

**Town of Chester  
Zoning Board of Adjustment  
January 17, 2023  
Town Hall  
7:00 PM  
Approved Minutes**

**Members Present:**

Chair Billie Maloney  
Vice-Chair Kevin Scott  
Jack Cannon  
William Gregsak  
Rick Snyder, Planning Board Ex-Officio Liaison  
Jason Walsh, Alternate  
  
Selectman Stephen D'Angelo, BOS Liaison

**Members Absent:**

**Guests:**

Joyce Trudeau  
Eric Nojes  
Eric Mello  
Andrea DiPietro

And other persons unknown to the minute taker.

**Agenda**

1. Call to Order/Roll Call
2. Non-Public Session 91-A:3(II)(c) if needed
3. Public Hearings
4. Approval of Meeting Minutes: 10-18-22, 11-15-22 and 11-16-22
5. Correspondence/Financials
6. Updates
  1. Proposed Zoning Amendments 2023
  2. Class VI Road – Building Permit Process (Pomp Road)
  3. Chester Gravel Pit – Planning Board Liaison
  4. Carlin lot line adjustment
  5. Tri-Town – publication
  6. Wetlands binder – Conservation
  7. Road Agent Position/Supervisor of Roads – eff 3/15/23
7. Other Business
8. Training  
Handouts
  1. handling ex-parte communication attempts by applicants

45           **2. Stergiou v. Cover 2021-0139 final approval v. conditional approval**

46           **9. Adjournment**

47           **1. Call to Order**

48 Chair Maloney called the meeting to order at 7:07 PM. By Roll Call were present: Billie  
49 Maloney, Kevin Scott, Jack Cannon, Rick Snyder, Bill Gregsak and Alternate Jason Walsh.  
50 Chair Maloney indicated that she, Kevin Scott, Bill Gregsak, Jack Cannon and Rick Snyder  
51 would be voting and that the affirmative vote of at least three members were needed to take any  
52 action.

53           **Public Hearings**

54           1. The continuance of the application of Joyce Trudeau

55  
56 For a Variance from Article 5, Section 5.3.5, Table 1 (Table of Dimensional Requirements) to install a  
57 second garage that is 16'x24' located ten (10') feet from the side property line where 25' are required

58  
59 On the premises known as and numbered Map 009, Lot 057-000, 67 Towle Road in the Residential zoning  
60 district.

61  
62 ***By Roll Call Chair Maloney motioned to go into non-public session pursuant to 91-***  
63 ***A:3(II)(c) reputation of someone other than a member of the Board. Mr. Cannon***  
64 ***seconded the motion. A roll call vote was taken, Maloney – aye, Scott – aye, Snyder –***  
65 ***aye, Gregsak – aye, Cannon – aye. The motion passed 5-0-0.***

66 The meeting room was closed to the public at 7:07 PM

67 ***Vice-Chair Scott motioned to come out of non-public session seconded by Chair***  
68 ***Maloney. The motion passed 5-0-0.***

69 The meeting room was reopened to the public at 7:30 PM.

70 ***By Roll Call Vice-Chair Scott motioned to seal the minutes of the non-public session.***  
71 ***Chair Maloney seconded the motion. A roll call vote was taken, Maloney – aye, Scott –***  
72 ***aye, Snyder – aye, Gregsak – aye, Cannon – aye. The motion passed 5-0-0.***

73           2. The application of Eric James Mello and Andrea DiPietro

74  
75 for an Equitable Waiver of Dimensional Requirements for deck, screenhouse, driveway and shed within the  
76 setbacks required by Article 5, Section 5.3.5 Table 1, which have existed since 2008

77  
78 and for a Variance from Article 5, Section 5.3.5 Table 1 (Table of Dimensional Requirements)

79  
80 to permit a 18'x25' inground pool one foot and four inches from the rear property line where 25' are required

81  
82 On the premises known and numbered Map 7, Lot 48-1, 14 Lady Slipper Lane in the Residential zoning  
83 district

84  
85  
86 Vice-Chair Scott read out loud the Public Hearing Notice.

87  
88 Mr. Mello testified that they purchased the property last February and were misled into believing  
89 the huge area behind the house was their yard. The screenhouse, deck, shed and driveway

90 existed at the time they purchased the property and Ms. Hoijer provided the Google Earth Pro  
91 timeline photo in support dated as of 2008 noting however that the Building Inspector had not  
92 required the equitable waiver. Vice-Chair Scott noted this would given the owners the opportunity  
93 to bring everything in the setbacks into conformance.

94  
95 Chair Maloney reviewed the conditions for granting an equitable waiver. She noted the Town has  
96 zoning with minimum acreage of two acres and minimum frontage and setbacks. While those are  
97 different now, the open space of cluster development of which Lady Slipper is a part, must  
98 conform with the setbacks and zoning in place at the time of approval. This was one of the first  
99 such non-conventional subdivision or "cluster" developments. Despite this, Mr. Mello noted there  
100 is not a lot of room and the red line (building envelope) finds almost everything encroaching right  
101 up to the house. Chair Maloney noted one requirement for the waiver is that it was not by  
102 ignorance of the law or failure to comply. The structures in the setback were there when the  
103 current owners bought in February and the violation was not disclosed in the MLS.

104  
105 Chair Maloney asked if this was their first home and if they were aware of setback requirements.  
106 Mr. Mello answered that it was not his first home and Ms. DiPietro answered that it was her first  
107 home but they were lied to by the agent, never had the final walkthrough: there was always a  
108 reason they were given whey it couldn't be done and there was a foot and a half of snow on the  
109 ground.

110  
111 Mr. Cannon asked if the homeowners association (the property is a condominium open space  
112 development) was actively involved. Ms. DiPietro answered they just do snow removal, she sees  
113 no enforcement and many other owners have structures in the common areas, such as basketball  
114 courts.

115  
116 Chair Maloney opened the hearing for comments and questions from the public, and noting there  
117 were no other public present, closed the hearing to public comment. Vice-Chair Scott explained  
118 to the applicants that no further testimony would be taken while the Board deliberates on this.

119  
120 Chair Maloney noted she felt the requirement that the violation has existed more than ten years  
121 has been proven and the testimony of the owners satisfied the other two requirements of the RSA  
122 and ordinance.

123  
124 ***Mr. Snyder motioned to grant the request for an equitable waiver for the deck, screen***  
125 ***porch, driveway and shed which are located within the setbacks of Table 1 (Article 5.3.5)***  
126 ***and have existed since at least 2008. Vice-Chair Scott seconded the motion. A vote was***  
127 ***taken, all were in favor, the motion passed 5-0-0.***

128  
129 Vice-Chair Scott read out loud the 30-Day Notice of Appeal but noted the structures have already  
130 been in place, normally he would advise the applicants to consider waiting to start construction.

131  
132 The Board next considered the request for a variance for the pool which is within the setbacks.  
133 Mr. Snyder noted it was above ground, however Mr. Gregsak added, it is dug in a bit so the grade  
134 is not flush.

135  
136 Mr. Mello noted the land behind their home is undeveloped and they believed their property line  
137 continued to the woods where there was a red mark shown to them by the agent.

Mr. Mello noted the 15'x24' pool is 1'4" from the property line of the common area and it was put in in June or July. The boundaries are now monumented, since getting a professional plot plan done, but were not when the property was purchased.

Mr. Snyder reiterated the discussion in the previous hearing about this being one of the first open space or "cluster" subdivisions promoted to allow for higher density and conservation principles. The subdivision was created in 1998 and the house built in 2001.

The Board reviewed the International Code for having a 48" barrier for an above ground pool and the applicants noted they would like to put a fence on top so it will be 4' above grade since the pool sits down lower by a couple of feet. Mr. Snyder noted the fence could be integral to the pool. Mr. Mello indicated the cost to remove the pool and fill it in would be difficult financially. He noted values will not be diminished because while the rest of the subdivision has homes closer to other homes their home is private, not visible and further away from other homes. He noted the side of the house that has the septic system and the a/c unit on the other side. He indicated there was no other place the pool could be situated that would comply and that the use is reasonable, he has three kids and horses which he has now had to keep somewhere else.

Chair Maloney opened the hearing to the public at 8 PM and being none closed the hearing to the public for deliberations.

Mr. Cannon stated the applicants are between a rock and a hard place. It is difficult for them to do anything, although he may feel differently had the pool not already been installed. He indicated it is not contrary to the neighborhood and the spirit is observed. As for substantial justice Mr. Cannon noted the agent wasn't truthful. As to values, Mr. Cannon indicated a small above-ground pool would not diminish property values. He indicated he was in favor of all five points.

Mr. Snyder agreed and noted the conditions put on the property by the subdivision rules, which are now more relaxed than they were in 1998, were not exactly reasonable. The pool is already up and taking it down creates another hardship. He is in favor on all five points.

Mr. Walsh indicated he is not voting but agrees with Mr. Cannon and Mr. Snyder.

Mr. Gregsak noted he is also in agreement with Mr. Cannon and Mr. Snyder. He added that there were not any markers there, the septic is on one side and the hill is there. Due to the grading down two and a half to three feet, only a couple of feet are visible. The pool is tastefully done and you don't really notice it. It is away from other houses. It is unique to the neighborhood. Mr. Cannon agreed that everything else in the subdivision is pretty congested. Mr. Gregsak stated he was in agreement on all five points.

Chair Maloney noted she had issues until listening to the presentation and the applicants answered her concerns. She noted the variance would not be contrary and within the spirit, does not threaten health, safety of the public and the benefit should not be outweighed by harm to the general public to make them take down the pool given the circumstances would not be in the spirit of anything. One hardship is the septic system location. This is the only place the pool could be. The home in a subdivision like this where everything is in the setback and not knowing when they bought the property either. She indicated she did not believe this was intentional and would vote yes on all five points.

Vice-Chair Scott indicated they obviously bought not understanding where the setbacks were and he is satisfied on all five points. This is the only place the pool could be. Even if it were right up against the house it would still be in the setback.

The Board agreed the applicants should have a variance for the pool and required fence because in the event they needed to put a fence on the ground rather than on top of the pool walls, they would need another variance.

Ms. Hoijer will provide the applicants with a copy of the ordinance concerning maintenance distances for fences required in the ordinance which she believes would exceed the 1'4" (ordinance in fact calls for 3').

***Chair Maloney motioned to grant a variance from Articles 5.3.5 Table 1 (Table of Dimensional Requirements) to permit a 15'x24' above-ground pool with fence that meets the barrier requirements per Section AG 105 of the 2000 IRC (as updated/in effect as of the date of this decision) and is 1'4' from the rear property line where 25' are required. Vice-Chair Scott seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.***

Chair Maloney reminded the applicants they would still need to obtain a building permit.

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

### **3. Approval of Minutes**

#### **i. October 18, 2022**

***Mr. Cannon motioned to approve the October 18, 2022 meeting minutes. Mr. Snyder seconded the motion. A vote was taken, all were in favor, the motion passed 5-0-0.***

#### **ii. November 15, 2022**

Chair Maloney recommended edits to page three, lines 93 and 95.

***Chair Maloney motioned to approve the November 15, 2022 meeting minutes, as amended. Mr. Gregsak seconded the motion. A vote was taken, Mr. Snyder and Mr. Cannon abstained. The motion passed 3-0-2.***

#### **iii. November 16, 2022**

***Mr. Gregsak motioned to approve the November 16, 2022 minutes. Chair Maloney seconded the motion. A vote was taken, Mr. Snyder and Mr. Cannon abstained. The motion passed 3-0-2.***

#### **iv. No December meeting**

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

Ms. Hoijer provided financials for November and December. She commented that the return of the certified mail cards, sent out in December, was still taking almost three weeks, perhaps due to the holidays.

## 5. Updates

### i. Proposed Zoning Amendments 2023 – Planning Board Liaison Rick Snyder

Mr. Snyder reported on the zoning amendments and code amendments proposed by the Planning Board and Building Inspector Bunker:

The following zoning & building code amendments will be proposed to be approved by vote at Town Elections on March 14, 2023. The amendments that pass will be in effect as of that date. Please note that these amendments **cannot be applied retroactively to previously existing situations.**

The public hearings for these proposed amendments will be held on January 4th and again on January 25th.

- 
- [Voting Article 2 - Zoning Amendment 1 - Article 5.3.5.3 - Frontage & Table 1](#)
  - [Voting Article 3 - Zoning Amendment 2 - Article 5.7.5.4 - Structure Setbacks](#)
  - [Voting Article 4 - Zoning Amendment 3 - Article 5.3.3.13 - Commercial Solar Facilities](#)
  - [Voting Article 5 - Building Code Amendment 1 - Article 3.1.1.1 - Sprinkler Systems](#)
  - Voting Article 6 - Building Code Amendment 2 - Article
  - Voting Article 7 - Building Code Amendment 3 - Article

(the full text of proposed amendments Article 2-5 are attached to and incorporated in the meeting minutes by reference)

Mr. Snyder indicated the amendments could be found on the Planning Board website. He referenced 5.3.5 Table 1 changes that would make it easier for developers to locate requirements within the body of the ordinance.

Mr. Snyder reviewed the proposal for Commercial Solar Facilities which would include definition. These would follow the federal and state safety requirements and be allowed in Town by Special Exception criteria in Article 11.4. So far they will not have their own criteria like ADUs for example that have to be met in addition to those in Article 11.4. Ms. Hoijer asked if they could be in residential zones since they are “commercial” and Mr. Snyder indicated yes.

Mr. Snyder reviewed the proposed change to the building code 3.1.1.1 for manufactured homes **not** situated in a mobile home park, see RSA 205A:1.

### ii. Class VI Road – Building Permit Process (Pomp Road)

Ms. Hoijer reported that the Foskitts received approval by the Board of Selectmen to build on the Class VI portion of Pomp Road, after recommendation by the Planning Board and agreeing to record the liability waiver. Only one home was approved on the lot at the present time.

272  
273 **iii. Chester Gravel Pit – Planning Board Liaison Rick Snyder**  
274

275 Mr. Snyder and Mr. Scott have attended some of the hearings with the Planning Board  
276 for the proposed expansion of the gravel pit on Fremont Road. An appeal of the  
277 approval could be forthcoming as one resident felt information obtained from OSI was  
278 not in line with what town counsel advised. Ms. Hoijer noted it was important without  
279 reviewing or discussing the potential appeal itself, which so far she has not received,  
280 that all members be aware, of any public knowledge the other two members are; so no  
281 one member or members would be asked to recuse themselves in the event of an  
282 appeal.(per handout provided). As the full Board was present, this satisfied the  
283 requirement that the entire Board be aware of any knowledge any individual board  
284 member/s may possess.  
285

286 **iv. Carkin lot line adjustment between Quintal and Bechtold**  
287

288 Ms. Hoijer reported that per TA Doda, the drainage issue has been worked on, but the  
289 parties have not reached an agreement on the lot-line adjustment to date.  
290

291 **v. Tri-Town – publication**  
292

293 Ms. Hoijer reported the Tri-Town may no longer by publishing by printed circulation and  
294 that notices will hereafter need to be published in the Union Leader.  
295

296 Mr. Snyder asked why the Planning Board did not have to publish notices due to recent  
297 legislative changes and the ZBA still did. Ms. Hoijer indicated that only the Planning  
298 Board was given the option not to publish their hearings and instead to post in two public  
299 places whereas the ZBA must continue to do both.  
300

301 **vi. Wetlands binder – Conservation**  
302

303 Ms. Hoijer was pleased to report that Conservation has brought in their 2011 wetlands  
304 study binder. It is full of great information and maps on wetlands that would have been  
305 considered prime had the legislative body voted to do so, which they did not. She is  
306 hopeful it will be updated, and she provided the Board members with a Table of  
307 Contents. She will scan the information in the coming weeks. The Board gets a lot of  
308 applications for variances from Table 2 of the wetland setbacks but has not historically  
309 received any information on which wetlands are considered more valuable than others or  
310 recommendations for mitigation when encroachments are unavoidable other than when  
311 a member of Conservation is able to attend their meetings in person.  
312

313 **vii. Road Agent Position/Supervisor of Roads – eff 3/15/23 James Piper**  
314

315 As of 3/15/2023 Road Agent Oleson's term will be ending, and Mr. Piper will be starting  
316 his appointment as Supervisor of Roads.  
317

318 **6. Training**

319 **Handouts**

320

321 **i. Handling ex-parte communication attempts by applicants and other parties**

322 **ii. Stergiou v. Dover 2021-0139 final approval v. conditional approval**

323

324 Ms. Hoijer provided the Board with handouts on the above-referenced topics to review.

325

326 **7. Adjournment**

327 ***Chair Maloney motioned to adjourn the meeting at 9 PM. Mr. Cannon seconded the***

328 ***motion. A vote was taken, all were in favor, so moved.***

329 Respectfully submitted,

330 Nancy J. Hoijer,

331 Recording Secretary

332

333 See attachments (proposed zoning amendments Articles 2-5)