



**MINUTES OF MEETING  
TOWN OF CHESTER ZONING BOARD OF APPEALS  
Regular Meeting  
Tuesday, November 24, 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, Arnold Jensen, Jack D. Bartlett (Secretary), Jeremy Little (Zoning Administrator), Mark Schachner (Attorney for the Town), and Thomas Thorsen (Zoning Enforcement Officer).

**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 application was tabled until later in the meeting.

**#486-V:** Richard M. and Noelle E. McCrum are requesting a 44 ft. front yard setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct an 8' x 15' enclosed structure attached to an existing covered walkway. Property is located at 47 Clarkson Rd., identified by Tax Map Parcel #: 86.19-1-59, in Zoning District Moderate Intensity. \*\*PUBLIC HEARING remained open from 10/27/2020 Meeting.\*\*

Richard McCrum was present at the meeting and explained his project as outlined at the October Meeting. Mr. McCrum stated that he had spoken with Warren County Building Codes and received guidance necessary for the Board and applicant to move forward with the Variance.

Michael Hough asked if the applicant would be using a 6x6 foundation. Mr. McCrum stated that he had spoken to Building Codes and they have no issue as long as it connects to the retaining wall.

The Public Hearing remained open from the October 27, 2020 meeting, however, no comments were made during the Public Hearing. A motion to close the Public Hearing at 7:04pm by Arnold Jensen, Seconded by Mary Clark. A Roll Call Vote was called by Secretary Bartlett-

Chairman MacMillen- Yes, Mr. Jensen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, and Ms. Kearney- Yes. The motion was carried 5-0.

A motion to approve #486-V by Michael Hough 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 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 Arnold Jensen. A Roll Call Vote was called by Secretary Bartlett-

Chairman MacMillen- Yes, Mr. Jensen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, and Ms. Kearney- Yes. The motion was carried 5-0.

**#488-V:** O Valentine Park LLC (Rich Farina) is requesting a 50 ft. front yard setback variance, 23.9 ft. left side yard setback variance, 44.4 ft. right side yard setback variance, and variance from Section 8.01(B) for minimum area requirements, according to Section 4.03 and 8.01 of the Town of Chester Zoning Local Law, in order to construct a 54' x 26' Three-Bedroom Single Family Dwelling with 2 ft. overhangs. Property is located at Valentine Park Road, identified by Tax Map Parcel #: 136.6-1-11, in Zoning District Rural Use.

#488-V was tabled until later in the meeting.

**#489-V:** Robert and Catherine Hulchanski are requesting a 25 ft. front yard setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct a two-car 24' x 30' garage. Property is located at 1372 North Gore Road, identified by Tax Map Parcel #: 33.-2-2, in Zoning District Low Intensity.

Robert & Catherine Hulchanski were present at the meeting and explained their request for a Variance. Mr. Hulchanski stated that there was limited placement possibilities for the garage, the applicants had received letters from the neighbors with no objection and these letters were provided to the Board. Mr. Jensen stated that he visited the property and felt that the placement of the garage was correct on the property and that there were not many alternatives for placement.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 7:13pm

No comments were made during the Public Hearing

A motion was made by Barb Kearney, Seconded by Mary Clark to close the Public Hearing at 7:14pm. A Roll Call Vote was called by Secretary Bartlett-

Chairman MacMillen- Yes, Mr. Jensen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, and Ms. Kearney- Yes. The motion was carried 5-0.

Chairman MacMillen declared that this request was a Type II Action.

A motion was made to Approve #489-V by Arnold Jensen 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 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-

Chairman MacMillen- Yes, Mr. Jensen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, and Ms. Kearney- Yes. The motion was carried 5-0.

**#490-V:** Sandra Aguirre, Margaret Wertime, Laurel Beavers, James Jones, and Nathaniel Foster are requesting a 142 ft. front yard setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct a second story addition to the existing single family dwelling and a new attached garage. Property is located at 807 Landon Hill Rd., identified by Tax Map Parcel #: 69.-1-30, in Zoning District Resource Management.

Gary Baker, a representative for the property owners, was present at the meeting as the applicants could not make it due to the current Pandemic. Gary explained the project and the request for a Variance.

Chairman MacMillen asked if the existing garage was being replaced. The applicant's agent stated that it would be. Barb Kearney asked if the setback variance was to the addition or the front porch. The agent stated that they were not going outside the footprint and were just adding an addition to the second story. The Zoning Administrator stated that the agenda description defines project as a whole. There would still need to be a variance for the second story addition. The agent stated that the porch would be the closes structure to the road and that this would be a complete rebuild in the same footprint. Chairman MacMillen asked if the septic system would be evaluated. The Board determined with the addition of bathrooms that a condition for approval would be for septic approval by the Town of Chester.

Having been duly advertised, the Public Hearing was opened at 7:27pm by Chairman MacMillen.

No comments were made during the Public Hearing.

A motion to close the Public Hearing at 7:28pm by Arnold Jensen, seconded by Michael Hough. A Roll Call Vote was called by Secretary Bartlett-

Chairman MacMillen- Yes, Mr. Jensen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, and Ms. Kearney- Yes. The motion was carried 5-0.

A motion to approve #490-V by Arnold Jensen 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 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.

Conditions for Approval-

1. Plans for an appropriate septic wastewater system are to be submitted to and approved by the Zoning Office prior to construction.

The motion was seconded by Michael Hough. A Roll Call Vote was called by Secretary Bartlett-

Chairman MacMillen- Yes, Mr. Jensen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, and Ms. Kearney- Yes. The motion was carried 5-0.

**#488-V:** 0 Valentine Park LLC (Rich Farina) is requesting a 50 ft. front yard setback variance, 23.9 ft. left side yard setback variance, 44.4 ft. right side yard setback variance, and variance from Section 8.01(B) for minimum area requirements, according to Section 4.03 and 8.01 of the Town of Chester Zoning Local Law, in order to construct a 54' x 26' Three-Bedroom Single Family Dwelling with 2 ft. overhangs. Property is located at Valentine Park Road, identified by Tax Map Parcel #: 136.6-1-11, in Zoning District Rural Use.

Zach Monroe with Winchip Engineering was present via Zoom representing the applicant. Mr. Monroe explained the project and the request for a Variance. A letter was received from the Adirondack Park Agency stating that the project was non-jurisdictional.

Michael Hough asked about the standing water on the property. Mr. Monroe stated that the applicant is proposing a berm around the house and would need to fill in around where the house was going to be placed. Barb Kearney stated that there seems to be an issue with building and water for the neighbors. Mr. Monroe stated that there seems to be a concern on the drainage in the area and that the water would stop pooling on the parcel with what is being proposed. Chairman MacMillen stated that the proposed field is 100 feet from the neighboring wells. Mr. Monroe stated that that was correct and there would not need to be any Local Board of Health approval.

Barb Kearney asked about the driveway material. Mr. Monroe stated that there has not been a final decision, however, gravel would be a possibility. Mr. Monroe noted that the applicants have owned the property for 2 years. Arnold Jensen asked if the applicants had been paying taxes on

the property as a buildable lot. The applicant stated that they had been. Chairman MacMillen stated that the Board had received a lot of correspondence. He stated that dock rights have no bearing on decisions on the Board and that the wetlands had been reviewed by the APA and has not been flagged. The Chairman stated that he wasn't sure that the culvert on the property existed and that the Association issues would also have no bearing on the decision of the Board.

Arnold Jensen stated that a dam might be necessary for the water; however, a berm is being proposed. Mr. Monroe stated that due to drainage way the berm would help protect from spring runoff. Water would stay in drainage way. There is a culvert to the left. The area that the house is being proposed is lower than the culvert and that this is not a well designed drainage way. Chairman MacMillen asked when this parcel was subdivided off, Mr. Monroe stated that he believes it was completed in 1964 and it created a taxable and buildable lot. Michael Hough asked about the sizes of the neighboring properties. The applicant stated that one larger and one about the same.

Having been duly advertised, the Public Hearing was opened at 7:46pm by Chairman MacMillen.

Noreen Foster (Via Zoom)- Neighbor to the rear of the applicant. Is concerned with the waste water placement as it could impede the possibility of future projects and placement of a well. Absorption bed to the rear line is 52.6 feet.

John Dey (Via Zoom)- Gave a background on the history of the parcel. The parcel is .47 acres. Mr. Dey stated that he has a concern with the septic location. He also stated that he did speak with the APA regarding Wetlands. The culvert was installed to divert the water and the berm being proposed would diver the water more and overload the culvert.

Laura & Arnold Van Nispen (Via Zoom)- Stated that the road washes out in the spring and is concerned with the property would wash out the road and the neighboring properties and contaminate the lake. Mr. Van Nispen stated that Storm Water Management Plan was not part of the application and that he did not believe that any test holes had been completed. Mr. Monroe responded that there has not been any Storm Water Management Plan proposed and that the test holes were completed on January 9, 2020. Mr. Van Nispen stated that the lot is non-conforming.

Chairman MacMillen stated that this subdivision would not have been approved by the Planning Board in 2010. The Chairman is concerned that a subdivision was completed without Planning Board approval.

Mark Schachner, Attorney for the Town, stated that he recommends to the Board that the applicant demonstrate that the subdivision was legally created and not close the Public Hearing this evening.

The applicant stated that he feels that it is the job of the previous owners and neighbor to prove that the subdivision was legally created. Zach Monroe stated that according to the letter received from the APA that the property was not part of a larger parcel in 1973.

Mr. Van Nispen asked if he was allowed to subdivide his lot next and would not want the lake destroyed.

Daniel & Sheila Quiles (Via Zoom)- Stated that the property is low lying. Feels that the water displacement to the culvert could cause destruction to neighboring properties. Maintenance to the roadway and culvert would fall back on the Association. Chairman MacMillen asked if the Association placed the culvert. Mr. Monroe stated that that statement was correct and the culvert itself was not on the applicant's property.

Mr. Van Nispen stated that the Association placed the culvert to help with the Water Management.

Barb Kearney asked if a Storm Water Plan could be created to appease the neighbors. The Applicant stated that he feels that the Association should be responsible for storm water management and planning. He does not feel that his property should be the drainage ditch for the other properties in the Association.

Chairman MacMillen stated that he is concerned with the size of the culvert if water management is such an issue.

Ms. Quiles stated that a Stormwater Management Plan should be completed.

The property owner at 62 Valentine Park (Via Zoom) stated that there was no plan for Water Management. Does not feel that the Association should take on the burden and also feels that this project is not very well thought through.

Linda & Frank Cappabianca (Via Zoom) stated that every spring this property is flooded and is in rough shape. Does not feel that the engineering changes would fix the water issues. Feels that 5 variances should not be granted.

Paul Setcavage (Via Zoom) stated that he feels that the variance should not be approved. The property is undersized. Does not feel that this is a buildable lot. Concerned with history of Water Runoff. Spring goes to pipes supply water to neighboring property.

The Chairman reminded that there should be no direct dialogue between the Applicant and the members of the Public unless requested by a Member of the Board.

A motion to close the Public Hearing at 8:40pm by Arnold Jensen, Seconded by Mary Clark. A Roll Call Vote was called by Secretary Bartlett-

Chairman MacMillen- Yes, Mr. Jensen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, and Ms. Kearney- Yes. The motion was carried 5-0.

Chairman MacMillen stated that he feels that if there was a water issue that the culvert should have been created to protect the buildable lot.

Arnold Jensen stated that he feels that the wetlands and water flow are two different things. Feels that this will affect the neighboring properties.

Chairman MacMillen asked Zach Monroe what would be involved in a Stormwater Management Plan? Mr. Monroe asked whose water should the Applicant be concerned with. The Chairman stated that the study should show a storm water plan for new surfaces and the rest should be the same as it has always been.

Arnold Jensen stated that the neighbors would be happier with an Engineering Plan. The property is definitely a wet area.

The Board is requesting that the applicant return with a Storm Water Management Plan showing newly impervious surfaces and for the property.

Barb Kearney stated that she is concerned with the spring that are in other people's deeds. Mr. Monroe read from the Applicant's deed regarding the spring.

Mary Clark asked who is responsible for the Water Study. It was stated that the Applicant is responsible for the study of the changes being made by the project.

The Public Hearing was reopened at 8:54pm and the application was tabled to the December Meeting of the Zoning Board of Appeals.

**#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.\*\*

Arnold Jensen recused himself and left the meeting at 8:56pm.

Mr. Taverni stated that the requested survey had been submitted. The Zoning Board of Appeals in 2008 approved this request and feels that per Counsel that the Broderick's would need to prove that the 2008 approval was incorrect. Mr. Taverni read from the 2008 Minutes on the decision. The Taverni's have invested financially into the project. He also spoke on the Town Attorney statements he felt were made regarding rehearing an application.

Mark Schachner (Via Zoom) Attorney for the Town, stated that in his opinion they are not rehearing an application that they are hearing a New Application for a Variance. When asked, the Zoning Administrator stated that he agreed with the statement of the Town Attorney. This new application is for the replacement of a shed that is no longer in existence.

The Chairman asked the Town Attorney if the 2008 determination on an appeal was the same as approving the Zoning Administrator's Approval of the request. The Attorney for the Town stated that the Zoning Board of Appeals upheld the Building Permit issued by the Zoning Administrator.

Linda Taverni stated that the shed was torn down as per the approved Building Permit.



Mary Clark asked about the Grandfather Clause.

The Attorney for the Town stated that with a Non-Conforming Structure the continuation of a non-conforming structure was removed. The existence of the preexisting nonconforming structure has expired.

Chairman MacMillen stated that the shed was torn down based on the 2008 decision. The rebuild was not completed based on the Stop Work Order issued by the Zoning Enforcement Officer. The Stop Work order has since been recanted by the Zoning Enforcement Officer.

The Attorney for the Town stated that a Variance Application was submitted to rebuild the shed on the existing footprint. The history does not have much relevance on the current variance, however, #5 on the criteria would not be self created based on the history. The Attorney reminded the Chairman that the Public Hearing remains open at that deliberation should follow.

Mr. Taverni feels that on the side of equity they should not be denied.

Barb Kearney asked if the survey was submitted. The Chairman stated that it was and the only change was it was stamped.

Mary Clark stated that there was a withdrawal of a 2018 Variance Application.

Michael Hough asked if the placement of the shed is due to a financial issue or if there is another issue to consider. Mr. Taverni stated that there is also a legal issue with an easement to be considered.

The Public Hearing was reopened at 9:40pm-

Jill Broderick- The 2008 Appeal was for fixing the "Unit" in 3 years. No Zoning Compliance Form is located in the file. Building Permit has not been provided or in the file. No Variance in the file. No work completed in 12 years. Issue has been self-created, it could be placed in another location on the property. Ms. Broderick read a correspondence submitted to the Board into the record.

Russell Langwig- Attorney to the Broderick's. Criteria for Area Variance is valid for not approving. This request should be treated as a new application. History is not entirely relevant here. Mr. Langly reviewed the Criteria for a Variance and inserted his own answers in regards to this request. Himself and the Broderick's are concerned with fire danger. This variance could affect the property owner and any further property owners.

A motion was made to close the Public Hearing at 9:54pm by Mary Clark, Seconded by Barb Kearney. A Roll Call Vote was called by Secretary Bartlett-

Chairman MacMillen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, and Ms. Kearney- Yes. The motion was carried 4-0.



Chairman MacMillen read from the 2008 Minutes of the ZBA regarding the appeal. He feels that this has been determined by a prior Zoning Board.

Barb Kearney sympathizes with the applicant. As a new application, she is not in favor to approving this variance due to the criteria and the possible alternatives.

Mary Clark agrees with Barb and cited the Fire Code.

Michael Hough agrees to treat this as a new application and there are alternatives.

Mr. Taverni stated that if this application was denied he will be monetarily out for \$5,000.00 at the fault of the Town of Chester.

The Attorney for the Town stated that decisions can be made 62 days after closing the Public Hearing. He recommends drafting a motion with complexity for a decision.

Chairman MacMillen that he feels that the Board should take out time with a motion and a determination would not be made this evening. He thanked everyone for their input. A decision will be made at a future Public Meeting of the Zoning Board of Appeals.

#### **MINUTES:**

A motion to approve the minutes of the October 27, 2020 Meeting of the Zoning Board of Appeals was made by Barb Kearney, Seconded by Mary Clark. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, and Ms. Kearney- Yes. The motion carried 4-0.

#### **CORRESPONDENCE:**

- Zoning Administrator's Activity Report for October 2020;
- Letter from Paul and Robin Setcavage dated November 12, 2020 and received by the Zoning Office on November 16, 2020 RE: Variance 488-V, Property of Richard Farina;
- E-mail from Steven Labate dated November 17, 2020 and received by the Zoning Office on November 17, 2020 RE: Variance #488-V;
- Letter from Linda and A. Frank Cappabianca dated November 17, 2020 and received by the Zoning Office on November 18, 2020 RE: Variance #488-V.
- Warren County Planning Department Project Review and Referral Form, reviewed by Department on November 17, 2020 for #490-V. Form received by the Zoning Office on November 18, 2020.
- Letter from Laura and Arnoud van Nispen dated November 19, 2020 and received by the Zoning Office on November 19, 2020 RE: Notice of zoning variance #488-V.
- Letter from John Dey dated November 18, 2010 and received by the Zoning Office on November 19, 2020 RE: Notice of zoning variance #488-V, Tax Map Parcel #: 136.6-1-11;
- Letter from Herman and Katie Nied dated November 16, 2020 and received by the Zoning Office on November 19, 2020 RE: 488-V Valentine Park LLC.

- 2020-2021 Winter Webinar Series provided by the NYSDOS Division of Local Government Services;
- Letter (undated) from Dan and Sheila Quiles received on November 20, 2020 RE: #488-V.
- E-mail from Annie Hillman dated November 20, 2020 and received by the Zoning Office on November 23, 2020 RE: #488-V (Valentine Park Lot).
- E-mail from Nathaniel Foster dated November 20, 2020 and received by the Zoning Office on November 23, 2020 RE: #488-V (Farina Variance – Valentine Park).
- E-mail from Rick Krug dated November 23, 2020 and received by the Zoning Office on November 24, 2020 RE: #488-V: Valentine Park LLC – Farina Variance.  
E-mail with attachment from Jill Broderick dated November 24, 2020 and received by the Zoning Office on November 24, 2020 RE: #481-V.

**PUBLIC PRIVILEGE:**

Jill Broderick stated that she would like her correspondence to be part of the official record. Secretary Bartlett stated that the correspondence was not listed on the Agenda printed for the meeting as the e-mail correspondence was received after the agendas had been printed and that her letter would be apart of the official record.

**BOARD PRIVILEGE:**

The Zoning Administrator asked if the Town Attorney would need to be present at the December 2020 Meeting. The Chairman will get in touch with the Town Attorney prior to the next meeting.

**ADJOURNMENT:**

A motion was made by Mary Clark, seconded by Michael Hough to adjourn the meeting at 10:07pm. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, and Ms. Kearney- Yes. The motion carried 4-0.

Respectfully submitted,

Jack D. Bartlett  
Secretary  
Zoning Board of Appeals