

**Town of Chester  
Zoning Board of Adjustment  
June 21, 2022  
Town Hall  
7:00 PM  
Approved Minutes**

**Members Present:**

Chair Billie Maloney  
Vice-Chair Kevin Scott  
Jack Cannon  
William Gregsak (until 8:10 PM)  
Rick Snyder, Planning Board Ex-Officio Liaison  
Jason Walsh, Alternate (electronically until 7:45 PM)

**Members Absent:**

None.

*This meeting was also offered electronically via Zoom 867 6223 9682*

**Guests:**

Alfred Cavedon  
Christine Cavedon  
Arica Gee  
Janet Janiak  
Wendy Reed  
Elizabeth Lufkin  
Jesse Lufkin  
John Gregsak  
Nick Gregsak (@7:12 PM)

**Agenda**

- 1. Call to Order/Roll Call**
- 2. Approval of April 19, 2022 Meeting Minutes**
- 3. Non-Public 91-A:3(II)(a) if needed**
- 4. Correspondence/Financials**
- 5. Updates – Rules of Procedure**
- 6. Public Hearings**
- 7. Other Business – Election of Officers**
- 8. Training/Legislation/Ordinance Books**
- 9. 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, Jack Cannon, Rick Snyder, and Jason Walsh (remotely due

to illness). Chair Maloney indicated Alternate Jason Walsh would be active, remotely, for the first hearing since Mr. Gregsak would be recused. All votes would be by roll call while Mr. Walsh is participating remotely, and he appeared alone in the room online. Chair Maloney moved the order of the agenda so that the public hearings could go first.

## **2. Public Hearings**

The application of Gregsak & Sons Engineering on behalf of Alfred E. Cavedon, III and Christine E. Cavedon

For Variances from Article 4, Section 4.2.1 and Article 5, Section 5.7.8, Table 2 (Table of Dimensional Requirements – Wetlands) to permit construction of a 24'x34' addition, 8'x8' deck with stairs and driveway onto a pre-existing non-conforming dwelling which is now situated 62' from the edge of wetlands where 75' are required; and where said expansion will result in the addition being 42.7' from wetlands where 75' are required and the stairs will be 70' from the wetlands where 75' are required

On the premises known as and numbered Map/Lot 005-080-001, 24 Emerson Road, in the R-1 zone

Vice-Chair Scott read out loud the Public Hearing Notice. Chair Maloney advised that the Denial Letters were incorrectly referenced, and the corrections were made in the Public Hearing Notice.

Mr. Gregsak recused himself as he was presenting the application on behalf of Alfred & Christine Cavedon who were present in the room.

Chair Maloney polled the members of the Board with the disqualifying questions under RSA 673:14 as Mr. Gregsak is a member of the Zoning Board of Adjustment. She asked if any member had any gain or loss, were related to the applicant, advised or assisted the applicant, had an opinion prior to the hearing or were otherwise prejudiced, were employed for or by the applicant or employed counsel of the applicant. All of the members answered no to all and the Board agreed no one needed to be disqualified.

Mr. Gregsak presented the application on behalf of the Cavedons. He noted the subdivision engineering was done in 2000/2001 and at that time the existing structure was within 50' of the wetland setbacks which was the setback at that time. The ordinance changed to 75' from wetlands in 2003-4. Mr. Gregsak referenced the updated plan in the application packet dated April 19, 2022. He pointed out the location of the existing setbacks shown in yellow. The Cavedons have collector cars they would like to store indoors and propose to add a two-car garage attached with living space above, to the rear of the house. There will be no bedroom, bath or kitchen in the additional living space, primarily used as a personal use office. The driveway will be extended so that the owners can get in and out of the new garage. Mr. Gregsak reviewed the five criteria noting the property was subdivided and home constructed in 2001 before the ordinance changed the wetland setback to 75'. Values will not be diminished as a two-car garage is a permitted use in the zone and the style will be in keeping with the style of other homes in the neighborhood. The use is reasonable and will put the cars, now being outside, indoors which will be less detrimental to the wetlands setback than having the cars outdoors. Mr. Gregsak went over the hardship criteria stating that being a prior non-conforming use the applicants would have to come before the Board for anything they would like to do since the setback changed in 2003-4. Chair Maloney cautioned about the storage of any hazardous chemicals in the garage that could leak.

Mr. Snyder asked about the existing shed and Mr. Cavedon noted the shed was there when they bought the property in 2006. Mr. Snyder asked what was stored in the shed and Mr. Cavedon noted lawnmower and yard tools, no gasoline.

Vice-Chair Scott asked Mr. Gregsak to expand upon his written answers to demonstrate that the application is not in conflict with the spirit and intent of the ordinance and the benefit of granting is not outweighed by harm to the general public. Chair Maloney handed out a copy of the criteria sheet and agreed the Board would like to have more information about the first three criteria as the hardship has been explained. Mr.

Gregsak explained the use does not impact neighbors or threaten health, safety or welfare. Mr. Snyder noted the spirit of the ordinance in this application is to protect the wetlands. Driveways were not considered structures at one time, but they are now. Chair Maloney asked where the garage is now, and Mr. Gregsak answered that it is under the house.

Mr. Snyder opined that the setbacks were changed with good reason. Chair Maloney asked what kind of wetlands were abutting the location and Mr. Snyder noted they were not prime, in the powerlines and evidenced by bullrushes, but no standing water.

Chair Maloney opened the hearing to the public for comments and questions at 7:35 PM.

Arica Gee stated that she is a neighbor across the street and supports the application. Janet Janiak noted she lives at 30 Emerson Road and is also in full support. Wendy Reed of Windham said she was here to support the Cavedons.

Chair Maloney closed the hearing to the public for deliberations at 7:36 PM.

Mr. Snyder noted all five criteria were met and he supports the application. Mr. Cannon noted he agreed with Vice-Chair Scott but was not sure how one would make a more compelling argument than Mr. Gregsak had, the ordinance changed over time.

Mr. Snyder noted the cars are already in the setback and not under cover. The vehicles could leak into the ground.

Vice-Chair Scott noted he went by the property today and is comfortable the values will not be diminished; the Cavedons have a lovely home, lovely property and plans and he was sure they would do nothing to diminish values.

Chair Maloney noted she never likes to see a garage close to the wetlands but conceded that the cars could already be where they are so having them in the garage would improve the situation. She noted it would not affect values or alter the character of the neighborhood, threaten public, health, safety or welfare so long as they are careful with chemicals, gas and oil; and the hardship exists and would vote yes on all five criteria.

Mr. Cannon agreed Maloney's concerns were legitimate just not probable. Mr. Walsh stated he agreed with the group and felt it was close to being an open and shut case given the layout and design and surrounding property. He stated that he had no problem or any questions.

***Chair Maloney motioned to grant the variances to Alfred & Christine Cavedon from Article 4, Section 4.2.1 and Article 5, Section 5.7.8, Table 2 (Table of Dimensional Requirements – Wetlands) to permit construction of a 24'x34' addition, 8'x8' deck with stairs and driveway onto a pre-existing non-conforming dwelling which is now situated 62' from the edge of wetlands where 75' are required; and where said expansion will result in the addition being 42.7' from wetlands where 75' are required and the stairs will be 70' from the wetlands where 75' are required. Vice-Chair Scott seconded the motion. A roll call vote was taken, Scott voted aye, Maloney voted aye, Walsh voted aye, Cannon voted aye and Snyder voted aye. The motion passed 5-0-0.***

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

Mr. Gregsak rejoined the meeting and Mr. Walsh departed at 7:45 PM.

The application of Elizabeth S. Lufkin and Jesse J. Lufkin

For Variances from Article 4, Section 4.2.1 and Article 5, Section 5.3.5 Table 1 (Table of Dimensional Requirements) to permit expansion of a pre-existing non-conforming driveway by expanding the existing driveway to the rear by the addition of a twenty foot by twenty-eight foot (20'x28') area to the right of the

garage adding 560 SF or a total of 19.5% impervious area where the existing impervious area is 18% and 15% is the maximum allowed by the ordinance; and resulting in a side setback of ten feet from the side property line where 25' are allowed by the ordinance

On the premises known as and numbered Map 16, Lot 11, 39 Chester Street in the Residential zoning district

Vice-Chair Scott recused himself and sat with the public as he is a patient of Dr. Lufkin.

Chair Maloney noted the Letters of Denial were incorrect and directed the Board to take notice that the Public Hearing Notice is different. While there is a home business on the premises, the parcel is in the residential zone not commercial. She noted that the notice to abutter, Mary Gesel, was returned as she is deceased, and the property has sold. She advised the applicants should the new owner have any issue with the application and Mr. Lufkin noted the new owners are aware of the application and support it. Ms. Hoijer noted the notice to Busche Academy was returned unclaimed.

Chair Maloney explained to the applicants that the affirmative vote of at least three members would be required to take any action on the application and the applicants indicated they wished to proceed.

Mrs. Lufkin read the application into the record and pointed out that the parcel is a pre-existing non-conforming use, as it is a .89-acre property built before zoning in 1968. Mr. Lufkin addressed the drainage improvements they propose to make and the reasons why they are needed. The property has experienced some water issues which will be alleviated by three drainage culverts along the driveway.

Ms. Hoijer directed the Board to the DOT Driveway Permit dated May 18, 2022 which is in their meeting packets and reported that the Town Planner advised her that the driveway improvements would not trigger Site Plan Review for the home business being conducted on the premises, a Chiropractic Office. Mr. Hadik noted he supported the application.

Mrs. Lufkin noted the improvements will enhance their curb appeal and therefore not be detrimental to the values of surrounding properties. As stated in the previous application driveways were not always structures as they are now. The property is small and burdened by dimensional and area requirements that came into effect after the home was built. The use is reasonable to add paved parking next to the existing garage and there will be no increase to setbacks. Mr. Lufkin explained the condition of the existing driveway and the huge benefit there will be to keep water out. Mr. Snyder noted the spirit of the ordinance in this application which includes additional impervious surface is to minimize stormwater runoff and that is what the applicants are attempting to do.

Chair Maloney opened the hearing to the public at 8:05 PM.

Mr. Scott noted he is a patient and agreed the driveway is in need of repair and it is a good plan to get the water in and out.

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

Chair Maloney and Mr. Snyder agreed it was a good plan and met all five points including the spirit of the ordinance in an odd way. Mr. Gregsak agreed the applicants have a problem they are trying to solve. Mr. Cannon noted he fully supported the application and had no objection.

***Chair Maloney motioned to grant the variances to Elizabeth Lufkin and Jesse Lufkin from Article 4, Section 4.2.1 and Article 5, Section 5.3.5 Table 1 (Table of Dimensional Requirements) to permit expansion of a pre-existing non-conforming driveway by expanding the existing driveway to the rear by the addition of a twenty foot by twenty-eight foot (20'x28') area to the right of the garage adding 560 SF or a total of 19.5% impervious area where the existing impervious area is 18% and 15% is the maximum allowed by the ordinance; and resulting in a side setback of ten feet from the***

*side property line where 25' are allowed by the ordinance. Mr. Snyder seconded the motion. A vote was taken, all were in favor, the motion passed 4-0-0.*

Vice-Chair Scott returned to the meeting at 8:10 PM.

### **3. Approval of Minutes – April 19, 2022**

Chair Maloney recommended edits.

*Mr. Snyder motioned to approve the April 19, 2022 minutes as amended. Mr. Gregsak seconded the motion. A vote was taken. Mr. Cannon abstained. The motion passed 4-0-1*

### **4. Correspondence/Financials**

The Board received correspondence in their meeting packets from:

- 5-18-22 Thomas Tombarello, Chair Rockingham County Board of Commissioners – redistricting
- 6-14-22 Finance Officer Duffy – USPS Rate Increases July 10, 2022
- 6-2-22 Caroline Wilson – Seacoast Online Article - Portsmouth Housing Dev./Supreme Court
- April and May Financials from Finance

### **5. Updates – Rules of Procedure**

Chair Maloney reread the changes to “Legal” which were reviewed at an earlier meeting.

*Mr. Cannon motioned to adopt the Rules of Procedure as amended, dated June 21, 2022. Chair Maloney seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.*

### **6. Election of Officers**

Mr. Snyder and Mr. Gregsak noted they have gone before the Selectmen for reappointment to the ZBA.

At the last meeting Ms. Hoijer asked the Board if they would like to elect officers in May/June as per the Rules of Procedure or wait until August as the current appointments are in effect until then. The Board had decided to follow the Rules of Procedure and elect officers at its June meeting.

*Mr. Cannon motioned to appoint Billie Maloney as Chair of the Zoning Board of Adjustment for one year. Mr. Snyder seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.*

*Mr. Cannon motioned to appoint Kevin Scott as Vice-Chair of the Zoning Board of Adjustment for one year. Mr. Snyder seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.*

Mr. Gregsak departed the meeting.

## 7. Training/Pending Legislation/Ordinance Books

The Board was provided with a copy of Riggins Rules which appeared in this months' Town & Country magazine circulated by NHMA. Ms. Hoijer noted that Mr. Walsh attended the online ZBA Training Seminars in May and June.

The Board Chair & Vice-Chair were provided with copies of proposed SB400 which is "laying on the table" with the State Legislature. Ms. Hoijer provided a summary of some of the changes proposed by the State (which have not passed) with the goal of providing Cities & Towns with a point rating system as incentives for affordable housing under the NH Housing Champion Certification Process, a voluntary program which would give municipalities preferential access to state resources and discretionary infrastructure funds as available based on a point system. Some of the proposed changes would affect the Planning & Zoning Boards' training and procedures and would take effective, if passed, in 2023.

Chair Maloney reported the Board will not be getting new Ordinance Books this year from the Planning Board as electronic use is being encouraged. Ms. Hoijer offered that the ZBA could print copies at their own expense for those who need paper copies. Chair Maloney polled the Board members, and it was agreed three copies would be printed, one for the office and paper copies to be distributed to Chair & Vice Chair. The Ordinance book in the front hall has already been updated by Ms. Hoijer. Ms. Hoijer will provide the Board with printed copies of the ordinance sections as they are applied for with their mailed monthly meeting packets.

**8. Non-Public Session pursuant to 91-A:3(II)(a)** The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her

***By roll call Mr. Snyder motioned to go into non-public session pursuant to 91-A:3(a). Mr. Cannon seconded the motion. A roll call vote was taken, Scott voted aye, Maloney voted aye, Cannon voted aye and Snyder voted aye. The motion passed 4-0-0.***

The meeting room was closed to the public at 8:10 PM.

***Mr. Cannon motioned to come out of non-public session at 8:20 PM. Chair Maloney seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.***

The meeting room was reopened to the public at 8:20 PM.

***By Roll Call Mr. Cannon motioned to seal the minutes of the non-public session indefinitely. Mr. Snyder seconded the motion. A roll call vote was taken, Scott voted aye, Maloney voted aye, Cannon voted aye and Snyder voted aye. The motion passed 4-0-0.***

## 9. Adjournment

***Mr. Snyder motioned to adjourn the meeting at 8:40 PM. Vice-Chair Scott seconded the motion. A vote was taken, all were in favor, so moved.***

282 Respectfully submitted,  
283 Nancy J. Hoijer,  
284 Recording Secretary