



**MINUTES OF MEETING
ZONING BOARD OF APPEALS ~ TOWN OF CHESTER
NOVEMBER 26, 2013**

ATTENDANCE:

Ken Marcheselli, John Grady, Arnold Jensen, John MacMillen, Bill Oliver, Walter J. Tennyson (Zoning Administrator), Jeremy Little (Secretary). Absent was Mary Jane Dower.

MINUTES:

On a motion made by Mr. Jensen, seconded by Mr. Oliver, the Minutes of the Zoning Board of Appeals meeting held on September 24, 2013 were accepted. Motion carried 5-0.

CORRESPONDENCE:

Zoning Administrator and Sanitary Code Enforcement Officer's Activity Report for September 2013, Letter from Adirondack Park Agency regarding R. Jon Slayback's proposed project.

PUBLIC HEARING:

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

The public hearing was opened for continuation pertaining to application #408-V (Anthony and Donna Affatigato) at 7:02 p.m.

#408-V ~ Anthony Affatigato - Mr. Robert Simon, attorney from Smith and Simon, LLC, was in attendance to represent the applicant. The applicant owns property at 226 Del Culver Road, in a Rural Land Use Area, identified by Tax Map Parcel #16.-1-60. At the September 24 meeting, the applicant requested a 29.5' sideline variance, which included the placement of a storage container next to the proposed garage which the Board requested be removed. As a result, Mr. Affatigato is requesting a lesser sideline variance of 19.8' after the removal of the storage container.

Mr. Simon began by stating that he was aware that there was a concern from the Zoning Board of Appeals members at the

previous meeting about an easement through the three (3) lots shown on the map provided. However, Mr. Simon affirmed that the parcels have been merged as aforementioned from the previous ZBA meeting due to the *Doctrine of Merger* and Mr. Affatigato has acquired full ownership of the merged parcels, which makes the easement non-existent.

Mr. Jensen re-affirmed his viewpoint on this proposed project by stating that he does not understand why the garage could not be moved to the opposite side and require a lesser variance. In response, Mr. Simon said that the variance might or might not be lesser than the variance requested; however, he stated given the location of the dwelling and the driveway, the placement of the proposed garage to the west of the driveway (using map as a reference) would be ideal and realistic.

Mr. Simon suggested to the Board there could be a restriction on the cutting/clearing of forest to which the Board agreed should be a condition included with the approval.

Mr. Grady stated that "the driveway is in place and prepared in a professional manner. . . the drainage overall is an issue and if the Board was to enforce placing the garage in another location, it would require extra work and drawing in more stone." Furthermore, he agreed that from an aesthetic and practicality standpoint, the proposed variance "is the best solution overall."

Mr. Marcheselli suggested to the Board that the public hearing be closed and to take a vote on this matter at the next meeting so that all of the Board members can visit the site of the proposed project. Mr. MacMillen questioned Mr. Simon about flagged wetlands on the parcel and he affirmed that there were none.

Mr. MacMillen suggested to the Board that the overhangs on the garage could be minimized from three (3) ft. to two (2) ft., which would allow Mr. Affatigato to move the garage over by another foot.

Mr. Grady made a motion to close the public hearing in respect to variance application **#408-V** at 7:20 p.m.; seconded by Mr. Oliver. Motion carried 5-0.

Mr. Marcheselli made a motion to postpone the vote regarding application **#408-V** to the next meeting which is to be held in January. In response, Mr. Grady and Mr. MacMillen stated that if there was a vote, both would be prepared for such action. Mr. Oliver and Mr. Jensen concurred. Furthermore, Chairman Marcheselli agreed and withdrew his motion to postpone the vote until the January meeting.

Before the vote, Mr. MacMillen re-iterated Mr. Simon's request to the Board that it would be rational to include a condition in the variance approval as to the limit of forestry that is permitted to be cut.

Mr. Grady made a motion to approve the 19.8' sideline variance with reference to variance application **#408-V** with a condition that any cutting be subject to written permission from the Zoning Administrator of the Town of Chester as it pertains to the garage variance. Motion was seconded by Mr. MacMillen. Motion carried 4-1.

#409-V ~ R. Jon Slayback and Sharon Palestri - R. Jon Slayback seeking one (1) sideline setback variance of 27'-9" and one (1) front setback variance of 26'-2", according to Section 4.03 of the Town of Chester Zoning Local Law in order to meet sideline and front setback requirements located at Bird Pond Rd., identified by Tax Map Parcel #: 66.-2-4, in Rural Land Use Area.

Having been duly advertised, Chairman Marcheselli opened the Public Hearing at 7:35 p.m.

Mr. Slayback began by stating that he currently owns two parcels of land on Bird Pond Road. One lot is identified by Tax Map Parcel #:49-1-25.11 consisting of 48.84 acres with a Single Family Dwelling; the other lot, identified by Tax Map Parcel #66.-2-4, is the parcel where he is seeking the two variances. Mr. Slayback stated that the construction of the single family dwelling "would not be a detriment" to what is currently surrounding the lot (in respect to other parcels) at the present moment. Mr. Slayback owns the adjoining parcel to the lot, identified by Tax Map Parcel #:49.-1-25.11. Furthermore, Mr. Slayback explained the lot is not riverfront and that the dwelling would be a one story modular single family residence with an elevation of approximately thirty (30) ft.

Mr. Marcheselli questioned Mr. Slayback if he was going to construct the home for himself. In response, Mr. Slayback stated that he has an offer from an individual to buy the lot. Moreover, he wants to ascertain that the lot is in fact buildable. He informed the Board that if the requests are approved, the interested buyers would use the building maps provided to aid in the construction of the dwelling.

Mr. Jensen explained to the Board that he visited the site and that the two adjacent parcels on each side of the parcel have dwellings that are further from the road as compared to the proposed dwelling. Furthermore, Mr. Jensen stated that the dwelling could be moved six to eight (6-8) ft. closer to the bank, but said that it would not make that "much more of a difference" in regards to the variance request.

Mr. MacMillen questioned Mr. Slayback about the septic system and that the tank has to be ten (10) ft. away from the dwelling. Mr. MacMillen asked, "Is there a site specific issue that prevents the septic to be parallel with the property line. . .you could turn the leach field which would decrease or eliminate the sideline variance."

Furthermore, Mr. MacMillen stated to Mr. Slayback the engineer that prepared the plans could decrease one lateral and increase the length, in reference to the map provided. To eliminate the sideline variance, the Board advised Mr. Slayback to move the septic and its components to the North-Westerly sideline and the dwelling more to the Westerly sideline.

Mr. Grady suggested to the Board that Mr. Slayback has the option of withdrawing his request for a sideline variance, based on the intention that the septic and its components and the dwelling are moved to the appropriate areas, as aforementioned by Mr. MacMillen. During the discussion, Mr. Slayback stated that he would propose to the prospective buyers and attorneys involved to re-locate the septic system and dwelling, which is suggested by the Board. Mr. Grady affirmed that if the sideline variance is withdrawn, a new variance application would need to be heard by the Board in reference to the necessary sideline variance. As a result, the Board agreed. Mr. Slayback affirmed that he has withdrawn his sideline variance request and only requests a frontline variance for this application.

Criteria for an Area Variance were reviewed and the findings were as follows:

- 1.) The board agreed that the benefit cannot be achieved by other means feasible to the applicant;
- 2.) The board agreed that there would not be an undesirable change in neighborhood character or to nearby properties;
- 3.) The board agreed that the request is substantial as the applicant is requesting a frontline variance of 26'-2".
- 4.) The board did not believe there would be adverse physical or environmental effects; and,
- 5.) The board agreed that the alleged difficulty is not self-created.

The public hearing was closed for application #409-v at 8:05 p.m. Mr. Grady made a motion to allow Mr. Slayback to withdraw his application for the sideline variance and make a motion to approve a 26'-2" frontline variance in connection with application #409-v. Mr. MacMillen seconded the motion. All aye, none opposed. Motion carried 5-0.

OLD BUSINESS: None.

PUBLIC PRIVILEGE: None.

BOARD PRIVILEGE:

Mr. Marcheselli discussed the application in respect to AT&T's proposal to collocate with the addition of nine (9) antennas on a new eight ft. (8') steel tower addition. He explained to the Board members after several discussions with the Town Counsel Michael J. Hill, Esq. of Miller, Mannix, Schachner, & Hafner, LLC, there was no need for the Zoning Board of Appeals to hear such proposal due to **Federal Law Section 6409: Wireless Facilities Deployment.**

****A CONTINUANCE OF DISCUSSION FROM PREVIOUS BOARD MEETING ENSUED CONCERNING COMPLETION OF APPLICATIONS AND ADVERTISEMENT FOR PUBLIC HEARING.****

Mr. Marcheselli suggested that the Zoning Board of Appeals have a scheduled meeting to discuss any questions in regards to an application. After the application is deemed complete by the Board members at the meeting, a public hearing shall be scheduled and advertised for the following month. Mr. Marcheselli stated that he will have a discussion with Michael J. Hill and to ensure that it meets approval.

ADJOURNMENT:

Mr. Grady made a motion to adjourn the meeting at 8:34 p.m.; seconded by Mr. MacMillen. Motion carried 5-0.

Respectfully submitted,

Jeremy J. Little

Secretary

Zoning Board of Appeals