



**MINUTES OF MEETING  
ZONING BOARD OF APPEALS  
TOWN OF CHESTER  
MAY 24, 2016**

The meeting was called to order by John MacMillan at 7:02pm.

7:03pm- Motion made by Bill Oliver to appoint John MacMillan as acting chair person in Mary Jane Dower's absence due to husband passing away. Seconded by Arnold Jensen. All in favor. 4-0.

**ATTENDANCE:**

Acting Chairperson John MacMillan, Bill Oliver, Arnold Jensen and Tom Thorsen. Justin Grassi (lawyer for Town of Chester from Miller, Mannix, Schachner & Hafner, LLC) was also in attendance as well as Craig Leggett Town Supervisor. Absent Mary Jane Dower. Audience guests included Nicole Howe (55 Agard Rd, Pottersville), Al & Linda Meunch (146 Hill Park Rd.), Bruce France (27 Elks Glade Rd.), Albert & Elizabeth Crevoiserat (111 Indian Springs Rd.) Dan Buffone (5 Cardiac Run), Frank Gabriel (837 Atateka Dr.), Chris Liddle (841 Atateka Dr.), Bruce Robbins (32 Theriot Ave.) Clark & Barbara Orton (25 Orton Dr.), Jill Broderick (830 Atateka Dr.), Thomas Feeney (24 Mills Rd.) and John Daly (didn't sign in).

John MacMillan opened public hearing at 7:05PM.

**PUBLIC HEARING:**

**#428-V:** Frank Gabriel is requesting a 44' shoreline setback variance, according to Section 7.01(B)(4) of the Town of Chester Zoning Local Law, in order to construct a post and rail fence with wire within the shoreline setback area that measures approximately 480 sf. Property is located at 837 Atateka Drive, identified by Tax Map Parcel #: 120.7-1-5, in Zone Classification Moderate Intensity.

Frank Gabriel stated he has been a property owner for 30 years and is in process of total remodel of existing structure. He is attempting to keep the 1926 character to the remodel as much as possible. He is requesting a post and rail fence 6ft from shoreline. He feels this is the only way to do it due to sloping lawn and wetlands in the bay area on the south end. He is trying to keep property attractive to make retirement home. He feels it is a non-obstruction type of fence and serves a functional and aesthetic purpose. Wire is to keep the dogs in and is mostly non-visible.

Arnold Jensen said the side fences are unobtrusive so if new one is same should be fine, but is asking why it is being measured the way it is? Never before have we ever measured in this manner usually just by footprint normally. Doesn't seem to make sense why it is measured vertically and how can a 150 ft x 4 inch tall fence be 120 square feet?

Frank Gabriel insists it is approx 120 square ft.

Arnold Jensen stated footprint is minimal because it is only 4 inches tall. If it was constructed in a different fashion that may not be the case. Also, zoning law only talks about footprint of structure.

Frank Gabriel stated he spoke with Walt Tennyson (Zoning Administrator) and when they reviewed zoning laws they saw some language that a fence is considered an accessory structure so that is why he took the route he did.

Chris Liddle stated the fence is an obstruction and is measured by the square ft. on face of fence. Frank Gabriel stated this is minimal invasion and would not construct a fence near water he could not see through.

Bill Oliver stated this qualifies as a structure.

Arnold Jensen stated Zoning Law says maximum 100 square ft. If we measured all buildings that way they would all exceed limitation.

Al Meunch asked if there was a drawing that they could look at. They reviewed briefly what was in his paperwork.

John MacMillan stated that this has no bearing on how it is measured not because of square footage because of the 50 ft setback variance to the lake.

Arnold Jensen stated he does not understand why fence is treated differently than any other structure. Based on the zoning ordinance all other structures are allowed if outside 50ft setback.

Bill Oliver stated we are here because Frank Gabriel is requesting a 44ft variance to allow fence 6 ft from shoreline. It is within the 50ft shoreline setback.

John Daly pointed out if you had a fence 50 ft long and 3 ft from shore that some consider that ok because it's not 100 ft.

John MacMillan has to call for order because guests are talking over each other and suggests we table this discussion for next meeting.

Frank Gabriel is currently working on property and wants excavator to do the pole digging/moving of rocks while machine is still there. Otherwise he has to disturb/dig up lawn again later. He has no other work planned near shoreline.

Chris Liddle stated the same things as in his complaint. There is illegal fencing in setback and existing zoning violations. Also, has fencing violations as 2 are inside the 50ft setback. Fencing also extends into the lake and are underwater. Wetlands have been filled in resulting in drainage issues for Liddle property. Also, a boat ramp that extends into protected wetlands.

Frank Gabriel has stated he has many approvals he needs already which include Army Core of Engineers, NYS DEC and APA. The APA said it was the town's responsibility at this point. As they reviewed drawing in board packet Frank Gabriel said he is reducing his beach area and adding a natural stone type retaining wall.

Justin Grassi asked if he met with Walt Tennyson for review?

Frank Gabriel stated he had met with Walt Tennyson and he helped with the calculations. At first they saw no issues but then realized it is considered a structure.

Justin Grassi stated because you are within the 50 ft setback the Code Enforcement Officer has determined the square footage would be measured by the front façade of fence when original application was submitted. At which time you (Frank Gabriel) had a chance to appeal but did not. So board can rely on officer's decision. Frank Gabriel is seeking a 44ft variance in one location as the fence is only 6ft from shoreline and is 480 square ft total. Mr. Grassi also stated the board can approve but have limitations or dimensional requirements if they so choose when reviewing the area variance criteria. And is this the least restrictive way to achieve goal? Why it has to be so close to shoreline?

John MacMillan asked about his complete shoreline development plan? He would like to see the drawing submitted to the Army Core of Engineers for review. When disturbing the shoreline more accurate drawings/proposals should be accessible to board. He is concerned when excavator is removing rocks and setting the posts it will be in close proximity to shoreline. He would like to see drawings with the whole plan assuming some kind of silt fence would be needed to prevent storm drainage/residue/sediment from entering the lake. No drawing shows this nor the size of fence and posts including depth of poles.

Frank Gabriel stated he assumes standard size of 6ft with 2ft in ground. He also does not anticipate any disturbing of the shoreline during the excavation process.

John MacMillan stated if you were away from the 50ft setback there is no issue but because you will have excavator working 6ft from the shoreline then it is a concern.

Frank Gabriel stated he has the right to dig and put in fence if outside 50 ft setback with no problems. He claims he has permits for the shoreline disturbance from Army Core of Engineers, NYS DEC, the APA and has spoken to Walt Tennyson to cover his basis.

John MacMillan stated as the Zoning Board they have the right to request drawings/additional documentation as part of the process. As a board they represent all property owners as well as him.

Justin Grassi stated as the board they need to consider the adverse physical and environmental effects?

Arnold Jensen asked why it has to be so close to shoreline?

Frank Gabriel stated he wants a large yard for dog.

Arnold Jensen stated you would still have a large yard even if moved back say 20 ft.

Frank Gabriel stated it would not be aesthetically pleasing with fence in the middle of the yard at 50 ft setback.

Tom Thorsen asked how far from house to the lake?

Frank Gabriel stated it is easily 150-200 ft from back porch to lake.

Arnold Jensen stated it would not look odd or bad in his opinion. He said we have to look at the possibility of achieving this goal another way which can reduce the variance request. Also he wanted to know why it has to be so close?

Frank Gabriel stated mostly wants it aesthetically pleasing and provide large area for dog.

Bill Oliver observed that his beach area would only be 6ft.

Frank Gabriel stated only on the south end would it be 6 ft from shoreline but further away as you progress to north end. South end is weedy and non-swimmable.

Bill Oliver stated he has never seen a fence that close to the water nor in it.

Chris Liddle stated his current fence enters the water and claims Mr. Gabriel may have lied on his application by saying he owns the lake bottom.

Frank Gabriel stated NYSDEC had no issue with fence in the water. Does not know what Chris Liddle is talking about.

John MacMillan stated that that is not a zoning board issue so let's not get off track.

Arnold Jensen stated it is vital that Mr. Gabriel give zoning board a good reason for approval and in his mind aesthetics and the want of a large yard are not it. They are personal preference. If he moved it back even 5ft it would still be large for dogs/kids and assumes a gate is in place to keep them out of the lake.

Frank Gabriel stated it is primarily aesthetics. He has diligently tried to retain old character of the house and thinks the fence would be a nice addition.

Tom Thorsen asked how far is the cutback on the beach?

Frank Gabriel stated approx 30-40 ft. The fence takes a turn due to uneven ground and that is for aesthetics of property.

John MacMillan feels they need more accurate drawings with precise measurements. About 30 ft is not precise enough even though it is just a fence.

Frank Gabriel is asking for some leeway due to rocks, trees, slope of land etc... Wants it to look as nice as possible.

John MacMillan stated the primary reason for this is for your dog?

Frank Gabriel stated it is functional and aesthetically pleasing.

John MacMillan stated if this is to keep your dog from going on neighbors property or in lake why can't you put in an invisible fence? Then variance would be obsolete.

Frank Gabriel stated the invisible fences don't work and does not keep other critters out.

Tom Thorsen asked if it is full containment fencing for dog?

Frank Gabriel answered yes. No fence there in winter for dog. Wire fence was too much work for him. Hard to get poles in. Wants more permanent fix.

Al Meunch stated he is permanent resident and has deeded beach & dock rights to Friends Lake. He is requesting this be tabled until July meeting to allow for the second homeowners to attend hearing for review even though not required. They will not be here full time until late June or July. This will give ample time for neighbors to review and voice concerns. He also stated that the drawing shows the fence on the high water mark which is not what he presented tonight. He also can't believe DEC allowed him to put wire fence in the water. He requests that the ZBA request from Mr. Gabriel copy of all permits for verification.

John MacMillan stated if we approve the variance as is and Mr. Gabriel does not follow guidelines then DEC and the Zoning Administrator would then have to review and take further action.

Al Meunch stated from an aesthetics standpoint for the whole lake this fence would ruin that. As stated by Bill Oliver he has never seen a fence that close to the water and by approving this it would set precedence and then become an issue. The alleged hardship is not unique so all could claim same hardship. He also believes this exceeds the Zoning Law allowance. It is an unnecessary eyesore and hardship is self-created. Owner should be aware of local zoning laws and that fence is not allowed.

John MacMillan wanted to give Mr. Gabriel a chance to answer question about DEC.

Frank Gabriel stated DEC said this was not their jurisdiction and had been advised by Walt Tennyson to go to DEC.

Chris Liddle stated he spoke to Frank Gabriel last week and has filed 2 inquiries yesterday about extensive development. He has concerns about fence in and near water. Has no problem with fence outside 50 ft setback. He claims Mr. Gabriel filled in the wetland area causing drainage issues for him. He also said Mr. Gabriel said he was not going to let anyone stop him he can do what he wants. He believes he has reached his maximum development for property. You can only develop 50% of shoreline when in fact you have developed 100% of it. You are only allowed to take out 1/3 of lake vegetation and have taken 100%. One third of the trees on property he has cut. Mr. Gabriel told DEC he owns the lake bottom which is a false statement on zoning application. You have no variance for fence in water. He feels that Mr. Gabriel can train his dog. He has reached 100% shoreline development. He is requesting this to be tabled for further review/discussion. Mr. Gabriel has chemicals entering the lake such as fertilizer on the lawns.

Frank Gabriel stated he spoke to Mr. Liddle last week and did not discuss what Mr. Liddle was describing to board. Mr. Liddle stated his opinion on the dock for about 10 minutes but no other issues were discussed. He claims he has been honest with all documentation. He is unsure what Mr. Liddle is referring to when he talks about cutting of the trees and claims he is exaggerating the situation.

Chris Liddle is requesting of the Zoning Board to table this until next meeting and have attorney look into Zoning Compliance outlined in his complaint. He would like a drawing with all development and future plans.

Jill Broderick who lives across the street stated she wants to make peace. She loves the lake and has used it for 30 years. She appreciates the setback and more natural setting. Asks Frank

Gabriel to tone it back and try to keep lake clean & pristine. That is important. The lily pads are natural state of the lake and should be protected at all costs.

John Daly stated he is a resident of Friends Lake and has been coming here since 1973. He wants to know why it has to be 6 ft from lake? Can you come to compromise that is not so close to shoreline? He also feels it would change aesthetics of the lake as a whole.

Justin Grassi stated the board can close the hearing or leave it open. If its is closed the board is locked into a 62 day window to make a decision. So, keep it open to avoid the limitation but that is at the discretion of the board.

Bill Oliver would also like to see a plan like Chris Liddle was explaining to show all changes/development before making a decision.

Public hearing for #428-V will be kept open. All board members agreed.

John MacMillan asked if he was required to get an elevation certificate? This is done by a surveyor which lays out the high water mark, etc...

Frank Gabriel believes he has that. He also stated it appears to be on the high water mark but really is not.

John MacMillan would like to see a complete package of all the plans including shoreline development, all permits and a site plan at least for affected areas including storm water mgmt.

Chris Liddle stated that this sounds reasonable to him.

Frank Gabriel stated that if no one is in agreement then he will withdraw his application. So, he did withdraw his variance request.

Chris Liddle would like the zoning compliance to be looked into and has to be taken up with Walt Tennyson according to John MacMillan. Has no bearing on this variance request.

8:15pm- Motion made by John MacMillan to close hearing on variance app #428-V.. Seconded by Bill Oliver. All in favor. 4-0.

John MacMillan opened public hearing for variance app #429-V.

**#429-V:** Indian Springs Property Owner's Association is proposing to extend the existing dock system from 66 ft. to 110 ft., in order to accommodate a total of 26 boats. Property is located at 16 Cardiac Run, identified by Tax Map Parcel #: 120.10-1-29, in Zone Classification Moderate Intensity.

Bruce France, president of Indian Springs Property Owner's Association, stated when original property was subdivided and sold each one was deeded rights to beach as part of the association. They have 26 lots total of which 20 are developed. His dad bought his in 1972 and at that time they tied their boats to a tree. Then they added a small dock system and then eventually an 18 boat configuration was approved. One current owner has no dock space and one is planning to build. This helps with harmony in association if all have option for boat and this is a plan that will solve issue forever.

The board reviewed drawings he provided with existing dock structure. They are now extended 66 ft and would be happy with 88ft total instead of the 110 originally asked for. The 88ft proposal would suffice for what they need.

He also stated that most complaints were about the 110ft proposal but were ok with the 88ft proposal. He claims Woodcliffe Acres next door already has it at 88ft so it's not much different. If we started mooring boats, that would be a concern at some point as well. He said according to NYS the property line extends straight into lake not at an angle. They are no closer to that with new proposal. According to the 2005 info.

John MacMillan stated you provided the existing and proposed drawings but one shows the Mills property line at an angle and the other one is straight.

John MacMillan asked if beach and docks could be reversed so property line is more square off the shoreline. This could eliminate issue.

Bruce France stated he would have to take that up with the association to see if that would be feasible to them.

All unsure if property line extends straight into water.

Tom Thorsen asked if there has been any issues with the Mills in the last # of years?

Bruce France answered no. They just want their area respected and safety to be first concern.

John MacMillan looking at the application would like a more clear definition from our attorney of property line to get better idea.

Arnold Jensen has always understood property lines extend out straight.

John MacMillan concurs that is how it has been interpreted in the past.

Craig Leggett stated this is a zoning issue from before and has researched definition of ordinances etc... and consulted OGS as they regulate some of this and there is a way to determine how property line enters lake. But, as a town they have not adopted a way to measure this. Both ways have merit but unsure what is proper to do.

John MacMillan would like to table this until further information is available and can consort with town attorney. Then the board can make a determination. Public hearing will be kept open.

Bruce France understands further info to be letter from the Mills, OGS and organization form 2005.

Bill Oliver points out that they should look at meeting minutes from 2005 for review.

John MacMillan requests he bring his 2005 letter to zoning office and if outlined in there definition of property line that would set precedence.

Arnold Jensen stated the existing dock system exceeds zoning allowances already even though approved in 2005. It's unlikely for this to be approved no matter how it's configured.

John MacMillan stated we have several correspondence from neighbors in opposition to this.

Arnold Jensen stated that we don't want to set precedence as Friends Lake is not the only lake of concern. All associations on lake have same issue.

John Daly asked if they would rent slips not currently used?

Bruce France stated the town does not allow them to rent them as they are not a marina.

Al Muench is requesting this to be tabled until July meeting to allow for summer homeowners to be involved. He states that the website had no notice of hearing as of yesterday. The mooring rights issue is just a way to increase value to the property. He personally believes proposal is much too large and takes away from other users. It makes boat traffic further into lake. It's a concern for kayakers, canoers and swimmers. He is requesting board to look into it further.

Elizabeth (Betty) Crevoiserat stated she bought in 1974 and was told she had mooring rights in water and now has no place for her boat. Someone in 1960 made a decision and now she has to suffer. It affects her life greatly.

Arnold Jensen states other associations have come up with ways to help solve problem. Sharing and alternating dock slips. If your boat is not used all summer be creative in working with each other so all can use boat at some point.

John MacMillan concurs. And stated it is not zoning board responsibility to solve error made back then. Our interest is for all owners in Chestertown.

Linda Muench had mentioned you thought they could maybe put a 3<sup>rd</sup> finger in same location. John MacMillan said no due to boat traffic. Maybe talk to marina to get another configuration.

Thomas Feeney stated his sister sent in a letter and he is representing her. Would like property line looked at, as it could affect swimming area next door. He has been coming since he was little. There has been boating issues within swimming area. Maybe we can reconfigure. A variance has already been granted. He has concerns for child safety.

Barbara Orton stated she has been on lake since 1943 and faces Bruce France property. 2 extra boats is not a big deal but proposal is too many and will set precedence. No one in her association knew about hearing. Residents don't read local paper. Owners were misled when buying land but same happened to her on Lake George and they took turns. It did not work out well. She does not want it to look like a marina. Need another solution. A launch, possibly?

Chris Liddle would like us to review his letter/complaint. Zoning laws should be tightened up. We should enforce compliance.

John MacMillan stated hearing will remain open and we will table this until June meeting.

7:45pm-Motion made by Arnold Jensen to table #429-V until next month. Seconded by Bill Oliver. All in favor. 4-0.

**CORRESPONDENCE:** Zoning Administrator and Sanitary Code Enforcement Officers Activity report for April 2016.

**NEW BUSINESS:** None.

**OLD BUSINESS:** None.

**MINUTES:**

7:48pm-Motion made by Bill Oliver to accept minutes from 4/26/16 meeting. Seconded by Tom Thorsen. All in favor. 4-0.

**PUBLIC PRIVILEGE:**

Craig Leggett stated there is a public hearing coming soon. Info will be on website. Please contact us with questions.

Nicole Howe stated she has issue with 2 neighbors in their neighborhood. One house has no running water and kids living there. Garbage and junk cars are all over. She wants the neighborhood cleaned up. One house has 2 campers with people living in them. She has spoken to Walt several times and CPS. No one will help.

John MacMillan says there is some kind of procedure you have to go through and Craig can help you with this. He has the form. We are not a zoning enforcement board so we can't help.

Justin Grassi confirmed the board is restricted to use and area variances only.

**BOARD PRIVILEGE:** None.

**ADJOURNMENT:**

9:00pm- Motion made to adjourn meeting by Arnold Jensen and seconded by Bill Oliver. All in favor. 4-0.

Respectfully submitted,

Brandi Bessette  
Secretary  
Zoning Board of Appeals