



**MINUTES OF MEETING  
TOWN OF CHESTER ZONING BOARD OF APPEALS  
Regular Meeting  
Tuesday, August 25, 2020**

Chairman John MacMillen called the meeting to order at 7:00 p.m.

**ATTENDANCE:**

Chairman John MacMillen, Barbara Kearney (Via Zoom), Mary Clark, Michael Hough, Jack D. Bartlett (Secretary), Jeremy Little (Zoning Administrator) and Mark Schachner (Attorney for the Town). Absent was Arnold Jensen.

**OLD BUSINESS AND PUBLIC HEARINGS:**

**#481-V:** Anthony F. and Linda T. Taverni are requesting a 13'-9" side yard setback variance and 10' rear yard setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to replace a storage shed that was demolished pursuant to issued permits with a structure of same size (232 sf. ±) in existing footprint. Property is located at 826 Atateka Dr., identified by Tax Map Parcel #: 120.11-1-4, in Zoning District Moderate Intensity. **\*\*PUBLIC HEARING** remained open from 07/28/2020 Meeting. **\*\***

This request was tabled until later in the meeting.

**PUBLIC HEARINGS AND NEW BUSINESS:**

**#484-V:** Adam Clark is requesting a 48.6' front yard setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct a 14' x 28' two-bedroom addition to existing one-bedroom single family dwelling. Property is located at 887 Igerna Rd., identified by Tax Map Parcel #: 50.-1-17, in Zoning District Rural Use.

Chairman Little read the Variance Request. Adam Clark was present at the meeting and explained his request for the variance. Mr. Hough asked why the addition was not being constructed in the rear of the property. Mr. Clark responded that the septic system is located on that part of the property. Chairman MacMillen stated that the house is not becoming any closer to the roadway with the addition. We did receive a notice back from one of the neighbors stating that they had no objection to the project. He also stated that the Board had heard nothing back from the upper neighbor to the property.

Having been duly advertised, the Public Hearing was opened at 7:03pm by Chairman MacMillen.

No comments were made during the Public Hearing.

A motion to close the Public Hearing at 7:04pm by Michael Hough, Seconded by Mary Clark. A Roll Call Vote was called by Secretary Bartlett-

Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes, Chairman MacMillen- Yes.

The motion was carried 4-0.

A motion to approve Variance #484-V by Mary Clark with the following Criteria to approve a Variance-

1. There was no undesirable change produced to change the character of the neighborhood or be a detriment to nearby properties.
2. There is not a feasible alternative to the variance that can provide a benefit if sought by the applicant.
3. The requested variance is not substantial.
4. The variance would not have an adverse impact on the physical or environmental conditions in the neighborhood.
5. The Board agrees that the alleged difficulty is self-created.

The motion was seconded by Barb Kearney. A Roll Call Vote was called by Secretary Bartlett-

Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes, Chairman MacMillen- Yes.

The motion was carried 4-0.

**#481-V:** Anthony F. and Linda T. Taverni are requesting a 13'-9" side yard setback variance and 10' rear yard setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to replace a storage shed that was demolished pursuant to issued permits with a structure of same size (232 sf. ±) in existing footprint. Property is located at 826 Atateka Dr., identified by Tax Map Parcel #: 120.11-1-4, in Zoning District Moderate Intensity. **\*\*PUBLIC HEARING remained open from 07/28/2020 Meeting.\*\***

Chairman MacMillen read the Variance Request. The Public Hearing remains open from the July 28, 2020 Meeting. Mark Schactner the Attorney for the Town of Chester introduced himself and stated that he does not take a stance for the Board, however, ensures that the Board follows the legal process including closing the Public Hearing. The attorney reminded the Board that they are under no obligation to take action this evening, however, they must complete their deliberation and make a decision within 62 days of closing the Public Hearing. Upon reviewing the application, he realized that there is a far backstory that is not relevant to the Area Variance. The Board must weigh the benefit to the applicant and the detriment that may be caused to the neighborhood. The backstory is not legally important.

Linda Taverni was present at the meeting and presented her request for a variance. She also stated that the materials requested by the Zoning Board of Appeals have been submitted. She agrees with the stance of the Town Attorney when it comes to the backstory. She feels that the Zoning Board of Appeals has already authorized the applicants to rebuild the shed. Ms. Taverni also mentioned that they have already received County Approval and said the Zoning Administrator stated that the stop work order should not have been issued.

Chairman MacMillen asked the Town Attorney if the easement was still valid after the destruction of the shed. The attorney stated that it is not the decision of the Town of Chester or the Zoning Board of Appeals to decide on property rights.

Jack Bartlett, Secretary asked Ms. Taverni if in her statement she meant the Zoning Administrator or Zoning Enforcement Officer. Ms. Taverni refuted her prior statement and confirmed that the Zoning Enforcement Officer stated that the stop work order should not have been issued.

Ms. Taverni asked if the 2008 decision of the Zoning Board of Appeals grant precedence in the decision of the board this evening. The Town Attorney responded to the applicant on how precedence with a Board decision works. Mr. Langwig (Attorney to Broderick's) The easement in question is a private easement and is not a state ordered easement. The Courts have interpreted the private easement. He stated that a letter was sent on August 24<sup>th</sup> to the Zoning Board of Appeals as well as the Attorney for the Town. He stated that the backstory should not have much stance. This Area Variance is going to have an effect on the neighbors and would be a detriment to nearby properties. There is no compelling reason why the shed cannot be built in an alternative location. There has been no work completed on the shed other than holes.

Jill Broderick presented a survey of the property showing lines. There is no question on the property lines. She is concerned that there will be no fire separation between her garage and the proposed shed that the Taverni's want to add. Submitted an image to the Board of the property today showing no completed construction. Ms. Broderick also submitted alternatives for the shed. The Warren County Building Permit that was issued was for repairs to an existing shed. There is no existing structure for repairs to be completed on. The Taverni's are relying on a permit from former Zoning Administrator Tennyson. The proposed structure is going from a shed to a pole barn to a storage building that is being attached to her structure. There was no demolition permit issued for the previous shed. She spoke with Warren County and they are going along with the Zoning Board of Appeals decision, the footings would be attached to her structure on her property, wants 15 feet met for her rights. Application 450-V was withdrawn in 2018, and was brought back a totally different variance. Chairman MacMillen stated that the application submitted for this meeting is a totally different variance than the one that was withdrawn. Ms. Broderick stated that she feels that she is the aggrieved party, and that Zoning Enforcement Officer Thomas Thorsen worked to amend the Zoning Laws for the Taverni's and gave them a heads up to pull their application. A discussion took place that the amendments were not just completed for the Taverni's.

Mark Schachner, Attorney for the Town stated that there is a 60 day deadline to appeal a Variance decision, however, there is no deadline for a Variance Application, therefore the Taverni's have a legal right to apply for a Variance. A new compliance would be given if application was approved. This should be considered a brand new Variance Application.

Mary Clark asked if a permit would not run out if work had already begun. Holes have already been dug to begin construction. Michael Hough stated that holes had already been dug. Ms. Broderick stated that she feels that she has right as a property owner.

Linda Taverni stated that the eaves of the proposed structure would attach to the party wall on the property. Chairman MacMillen stated that he is not familiar with a party wall. Ms. Taverni stated that it is a common wall on a property line. Chairman MacMillen asked why they would attach to an old structure. Ms. Taverni stated that they are compelled to do so, would rather not do so, however, that could lead to the loss of the easement which is a valuable property right. Mr. Langwig asked what the value is? The Attorney for the Town stated that all questions and comments should be directed to the Board and not to other members of the audience.

Chairman MacMillen stated that the value of the easement does not have a bearing on the decision. Ms. Taverni stated that the loss of the easement would be a detriment. Mr. Langwig stated that he feels that the loss of value is not a bearing that the Zoning Board of Appeals should consider.

Chairman MacMillen reminded those in attendance that personal attacks would not be tolerated.

Mary Clark stated that she agrees that a 15 foot setback is difficult if you're hooking buildings together. Michael Hough stated that he feels that the easement should be worked out between the neighbors before a decision is made. The Taverni's would be willing to work out the neighbors. There are alternatives to build this structure. The Taverni's stated that they would not have torn down the structure if they had known all of this was going to happen.

The Attorney to the Town stated that the Board is not in a position to force neighbors to work out issues between neighbors.

Chairman MacMillen stated that the easement has no bearing on his decision on building this shed. It is not the job of the Zoning Board of Appeals to settle disputes. He would like to see the building separated from the "party wall".

Barb Kearney asked if the survey's submitted by the applicant and neighbors match up. The Chairman stated that they are not the exact survey but they match up. There is always a difference in survey's from surveyor to surveyor. Ms. Kearney stated that she is a certified Code Official in New York State and she disagrees with Mr. Wallace from Warren County on there not being any fire code issues with attaching a structure on a "party wall".

A lengthy discussion took place regarding the two survey's submitted. The Survey submitted by the Broderick's was stamped, while the one submitted by the Taverni's was not stamped. The Attorney for the Town stated that the Board should not consider an application if it is not submitted correctly by the applicant. A discussion took place on the survey's and options were given to the Board by the Attorney for the Town.

Chairman MacMillen recommended that the Board table the application and give the Taverni's a chance to get a stamped survey and allow for further review of the deeds.

The Taverni's are going to submit a stamped survey. Ms. Taverni stated that they have been wronged by the Town and that there is case law that could allow for further action to be taken by the Taverni's. The Attorney for the Town stated that the Board should not be concerned by the statement that Ms. Taverni just made.

The Public Hearing will remain open until the September 2020 Meeting. The Board is requesting that the Town Attorney attend the September meeting.

**MINUTES:**

A motion to approve the minutes of the July 28, 2020 Meeting of the Zoning Board of Appeals was made by Mary Clark, Seconded by Michael Hough. A Roll Call Vote was called by Secretary Bartlett-

Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes, Chairman MacMillen- Yes.

The motion was carried 4-0.

**CORRESPONDENCE:**

- Zoning Administrator's Activity Report for July 2020;
- State of New York, Supreme Court, Appellate Division, Third Judicial Department Memorandum and Order Decided and Entered November 27, 2013 (Received from Linda Taverni by the Zoning Office from Linda Taverni via e-mail on August 03, 2020);
- Addendum to Variance Application #481-V dated August 3, 2020 from Linda Taverni (Received by the Zoning Office from Linda Taverni via e-mail on August 03, 2020);
- State of New York, Supreme Court, County of Warren Decision and Order RJI No. 56-1-2005-0441, Index No. 47050 dated June 19, 2012 and an undated photograph (Received from Linda Taverni by the Zoning Office via e-mail on August 06, 2020). Last Revised 8/24/2020 3:12 PM
- Correspondence from Laura and Erwin Bradway Jr. RE: 484-V dated August 16, 2020 and received by the Zoning Office on August 24, 2020.
- Letter from J. Russell Langwig III RE: Taverni Variance Application dated August 24, 2020 with attachments received by the Zoning Office on August 24, 2020.

**PUBLIC PRIVILEGE:** None

**BOARD PRIVILEGE:** None

**ADJOURNMENT:**

A motion was made by Mary Clark, seconded by Barb Kearney to adjourn the meeting at 8:39pm. A Roll Call Vote was called by Secretary Bartlett-

Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes, Chairman MacMillen- Yes.

The motion was carried 4-0.

Respectfully submitted,

Jack D. Bartlett  
Secretary  
Zoning Board of Appeals