

**Town of Chester
Zoning Board of Adjustment
June 19, 2018
Town Hall
7:00
Approved Minutes**

Members Present:

Chair Billie Maloney
Vice-Chair Kevin Scott
Courtney Cashman
Jack Cannon
Jean Methot, Alternate
Matt Gelinis, Alternate

Members Absent:

Adam Maciaszczyk
Richard Snyder, Alternate
Joseph Hagan, Selectman Liaison

Guests:

Nicholas Martino
Theodore Ian MacLean
Amber Bell-Ragnarsson
Becky Hanna
Nicholas MacLean
Brittany Verzi
And other persons unknown to the minute taker

Agenda

- 1. Call to Order/Roll Call**
- 2. Correspondence –** One (1) returned abutter notice (MacLean)
- One (1) notice from Building Inspector (Bredstein)
- 3. Unfinished Business**
 - Minutes of May 15, 2018**
 - New - Application Fees Can Be Paid Online**
- 4. New Business**
 - Rules of Procedure Amendments recommended at Spring Seminar**
 - Fiscal Period Budget Reconciliations – Tabled**
 - Training/File Reviews –** Bredstein
Clay
 - Heath Expired Variance 1987 – Tabled**

Ordinances Passed at Town Meeting

Welcome New Member – Jack Cannon

Congratulations – Billie Maloney – 30 Years/Presentation of Certificate

5. Public Hearings

a. Nicholas Martino, M/L 002-069-002, 270 Haverhill Road

For a variance from Article 5, Section 5.3.5 Table 1 to permit a non-permitted, post-construction, addition to the garage which sits approximately 21' feet from the closest property line where 25' is required

b. Theodore Ian MacLean, M/L 002-082-000, located at 82 Pulpit Rock Road

For a variance from Article 5, Section 5.3.5, Table 1 to permit a house lot with less than the required 290' of street frontage

6. Adjournment

1) Call to Order/Roll Call

Chair Maloney called the meeting to order at 7:00 pm on Tuesday, June 19, 2018.

Chair Maloney welcomed and introduced the ZBA's newest Board Member, Jack Cannon who had previously served as the Board's Selectman Liaison for many years.

Chair Maloney provided copies of the Administered Oaths from the Town Clerk for both her reappointment and Mr. Cannon's.

Vice Chair Scott presented Chair Maloney with a Certificate for 30 Years with the Zoning Board of Adjustment and the Board gratefully acknowledged and thanked Chair Maloney for her service, patience and knowledge.

By Roll Call were present: Matt Gelinas, Chair Maloney, Vice-Chair Scott, Courtney Cashman, Jack Cannon and Jean Methot.

Chair Maloney designated that Alternate Matt Gelinas would substitute for Adam Maciaszczyk.

Additions/Deletions

Vice-Chair Scott requested an updated copy of the **Master Plan**. Ms. Hoijer will ask Mrs. Doda if another copy could be made available to the ZBA Office for Vice-Chair Scott.

Chair Maloney added **Election of Officers** and **Memo from BOS**.

2) Correspondence

Returned Abutter Notice 002-082-000

Chair Maloney advised that an abutters notification of hearing for M/L 002-082-000 had been returned "vacant, unable to forward" by the post office.

Ms. Hoijer presented a note to file that upon receipt of the returned notice, she investigated the abutters list provided to the Zoning office by Assessing and that had a different mailing address in Salem, NH where the copy in the front hall which is often used by applicants, only lists the property addresses, which were viewed by Chair Maloney and Vice-Chair Scott.

Chair Maloney instructed Ms. Hoijer to see if Assessing could provide the more detailed list to replace the one in the front hall.

Chair Maloney asked the Board if they should proceed with the hearing since an abutter had not been properly noticed. It was unanimously agreed to allow Mr. MacLean to present his application conditioned on the advice to him that if said abutter raised an objection they would be entitled to a re-hearing. Mr. MacLean stated that he wished to proceed.

Ms. Hoijer will forward a copy of the notice to the abutter at the correct address, by certified mail and asked if the Board would like to waive the noticing fee of \$10.00. The Board agreed to waive that fee.

Notification from the Building Inspector (Bredstein)

Chair Maloney presented a copy of a letter dated May 31, 2018 from the Building Inspector and would discuss that after public hearings were concluded.

3) Unfinished Business

a) Minutes of May 15, 2018

Chair Maloney asked if the Board members had an opportunity to review the minutes and all answered affirmatively. Chair Maloney asked if there were any suggested changes or corrections. Vice-Chair Scott advised that he had one. Mr. Latham, one of the abutters of the Clay public hearing, contacted him a few days after the hearing to advise him that his testimony that there were no other homes on Donna Street that had two driveways, was incorrect. Vice Chair Scott was unsure which line that testimony was on, and Mr. Gelinas directed that it was Line 357. Vice Chair Scott directed Ms. Hoijer to amend Line 357 to reflect Mr. Latham's corrected testimony.

Vice Chair Scott motioned to approve the minutes of May 15, 2018 amended as directed above. Mr. Gelinas seconded his motion. Mr. Methot and Mr. Gelinas abstained from voting as they were absent from that meeting. Chair Maloney, Vice-Chair Scott, Mrs. Cashman and Mr. Cannon all voted in the affirmative, with four (4) votes in the affirmative, motion passed.

b) New – Application Fees Can Be Paid Online

Chair Maloney advised that the Zoning Board of Adjustment had made updates to the online webpage so that application fees could now be paid online, the result of which is that applications can now be submitted electronically. *(note: applications must be completed, scanned and emailed as the online form is not a fill-able form).*

4) New Business

Chair Maloney indicated that New Business would be moved to the end of the meeting after the Public Hearings were concluded.

5) Public Hearings

Vice Chair Scott read out loud the Public Hearing Notice, as written and advised that the Notice had been posted on June 1, 2018 at the Town Hall, the Post Office and the Town's webpage.

123 The abutters were noticed by certified mail, return receipt requested, on June 1, 2018 and the
124 Notice was published in the Tri-Town Times on June 7, 2018.

125 **1) Nicholas Martino, M/L #002-069-002, 270 Haverhill Road**

126 Chair Maloney advised that Mr. Martino has filed an application for a variance to permit a
127 garage which has been constructed 21' from the abutters property line where 25' are required.

128 Chair Maloney read out loud the Building Inspector's notification to Mr. Martino dated 2017 and
129 invited Mr. Martino to the meeting table to present his application.

130 Mr. Martino began to read his application out loud, verbatim adding to Section 5 that it was the
131 only place he could put it because of the well, the side hill and the septic. That he did not
132 realize, until he pulled a permit to build his farmer's porch, at which time the Building Inspector
133 notified him that he needed 25.' Mr. Martino stated that he understood ignorance was no
134 excuse and explained how the encroachment tapers as it goes back so that 2/3 are in violation.

135 Vice Chair Scott asked, "Where is the farmer's porch?"

136 Mr. Martino responded that the farmer's porch was constructed at the front and that has been
137 signed off on, that this request was for the garage.

138 Chair Maloney asked if that was what was shown on the picture and stated that "you didn't know
139 you had 25' setbacks?"

140 Vice Chair Scott added "You didn't have a permit?"

141 Mr. Martino responded "no."

142 Vice Chair Scott clarified the garage was built a few years ago, that's what we're talking about
143 now?"

144 Mr. Martino responded that he didn't think he needed one.

145 Chair Maloney clarified "a building permit?" "Are you a builder?"

146 Mr. Martino responded that he was a Finish Carpenter.

147 Chair Maloney asked, "and you had no idea?"

148 Mr. Martino responded, "I'm not a permit dodger, I pulled one for the porch." "That I knew."
149 "There is a deck." "People walk on it."

150 Chair Maloney directed that Mr. Martino should finish presenting his application.

151 Mr. Martino finished reading the application out loud.

152 Chair Maloney asked Mr. Martino what he had built and when.

153 Mr. Martino stated, "The second year after I bought the house." "Five years ago." (*Note: per*
154 *deed, it is evidenced that Mr. Martino purchased the home in 2013*).

155 Chair Maloney asked if there were any questions from the Board?

156 Mr. Gelinas asked, "Were you granted permit for farmers porch?"

157 Mr. Martino responded "Yes, he was out last week." Mr. Martino added that there was no
158 electric, plumbing or living space. The slab was pre-existing.

159 Mr. Cannon asked if there was only one entry.

160 Mr. Martino responded that there was a 6' wide, rolling, opening, secured by screwed on
161 plywood over because he hasn't built the doors yet. It is double wide for his lawn mower.

162 Chair Maloney stated, "existing slab?" "You poured the slab?"

163 Mr. Martino clarified that the slab was existing, and he had poured the tubes.

164 Vice Chair Scott asked, "What do you imagine was on there, a dog kennel...?"

165 Mr. Martino stated that he didn't know, it looked like there had been pipe that was cut off and he
166 was sure the building inspector would agree with the work.

167 Chair Maloney asked if the public had any comment or input.

168 Amber Ragnarsson stated that she was an abutter and that the people that lived there before
169 had a dog house and stacked wood there for their fireplace or woodstove. "I'm here and have
170 no problem with him encroaching, close." "It's finished, I have no problem with it."

171 Mr. Methot stated, "You realize why building permits are important, so towns can get the
172 revenue and increase the value of your home, and for last five years you haven't paid your fair
173 share."

174 Mr. Martino stated that he was more than happy to pay the back-tax assessment. "It wasn't
175 cheap." "It took me several seasons to build."

176 Mr. Methot advised him "This board has made somebody move a house at one time." "He only
177 put the first floor on and the contractor had to tear it down." "Just to give you a heads up."
178 "Building permits are very important in this town."

179 Mr. Martino stated, "I would have built it within the setback and wouldn't be here."

180 Mr. Cannon asked about electric.

181 Vice Chair Scott asked no lights, or utilities?

182 Mr. Martino responded that he only had a battery powered lantern out there.

183 Ms. Ragnarsson asked about the size, "was it 12' or 20'?"

184 Vice Chair Scott advised that it was 20'."

185 Vice Chair Scott advised that the hardship is a tough one. "Have you read the explanation on
186 the back?" Vice Chair Scott read out loud Section 5 of the application emphasizing that it must
187 be burdened in a matter that is distinct from other properties, "the applicant must establish..."

188 Vice Chair Scott advised "Convince us that its reasonable, that it must not alter the general
189 character, that the use is reasonable. Vice Chair Scott continued "I see a garage that could be
190 expanded forward to the street or to the rear without impacting your well, having a little
191 trouble..."

192 Mr. Martino stated that it was the expense. "It was the only place right off the driveway". "It's
 193 safe, not an eyesore." "It's the only spot, barring the expense to expand the garage itself and
 194 the room above it." "Funny having the garage bump out."

195 Mr. Methot added, the front is ok. The back is in the setback."

196 Vice Chair Scott asked if there was another reasonable use.

197 Mr. Martino responded that "It would look funny." "Front expansion...back would probably not
 198 even be visible. "If its cold storage, probably, maybe you would have built with a concrete floor,
 199 for just ladders." "Like wife to have one bay...for my wife to park." "The other is jam packed
 200 with kid's toys." "I can back my pick up and grab whatever I need." "The back would be difficult
 201 to get to." "It was a no brainer." "There is already a slab." Mr. Martino stated that he had built it
 202 only a bit larger than the slab that existed. "I didn't realize there was a setback." "Expanding
 203 the existing garage wouldn't have worked..."

204 Chair Maloney advised that perhaps he meets the criteria for an Equitable Waiver? "Could we
 205 grant him an Equitable Waiver?" Mr. Martino advised that he had filled out the application. Ms.
 206 Hoijer advised that he did not qualify for the second prong, the violation had not existed for more
 207 than five years, so Mr. Martino had decided to go with the variance application instead.

208 Chair Maloney read the criteria from the town's ordinance for the first prong out loud to Mr.
 209 Martino. Chair Maloney stated that she would have trouble proceeding with that at this hearing
 210 without checking with counsel first to see if the abutters would need to be re-noticed.

211 Vice Chair Scott suggested that they could continue the hearing until next month. Mr. Martino
 212 agreed.

213 ***Vice Chair Scott motioned to continue the hearing until next month to consider the***
 214 ***application for Equitable Waiver on the 3rd Tuesday of July. Mr. Cannon seconded his***
 215 ***motion, with all in favor, so moved.***

216 Chair Maloney advised Ms. Hoijer that they would meet Friday to frame a letter to town counsel
 217 concerning whether abutters had to be re-noticed to present the application for Equitable Waiver
 218 at next month's meeting.

219 Mr. Martino departed the meeting at 7:20 pm.

220 **2) Theodore Ian MacLean, M/L #002-082-000, 82 Pulpit Rock Road**

221 Ms. Hoijer notified the Board that Mr. MacLean had difficulty speaking and may require some
 222 assistance. Vice Chair Scott advised that Mr. MacLean was welcome to bring his son Nicholas
 223 and his son's girlfriend, Brittany Verzi up to the meeting table with him to assist with the
 224 application.

225 Vice-Chair Scott advised that as one of the abutters notices had been returned for the wrong
 226 mailing address that the Board was willing to hear the application, but it was up to the applicant
 227 to risk that the abutter may come back to challenge that and if that abutter comes forward, they
 228 would need to postpone.

229 Vice-Chair Scott read the 30-Day Notice out loud.

230 Chair Maloney gave a brief history of the parcel's prior variance, which was a lot which would be
231 subdivided with short frontage. The variance was granted conditionally in April of 1996 and had
232 expired as no home had been built, had begun to be built or had pulled a permit to be built. A
233 few years ago, Mr. MacLean had asked for an extension which was granted with the same
234 conditions which were not adhered to, most important of which was the requirement to provide a
235 survey which would show the proposed lot. In 2016 the ZBA had sent a letter stating that no
236 additional extensions could be granted so that he would need to reapply."

237 Mr. MacLean stated that he could not afford to do a survey and produced the original survey
238 from when he had purchased the property. Some suggestions that were offered to the applicant
239 were to have only the two-acre parcel surveyed which should be less expensive as they
240 charged by the s.f. Vice Chair Scott and Mr. Methot provided some names and suggested that
241 the Planning Board may have some others as most of them are quite busy right now. Chair
242 Maloney asked whether Mr. MacLean had gotten in touch with Chuck Myette from Conservation
243 as they would most likely be interested in doing something on a parcel like this that had the
244 Exeter River running through it. Mr. MacLean advised that he wanted to subdivide the smaller
245 piece and sell it in order to afford to survey it and sell off a large portion of the remaining 120 or
246 so acre parcel.

247 Chair Maloney expressed that she understood all of that but Planning and the Building Inspector
248 were going to require a survey as part of this process and that previously he had been given
249 more than 30 years to provide one and had not been able to.

250 Chair Maloney asked Mr. MacLean if he was familiar with the letters that had been sent to him
251 concerning the variance. Mr. MacLean stated that he was. Mr. MacLean added that he needed
252 Mr. Hadik to assist him with contacting Mr. Myette and meeting and once they had scheduled
253 such a meeting and for health reasons he was unable to go. Ms. Verzi explained that his health
254 was such that it was difficult to commit to scheduled meeting times.

255 Chair Maloney asked, "You had gotten variance for short frontage to put your driveway up off
256 this class 6 road to your house, is that correct?"

257 Vice Chair Scott asked, "Where is your house?" showing on plan. Chair Maloney added that
258 this was the problem we do know these things because a proper survey was never done.

259 Mr. Methot added that he was familiar with the premises, having done some work next door and
260 there was an old road, a bridge which is out now, used to be out there, it serviced three mills.

261 Vice-Chair Scott stated, this has not yet been surveyed for the purpose of being subdivided,
262 how much frontage will be for your house?

263 Mr. MacLean explained that the new lot would have 290" and his lot which used the Class 6
264 road for his driveway, would have 40.'

265 Chair Maloney stated that we are going to let you present your case.

266 Mr. MacLean stated that he was trying to make three lots, one with the house with his son and
267 his girlfriend and sell the two-acre lot to get the money to do the survey for the rest. "I can't
268 afford to survey all of this." "Income is Social Security."

269 Chair Maloney advised that “even if we give you a variance you have to go to Planning Board
270 and they cannot give you permission without it being surveyed, they need footage, its going to
271 have to be done.” Mr. MacLean stated that he simply couldn’t afford it.

272 Chair Maloney explained “I don’t want to sound like I’m being hard.” “It’s not going to go past
273 the Planning or Building Departments without one.”

274 Vice Chair Scott stated, “the irony is the access to the land isn’t on the land anyway, it’s along
275 the boundary.”

276 Chair Maloney added “He told me it was very steep here, to cut a new driveway would be very
277 difficult.”

278 Vice Chair Scott advised “Talk to Chuck (Myette) first, even if we grant you a variance you have
279 to get a survey there is no getting around it.” “You need to survey the part you want to change,
280 just the part you want to do, whatever you want to withdraw.” “You have to have a survey
281 before you come here.” “Anything you are going to withdraw from that survey right there needs
282 to be surveyed.” “If you want two subdivisions, then you have to go to the Planning Board twice
283 and subdivisions are expensive.” “There are so many hoops to jump through.”

284 Chair Maloney advised that “I think we should continue this.” Vice Chair Scott agreed, adding
285 “Try to get with Mr. Myette between now and the next meeting.” “If we move forward with
286 subdividing, Brittany, that has to be surveyed.” “If you want to separate them, there has to be a
287 document that shows the separation.” “It would have to show that parcel, this parcel and if this
288 is the configuration you want to go with, have to show actual frontage, where the driveway will
289 cut through and Charles Pearson is still in business in Sandown I think.” Chair Maloney added
290 or possibly “Gregsak” but Mr. Methot didn’t think he did surveys just engineering. Possibly
291 Kevin Hatch or Promised Land.

292 Mr. MacLean stated, “I can’t find anyone to do it.”

293 ***Vice Chair Scott motioned to continue the hearing until next month. Chair Maloney***
294 ***seconded his motion, with all in favor, so moved.***

295 Vice Chair Scott advised “speak to Mr. Myette or a surveyor. They are all busy. Mr. Hadik can
296 give you a list.

297 Mr. MacLean, Mr. MacLean and Ms. Verzi departed the meeting at 7:45 pm.

298 **6) Continuation of New Business**

299 **Notification from the Building Inspector (Bredstein)**

300 Chair Maloney provided copies of the letter from the Building Inspector dated May 31, 2018 to
301 the Board Members notifying them that Mr. Bredstein is in violation of the terms of the variance
302 where he represented there would not be outdoor seating. There is a coffee and tea counter
303 that has been added and a patio table with umbrella which he claims is for his own personal
304 use, similar to what prompted the claim for the bathroom requirement at the Center Scoop. Mr.
305 Methot added where they have added picnic tables.

306 Mr. Methot stated that Mr. Bredstein is moving to Texas. Chair Maloney added at the end of the
307 month. There were no conditions to the variance. Vice Chair Scott asked how valid this was.

308 There was a dumpster. Mr. Cannon stated that he believed it was permanent. Vice Chair Scott
309 requested that as he is reported to be leaving, can we continue review of this until next month's
310 meeting. All were in agreement. **Tabled.**

311 **Addendum to Rules of Procedure**

312 Chair Maloney advised that proposed amendments to the Rules of Procedure were discussed at
313 the last meeting that were generated by recommendations made at the Spring Seminar.

314 The first is to put in writing the manner of voting so that it will be consistent. In the past, there
315 were discussions that the legislature were going to require that the voting be changed to
316 deliberate each of the criteria separately, with each member casting a different vote for each,
317 and that was taking too long. All agreed that having each member who is voting go over each
318 of the five criteria and that a no vote on any one of them would result in their vote being cast as
319 a no, would be the manner adopted in the Rules of Procedure which could be amended at the
320 next meeting.

321 Proposed language for the amendments to that and the proposed requirement for applicants to
322 notify Homeowner's Associations and Condominium Association via their Management, is
323 included in the members packets in the Memo dated May 15, 2018 and Ms. Hoijer will
324 incorporate that language into the Addendum and have it ready for signatures at next month's
325 meeting.

326 **Ordinances Passed at Town Meeting**

327 Chair Maloney advised the Board that the proposed Ordinances included in their packets had
328 passed at the Town Meeting and should be put into their binders at the appropriate sections
329 until the new books were received.

330 **Memo from the BOS**

331 Chair Maloney presented a copy of a Memo to the Employees from the Board of Selectmen
332 which was circulated on June 12, 2018. Chair Maloney advised that some of the employees
333 were having difficulty with regular visitors taking up significant amounts of time and asking for
334 huge copying requests under RTK law. The policy encouraged employees to treat all members
335 of the public equally while supporting their need to get work done with fewer distractions.

336 **Election of Officers**

337 Chair Maloney advised that it was time to elect the Chair and Vice-Chair to serve for a one year
338 term and asked if anyone was interested, or interested in nominating someone.

339 ***Vice Chair Scott nominated Billie Maloney to serve as Chair of the ZBA. Mrs. Maloney***
340 ***accepted. Mrs. Cashman seconded his motion, with all in favor, so moved.***

341 Mr. Cannon stated that Kevin Scott has done a good job as Vice-Chair and has my support.

342 ***Chair Maloney motioned to appoint Kevin Scott as Vice-Chair of the ZBA. Mr. Cannon***
343 ***seconded her motion, with all in favor, so moved.***

344

345 **7) Adjournment**

346 ***Vice-Chair Scott motioned to adjourn the meeting at 8:00 pm. Mr. Methot seconded his***
347 ***motion, with all in favor, so moved.***

348 Respectfully submitted,

349

350

351 Nancy J. Hoijer,
352 Recording Secretary