

**Town of Chester  
Zoning Board of Adjustment  
July 17, 2018  
Town Hall  
7:00 pm  
Approved Minutes**

**Members Present:**

Chair Billie Maloney  
Jack Cannon  
Adam Maciaszczyk  
Matt Gelinas, Alternate

**Members Absent:**

Vice-Chair Kevin Scott  
Courtney Cashman  
Jean Methot, Alternate  
Richard Snyder, Alternate  
Joseph Hagan, Selectman Liaison

**Guests:**

Dick Trask  
Jess Edwards  
Jean Packard  
Ed Sargent  
Esra Sargent  
James Smith  
Samuel Ashby  
Nicholas Martino  
Lee Brown  
And other persons unknown to the minute taker

**Agenda**

- 1. Call to Order/Roll Call**
- 2. Correspondence & File Reviews**
- 3. Approval of Minutes – June 19, 2018**
- 4. New Business**
  - Addendum to Rules of Procedure – Consistent Voting & Notification of Assocs.**
  - Discontinue Use of Petty Cash**
- 5. Hearings/Continuances:**
  - Nicholas Martino, M/L 009-069-002, 270 Haverhill Road (R1)**
  - Theodore Ian MacLean, M/L 002-082-000, 82 Pulpit Rock Road (R1)**
  - James P. Smith, Allen Major & Assoc. for Samuel Ashby (R1)**

M/L 012-013-001, 183 Lane Road

Edward Sargent d/b/a Pressed 4 Time Coffee (P4T) and the American Legion  
Forsyth-Drowne Post 108, M/L 016-024-000, 25 Raymond Road (R1)

## 6. Adjournment

### 1. Call to Order/Roll Call

Chair Maloney called the meeting to order at 7:04 pm. By Roll Call were present: Matt Gelinas, Billie Maloney, Chair, Adam Maciaszczyk and Jack Cannon. Chair Maloney designed Mr. Gelinas as an active alternate.

### 2. Correspondence & File Review

Ms. Hoijer provided the Board members with copies of correspondence received from Mr. MacLean, Ms. Packard and Jess Edwards, Legion Post 108.

The Board briefly reviewed the status of Mr. Bredstein's mobile food site and Mr. Cannon reported that he had seen no activity on the premises during the last week. Tabled.

### 3. Approval of Minutes – June 19, 2018

Chair Maloney asked if the Board members had a chance to review the minutes. All answered affirmatively.

***Mr. Cannon motioned to accept the minutes of June 19, 2018 as written. Mr. Gelinas seconded his motion, with all in favor, so moved.***

### 4. New Business

#### Addendum to Rules of Procedure – Voting & Notification

Chair Maloney provided copies to the Board members of the proposed Changes to Rules of Procedure to reflect the recommendations from the Spring conference relative to consistent voting and notice to associations. Chair Maloney advised that there were still some small items that could be looked over if we could get a couple of members to go over and add those.

***Mr. Cannon motioned to amend the Rules of Procedure to add the language concerning consistent manner of deliberating and notification to associations. Mr. Maciaszczyk seconded his motion, with all in favor, so moved.***

Ms. Hoijer advised that the next step would be to have the Addendum signed by all of the members at the next meeting and filed with the Town Clerk.

#### Discontinuance of Petty Cash Fund

Chair Maloney advised that Ms. Hoijer found the petty cash policy to be more of a nuisance than a convenience and as it wasn't needed asked to discontinue it.

Ms. Hoijer provided the Board members with a copy of the final reconciliation and will forward a memo to Finance to return the funds to the Town's general fund.

**Chair Maloney motioned to eliminate the petty cash fund, totaling \$100.00 and return it to the town's general fund. Mr. Maciaszczyk seconded her motion, with all in favor, so moved.**

## **5. Hearings**

Mr. Maciaszczyk read out loud the Public Hearing Notice.

### **Theodore Ian MacLean, M/L 002-082-000, 82 Pulpit Rock Road (R1)**

Chair Maloney advised that Mr. MacLean was working with Conservation and had requested a continuance until next month.

**Mr. Maciaszczyk motioned to continue Mr. MacLean's application until August 21, 2018 at 7:00 pm. Mr. Cannon seconded his motion, with all in favor, so moved.**

#### **a. Continuance of Nicholas Martino, M/L 009-069-002, 270 Haverhill Road (R1)**

Chair Maloney advised Mr. Martino that there were only four Board members present to vote on his application and that he had the option to continue his hearing until next month or proceed.

Mr. Martino asked if his application were denied would he be able to apply for the Equitable Waiver discussed briefly at the last hearing. Chair Maloney gave Mr. Martino a copy of the State RSA 674:33-a and reviewed the local ordinance, Article 11.6, with the other Board members. Chair Maloney apologized that the local ordinance should be updated to reflect the current State statute requirements, but it did not appear that Mr. Martino would be eligible.

Chair Maloney advised that to qualify for Equitable Waiver it had to be an honest measuring mistake and/or it to have existed ten years or more prior to enforcement action, and it had not.

Mr. Martino stated that he would like to continue his application until next month.

**Chair Maloney motioned to continue Mr. Martino's application until August 21, 2018 at 7:00 pm. Mr. Maciaszczyk seconded her motion, with all in favor, so moved.**

#### **b. James J. Smith of Allen Major & Associates for Samuel Ashby for two variances from Article 5, Section 5.3.5 (Table 1) and Article 4, Section 4.2.1 (expansion of a pre-existing, non-conforming lot) Tax Map 012-013-001 located at 183 Lane Road in the R1 District**

Mr. Gelinas read out loud the public notice.

Chair Maloney advised that Mr. Ashby had the option to continue his hearing until next month as there were only four Board members present or to proceed. Mr. Ashby stated that he would like to proceed.

Mr. Smith presented Mr. Ashby's application verbatim adding only that they had dug and found a corner of the existing tank 6.9' with 5' state setback to foundation leaving 2.'

Mr. Smith stated that this was for a 26'x32' attached garage, and that while he could do a de-attached garage, the purpose is to be able to get out of the car and go into the home. The original plan, attached to the house, was closer to the house and the wetlands, so Mr. Bunker thought it best to whittle one of those down, showing plan.

119 Mr. Smith handed out pictures.

120 Chair Maloney asked if there were any questions.

121 Mr. Gelinas asked where the garage entrance was. Mr. Maciaszczyk asked if this location was  
122 the only option.

123 Robert Grimm, 173 Lane Road stated that he was an abutter and asked if it was a two or four  
124 car garage. Mr. Ashby answered that it was 2. Mr. Grimm asked if it was for work purposes  
125 and Mr. Ashby answered that it was not. Mr. Grimm asked about the parked vehicles and tent,  
126 whether those would be going, and Mr. Ashby answered that they would. Chair Maloney asked  
127 if the vehicles were drivable and Mr. Ashby answered that they were. Mr. Grimm expressed  
128 concerns with the proximity to wetlands.

129 Mr. Cannon expressed concerns with additional runoff from the paved driveway at its current  
130 elevation to Lane Road which has a history of problems with drainage already. Mr. Ashby  
131 stated that he would still have a driveway and there is a culvert on the other side of the street to  
132 absorb runoff. Mr. Maciaszczyk stated that you could see evidence of runoff damaging the  
133 road.

134 Chair Maloney asked if there were any further questions from the public and being none, closed  
135 the hearing to the public for deliberations at 7:35 pm.

136 Chair Maloney stated that as far as Public Interest, Spirit of the Ordinance and Substantial  
137 Justice she didn't think a garage will alter the character or pose a threat to health or safety.

138 Mr. Gelinas stated that he did not think it would devalue surrounding values but increase them.  
139 "Its not contrary." "There is no reason he shouldn't have a garage." "A garage raises values."  
140 "The hardship, restriction doesn't serve the resident in a fair or substantial way, being a non-  
141 conforming lot." "The layout looks good, no problems, reasonable use, would vote yes on all  
142 five points." "The size of the property provides confinement, pointing to leech field. "Special  
143 conditions, yes on all five."

144 Mr. Maciaszczyk stated that "the first three, Public Interest, Spirit, Justice, would agree on both."  
145 "The hardship is, this property is challenging due to its size, location of wetland and a 75'  
146 setback is restrictive where the State calls for 50,' "We've come into this quite a bit." "My only  
147 concern is with runoff." "Yes, to all five."

148 Mr. Cannon stated that "It's not contrary to the Public Interest but the Hardship....I don't believe  
149 it would create a hardship." "He hasn't had a garage before." "Where I'm hung up is the Spirit  
150 of the Ordinance." "The increased runoff, structure to the back, knowing the history for many  
151 years." "There is probably more gravel in those wetlands than was ever there, prior to any  
152 roads being built." "I'm concerned with downstream impact to neighbors with that runoff."

153 Mr. Ashby stated that it already goes down already, it goes into the culvert, its open. There is  
154 no neighbor in between.

155 Mr. Cannon continued "It wouldn't diminish values." "It could enhance them." "One abutter has  
156 issue with vehicles creating concern." "Going to have to say no, based on runoff." "The Spirit  
157 would not be observed by impinging on this setback."

158 **Mr. Maciaszczyk motioned to approve the variance from Article 5, Section 5.3.5, Table 2**  
159 **and Article 4, Section 4.2.1 to allow a 26'x32' attached garage within 70.6' feet from**  
160 **wetlands where 75' are required on a non- conforming lot. Mr. Gelinas seconded his**  
161 **motion, with 3 in favor (Chair Maloney, Mr. Gelinas and Mr. Maciaszczyk) and 1 opposed**  
162 **(Mr. Cannon), motion carried.**

163 Mr. Maciaszczyk read out loud the 30-Day Notice.

- 164       **c. Edward Sargent d/b/a Pressed 4 Time Coffee (P4T) and the American Legion**  
165 **Forsyth-Drowne Post 108**  
166 **M/L 016-024-000 located at 25 Raymond Road in the R1 District**  
167 **For Variances from Article 4, Section 4.4.2.1 to permit a sign less than 10'**  
168 **high; Article 5, Section 5.3.4 to permit a 10'x17' trailer on the right side of the**  
169 **property to be used as a breakfast coffee business in the R1 zone; Article 5,**  
170 **Section 5.3.5, Table 1 (Table of Dimensional Requirements) to permit said**  
171 **trailer to be parked eight (8') feet from the assumed property line where 25' are**  
172 **required and to permit said trailer to be parked 36' from the front property**  
173 **setback where 40' are required; and NEW: Article 4, Section 4.2.1 on a lot**  
174 **where 2 acres and 290' frontage are required, making it an expansion of a non-**  
175 **conforming lot.**  
176

177 Mr. Gelinas read out loud the public notice.

178 Ms. Hoijer provided the Board members and Mr. Sargent with copies of a new denial letter from  
179 the Building Inspector for Article 4, Section 4.2.1 (non-conforming lot size and frontage  
180 requirements) and letter of approval from Legion Post 108 and abutter questions from Ms.  
181 Packard.

182 Mr. Sargent, Mr. Trask and Mr. Edwards were invited to the hearing table. Mr. Sargent read his  
183 application into the record, verbatim, adding that it would benefit the community being local and  
184 convenient and through hiring employees and that the Legion Hall needed the donation. Mr.  
185 Sargent discussed some of his menu items which would include freshly prepared crepes.

186 Mr. Sargent provided each of the Board members with copies of a traffic study he had done  
187 which did not reflect when school was in session but stated that he did not believe his peak  
188 hours would conflict with arriving school buses. Mr. Sargent stated that he had been visited by  
189 and was cooperating with the DOT.

190 Mr. Cannon asked if he had tried for permission at Your Variety and Wason Pond. Mr. Sargent  
191 answered that he had been turned down because most businesses with the same products for  
192 sale didn't want the competition on their doorstep. This site made sense and is more central to  
193 the community which is what the Planning Board says they want.

194 Mr. Cannon stated that it was a great idea but that he couldn't think of a worse location for what  
195 he was trying to do. "That area is controlled chaos." Mr. Sargent stated that he believed turning  
196 vehicles would slow down traffic. Mr. Cannon argued that business will cause more activity in  
197 an already confined area, in and out of driveways.

198 Mr. Cannon referenced Mr. Bredstein, whose entryway off 102 into the general store, has two  
199 driveways, one from Derry, one from Raymond, and has observed cars parked in the entry way

200 facing out, for vehicles coming up from Derry there is nowhere for cars to go, in spite of all  
201 signs, pulled onto 102. "I understand your flow pattern but doubt highly that anyone will observe  
202 it."

203 Mr. Sargent stated that he didn't agree. "Bredstein is in a tough area." "I have sat out there and  
204 monitored traffic."

205 Mr. Trask asked if the Board had a decent drawing of the property. Chair Maloney showed what  
206 the applicant had provided, an early out of date sketch of the Legion. Mr. Trask provided a  
207 drawing of what the premises looked like now.

208 Chair Maloney stated that she had visited the site, that she went and drove in. "There is a small  
209 trailer there now." "How much bigger, or the same size?"

210 Mr. Sargent stated that the dimensions were off, it is 8'x12.'

211 Chair Maloney asked about the boundary line issues. Mr. Trask showed a copy of the Legion's  
212 deed and advised that it did not coincide with the tax maps. "The town built their garage on our  
213 property." Jess Edwards corrected "on part of our property."

214 Chair Maloney advised "You're going to need an actual site plan on this property for Site Plan  
215 Review with the Planning Board. "I drove in there." "It is very confined." "Not much room going  
216 around." "It had so many issues with so many things."

217 Chair Maloney advised that they had read his Letter of Understanding with the Legion Post. "A  
218 72 decibel generator is quite loud." "Something about using internal facilities, bathroom or  
219 kitchen by members of Legion. If you join. Can use picnic tables. The public will be  
220 discouraged from using, but if you belong..." "How do you police that?"

221 Mr. Trask stated that members have access. Chair Maloney advised that if people sit at that  
222 picnic table...once you have a customer that sits and eats you have to have handicapped  
223 access. Mr. Trask offered to put a sign up. "He is a member."

224 Chair Maloney advised that like with Mr. Bredstein, with no outside seating, you would be going  
225 to get a Cease and Desist. Mr. Sargent continued "In my defense I don't want to be compared  
226 to other businesses.

227 Mr. Sargent responded that he was only open from 4 am to 12 pm and there would be no public  
228 seating. Chair Maloney stated that there are already picnic tables. Mr. Edwards offered to flip  
229 the tables over when Mr. Sargent was open.

230 Chair Maloney asked if there was any other space where you could put it?

231 Mr. Edwards stated that there was parking on the side, 3-4 spaces to the left of the trailer, 8  
232 parking spaces on the other side. Mr. Trask stated that they are not supposed to park up there.

233 Mr. Edwards stated that these were valid concerns and offered that if it didn't work out they  
234 could stop it. If it created a public nuisance the Legion would not want to do it.

235 Chair Maloney asked about water. Mr. Edwards stated that he was not using town water and  
236 would be trucking away waste water when he leaves. Mr. Sargent stated that his coffee was  
237 brewed with purified water, no minerals to improve the taste, brought in in 45-gallon jugs. "The  
238 20'x30' foot square is septic, cars don't drive over that."

239 Chair Maloney stated that “Our requirements are, you are to convince us of the five points for  
240 giving a variance, if you want to look at this (handing Mr. Edwards the criteria instruction sheet).”

241 Chair Maloney stated, “We have to vote on this, not on what he is serving.”

242 Chair Maloney advised that the Board had received a letter from Ms. Packard, a direct abutter,  
243 with a lot of concerns.

244 Ms. Packard explained that the attached Food Service RSAs go with mobile food trucks.

245 Ms. Packard asked about licensing with the State, base of operation, and whether being in a  
246 fixed spot for an extended time was an accurate definition of “mobile” per the statute. Ms.  
247 Packard expressed concerns with noise of a generator operating at 4 am.

248 Ms. Packard asked what is the hardship, proven by the owner, Legion? What is their hardship,  
249 to allow donations for space. “You are allowed your current use.”

250 Mr. Trask stated that it costs \$7,000/yr. to operate and the Legion needs those donations to  
251 operate. “We could start a cocktail lounge.” “We’re trying not to.” “We could do bingo, meat  
252 raffles, things that other posts do.” Ms. Packard stated that those would be confined within the  
253 hall, not outside. “That’s an allowed use you already have, this is on top of that.”

254 Lee Brown, 19 Raymond Road, stated that the 102 traffic is ridiculous. “There is nowhere to  
255 turn around.” “You can’t drive up into that leech field.”

256 Mr. Sargent responded that the trailer on there now is the same size, that little trailer. It will be  
257 taller, but otherwise the same dimensions, with a pull-up entrance where the customers get out,  
258 no drive-thru.

259 Mr. Brown stated that “I have nothing against you doing business.” “It’s just not the right place.”  
260 “It’s 20 mph during school, and we watch them go by at 50 mph, every day.”

261 Ms. Packard asked about snow removal in the Winter. Mr. Edwards stated that he would wrap in  
262 November, not be there during most of school year. Mr. Sargent corrected that he would run  
263 partially during the Winter.

264 Ms. Packard added “It’s a use variance.” “It stays with the property, so they can have someone  
265 else come in.”

266 Mr. Edwards stated that “Mr. Sargent found us.” “We’re not looking to do harm to the  
267 community.”

268 Mr. Edwards asked Mr. Brown “When you complained about trash, it was taken care of?”

269 Ms. Packard added that “Once the variance is granted, it wouldn’t be for just you.”

270 Mr. Edwards stated that the Legion could restrict it and offered to write a letter that he’ll be the  
271 only one.

272 Chair Maloney advised that a variance cannot be conditioned upon the requirement that the  
273 current owner or operator utilize the variance. Likewise, the Board can’t put a time limit on the  
274 variance or require them to reapply for the variance annually. The variance would run with the  
275 land until the use was abandoned.

276 Ms. Packard asked about the hardship and spoke to the values of surrounding property. "We  
277 didn't buy next to a commercial business."

278 Mr. Sargent's responses to the five criteria did not reflect that he understood the criteria. Mr.  
279 Sargent requested to continue the hearing until next month and have the owner work together to  
280 answer the five conditions in unison.

281 ***Mr. Maciaszczyk motioned to continue the hearing until next month to give Mr. Sargent***  
282 ***an opportunity to answer the five criteria for the proposed food truck business. Mr.***  
283 ***Cannon seconded his motion, with all in favor, so moved.***

284 **6. Adjournment**

285 ***Mr. Maciaszczyk motioned to adjourn the meeting at 8:30 pm. Mr. Cannon seconded his***  
286 ***motion, with all in favor, so moved.***

287 Respectfully submitted,

288

289

290 Nancy J. Hoijer,  
291 Recording Secretary