



**ZONING BOARD OF APPEALS
Special Meeting – September 8, 2022**

Chairperson Barbara Kearney called the meeting to order at 7:00 pm.

Attendance:

Chairperson Barbara Kearney, Vice Chairman Michael Hough, James Batsford, Victor Greco, Dr. Bryan Bilfield, Zoning Administrator Jeremy Little and Mindy Conway (Acting Secretary). Mary Clark was absent.

Chairperson Kearney welcomed everyone to the meeting and reminded the public of the rules of the Board and that everyone would have a chance to be heard during the public sections of the meetings.

Old Business and Public Hearings:

#498-V: C. Thomas Luciano and Darlene Luciano are (1) requesting multiple setback variances for construction of structures on proposed Lot 1 and Lot 2 and (2) seeking relief from the 8.5 acres per Principal Building Intensity requirement for a proposed two-lot subdivision, according to Section 4.03 and Section 7.01(B)(4) of the Town of Chester Zoning Local Law. The proposed two-lot subdivision will result in the creation of Lot 1 consisting of 4.56 acres and Lot 2 consisting of 6.31 acres. Property is located at Carl Turner Road currently consisting of 10.87 acres, identified by Tax Map Parcel #: 87.2-1-1.1, in Zoning District Rural Use. ****PUBLIC HEARING remained opened from 04/27/2021 ZBA Meeting.****

Chairperson Kearney stated that **Variance Application #498-V: C. Thomas Luciano and Darlene Luciano** will remain open at the request of the applicant.

#509-V: Word of Life Fellowship, Inc. are requesting multiple area variances from requirements of Section 7.04 of the Town of Chester Zoning Local Law, in order to install a 53.16 square ft. internally illuminated free-standing monument sign to include a digital display to notify motorists of community events and important information for students. Property is located at 8072 State Route 9, identified by Tax Map Parcel #: 36.-1-20, in Zoning District Hamlet. ****PUBLIC HEARING remained opened from 12/28/2021 ZBA Meeting.****

Chairperson Kearney read the following letter from Thomas Wheeler, AJ Signs:

“Jeremy, on behalf of Word of Life Institute please accept this official notification that we would like to withdraw our previously submitted variance application #509-V for the digital freestanding sign. SBL # 36-1-20.”

New Business and Public Hearings:

#523-V: Bernardo Atehortua Clavijo is seeking relief from the 45,000 square ft. minimum requirement for an agricultural use involving the keeping of livestock (chickens) for personal use (After-the-Fact), according to Section 7.19(A)(1) of the Town of Chester Zoning Local Law. Property currently consists of .92 acres (40,075.2 sq. ft.) and is located at 27 Middle Agard Road, identified by Tax Map Parcel #: 35.2-1-28, in Zoning District Moderate Intensity.

Dr. Bryan Bilfield entered the meeting at 7:03 pm.

Bernardo Atehortua Clavijo commented that he used to live in Yonkers, NY and moved here about three (3) years ago. He loves this place so much and loves his chickens. Bernardo thanked the Board for listening to him and asked for their help in letting him keep his chickens. He said he tries to work with his neighbors, and it is very important to him.

Chairperson Kearney commented that the only written correspondence that they have received was from Nicole and John Howe and they are in favor of the variance.

Chairperson Kearney asked if the Board had any questions for Bernardo.

James Batsford asked Bernardo if he planned on raising any other livestock besides chickens. Bernardo replied chickens and ducks.

Victor Greco asked Bernardo if the chickens were in the backyard. Bernardo replied yes sir. Victor asked what was behind it. Bernardo replied the street.

Michael Hough asked Bernardo if he raises the chickens for eggs. Bernardo said yes. Michael Hough asked Bernardo what he does with the manure. Bernardo commented that he puts it in plastic bins and mixes it with soil and puts it in his garden. Michael Hough asked if the chickens were in a coop. Bernardo said yes, they are in a coop.

Dr. Bilfield asked if there was a rooster to guard the hen house. Bernardo said yes, he keeps him in the shed at night, so nobody hears. Bernardo commented that he has 9 chickens, 1 rooster and 4 ducks.

James Batsford asked there were regulations for animal waste near a well. Jeremy Little replied that under Table 1 of the Department of Health Regulations it states that storage areas for manure piles must be 200 ft away but there is a foot note there that states that water wells may be located 100 ft for a temporary 30 days or less manure piles/staging areas that are controlled to preclude contamination of surface or groundwater or 100 ft. from otherwise managed piles that are controlled pursuant to a regulation in a manner that prevents contamination of surface or groundwater. Michael Hough asked if we consider the poop a manure pile because he places it in

plastic bins. Jeremy Little commented that as long as it is contained then that regulation does not apply.

Chairperson Kearney and James Batsford thanked Jeremy for the clarification.

Chairperson Kearney asked the Board if they had any other questions for Bernardo.

Chairperson Kearney **opened** the Public Hearing for **Variance Application #523-V: Bernardo Atehortua Clavijo** at 7:12 pm.

Chairperson Kearney asked if there was anyone from the public who would like to speak.

Hilda Vanderwarker has no problem with the chickens he already has but feels that he should not have more than that in her area. It is not an agricultural area that provides for livestock, chickens and such. What he has does not bother her at all. She just feels that it should be any bigger than it is.

Arlene Frasier lives next door to Bernardo and it's not the idea that he has chickens it is that he has a rooster that she hears every day, morning, noon and night. He also has a pea hen that screeches out front when the rooster crows and they talk back and forth all day but that doesn't bother her but when she is out in the back yard it drives her crazy. She doesn't have any qualms about him having the chickens, but get rid of the rooster. She has a camper trailer out back and has stored it there for three years and never had a problem with mice or anything and this year it is right full of mice. The only problem she has is with the pea hen and the rooster. He treats the pea hen like a little kid and she does have a problem with mice.

Hilda Vanderwarker commented that they do have bears in the area now and they there is also a coyote and she is just concerned that they might get his chickens.

Arlene Frasier commented that she is concerned that it is drawing them in, because there are coyotes over in the sand pit that got her cat. She doesn't have any problems with Bernardo, it is just the noise.

Chairperson Kearney asked if there was anyone else on this variance.

Hearing none.

On a motion by James Batsford, seconded by Victor Greco, the Public Hearing **closed** for **Variance Application #523-V: Bernardo Atehortua Clavijo** at 7:17 pm.

Chairperson Kearney commented that she would like to limit him to what he has and to be conscious of the smell.

Chairperson Kearney read the following questions from the Short Environmental Assessment Form, Part 2 Impact Assessment. The Board all agreed "No, or small impact may occur".

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Chairperson Kearney said that no further discussion needed to occur since “No, or small impact may occur”.

Chairperson Kearney read the following:

NOTICE OF DETERMINATION OF SIGNIFICANCE AND NEGATIVE DECLARATION IN CONNECTION WITH VARIANCE APPLICATION #523-V, BERNARDO ATEHORTUA CLAVIJO

WHEREAS, the Town of Chester Zoning Board of Appeals (“ZBA”) has received an Application from Bernardo Atehortua Clavijo (the “Applicant”) for an agricultural use for the keeping of livestock (chickens, rooster and ducks) for personal use (After-the-Fact) on property located at 27 Middle Agard Road, identified by Tax Map Parcel #: 35.2-1-28 (the “Project”); and

WHEREAS, the ZBA has identified the Project to be an Unlisted action for purposes of State Environmental Quality Review Act (“SEQRA”) review pursuant to 6 NYCRR 617; and

WHEREAS, the ZBA has decided to conduct an uncoordinated review as a Lead Agency for the Project; and

WHEREAS, the ZBA has received a Short Environmental Assessment Form (“SEAF”) for the Project with Part 1 of the SEAF completed by the Applicants; and

WHEREAS, SEQRA requires that the ZBA undertake a thorough review of the potentially significant adverse environmental impacts prior to making its determination with respect to the Project; and

WHEREAS, the ZBA has reviewed Parts 1, 2 and 3 of the SEAF and all other supporting information submitted to the ZBA by the Applicant;

NOW, THEREFORE BE IT

RESOLVED, that in accordance with SEQRA, the ZBA, as a Lead Agency, has determined that the Project will not result in any significant adverse environmental impacts and hereby issues a Negative Declaration pursuant to the requirements of SEQRA and directs the ZBA Chairperson to complete and sign Part 3 of the SEAF as required for the Determination of Significance, confirming the foregoing Negative Declaration.

MOTION FOR ISSUANCE OF NOTICE OF DETERMINATION OF SIGNIFICANCE AND NEGATIVE DECLARATION IN CONNECTION WITH VARIANCE APPLICATION #523-V, BERNARDO ATEHORTUA CLAVIJO,

Introduced by Michael Hough who moved for its adoption, seconded by James Batsford:

Duly adopted this 8th day of September, 2022 by the following vote:

AYES:	Chairperson Barbara Kearney Michael Hough James Batsford Bryan Bilfield
NOES:	None.
ABSTAINED:	None.
ABSENT:	Mary Clark

Chairperson Kearney read the following letter from Nicole and John Howe:

“This letter is in regards to the recent notice that we received on property of 27 Middle Agard Road, owned by Bernardo Clavijo.

A couple of months ago I had visited the town hall and had a casual conversation asking if anything could be done about an ongoing issue we were having with Mr. Clavijo cats, and had mentioned that he also had farm animals. In that conversation I had asked about the animals simply because we wanted to have leverage when we spoke to him about the cats, we wanted nothing to be done with the ducks, chickens, ect, but was told that he would need to have a permit to keep them. After we recently had a conversation with Bernardo we have come to realize that these aren’t just farm animals to him. Yes, they do provide food on this table, but they are more like family. Yes, that may sound silly as it

does as I am writing this! But on any given day, no matter the time of day you can find him outside sitting in the pen talking to the animals, showing them love and affection, the same love and affection we show our pets, but yes it is typically dogs and cats, not ducks and chickens!! As we all come to grips in the world we are living in today, the hate among us, the senseless shootings, if Bernardo finds comfort in his animals I say why not.

We completely understand that the Town has rules and regulations for everything, but everyone needs to be on the same page. However, if you are going to make Bernardo file for such permits then the same should be true with everyone within the town. I hope that you will find it in your hearts and allow him to keep his animals and NOT have to spend the money on the permits.

If you should have any questions or concerns, we would be more than happy to discuss them further.”

Chairperson Kearney asked if there was any more discussion on Bernardo and his 9 chickens, 1 rooster and 4 ducks.

Victor Greco asked if they make a lot of noise. Arlene Frasier commented just the rooster. Victor Greco asked what time does he wake you up. Bernardo said that he lets him out around 7:30 to 8:00 am. Arlene Frasier said she has no issues with what he already has, she just feels no more is necessary.

Victor Greco read the following:

RESOLUTION FOR VARIANCE APPLICATION #523-V

WHEREAS, Bernardo Atehortua Clavijo (the “Applicant(s)”) is proposing an agricultural use for the keeping of livestock (chickens, rooster and ducks) for personal use (After-the-Fact) on property currently consisting of .92 acres (40,075.2 sq. ft.) located at 27 Middle Agard Road, identified by Tax Map Parcel Number 35.2-1-28, in Zoning District Moderate Intensity (the “Project”) and have applied to the Town of Chester Zoning Board of Appeals (“ZBA”) for relief from the 45,000 square ft. minimum requirement of Section 7.19(A)(1) of the Town of Chester Zoning Local Law for the keeping of livestock; and

WHEREAS, the ZBA opened and held a properly-noticed Public Hearing on Variance Application #523-V on September 08, 2022 and closed the public hearing on September 08, 2022; and

WHEREAS, Site Plan Review approval by the Planning Board will be required for the Project; and

WHEREAS, the ZBA has reviewed, considered and deliberated about the variance requested and the written and verbal comments received in connection with the variance application; and

WHEREAS, the ZBA has classified the Project as an Unlisted Action pursuant to the New York State Environmental Quality Review Act (“SEQRA”) and its implementing regulations in 6 NYCRR 617 and determined to conduct an uncoordinated review; and

WHEREAS, the ZBA performing the duties as Lead Agency has prepared and reviewed the records of SEQRA, Short Environmental Assessment for the Project; and

WHEREAS, the ZBA has issued a Notice of Determination of Significance and Negative Declaration concluding that the Project will not create any significant adverse environmental impacts and that a draft Environmental Impact Statement will not be prepared;

NOW, THEREFORE, BE IT

RESOLVED, that the ZBA hereby determines that the Application meets the requirements set forth in Section 7.19(A)(1) of the Town of Chester Zoning Local Law for issuance of an area variance as further discussed below:

1. An undesirable change will not be produced in the character of the neighborhood nor be a detriment to nearby properties, so long as the Applicant continues with what he is currently doing.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue, other than area variances. The Applicant currently has .92 acres and is seeking relief from the 45,000 square ft. minimum requirement.
3. The requested area variance is substantial.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The alleged difficulty is self-created.
6. The proposed variance is the minimum variance that is necessary and adequate to achieve the Applicant's goal and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
7. The benefit to the Applicant if the variance is granted would outweigh the potential detriment to the health, safety and welfare of the neighborhood or community.

FURTHER RESOLVED, that the ZBA therefore grants the requested area variance subject to the following conditions:

- A. The Applicant is to only have (1) Rooster, (9) Chickens and (4) Ducks.
- B. Manure is to continue being kept in the plastic containers.

Duly adopted this 8th day of September, 2022 by the following vote:

AYES: Chairperson Barbara Kearney

Michael Hough
James Batsford
Victor Greco
Bryan Bilfield
NOES: None.
ABSTAIN: None.
ABSENT: Mary Clark

#524-V: The Cobb Family Residence Trust is requesting an 18 ft. shoreline setback variance, according to Section 7.01(B)(4) of the Town of Chester Zoning Local Law, in order to construct an 11'-4 1/4" x 12'-8 1/4" Pavilion (After-the-Fact). Property is currently located at 683 Atateka Drive, identified by Tax Map Parcel #: 120.15-1-18, in Zoning District Moderate Intensity.

Leigh Stevenson Cobb said that the project started with a visit to Jeremy Little during covid. My son wanted to build a pavilion, and Jeremy Little said if you build something under 100 sq ft. you will be fine. She took that to mean that she didn't need a permit. In retrospect that was foolish, and she should have asked more questions. She intentional order a 9 ft. by 11 ft. pavilion kit. Had she filed a permit it would have been clear to Jeremy Little that it was bigger than 100 sq. ft. because of the overhang. She apologized for the after-the-fact and not going through the appropriate channels.

Chairperson Kearney asked about the size of the base. Leigh Cobb replied that the base is 9'x11'. It was a flat area and they did not have to cut any trees down.

Chairperson Kearney commented that the Warren County Planning Department referred it to the Zoning Board of Appeals.

Michael Hough asked if she shared the pavilion with her neighbors. Leigh replied yes.

Chairperson Kearney asked the Board if they had any other questions.

Chairperson Kearney **opened** the Public Hearing for **Variance Application #524-V: The Cobb Family Residence Trust** at 7:43 pm.

Chairperson Kearney asked if there was anyone from the public who would like to speak.

John Peeling from Atateka Drive said that they have no objections to the granting of this variance, it's not visible from his property and barely visible from the lake (Friends Lake). John Peeling thanked the Board for allowing him to speak.

On a motion by Michael Hough, seconded by Victor Greco, the Public Hearing **closed** for **Variance Application #524-V: The Cobb Family Residence Trust** at 7:17 pm.

James Batsford read the following:

RESOLUTION FOR VARIANCE APPLICATION #524-V

WHEREAS, The Cobb Family Residence Trust (the “Applicant(s)”) is proposing to construct a 11’-4 ¼” x 12’-8 ¼” Pavilion (After-the-Fact) on property located at 683 Atateka Drive, identified by Tax Map Parcel Number 120.15-1-18, in Zoning District Moderate Intensity (the “Project”) and have applied to the Town of Chester Zoning Board of Appeals (“ZBA”) for an 18 ft. shoreline setback variance from requirements of Section 7.01(B)(4) of the Town of Chester Zoning Local Law; and

WHEREAS, the ZBA has classified the project as a Type II Action, requiring no further review under SEQRA; and

WHEREAS, as required by General Municipal Law Section 239-m, the Variance Application was referred to the Warren County Planning Department for its review and the County has determined that there was No County Impact; and

WHEREAS, the ZBA opened and held a properly-noticed Public Hearing on Variance Application #524-V on August 24, 2022 and closed the public hearing on September 08, 2022; and

WHEREAS, a full record of the Decision will be referred to the Adirondack Park Agency (“Agency”) as required by Section 10.08(E)(2) of the Town of Chester Zoning Local Law; and

WHEREAS, the variance does not take effect until thirty (30) days from the Agency’s receipt of the Board’s complete record of the Decision and if within such thirty (30) day period, the Agency determines that such variance involves the provisions of the land use and development plan including any shoreline restriction and was not based upon the appropriate statutory basis, the Agency may reverse the local determination to grant the variance; and

WHEREAS, the ZBA has reviewed, considered and deliberated about the variance requested and the written and verbal comments received in connection with the variance application;

NOW, THEREFORE, BE IT

RESOLVED, that the ZBA hereby determines that the Application meets the requirements set forth in Section 7.01(B)(4) of the Town of Chester Zoning Local Law for issuance of an area variance as further discussed below:

1. An undesirable change will not be produced in the character of the neighborhood or/nor be a detriment to nearby properties.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue, other than area variances.
3. The requested area variance is substantial.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The alleged difficulty is self-created.
6. The proposed variance is/is not the minimum variance that is necessary and adequate to achieve the Applicant's goal and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
7. The benefit to the Applicant if the variance is granted would outweigh the potential detriment to the health, safety and welfare of the neighborhood or community.

FURTHER RESOLVED, that the ZBA therefore grants the requested area variance with no condition(s) imposed.

Introduce by James Batsford, seconded by Dr. Bilfield:

Duly adopted this 8th day of September, 2022 by the following vote:

AYES:	Chairperson Barbara Kearney
	Michael Hough
	James Batsford
	Victor Greco
	Bryan Bilfield
NOES:	None.
ABSTAIN:	None.
ABSENT:	Mary Clark

Old Business: None.

Minutes:

On a motion made by James Batsford, seconded by Michael Hough to approve minutes from Regular Meeting July 27, 2022 and Regular Meeting August 24, 2022.

AYE 3
 NO 0
 Abstain: Victor Greco, Dr. Bryan Bilfield

Motion Carried 3-0.

Correspondence:

- Zoning Administrator's Activity Report for July and August 2022;

- Warren County Planning Department Project Review and Referral Form, reviewed by Department on August 08, 2022 for #524-V. Form received by the Zoning Office on August 09, 2022;
- Letter from Russell Ruehl dated August 17, 2022 and received by the Zoning Office on August 17, 2022 RE: Variance Applications #522, #523-V and #524-V;
- Letter from Nicole and John Howe received by the Zoning Office on August 18, 2022 RE: Variance Application #523-V;
- Letter from Thomas Wheeler (AJ Signs) received by the Zoning Office on July 28, 2022 RE: Withdrawal of Variance Application #509-V.

Public Privilege:

None.

Board Privilege:

Discussion took place about ending or canceling meetings before the meeting ends.

Chairperson Kearney asked Jeremy Little if there would be a Zoning Board of Appeals Meeting on September 28th. Jeremy Little said that today is the deadline, and he has not received any applications so there will not be a regular meeting in September.

Adjournment:

On a motion by James Batsford, seconded by Dr. Bilfield, the meeting adjourned at 7:55 pm.

Respectfully submitted,

Mindy Conway
Acting Secretary