

1 **TOWN OF CHESTER**
2 **DEVELOPMENT REVIEW BOARD**
3 **DRAFT MINUTES**

4 *June 13, 2022*

5 **BOARD MEMBERS PRESENT:** Harry Goodell, Bob Greenfield, Scott MacDonald, Gary
6 Coger and Phil Perlah, at the Town Hall.

7 **STAFF PRESENT:** Zoning Administrator Preston Bristow and Recording Secretary Cathy
8 Hasbrouck at the Town Hall.

9 **CITIZENS PRESENT:** Scott Carroll, Julie Hance, Lee Gustafson, and Rick Cloud at Town
10 Hall.

11 **Call to Order**

12 3:45:00Bob Greenfield called the meeting to order at 6:00 PM. He led the group in the Pledge of
13 Allegiance and introduced the members of the Development Review Board and staff.

14 **Agenda Item 1 Review minutes of the May 26, 2022 meeting**

15 Harry Goodell moved to accept the minutes as written. Phil Perlah seconded the motion. Phil
16 Perlah had a correction to page 3 line 20, the name Scott Blair needed to be changed to Scott
17 MacDonald. A vote was taken, and the minutes were accepted as amended.

18 **Agenda Item 2 Citizen's comments**

19 Lee Gustafson explained he was attending the hearing on behalf of the Public Safety Building
20 Committee. Chair Bob Greenfield swore in four witnesses for the two planned hearings, Julie
21 Hance, Lee Gustafson, Richard Cloud and Scott Carroll.

22 **Agenda Item 3 Conditional Use hearing for addition to Benny's Sales and Service building,**
23 **Case #576.**

24 Chair Bob Greenfield asked if any of the board members had had any ex parte communication on
25 the issue. None did. He then asked if any board member had a conflict of interest to report.
26 None had.

27 06:34:00The following exhibits were entered in evidence.

28 The first document was a Notice of Hearing on June 13, 2022 for a Conditional Use hearing for
29 Benny's Motor Sports Sales and Service, Auto Repair and Towing Service dated May 20, 2022,
30 issued by Zoning Administrator Preston Bristow. Phil Perlah moved to accept the Notice as
31 Exhibit A. Harry Goodell seconded the motion. A vote was taken, and the Notice was accepted
32 as Exhibit A.

33 The second document was an Application for Hearing before the Development Review Board
34 from Benny's Sales and Service dated May 5, 2022. Phil Perlah moved to accept the Application
35 as Exhibit B. Harry Goodell seconded the motion. A vote was taken, and the Application was
36 accepted as Exhibit B.

37 The third document was a one-page sketch of one part of the proposed addition from Sentinel
38 Buildings indicating a 75-foot by 45-foot addition. Harry Goodell moved to accept the narrative

1 as Exhibit C. Phil Perlah seconded the motion. A vote was taken, and the narrative was
2 accepted as Exhibit C.

3 The fourth document was a list of six abutters who were notified of the hearing. Harry Goodell
4 moved to accept the list as Exhibit D. Phil Perlah seconded the motion. A vote was taken, and
5 the list was accepted as Exhibit D.

6 The fifth document was a photograph of the two buildings which would be joined by one of the
7 proposed additions. Harry Goodell moved to accept the photo as Exhibit E. Phil Perlah
8 seconded the motion. A vote was taken, and the photo was accepted as Exhibit E.

9 The sixth document was a one-page survey drawn by Gary Rapanotti, indicating the edge of the
10 flood plain and showing the proposed placement of the two additions. Harry Goodell moved to
11 accept the site plan as Exhibit F. Phil Perlah seconded the motion. A vote was taken, and the
12 site plan was accepted as Exhibit F.

13 The board members discussed the analysis of the application presented by Preston Bristow, the
14 Zoning Administrator. As in past hearings, this document was not entered into evidence, as it
15 was not prepared or submitted by the applicant. Phil Perlah reminded the members that the
16 Development Review Board could disagree with the Zoning Administrator's analysis.

17 10:14Preston Bristow recapped the history of the application. Scott Carroll is a manager at
18 Benny's and was seeking a greater ownership interest in the property. He applied for a permit to
19 make additions to the buildings. In receiving the application Preston noticed the property is
20 partly in a flood plain and there was no documentation of the flood plain status. He determined
21 the proposed additions would require a conditional use hearing. Scott Carroll agreed to the
22 conditional use hearing and presented a site plan showing the edge of the flood plain, its
23 elevation, the proposed additions and contour lines at one-foot intervals for the parcel.

24 Scott Carroll said the business needed more space and had decided to remain in Chester instead
25 of moving part or all of the business to larger quarters elsewhere. The project would increase
26 Scott's share of ownership in the company.

27 Preston Bristow recapped the discussion which took place at the site visit. The additions would
28 get more inventory and repair space under cover. They could provide space to store tow vehicles
29 under cover during snowstorms. Scott Carroll said the buildings could also provide additional
30 security for their inventory and customer vehicles.

31 Phil Perlah asked whether any of the parking area in the lower field was in flood plain. Scott
32 Carroll said the field had not been surveyed, but he believed the furthest corner of the field was
33 in flood plain. Phil Perlah confirmed that the cars stored in the field are not in the floodplain.

34 Bob Greenfield asked about the status of the vehicles. Scott Carroll said they were mainly
35 vehicles towed in after an accident and were waiting for action by the insurance company.
36 Preston Bristow stated he (Preston) had been a flood plain administrator in the past, though he
37 had allowed his certification to lapse. He said the big concern with items stored in a flood plain
38 was that they would move downstream. FEMA did not consider cars and trucks as likely to be
39 swept away by a flood. There is no concern about vehicles stored in floodplains. Scott Carroll
40 said Benny's did not have a problem with flooding in 2011 (during Tropical Storm Irene).

41 14:19Bob Greenfield read from the document prepared by the Zoning Administrator about this
42 application. He said the application will have no significant impact on water, sewer, fire or

1 police coverage. Bob noted that there were no letters from the Fire or Police chiefs on this topic.
2 Preston Bristow said he did not ask them for their input, but Chester’s Police Chief was present
3 at the hearing and could be asked.

4 Bob Greenfield read the response to the character of area affected from the document, “This site
5 has been in commercial use since before the adoption of zoning and is consistent with
6 surrounding commercial uses.” With regard to traffic on roads and highways in the vicinity, Bob
7 stated that Elm Street does not get a lot of traffic.

8 Bob Greenfield read the next paragraph from the staff report:

9 “The property is located partly within the Williams River floodplain. However, the site operates
10 on fill that predates the adoption of floodplain regulations. Surveyor Gary Rapanotti has
11 determined that the existing and proposed buildings are on land that is above base flood
12 elevation. The field across the Williams River from this site should provide ample release for
13 floodwaters.”

14 Bob Greenfield noted there was no planned utilization of renewable energy resources.

15 Bob Greenfield, Harry Goodell and Preston Bristow discussed the fact that some of the existing
16 buildings did not meet the current zoning setback standards, but the proposed additions do not
17 further intrude into the setbacks.

18 Bob Greenfield noted that off-street parking is not an issue. There is no landscape, sign or
19 fencing requirement to be met.

20 Scott MacDonald asked about the house on the south end of Elm Street. Preston Bristow said the
21 house was part of the Benny’s Power property. For that reason, he did not include it in the
22 inventory of nearby uses. Harry Goodell asked if site plans in the future could include the entire
23 parcel. Preston agreed to do that.

24 Preston said the house was originally built as an office for Mackenzie Construction, who built
25 the original garage building. Harry Goodell said the office building was moved further from the
26 garage and then converted into a residence. Preston said Benny’s Power owns all the buildings
27 and wondered whether he would object to his rental house being too close to the expanded
28 garage buildings.

29 Bob Greenfield read the Performance Standards entry on the staff report (item g), noting that
30 there were no changes that would affect the performance standards. Harry Goodell pointed out
31 the propane tanks would have to be moved. Preston Bristow said he had discussed underground
32 storage tanks on the property with Scott Carroll who said he was not aware of any. Preston said
33 he imagined there were many safety requirements to be met for the fluids used by a garage.
34 Scott Carroll agreed and said the buildings were heated with waste oil.

35 There being no further questions from the board or audience, Harry Goodell moved to close the
36 hearing. Phil Perlah seconded the motion. A vote was taken, and the hearing was closed.

37 **Agenda Item 4 Conditional Use hearing for fence at Chester Public Safety building, Case**
38 **#577.**

39 22:18 Bob Greenfield began by accepting the exhibits presented into evidence.

40 The first document was a Notice of Hearing on June 13, 2022 for a Conditional Use hearing to
41 amend a Conditional Use permit for the property located at 130 Pleasant Street. Phil Perlah

1 moved to accept the Notice as Exhibit A. Harry Goodell seconded the motion. A vote was
2 taken, and the Notice was accepted as Exhibit A.

3 The second document was an Application for Hearing before the Development Review Board
4 dated May 10, 2022 from the Town of Chester. Phil Perlah moved to accept the Application as
5 Exhibit B. Harry Goodell seconded the motion. A vote was taken, and the Application was
6 accepted as Exhibit B.

7 The third document was a photograph of a black chain link fence, an example of the fencing
8 proposed in the application. Harry Goodell moved to accept the photo as Exhibit C. Phil Perlah
9 seconded the motion. A vote was taken, and the photo was accepted as Exhibit C.

10 The fourth exhibit was a quotation for the proposed project from Springfield Fence Company
11 dated 4/18/2022. The quotation was for 400 feet of chain link fence at a cost of \$14,150. Phil
12 Perlah moved to accept the quote as Exhibit D. Harry Goodell seconded the motion. A vote was
13 taken, and the quote was accepted as exhibit D.

14 The fifth document was a list of six abutters who were notified of the hearing. Harry Goodell
15 moved to accept the list as Exhibit E. Phil Perlah seconded the motion. A vote was taken, and
16 the list was accepted as Exhibit E.

17 The sixth document was a satellite photo of the parcel before the building was built. Harry
18 Goodell moved to accept the photo as Exhibit E. Phil Perlah seconded the motion. A vote was
19 taken, and the photo was accepted as Exhibit E.

20 Lee Gustafson, as the chair of the Public Safety building committee, explained that the fence was
21 proposed for purposes of safety, to prevent animals, pets and children from entering the property
22 in a dangerous manner. The goal was to funnel foot traffic to the front of the lot where it would
23 be easier to see. Training exercised take place at the back of the property and the parking area is
24 used by fire fighters responding to emergency calls. The color black was chosen to emphasize
25 the intent of directing foot traffic in a safe manner.

26 Bob Greenfield asked if there was a split-rail fence on the other side of the Public Safety
27 building. Lee Gustafson said there was a stone wall, numerous trees, and a significant slope.
28 There were bollards protecting the propane tanks. On the west side of the building where the
29 fence will be installed, there was a rail lining the parking lot.

30 Julie Hance said that it was stated there would be no fence on the property during the original
31 hearing and the permit was issued with that condition. Since the fence is now needed to protect
32 the public, the town came to the DRB to amend the permit.

33 Harry Goodell said he wanted to be sure everyone understood that in approving the fence, the
34 DRB was not approving the \$14,000 price tag. It was agreed that the cost of the fence was the
35 Selectboard's issue.

36 There being no further questions, Harry Goodell moved to close the hearing. Phil Perlah
37 seconded the motion. A vote was taken, and the hearing was closed.

38 The two hearings being dispatched in near-record time, the board decided to move to deliberative
39 session while waiting for Peter Hudkins who was expected at 6:30 PM to discuss a proposal from
40 the Planning Commission.

1 **Agenda Item 5. Discuss adaptive re-use and legacy use bylaw amendments with Peter**
2 **Hudkins and other members of the Planning Commission.**

3 Peter arrived as scheduled and the board returned from Deliberative Session at 6:33. Cathy
4 Hasbrouck, another member of the Planning Commission, joined the discussion.

5 Peter explained the concept of legacy use. A legacy use is a use that was in place in the past,
6 sometimes the distant past. In that time the use was not a problem for the abutters. The use was
7 discontinued at some point and the zoning district no longer allows that use. Given that the use
8 was not a problem in the past a legacy use could be allowed again after a Conditional Use
9 hearing which gave the abutters and other citizens the right to voice their opinions on the
10 proposal.

11 Peter then explained the concept of adaptive re-use. Adaptive re-use is applied to structures.
12 The original use for the building may no longer be viable and the building may not be suitable
13 for any of the uses currently allowed in the district. Adaptive re-use would allow one or more
14 uses for the building which are not otherwise allowed in the zoning district. Again, a conditional
15 use hearing would be held to give the abutters and other neighbors a chance to voice their
16 opinions.

17 Peter acknowledged the task of the Development Review Board would not simply be looking at
18 a list of standards and checking them off one by one. He discussed the parcel in Gassetts
19 belonging to Roy Spaulding. It had been the site of a restaurant, a gun shop, and a real estate
20 office. In the past, planners have made the parcel non-commercial. It isn't a large area, and it is
21 fairly isolated. Allowing commercial use of the area was seen as spot zoning. The commercial
22 uses could be continued despite the non-commercial zoning as long as the businesses stayed
23 open, but they could not expand or change to another commercial use. Finding uses for
24 commercial building left on those parcels can be difficult, leaving the buildings vacant. Peter
25 cited two other businesses in Chester, a log house construction business, and a motel – diner
26 combination, located in now residential districts. The buildings left behind are difficult to adapt
27 to residential uses.

28 Scott MacDonald said the two proposed amendments sounded like a way to be business friendly.

29 Phil Perlah asked about the change made in 2021 to Section 3.19.D.1B, to allow a
30 nonconforming use to be resumed after a 5-year period instead of a 2-year period. He wondered
31 why that change was not reflected in the amended bylaw. Preston Bristow explained that the
32 change was an interim bylaw amendment, not a permanent part of the bylaw.

33 Phil asked what the meaning of the word “moved” meant in 3.19.D.2 where it said, “A Legacy
34 Use may be re-established, expanded, extended, moved or enlarged only following conditional
35 use review. . .”. He wondered whether the use was being physically moved. Peter Hudkins said
36 the use could not move to another parcel where it had not existed before. The group decided to
37 strike the word “moved”.

38 Phil asked about the meaning of the term “special use buildings”. Peter Hudkins agreed with
39 Phil that determining whether the building was a special use building was up to the Development
40 Review Board. He said an early draft of the amendment had listed examples of special use
41 buildings: a church, a school, etc. Peter said he and Cathy Hasbrouck had discussed the list and
42 decided the examples were more confusing than helpful and the DRB could determine whether
43 the building had once had a special use without a list.

1 Finally, Phil asked about section 3.d.ii, which requires following the U.S. Secretary of the
2 Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Phil
3 wanted to add that these standards should be applied whether the building was eligible to be
4 designated an Historic Building or not. Phil wanted to avoid forcing a building owner to go
5 through the process of getting the building designated historic before it could be considered for
6 adaptive re-use.

7 Scott MacDonald asked about the possible exemption to surface water protection setbacks
8 mentioned in section 3.d.iii. Preston Bristow explained that if an existing building was already
9 in violation of the zoning district dimensional standards or the surface water setbacks (Section
10 3.29) it could still be considered for adaptive re-use. Scott MacDonald asked if the DRB is being
11 asked to consider the safety of the river. Peter Hudkins said the DRB is asked to consider the
12 river's safety now. Scott MacDonald asked Preston Bristow whether he would be doing the
13 same type of research for an adaptive re-use conditional use hearing that he does for any other
14 conditional use hearing or if the DRB members would be expected to do that research on their
15 own. He was concerned that there would be more of a burden placed on the DRB members to
16 research issues such as surface water protection for an adaptive re-use application than for a
17 normal conditional use application.

18 Preston Bristow said an earlier draft of the amendment had the words to the effect that the
19 burden of proof is on the applicant. The Planning Commission thought those words were too
20 intimidating and asked to have them removed from the draft. Phil Perlah said the burden of proof
21 is always on the applicant.

22 Bob Greenfield asked whether DRB members are liable for any damage that occurs as a result of
23 a permit they issued. This issue was discussed without a clear conclusion. Bob Greenfield said
24 he was concerned about allowing a waiver and having the decision turns out badly, i.e., the river
25 floods and pollution is released from the building. Peter Hudkins, who has been the chair of the
26 body that preceded the DRB, said the DRB members can always ask for more information from
27 an applicant if there is an aspect of the application they are not comfortable with. The DRB is
28 not obliged to approve any application.

29 Peter Hudkins asked Phil Perlah if he saw any other problems with the proposed amendments.
30 Phil said the DRB has more or less used a checklist for their decisions in the past. There is not
31 now any type of architectural review in the Chester bylaw. There are some standards for the
32 village center area. He said he liked the two concepts, legacy use and adaptive reuse. He
33 thought Chester should try it and if the concepts prove to be too contentious, the Planning
34 Commission can modify them. Gary Coger and Bob Greenfield agreed.

35 Scott MacDonald wondered why the two issues could not be dealt with via zoning. Peter
36 Hudkins explained that regulations addressing individual properties would be considered spot
37 zoning. Scott asked if the proposed amendments would make the Zoning Administrator job any
38 easier. Preston said he was the kind of person who hates to say no to an application. There had
39 been a long period when zoning was supporting purely residential areas. This is changing to a
40 more mixed-use environment. These amendments support a mixed-use environment.

41 Peter also asked the DRB for their ideas about dwellings. The definition of dwelling applies to
42 mobile homes as well as manufactured homes and traditional stick-built homes. Mobile homes
43 have a definition which includes a minimum specific size. Mobile home parks also have a

1 specific definition and setback standards. These definitions and standards do not fit tiny homes
2 very well.

3 Phil Perlah said investors are currently buying mobile home parks. The tenants of the parks own
4 the mobile homes and rent the land. Phil said the mobility of the mobile home is mostly
5 theoretical. It is very difficult to actually move a mobile home. Therefore, the residents of the
6 parks are more or less stuck with the parcel of land they are renting under their mobile home. If
7 the park owner raises the rent for the land, it is very difficult to move their home to another park
8 with a lower rent. At the same time Phil said he has seen huge structures jacked up and moved
9 miles to a new site. Mobile homes are not intrinsically mobile and permanent structures are not
10 always permanent.

11 Scott MacDonald read a legal definition for mobile home to the DRB members. Phil Perlah said
12 perhaps the problem with the mobile home definition is the size specification. Peter agreed.
13 Peter thought that a tiny house is the latest version of the Vermont tradition of building your own
14 home in stages, beginning with living in a roofed over foundation.

15 Peter mentioned that the Catholic Church in Chester is thinking about have a tiny house village
16 on the large parcel they own on South Main Street. There is municipal water and sewer on two
17 sides of the property. Peter and Preston agreed that mobile home and tiny house parks need to be
18 on municipal sewer. It is too expensive to build a private septic system for a group of homes.

19 This concluded the discussion with Peter Hudkins.

20 Preston Bristow said there would be two subdivisions to hear on June 27 and another hearing on
21 July 11.

22 Harry Goodell moved to adjourn the meeting. Gary Coger seconded the motion. A vote was
23 taken, and the meeting was adjourned at 7:32.