Planning Board Ex-Officio Liaison

**Members Absent:**

**Guests:**

Jason Walsh

David Veale

Ted Broadwater

Mielle Riggie

Glenn Gawry

James Theole

John Sullivan

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 (if needed)**
3. **Correspondence Received (concerning hearings)**
4. **Public Hearings**
5. **Approval of October 19, 2021 Meeting Minutes**
6. **Appointment of New Alternate Member**
7. **Training – ADU Seminar; Duty to Assist**
8. **Rules of Procedure Update – Tabled**
9. **Other Business**

**10. Adjournment**

**1. Call to Order**

Chair Maloney called the meeting to order at 7:00 PM. By Roll Call were present: Billie Maloney, Kevin Scott, Bill Gregsak, Rick Snyder and Jack Cannon.

**2. Non-Public Session pursuant to RSA 91-A:3(II)(c) reputation of someone other than a Board Member or 91-A:3(II)(I) consideration of advice of legal counsel (if needed)**

**3. Correspondence received (concerning public hearings)**

**4. Public Hearings**

The application of Kevin C. Scott on behalf of Brett A. Scott and Christian C. Scott, Trustees of the Kevin C. Scott and Annette M. Scott Irrevocable Trust dated February 14, 2019

For a Special Exception pursuant to the criteria of Article 5, Section 5.3.3.1 Saw mills and logging operations and other woodworking operations and Article 11, Section 11.4 criteria for granting of a Special Exception

On the premises known as Map 4, Lot 29-0, 359 Chester Street in the R-1 Residential zoning district

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

Mr. Snyder read out loud the Public Hearing Notice

Chair Maloney read the criteria for disqualification of a voting member per RSA 673:14 and polled the voting members to see if they had any gain or loss based on the disposition of the case; were related to the applicant; had advised or assisted either party, had a preformed opinion; were employed by or employed the applicant; were prejudiced to the outcome; or employed counsel of the applicant. All voting members answered no to each of those questions.

Chair Maloney read out loud the 30-Day Notice of Appeal and indicated the application is for a Special Exception which is different from a variance. The use is allowed if it meets the criteria in Section 11.4 of the Ordinance.

Kevin Scott presented his application and first answered the question submitted by Mr. Theole to the ZBA Administrative Assistant concerning the cell tower and the ordinance criteria of the Telecommunications District. Mr. Scott indicated the two parcels in Chester that were in that telecommunications district and passed out copies of the map; the one being behind Murphy Drive and the other 400’ site off Derry Road. Mr. Scott received a variance for the tower in the R-1 zone because it is not located in the telecommunications district.

Mr. Scott read the October 25, 2021 letter from Building Inspector Myrick Bunker out loud. Mr. Bunker noted he observed firewood being processed and instructed him to apply for relief by Special Exception.

Glen Gawry who would be operating the firewood processing site indicated he has been in the wood sale business for years. The open space would be used to store firewood for seasoning. He operates a tree removal business and the hardwood generated from that as well as grapple loads brought in would be split, seasoned and stored on the site. There would be a couple of tractors, conveyor and one-ton dump truck as well as two small 24” log splitters. The work is done manually and not automated.

Mr. Snyder asked if he would be selling from another location and Mr. Gawry indicated there would be no customers on site.

Mr. Scott read each of the criteria of Article 11.4 out loud:

He noted the use would not be detrimental to the character of the neighborhood. The site is 2000’ off the highway, near the existing cell tower, which is located on the second highest point in Chester (the federal aviation tower being the highest). The site is not visible to abutters.

Mr. Theole noted he owns the property next door, lives in Windham and does not live on his property, there is no home built on it, but can see clearly when using his property for recreation. Chair Maloney asked the public to wait to speak until she opened the hearing to the public after Mr. Scott finished his presentation.

Mr. Scott addressed 11.4.2-3 and noted the use would not be injurious, obnoxious or offensive to the neighborhood or hazardous. He noted when the property was logged by Chester Forest Products recently there were log trucks, chipper trailers passing through each day, all winter long without incident.

Mr. Scott addressed 11.4.1.4 and noted there was a Site Plan Review with the Planning Board pursuant to RSA 674:13 done on the property (circa 1998 or 1999) and is on file with no deficiencies in the COA.

Mr. Scott addressed 11.4.1.5 and noted it would not be detrimental to values, unsightly, odorous etc. There will be no structures associated with the wood processing operation. Mr. Gawry indicated the equipment would not be visible from the street.

Mr. Scott referenced his DOT driveway permitting in relation to 11.4.1.6 and noted trucks would not be coming in and out daily such as residential homeowners do with their vehicles much more frequently.

Mr. Scott addressed 11.4.1.7-8 water, sewer and waste and stormwater. There is no service for any of these on the parcel at this time. No soil erosion or water pollution will be generated as a result of the use. Mr. Gawry noted he had been operating for months and has not observed any erosion or pollutants.

Mr. Scott provided a survey relative to setbacks and noted as to screening the site is 2000’ from the road.

Mr. Scott addressed 11.4.2.3, 4, 5, 6-9 there are no structures, buildings or occupants. Work would be conducted during the daylight in good weather as it is quite windy on the top of the hill. There will be no grading of the site. There are no sidewalks or signs.

Mr. Scott addressed 11.4.2.10-11 mitigation and adverse environmental impacts. There is no construction involved only processing and storage of logs, cord wood and equipment, tractors, splitter, and no alteration or improvement planned.

Mr. Scott addressed 11.4.2.12 structures – there are none other than the existing cell tower.

Chair Maloney asked if the Board had any questions and noted the applicant may need to visit the Town Planner to have Site Plan Review. Mr. Gawry indicated the hours of operation would be during daylight hours and he currently has four part-time employees who live in Town and can come and go as they need to use facilities and have their lunch.

Mr. Cannon addressed 11.4.1.8, 10 and 11.4.2.6 and 10 stormwater runoff, soil erosion, drainage and mitigation of environmental impact. He asked Mr. Scott and Mr. Gawry how they knew these won’t occur. Mr. Scott answered past history by Chester Forest Products who were in and out with larger logging vehicles more frequently during the winter months with a chipper trailer, and large heavy duty log truck.

Mr. Cannon asked how much of the property was cleared and Mr. Scott indicated none, all the logs to be processed are going to be brought in.

Mr. Snyder asked if there would be any grading or leveling and Mr. Gawry noted no changes or soil removal.

Mr. Cannon asked about fuel storage and Mr. Gawry noted only a five-gallon sealed container kept under the conveyor.

Mr. Gregsak asked about the number of cords at one point and Mr. Gawry answered currently the most is 150 but he expects to process 250 per year; four cords are processed per day.

Chair Maloney opened the hearing to the public for comments and questions at 7:32 PM.

ZBA AA Hoijer reported an email was received from an abutter, Mr. Theole, who stated he had no objection to the proposal.

John Sullivan (Lot #27) indicated he can hear the trucks coming and going. He expressed concerns about the size and scope of the operation and possible expansion. He opined that during the tower application Mr. Scott stated the property would remain an open space and feels he is going back on what he stated. Chair Maloney indicated the use is allowed by special exception. The condition imposed on the tower variance was no further subdivision.

David Veale of 346 Chester Street stated he is an abutter across the street and is also concerned by the size and scale of the operation and would like to see parameters so it does not explode into a large operation. He encouraged a new Site Plan Review be done by the Planning Board and the driveway approval by NH DOT, which is for telecom use, be updated so the DOT is alerted to the use by logging trucks and any safety issues that need to be addressed.

Mr. Snyder asked Mr. Gawry to describe the typical operation planned. Mr. Gawry indicated trucks would come in about 25 times per year with grapple loads (twice a month); more in April then not for a few months. He expects to cut 200 cords to season and store. There is only so much open land.

Ted Broadwater of 374 Chester Street noted he is an abutter across the street and concurs with Mr. Sullivan and Mr. Veale about the scope of the operation and addressing safety concerns. He noted vehicles don’t travel the posted speed limit, they go 50-60 mph and it is tough to pull out. He would like to see the Planning Board and DOT weigh in to say its safe.

James Theole of 125 Lowell Road, Windham NH (owner of Lot 4-11) confirmed that he sent the email but noted after listening to the concerns of the other abutters he was inclined to agree with their concerns about making sure safeguards are met. He added that the land, habitat, animals and open space environmental concerns are another concern. He has no objection to two tractors and two log splitters.

Mielle Riggie of 374 Chester Street agreed with concerns of safety and proposed signage like Mr. Lewis (Chester Forest Products) had placed to warn of the blind hill.

Chair Maloney closed the hearing to the public for deliberations.

Mr. Broadwater noted a logging truck is different from a Volvo but if the DOT, PD and FD say its safe.

Mr. Snyder addressed the existing driveway permit which under Item 11 calls for a new permit in the event of change of use from the listed cell tower.

Chair Maloney noted there would need to be Site Plan Review by the Planning Board to address the scope of the business.

Mr. Cannon noted that any condition on the number of truckloads would be difficult to enforce.

**Chair Maloney read out loud the proposed conditions of approval:**

**1. Site Plan Review with the Planning Board to address the scope of the operation; and**

**2. DOT to review the existing driveway permit pursuant to Item #11 of the existing permit dated 5/12/1998 that any change of use (in this case additional use) shall require a new permit – reference Permit #085-98-5.**

Chair Maloney noted she would vote yes. Mr. Snyder noted he agrees but will abstain as he will be voting on the application when it comes before the Planning Board and does not want to vote twice. Mr. Gregsak indicated he would vote yes and Mr. Cannon indicated he would vote yes on the application and conditions.

***Chair Maloney motioned to grant the Special Exception pursuant to Articles 11.4 and 5.3.3.1 of the Ordinance to permit wood processing and storage on the site with the two conditions aforesaid. Mr. Cannon seconded the motion. A roll call vote was taken, Mr. Snyder abstained. Chair Maloney voted aye, Mr. Gregsak voted aye and Mr. Cannon voted aye. The motion passed 3-0-1.***

Chair Maloney read out loud the 30-Day notice of appeal.

Vice-Chair Scott rejoined the meeting at 8:16 PM.

Jason Walsh, incumbent alternate, joined the meeting at 8:16 PM.

**5. Approval of Meeting Minutes**

* **October 19, 2021**

Chair Maloney recommended edits.

***Mr. Snyder motioned to approve the October 19, 2021 Meeting Minutes as amended. Mr. Gregsak seconded the motion. A vote was taken, Mr. Scott abstained. The motion passed 4-0-1.***

**6. Appointment of New Alternate Member**

Chair Maloney introduced Jason Walsh as a prospective new alternate member. Mr. Walsh indicated he moved to Chester last year from Connecticut and has two kids. He noted he sees the Town growing similar to the Town he previously lived in.

Chair Maloney asked how many applications he has sat in for and Mr. Walsh noted he came before the Board earlier this year for the driveway variance and attended the Sandown ZBA for his ADU. He observed on one other meeting this year prior to his application being heard.

Chair Maloney asked how he found the application process and Mr. Walsh stated it was pretty clear, all the information is on the website and the link to find abutters.

***Mr. Cannon motioned to recommend to the Board of Selectmen that Jason Walsh be appointed as an Alternate Member of the Zoning Board of Adjustment. Vice-Chair Scott seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.***

Chair Maloney advised Mr. Walsh that an appointment would be scheduled with the Selectmen, and he would then be sworn in by the Town Clerk.

**7. Training:**

* ADU Seminar

Ms. Hoijer noted she attended the SNHPC ADU Seminar and has slides and link to the video of the seminar if anyone is interested to let her know.

* Duty to Assist

Vice-Chair Scott read out loud, for discussion purposes, the handout entitled “The Duty to Assist” which referenced case law and the NH Constitution. While the Board must maintain a level of impartiality the zoning administrator and other officials assist applicants and abutters in connection with their application process and inquiries about pending applications.

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

Chair Maloney recommended edits and tabled amendment of the Rules of Procedure to the next meeting.

**9. Other Business**

**10. Adjournment**

***Vice-Chair Scott motioned to adjourn the meeting at 8:37 PM. Mr. Snyder seconded the motion. A vote was taken, all were in favor, so moved.***

Respectfully submitted,

Nancy J. Hoijer,

Recording Secretary