

Zoning Board of Adjustment
Approved Minutes of October 17, 2017

Members Present:

Billie Maloney (Maloney), Chair
Kevin Scott (Scott), Vice Chair
Courtney Cashman (Cashman)
Chip Fredette (Fredette)
Jean Methot (Methot), Alternate
Rick Snyder (Snyder), PB Rep/Alternate
Adam Maciaszczyk (Maciaszczyk)
Jack Cannon, Selectman Liaison

Members of the Public Present:

David St. Pierre
Jerome Gesel
Ms. Morneau
Andrey Bredstein
Jerry Bolduc
Dave Youkstetter

and other members of the public unknown to the minute taker

Agenda:

1. Meeting Convenes/Roll Call
2. Action on Minutes – Tabled
3. Correspondence
4. Applications and Hearings
 - a. Attorney John G. Cronin for Mary Gesel, Trustee of the Francis X. Gesel, Sr. Revocable Trust – appeal of administrative decision concerning the Center Scoop Ice Cream business located at 15 Chester Street, m/l 016-009-000 R1
 - b. David St. Pierre for a variance to construct a 10'x16' Reeds Ferry” located at 22 Partridge Lane, m/l 009-081-075 R1
 - c. Andrey Bredstein, application for variance to conduct a retail baked goods store known as Hidden Berry Cakes & Breads, located in a '7x16' trailer located at 9 Derry Road, m/l 016-033-000R1
 - d. Terrence Fitzgerald – variance for building setbacks at 164 Chester Turnpike, m/l 007-018-004 R1.

5. New Business:

6. Other Business/Adjournment

1. Call to Order

Chair Maloney called the meeting to order at 7:00 pm and roll call was taken. Quorum was present with 5 members and 2 alternates present.

2. Action on Minutes – July, August & September, 2017

July 11, 2017 - Mr. Snyder motioned to accept the July 11, 2017 minutes, as written. Vice Chair Scott seconded his motion; voting 5 in favor with Ms. Cashman and Mr. Fredette abstaining; motion carried.

August 15, 2017 - Mr. Methot motioned to accept the August 15, 2017 minutes, as written. Mr. Snyder seconded his motion; voting 5 in favor with Ms. Cashman abstaining; motion carried.

September 19, 2017 – Mr. Methot motioned to accept the September 19, 2017 minutes, as written. Mr. Maciaszczyk seconded his motion; voting 5 in favor with Ms. Cashman abstaining; motion carried.

3. Correspondence – Chair Maloney read a letter it received today from Jim Brown and Maria Brown in favor of the application of Mr. Bredstein. Chair Maloney advised that she had received written correspondence from Attorney Cronin asking for a continuance of Mr. Gesel's application until the November 21, 2017 hearing.

4. Applications and Hearings

Chair Maloney advised that the Public Hearing Notice was published in the Union Leader, posted at the Chester Town Hall and the Chester Post Office, and notice was mailed by certified mail to all provided abutters.

a. Center Scoop Ice Cream, 15 Chester Street

Chair Maloney recognized Mr. Gesel, who appeared without counsel, and advised him of the continuance to November 21, 2017 providing him with a copy of the letter written by the Board of Selectman signed by Chairman Trask summarizing the items to be completed. Chair Maloney apologized for the delay in getting that to him. Chairman Maloney additionally supplied a copy of the Fire Department's letter itemizing its safety concerns. Chair Maloney asked the public who were present if any party interested in the matter presented by Mr. Gesel would like a copy of the letter, no response indicated.

89 **Chair Maloney motioned to continue the hearing until November 21st which is**
90 **the next regularly scheduled meeting of the ZBA. Mr. Fredette seconded her**
91 **motion, voting 5 in favor with Ms. Cashman abstaining; motion carried.**
92

93 b. Terrence Fitzgerald, 164 Old Chester Turnpike
94

95 Mr. Fitzgerald, it was noted by Vice Chair Scott, was not present.
96

97 **Vice Chair Scott motioned to continue the hearing until next month. Mr. Fredette**
98 **suggested that they postpone the continuance instead, to the end of the meeting**
99 **in case Mr. Fitzgerald arrived late.**
100

101 c. Mr. St. Pierre – 22 Partridge Lane
102

103 Vice Chair Scott read aloud the Public Hearing Notice.
104

105 Chair Maloney, by roll call, requested the Zoning Board members and alternate to
106 identify who will be voting on this hearing, as follows: **Chair Maloney, Mr. Fredette,**
107 **Vice Chair Scott, Ms. Cashman, and Mr. Maciaszczyk.**
108

109 At 7:15 Chair Maloney acknowledged Mr. St. Pierre who was present and invited him
110 to the meeting table to present his application. Chair Maloney questioned whether the
111 attachments to Mr. St. Pierre's application answers were present and instructed the
112 administrative assistant to furnish copies to all present board members.
113

114 Mr. St. Pierre presented that he lived at 22 Partridge Lane for approximately ten (10)
115 years. Mr. St. Pierre continued that he would like to construct a 10'x16' "Reeds Ferry"
116 shed towards the back of their driveway, as shown on the map. Mr. St. Pierre advised
117 that he had gone to the Building Inspector who denied his application for two reasons,
118 the 75' setback and the 25' no clearing buffer.
119

120 Mr. St. Pierre stated that the area considered had been cleared already by the prior
121 owner, it was grass when he moved in, it has been continuously maintained as grass
122 with no additional trees cut.
123

124 Mr. St. Pierre read his application into the record stating that he did not believe it to be
125 contrary to the public interest as the current ecosystem will still be allowed to flourish, it
126 was not altering any drainage pattern and the crushed rock base allows for runoff and
127 the prevention of erosion.
128

129 Mr. St. Pierre stated that he believed the spirit of the variance would be observed
130 similarly and in addition the man-made structure would create a barrier preventing
131 further disturbances.
132

133 Mr. St. Pierre stated that he believed substantial justice would be served because it
134 allows the wetlands buffer to still exist, acts as a fence, and provides the homeowner
135 with storage space.
136

137 Mr. St. Pierre stated that, if granted, he did not believe the variance would diminish
138 property values because a "Reeds Ferry" shed is a good quality product with its
139 exterior matching the home. In addition, the structure would be set back toward the
140 driveway, not be visible from the road. There would be no issues with daming or
141 drainage.
142

143 Mr. St. Pierre stated that as far as un-necessary hardship, if you look at the map a
144 large portion of the property, the majority of it, falls into the wetlands buffer, the home,
145 septic, trees, buffers and pre-existing pool don't allow the property owner a more
146 suitable location for the shed to be placed and would be less appealing to future
147 buyers.
148

149 Mr. St. Pierre stated that in his opinion the proposed used was reasonable because it
150 would still allow a buffer to exist, ecosystem to flourish while assisting as an additional
151 protective buffer, preventing future unnecessary foot traffic.
152

153 Mr. Snyder asked Mr. St. Pierre what he would be storing in the shed, no gasoline,
154 garbage or hazardous materials? Mr. Fredette added "but for what is in the tank of
155 each machine." Mr. Snyder asked whether the location behind the house would be
156 more suitable, as the least no-cut buffer and potentially free and clear, requiring no
157 variance at all.
158

159 Mr. St. Pierre responded that the proposed shed would sit at the end of the driveway,
160 making it easier in the Winter to get their snow blower in and out. In other places there
161 is a pool, patio and a wooded area, not shown on the map.
162

163 Chair Maloney asked what kind of pool? Swimming? Mr. Fredette asked Mr. St. Pierre
164 to show them where the pool was located. Mr. Snyder advised that the pool must have
165 been built before the 75' setback existed. Mr. St. Pierre pointing to the map indicated
166 that it was located between the well and well pump, there, the well sits within the 75'
167 buffer. Mr. Methot stated that the well isn't a problem.
168

169 Mr. Methot asked how many acres? Mr. St. Pierre stated that it was 2.3 acres listed
170 with the majority of it falling into the buffer area. Mr. Methot stated that he was trying to
171 place the shed in other places, with the septic, leach field in front of the house, the
172 other side is wooded. Mr. Snyder added "and the pool is in the back." Mr. St. Pierre
173 offered to slide the shed an additional foot from the driveway edge. Vice Chair Scott
174 opined that if this were his driveway, he would want the shed right there as well. Mr.
175 Methot added, "closer." Vice Chair Scott added that in big storms, when you have to
176 hire a plow truck, that snow is going to need to be pushed back. Mr. Maciaszczyk

asked what's in that spot now, where it says "drain" on the map. Mr. St. Pierre indicated a stone retaining wall, with a minor slope. Mr. Methot opined that he would like to see it at least away from the no-cut zone. Vice Chair Scott disagreed as it had already been cut and that doesn't require any additional trees to be removed. Mr. Fredette asked what would be wrong with that. Vice Chair Scott advised that it would be a long way to snow blow back. Mr. Fredette asked if this was for convenience or due to a genuine hardship. Chair Maloney asked Mr. St. Pierre if he had a better plan that shows where the pool, patio, rock wall, fence and hill exist. Mr. St. Pierre did not have a site plan but explained the rough location of each. Mr. Maciaszczyk asked "what's the downstream effect of disturbing that?" Mr. Snyder advised that the crushed stone foundation helps, it sheds off roof and goes underneath. Mr. Maciaszczyk opined that he wouldn't want the shed that close. Vice Chair Scott advised "this building is no bigger than this conference table, we're not talking about torrents of rain with runoff as an issue." Chair Maloney asked if there was any public comment.

Mr. Bolduc stated that he was a friend of the Davis, who had almost bought the same house, the drain shown on image is runoff for the entire roof of the house, bigger than the shed, all the water coming past where the shed would be. Mr. Youkstetter stated that he was struggling to see what runoff from the roof would be.

Mr. Snyder advised that a mitigating factor is the lawn, it was already cut years ago, its a good location. The hardship is the fact that zoning changed some time ago and put most of this in the 75' region, 25' no-cut already.

Mr. Methot asked if he felt his request was reasonable. Mr. Snyder stated that yes, all things considered, if he were here to ask us to let him cut trees in a significant prime wetland I would be more concerned. Mr. Maciaszczyk asked if there were any pictures of the clearing. Mr. St. Pierre stated that he did not bring any with him. Mr. Methot advised that you cannot see it from google either, it shows as a darkened area.

Chair Maloney requested that if there was no further comment, the members enter deliberations.

Mr. Maciaszczyk stated that it was in the public interest, agreeing that the spirit of the ordinance would not be impeded, the wetlands buffer had already been cleared. Substantial justice: it creates a wetlands buffer that isn't already there. Values: agree would not be diminished, a Reeds Ferry shed is not cheap. Do believe there is a hardship as a large portion falls into the buffer created after the fact and that the use is a reasonable one.

Mr. Fredette stated that while he struggled with not having a plan that shows all the improvements, and is unsure whether it is appropriate to have you sketching it, nobody is opposing it. "While I would like to see more detail, this is the one and only spot."

Ms. Cashman agreed that while she was having a hard time visioning where the pool, and rock wall were located and whether there was a more suitable place for the shed to be.

Vice Chair Scott stated that while he didn't believe it was the Zoning Board's job to find a place for the shed to be located, given the reasons Mr. Maciaszczyk so eloquently stated, he would vote yes on all these, this is only a 10'x16' shed, there is no cutting of trees, the infringement pre-exists, voting yes on all five.

Chair Maloney stated that Mr. St. Pierre had done a good job answering all the questions. "I don't like to see things in the wetlands, or no cut buffer zones, but it appears that this is probably the best place to put it on the property, its already cut." "I would vote yes on all five points."

Vice Chair Scott closed the hearing to public at 7:40 to enter discussions and made a motion to grant Mr. St. Pierre a variance from Article 5, Section 5.5.3 (Table 2) to permit building a 10'x17' shed building. Chair Maloney seconded his motion. With Mr. Fredette abstaining, 4 in favor; motion carried.

Chair Maloney read the 30-day Notice under RSA 677 advising Mr. St. Pierre that any party that disagrees with the decision can ask for a re-hearing in that time-frame, "so that you know." Chair Maloney stated that Mr. St. Pierre would receive a letter in a week or two.

Mr. St. Pierre departed the meeting at 7:42 pm.

d. Mr. Bredstein – 9 Derry Road

Vice Chair Scott read the Public Hearing Notice and invited Andrey Bredstein to the meeting table at 7:45 pm.

Chair Maloney advised that the five regular voting members will be herself, Vice Chair Scott, Mr. Fredette, Ms. Cashman and Mr. Maciaszczyk.

Mr. Bredstein presented that he moved to Chester in 2014, first living and operating his bread and baked goods business at 306 Lane Road, having a permit issued by then building inspector Roy. Mr. Bredstein moved to Israel in the Summer of 2016 and returned to find the owners selling the property. Mr. Bredstein found the place to rent with Mr. Gregsak who had a previous permit, which is no longer valid, started baking and selling his goods when the current building inspector informed him that he could not sell his bread without a variance due to residential zoning.

263 Mr. Bredstein summarized his application, adding to it, that nothing is going to be built
264 there, it is a trailer, with two axels, it can be moved anywhere, it is 7'x16' and can be
265 pulled with his Tahoe, about 4,000 pounds.
266

267 Mr. Bredstein added that it is common for downtown homes to have a store front. This
268 business is in among a stretch of businesses, the general store, the nail salon, across
269 from Stevens Hall, the Post Office, the restaurant, the telephone company is across
270 the street.
271

272 Mr. Bredstein added that Chester does not have a bakery, it is good for the town, so
273 that no one has to travel 15 miles, there are no additives, its good for health.
274

275 Mr. Bredstein cited that the hardship is to have someone else sell his bread, even next
276 door, costs him 55% of the cost, to him as a baker is unacceptable.
277

278 Chair Maloney stated that parking was her only concern.
279

280 Mr. Bredstein responded that for the first few weeks he was open, he found it to be a
281 convenient location, the general store exists in the parking lot and offers a wide
282 selection of items, no one has to drive to the trailer, they can walk, it does not increase
283 the traffic in any significant way. Chair Maloney asked if they backed into the road.
284 Mr. Bredstein responded that "no, you cannot." "You must go straight from the
285 driveway, to the right." Mr. Methot stated that he visited the store, bought some bread,
286 it took only two minutes, no one is shopping around, its not causing problems, the
287 selection is limited.
288

289 Vice Chair Scott asked about the volume of business. Mr. Bredstein expressed that it
290 was about 50 loaves per day, being open he hoped 3 days a week he expected to
291 generate 300 loaves per week.
292

293 Chair Maloney asked if there will be any additional signage other than what is on the
294 trailer?
295

296 Mr. Bredstein replied that he used to have an led sign but the building inspector told
297 him he could not have that or any flags. Mr. Bredstein added that the structure is a
298 vehicle that travels to farmers markets, "when it drives its like an ad."
299

300 Mr. Methot asked "does the zoning regulate anything on wheels?" "Are we going to
301 start?"
302

303 Vice Chair Scott agreed that he did not think we should, he is not living there, it is not a
304 home occupation, he bakes at home.
305

Mr. Snyder stated that while he wasn't a voting member tonight, he believed he had answered truthfully and very well, capturing the hardest part which is the hardship, the operation is an asset to the town.

Mr. Fredette stated that he agreed, it was a sensible location "I would support this wholeheartedly."

Mr. Method stated that safety wise other parties who had wanted picnic tables there, were turned down, people would have lingered, delivery trucks have made it hard to get out. Mr. Bredstein replied that the state does not allow this to be used as a restaurant or cafe.

It is a dangerous intersection. Mr. Bredstein stated that he had never witnessed anyone parking on the road, that would be unsafe. Mr. Maciaszczyk stated that he'd never had any issues parking along the rail where the pipes are.

Mr. Gesel who was present in the public, offered his support of Andrey.

Vice Chair Scott closed the hearing to the public at 8:10 pm for deliberations and voting.

Chair Maloney inquired of Mr. Snyder whether he thought this should have a site plan review. Mr. Snyder replied that if he was applying for a home business, then Planning Board would want to get the location of the trailer established and parking, but this site is so well known to us, "I don't think he has the options to improve or change anything there, it is not necessary."

Mr. Maciaszczyk stated that he had nothing to add.

Vice Chair Scott stated that he was very comfortable with all five satisfied, and was in support of this application.

Mr. Fredette agreed.

Ms. Cashman agreed.

Mr. Maciaszczyk stated that the letter says it all, "resoundingly agree."

Vice Chair Scott motioned to approve Mr. Bredstein's application for a variance of Article 5, Section 5.3.2 to permit him to run a retail baked goods store from a 7'x16' trailer parked on 9 Derry Road. Chair Maloney added "limited to what you're doing now." "If you expand, you come back." Mr. Bredstein replied that he was "not Bill Gates, and didn't want a baking empire, just good quality, he did not want to hire a bunch of employees, to be out of control, like another Hannaford, no plans for

expanding.” **Mr. Maciaszczyk seconded his motion. With 5 voting in favor; none opposed; motion carried.**

Chair Maloney read the 30-day appeal notice to the applicant who asked if he could start selling tomorrow am and thanked the board so much.

Mr. Bredstein departed the meeting at 8:15 pm.

Vice Chair Scott motioned to continue Mr. Fitzgerald's application as he was not present, to November 21, 2017. Mr. Snyder seconded his motion; with all in favor and none opposed; motion carried.

5. New Business

Chair Maloney welcomed Ms. Cashman as a new member to the Zoning Board as well as Ms. Hoijer as its new administrative assistant. Chair Maloney advised that board member Charlotte Lister had resigned on Friday. The board unanimously recognized and thanked Ms. Lister for all her years of service on the board.

6. Other Business

Vice Chair Scott announced that the Cannata subdivision plan has been approved by the Planning Board.

7. Adjournment

Mr. Methot motioned to adjourn the meeting. Vice Chair Scott seconded his motion, all in favor; motion carried. The meeting of the Chester Zoning Board was adjourned at 8:15 pm on Tuesday, October 17, 2017.

Respectfully submitted,

Nancy J. Hoijer, Recording Secretary