

**Town of Chester
Zoning Board of Adjustment
March 21, 2023
Town Hall
7:00 PM
Approved Minutes**

Members Present:

Chair Billie Maloney
Vice-Chair Kevin Scott
William Gregsak
Rick Snyder, Planning Board Ex-Officio Liaison
Jason Walsh, Alternate

Selectman Stephen D'Angelo, BOS Liaison

Members Absent:

Jack Cannon

Guests:

MaryBeth Clough
Hope Gagne
Paul St. Peter
Saul Shriber

Agenda

1. Call to Order/Roll Call
2. Non-Public Session 91-A:3(II)(c) if needed
3. Approval of Meeting Minutes: 1-17-23 Public & Non-Public Session
4. Public Hearings
5. Correspondence
6. Updates
 1. Trudeau, Joyce - Variance Not Required, Map 009, Lot 057-000, 67 Towle Road
 2. Handouts – Financials
 3. Postage Rate Increase
 4. NOLO – Alizio 5-96 118 Sandown Road
7. Training
 1. Handouts – Spring Conference (Virtual) 4-29-23 Reg opened 3-17
 2. OSI Handbooks – Digital Only – See Summary of Changes
 3. Legislative Tracking
8. Adjournment

43 **1. Call to Order**

44 Chair Maloney called the meeting to order at 7:00 PM. By Roll Call were present: Billie
45 Maloney, Kevin Scott, Rick Snyder, Bill Gregsak and Alternate Jason Walsh. Chair Maloney
46 indicated that she, Kevin Scott, Bill Gregsak, Rick Snyder and Alternate Jason Walsh would be
47 voting and Vice-Chair Scott advised the applicant that the affirmative vote of at least three
48 members were needed to take any action.

49 **2. Approval of Minutes**

50 **i. January 17, 2023 Public Meeting Minutes**

51 *Mr. Snyder motioned to approve the January 17, 2023 meeting minutes, as written.*
52 *Mr. Gregsak seconded the motion. A vote was taken, all were in favor, the motion*
53 *passed 5-0-0.*

54 **ii. January 17, 2023 Non-Public Meeting Minutes**

55 *Mr. Snyder motioned to approve the January 17, 2023 non-public meeting*
56 *minutes, as written. Mr. Gregsak seconded the motion. A vote was taken, all were*
57 *in favor, the motion passed 5-0-0.*

58 **iii. No February meeting**

59 **3. Correspondence/Financials**

60 Ms. Hoijer provided financials for January and February. She commented that the return of the
61 certified mail cards, some are being returned signature questionable and undated.

62 **4. Updates**

63
64 **i. Trudeau, Joyce – No Variance Required Map 009, Lot 057-000, 67 Towle Road**

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66 Chair Maloney provided an update on Ms. Trudeau's attempts to obtain a building permit
67 since the ZBA Decision rendered at the November 16, 2023 meeting that no variance
68 was required because the carport was not located outside the setback.

69
70 Chair Maloney noted that while she could not discuss the non-public session of the
71 January 2023 meeting, she had since that time, called the ZBA representative,
72 Selectman D'Angelo and brought him up to date on what was happening. She noted the
73 applicant had provided the Building Inspector with everything he asked for, the new
74 permit application paperwork he requested, new site plan, and paid the permit fee,
75 \$253.14. She noted Ms. Trudeau brought the Building Inspector information from the
76 manufacturer showing it was NE Code approved, however he found that the plan was
77 designed in 2009 and the code had changed in 2018 to require rating for wind speeds of
78 120 mph and snow load which it did not meet as there was no indication how the
79 structure is to be secured to the ground. The manufacturer is working with the applicant
80 to retrofit the structure and work will continue once the snow melts.
81

Chair Maloney questioned why the applicant was not told this information months ago before:

1. Coming to the ZBA for a variance she didn't need;
2. Nine months of back and forth requests from the Building Inspector;
3. Paying the Building Inspector for a building permit when the car port didn't meet code.

Chair Maloney questioned why the Building Inspector had not gone out back in June of 2022, inspected the structure, and told her it didn't meet code.

Chair Maloney noted that any building greater than 200 square feet in climate zone 5A must withstand wind gusts of 120 mph. Mr. Snyder agreed the Town is on the line in terms of coastal winds.

Chair Maloney noted Selectman D'Angelo was supposed to speak with the Building Inspector to find out how the process could go more smoothly, before telling someone to get a variance, the cost of which is between \$200-\$300; to get a survey which costs thousands of dollars and paying an additional \$200 for a permit and then say it doesn't meet code, sorry.

Chair Maloney noted she did not hear back from Selectman D'Angelo and it has been over a month. We now have a similar application tonight for another carport and the applicant asked the Building Inspector to come out and make sure it met code before applying to the ZBA and spending \$200-\$300 but the Building Inspector told her he would come out after she got a variance.

Vice-Chair Scott noted it seemed that when the ZBA tried to resolve the issue the Building Inspector threw up another roadblock. He questioned whether the ZBA had issued a variance she didn't need, whether she would have been given this much trouble.

Mr. Gregsak noted often people don't realize they need a building permit for everything, pools, sheds, etc. Mr. Snyder agreed applicants are running the gauntlet but we don't know the facts.

Mr. Snyder and Mr. Gregsak agreed that it should all be put out there in the beginning and the denial letter should contain each and every reason why the owner's application for a building permit has been denied.

5. Public Hearings

The application of Mark Clough and MaryBeth Clough for a Variance from Article 5, Section 5.7.8 Table 2 (Wetland Buffers and Setbacks) to permit a 20'x27' carport located 57' from the edge of wetlands to the left and approximately 70' from the edge of wetlands at the rear; where 75' are required

On the premises known as Map 004-042-105, 11 Bellwether Lane, Chester, NH in the R-1 Residential zoning district.

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

130 Mrs. Clough provided the Board and Adm. Asst. seven copies of a new color coded map.

131 Chair Maloney asked the applicant to clarify that she had requested the Building Inspector come
132 out to see if the carport met code prior to applying for a variance and she indicated she had
133 requested he do so and he told her he would come out after she received a variance.

134 The Board reviewed the new plan and the Adm. Asst. provided an enlarged copy of the entirety
135 of the Septic Plan provided by the Building Inspector.

136 Mrs. Clough reviewed her application. She noted it was not contrary to the public, not an
137 eyesore, the neighbors can't see it, it covers the pavement and keeps the runoff out, it is a
138 natural tan color and blends in. The spirit of the ordinance is maintained because it is not
139 harming the wetlands and will keep runoff from running down. She noted while it can not go
140 anywhere else in the yard it is a movable non-permanent structure. Mrs. Clough indicated her
141 elderly father moved in, is 85 years old and has fallen and can't pull into the garage due to the
142 angle. The building envelope is very small and she is on a corner lot. There is no place she
143 can put this because of the wetlands. She stated that it is not intrusive to the neighbors and is
144 more solid than most of the tents we see around. She indicated the request is reasonable.

145 Mrs. Clough commented that the wetlands layer at the Town website was not showing the
146 wetlands on her property and she could not tell if her neighbors had any either. She tried to
147 look it up on Granite GIS and it showed no wetlands either. She noted the Building Inspector
148 reviewed the three criteria in the ordinance that consider land to be a wetland. The Board
149 showed the applicant the symbols on the septic plan provided and the subdivision plan from the
150 Planning Board and explained how a licensed surveyor and wetland scientist had flagged the
151 property.

152 Mr. Gregsak noted that the wetlands setback used to be 50.' Mr. Snyder noted when the home
153 and driveway were built the setback was 75.' Vice-Chair Scott asked if the driveway was in the
154 setback. Ms. Hoijer reminded that back then driveways were not considered structures.

155 Mr. Walsh asked when the carport went in and Mrs. Clough indicated a year to a year and a half
156 ago. She didn't understand that it needed a permit for several reasons, including that it didn't
157 have sides. Vice-Chair Scott asked if the carport was completely on the existing asphalt and
158 she indicated it was.

159 Ms. Hoijer asked for clarification whether Section 4.2.1 applied questioning if this is an
160 expansion of a prior non-conforming use since the carport is over the existing driveway and the
161 Board was of the consensus that there was no enlargement or expansion of it or the impervious
162 surface.

163 Mrs. Clough indicated they dug a couple of holes and poured cement and bolted the bottom of
164 the structure to it.

165 Chair Maloney opened the hearing to comments from the public and Hope Gagne of 19
166 Bellwether indicated she was fine with the application and noted the home was built around
167 2002. Ms. Hoijer noted the tax card concurred with her statement, noting 2001.

168 Paul St. Peter of 39 Sheepwash Drive, an abutter, also noted he was fine with the application.

Chair Maloney closed the hearing to the public for deliberations at 7:45 PM.

Mr. Gregsak noted it was not contrary and the neighbors are in support; the spirit is observed, the cover is over an existing space and helps her elderly father get in and out. The hardship is the layout of the lot and change in zoning – even the existing pavement is not in the 75' wetlands setback as driveways were not a structure 23 years ago. He noted he would vote in favor on all five points.

Mr. Walsh agreed with what Mr. Gregsak stated on not being contrary, observing the spirit and substantial justice.

Mr. Snyder stated what was said about net impervious surface not increasing. He noted it does not alter the character and added the family need for it. He noted the application was well put together and agrees with all five points and the spirit of the ordinance concerning protection of the wetlands being helped by reducing runoff. The hardship is the configuration of the lot and the driveway conformed when the home was built. The carport is over the existing driveway and helps the father's situation. He noted all five points are met.

Chair Maloney agreed on all five points. She stated there was no alteration of the character of the neighborhood or threat to public health, safety or welfare. Substantial justice is done and there is no harm to the public. The hardship is the special condition of the property, the wetlands and there is a reasonable use.

Vice-Chair Scott noted the driveway at the time of construction was not considered a structure and so no variance was required then. He noted the carport protects the wetlands further and is not adding salt etc.

Vice-Chair Scott motioned to approve the application of Mark Clough and MaryBeth Clough for a Variance from Article 5, Section 5.7.8 Table 2 (Wetland Buffers and Setbacks) to permit a 20'x27' carport located 57' from the edge of wetlands to the left and approximately 70' from the edge of wetlands at the rear; where 75' are required. Chair Maloney seconded the motion. A vote was taken, all were in favor, the motion passed unanimously.

Vice-Chair Scott read out loud the 30-Day Notice of Appeal. Chair Maloney requested that the applicant keep the office informed as to her success with the building permit.

6. Updates (continued)

ii. Costs – Postage Increase and Advertising

Ms. Hoijer provided a handout of postage increases for 2023. A certified mailing is costing over \$8 now and advertising with the Union leader is almost double the cost that the Tri-Town charged, to keep in mind for budget season.

iii. NOLO

Ms. Hoijer noted difficulty with the condition that a Notice of Limited Occupancy be provided to the ZBA as a condition of approval of ADUs. This is signed by the Building Inspector on completion and recorded at the Registry of Deeds. Applicants are supposed to send a copy to the ZBA. The Board discussed how the requirement that

one of the units be occupied by the owner could be monitored and enforced. Mr. Shriber asked the penalty for not being honest and Ms. Hoijer explained that these are the statements made in the NOLO so that the applicants can't say they didn't know. The state requires ADUs be treated as a single family residence, among other incentives so it would be a mis-use if they were renting out both units while enjoying the benefits of a single family residence. Chair Maloney noted it would be a difficult problem to police.

iv. Voting

Town Meeting Results

Elections/Zoning Amendments postponed due to weather – 3/28

Chair Maloney noted the elections portion was moved to March 28th due to the storm but Town Meeting had proceeded on schedule. Mr. Snyder noted that all the amendment clarifications will help people better navigate the Ordinance.

7. Training

Handouts

i. Spring Conference

Ms. Hoijer provided a handout concerning registration for the virtual conference in April. She noted that the recording will be on YouTube so it can be watched later.

ii. OSI ZBA Handbook – Digital Only – See Summary of Changes

Chair Maloney noted the handbook is only available digitally now but a summary of changes was provided. Anyone that wishes to have the digital copy printed can let Ms. Hoijer know.

Legislative Tracking

Ms. Hoijer provided a brief update on the status of the legislative bills being tracked. She noted that unfortunately it did not look like the requirement that the ZBA publish notice in the newspaper would be waived like it had been for the Planning Board, as the status is listed as Inexpedient to Legislate. Chair Maloney noted it could be because the ZBA is a quasi judicial Board.

8. Adjournment

Mr. Snyder motioned to adjourn the meeting at 8:10 PM. Vice-Chair Scott seconded the motion. A vote was taken, all were in favor, so moved.

Respectfully submitted,
Nancy J. Hoijer,
Recording Secretary