



**MINUTES OF MEETING
TOWN OF CHESTER ZONING BOARD OF APPEALS
Regular Meeting
April 27, 2021**

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), Mark Schachner (Town Attorney) (Via Zoom), and Jeremy Little (Zoning Administrator) (Via Zoom).

OLD BUSINESS:

#A2021-01: Jill and William Broderick are requesting an appeal of the determination of the former Zoning Enforcement Officer, Thomas Thorsen, with regard to property located at 826 Atateka Drive, Tax Map Parcel #: 120.11-1-4, currently owned by Anthony F. and Linda T. Taverni.

Chairman John MacMillen stated that the Public Hearing was already closed; therefore, the Board would not be hearing any comments from the Public this evening.

The Chairman read the following Draft Resolution for Appeal #A2021-01 into the record:

WHEREAS, Jill and William Broderick (“Appellants”) are appealing the determination of former Zoning Enforcement Officer Thomas Thorsen made in a letter to Anthony and Linda Taverni dated January 20, 2021 which rescinded a Stop Work Order imposed on September 14, 2018 on the Tavernis’ property located at 826 Atateka Drive, Tax Map Parcel # 120.11-1-4, and

WHEREAS, on February 02, 2021, the Appellants submitted Appeal Application #A2021-01 which includes an application form and one attached copy of the letter determination

dated January 20, 2021 issued by former Zoning Enforcement Officer Thomas Thorsen to the Tavernis, and

WHEREAS, the Zoning Board of Appeals held a properly noticed Public Hearing on the Appeal on February 23, 2021, and

WHEREAS, during the Public Hearing the Appellants' counsel, Appellant Jill Broderick and Linda Taverni made comments to the Board relating to the Appeal, and

WHEREAS, the ZBA has thoroughly reviewed relevant portions of the Town's Zoning Law and the decision rendered by the ZBA on July 29, 2008 about the subject property and the shed structure formerly located on it,

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Appeals finds as follows:

In regards to Appeal Application #A2021-01, the determination of former Zoning Enforcement Officer Thomas Thorsen made in his letter of January 20, 2021 to the Tavernis lifting the Stop Work Order is hereby vacated and repealed and the Stop Work Order issued on September 14, 2018 is hereby reinstated based upon the following Findings of Fact:

1. The ZBA finds that the intent of Section 9.01 of the Zoning Local Law is not to allow for replacement of a pre-existing nonconforming structure that does not conform to the provisions of the Town's Zoning Law unless required variance(s) are approved by the ZBA. Reading Sections 9.01 and 9.05 together, it is clear that the intent underlying them is to eventually eliminate pre-existing, non-conforming structures through natural attrition and not allow rebuilding or other replacement of such structures based upon a choice by property owners and their deliberate demolition of a pre-existing, non-conforming structure, as happened in this case.

2. The ZBA further finds that Section 9.01(A) is not applicable in this case because the structure that was demolished and/or removed in 2018 was being used for a conforming use, not a nonconforming use, as an accessory structure is an "Allowed Use By Right With Zoning Permit" and not prohibited in the Moderate Intensity Zoning District. Thus, no use variance would be required for the Tavernis' proposed replacement accessory structure.

3. In addition, the ZBA finds that Section 9.01(B) also does not apply to the replacement of a nonconforming structure as it states the following:

Section 9.01 (B) No nonconforming structure shall be enlarged, expanded, extended, increased in bulk or moved to a different portion of the lot it occupies unless such modification is in conformance with this local law or an area variance is obtained.

The ZBA finds that Section 9.01(B) of the Zoning Local Law allows existing and otherwise lawful nonconforming structures to continue in existence in the same location but does not address or allow for their repair or replacement.

4. The ZBA finds that Section 9.05, which allows a lawfully pre-existing, non-conforming structure to be repaired or rebuilt within three years after being damaged or destroyed by “acts beyond the control of man” does not apply because no such damage or destruction from natural causes during the prior three years was established by the Tavernis before and/or as a basis for their deliberate demolition of their then-existing shed structure on or about August 28, 2018.

5. The 2008 Decision by the ZBA is not determinative of this Appeal. The ZBA acknowledges that precedent should be followed if the Zoning Law has not changed and the current facts and circumstances are the same as those on which the prior decision was based. However, a different decision may be warranted if the facts and circumstances are different than those on which the previous decision was made. In the current case, the facts and circumstances have changed from those in 2008. At that time, the damage to the then-existing shed was from natural causes and Section 9.05 applied to allow repairs to it. Thus, the ZBA at that time appropriately affirmed the Zoning Administrator’s determination to allow repair or rebuilding of the shed portion of the structure. However, Section 9.05 is not applicable under the circumstances relating to the

current Appeal because the shed was deliberately demolished, not destroyed by natural causes.

6. The proposed open pole barn is clearly different than the three-sided shed structure that previously existed on the Tavernis' property. As a result, the construction of the proposed pole barn structure as opposed to a replica of the pre-existing nonconforming structure would not be in compliance with the 2008 Decision.
7. In 2008 the ZBA's decision properly stated that its affirmance of the Zoning Administrator's determination "does not give the Tavernis' or their contractor(s) any rights to go onto the Appellant's property or to touch or do anything with or to any part of the structure that is on the Appellants' property". The ZBA concurs with this portion of the 2008 ZBA decision.
8. After careful review of the construction plans submitted with the Application for Zoning Permit by the Tavernis to the Town Planning and Zoning Office on February 15, 2018, Sheet No. 5 of 5 of the submitted plans drawn by Winchip Engineering, PC clearly states "Provide Flashing From Old Roof to New Roof". Thus, according to the construction plans, the flashing would be "touching" the existing garage structure on the Appellants' property and therefore potentially inconsistent with the 2008 ZBA decision.

Therefore, based on the above findings, the Appeal is granted and the Stop Work Order issued on September 14, 2018 that was rescinded by the former Zoning Enforcement Officer on January 20, 2021 is hereby reinstated.

A motion was made by Barbara Kearney, Seconded by Mary Clark to Adopt the Draft Resolution for Appeal #A2021-01. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes, the motion carried 4-0 and Resolution for Appeal #A2021-01 was adopted.

Arnold Jensen arrived and sat on the Board at 7:12pm.

Mark Schachner departed the meeting at 7:12pm.

NEW BUSINESS AND PUBLIC HEARINGS:

#493-V: M & J Lakehouse, LLC (Lisa Esperti) is requesting a 3 ft. left side yard setback variance, according to Section 7.03(A)(1) of the Town of Chester Zoning Local Law, in order to install a 4' x 40' dock. Property is located at 99 Kingsley Lane, identified by Tax Map Parcel #: 86.14-1-26, in Zoning District Moderate Intensity.

Lisa Esperti was present at the meeting. She stated she was looking at the replacement of a dock that she has had for 30 years. Dock is not permanent and will roll in and out of the lake. Arnold Jensen asked if there were submerged rocks across the property. The applicant stated that was correct.

A discussion took place on the location of the dock. The applicant stated that large rocks would hinder relocation. Arnold Jensen stated that the dock was pre-existing.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 7:19pm.

No comments were made during the Public Hearing.

A motion to close the Public Hearing at 7:20pm by Arnold Jensen, Seconded by Michael Hough. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

A motion to approve #493-V by Arnold Jensen with the following criteria reviewed-

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. This is based on the applicant's statements.
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 Barbara Kearney. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

#494-V: Cynthia M. and Robert W. Monaghan are requesting a 38 ft. front yard setback variance, 9 ft. left side yard setback variance, and a 49 ft. shoreline setback variance, according to Section 4.03 and Section 7.01(B)(4) of the Town of Chester Zoning Local Law, in order to construct a 12' x 16' deck with railings. Property is located at 644 Atateka Drive, identified by Tax Map Parcel #: 120.15-1-9, in Zoning District Moderate Intensity.

Robert Monaghan was present at the meeting and explained his want to build a deck right on the shoreline. Arnold Jensen asked about the correct location of the proposal, it was explained to Mr. Jensen that it was going to be right on the lake. Mr. Jensen asked what the deck would do for the applicant? The applicant stated that it would allow for seating and sunshine. Mr. Jensen asked what the deck would do instead of the grassy area on the property? The applicant stated that there is currently brush, granite rocks and trees in that location.

Michael Hough asked about improving the property instead of building a deck? Barbara Kearney asked if there was a dock on the property. The applicant stated that there was. Chairman MacMillen asked how big the dock was. The applicant stated it was 18x5 and has been there for 20 years. The Chairman asked about building a bigger dock. The applicant stated that he already has an aluminum dock extending the dock.

Arnold Jensen stated that he would like to defer and see if there are any alternatives. Mary Clark stated that the APA may kick back the variance with the closeness to the shoreline. Barbara Kearney stated that she believes there are alternatives to the variance instead of the deck.

Chairman MacMillen started a discussion on feasible alternatives regarding the Variance. Arnold Jensen stated that he believes there are alternatives to the variance and could not support this application this evening.

Having been duly advertised, the Public Hearing was opened at 7:39pm by Chairman MacMillen-

No Comments were made during the Public Hearing.

A motion to close the Public Hearing by Michael Hough, Seconded by Arnold Jensen at 7:40pm. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

After discussion with the applicant, he wanted the Board to move forward with a vote on this application.

A motion was made by Barbara Kearney to Deny #494-V. The Motion was seconded by Mary Clark. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

#495-V: Frank and Katherine Forbes are requesting a 2 ft. left side yard setback variance and a 40 ft. front yard setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to replace an existing deck with a new 8' x 8' deck with steps. Property is

located at 75 Ferris Road, identified by Tax Map Parcel #: 103.-2-14.15, in Zoning District Rural Use.

Frank Forbes was present at the meeting. The applicant is looking to replace an 8'x8' deck with stairs. Michael Hough asked if the deck would be built in the existing footprint, the applicant stated that it would be. Arnold Jensen asked if the current deck is deteriorating. The applicant stated that it is approaching that point fast.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 7:43pm.

No comments were made during the Public Hearing.

A motion was made by Mary Clark, Seconded by Arnold Jensen to close the Public Hearing at 7:44pm. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

A motion to approve #495-V by Barbara Kearney with the following Criteria reviewed-

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 not self-created.

The motion was seconded by Mary Clark. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

#496-V: Eric and Sara Pooler are requesting a 90 ft. front yard setback variance and a 127 ft. shoreline setback variance, according to Section 4.03, Section 7.01(B)(4) and Section 7.01(D) of the Town of Chester Zoning Local Law, in order to replace an existing wooden shoreline retaining wall with a concrete stacker-type block shoreline retaining wall (7' x 60', 420 square ft.). Property is located at 11 Carl Turner Road, identified by Tax Map Parcel #: 87.12-1-20, in Zoning District Rural Use.

Eric Pooler was present at the meeting. He is the new owner of Riverside Pines Campground. The retaining wall is dangerous and would like to remove and replace so that they can reopen the beach. Chairman MacMillen stated that he feels that it is something the needs to be done. Michael Hough asked if the applicant would be encroaching on the water at all. The applicant stated that it is not the plan to do so. Chairman MacMillen stated that he feels the Board should place a condition that necessary permits be received.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 7:52pm-

No comments were made during the Public Hearing.

A motion to close the Public Hearing at 7:53pm by Michael Hough, Seconded by Arnold Jensen. A Roll Call Vote was called by Secretary Bartlett- The motion was seconded by Mary Clark. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

Chairman MacMillen stated that the Warren County Planning Department referral was received and this application would be sent to the APA for review.

A motion to Approve #496-V by Arnold Jensen with the following Criteria reviewed-

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 not self-created.

The following Condition of Approval was part of the motion-

- a. Applicant will receive necessary permits from the New York State Department of Environmental Conservation, Army Corps of Engineers, and Adirondack Park Agency, as applicable to the project.

The motion as seconded by Mary Clark. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

#497-V: Word of Life Fellowship is requesting (1) a 50 ft. shoreline setback variance for the renovations to the existing "Lake House" dwelling and to replace an existing deck with a new deck; and, (2) a 31 ft. shoreline setback variance for the renovation of an existing one-story detached structure with a proposed two-story garage addition, according to Section 7.01(B)(4) of the Town of Chester Zoning Local Law. Property is located at 8192 State Route 9, identified by Tax Map Parcel #: 36.-1-19.1, in Zoning District Moderate Intensity.

Clinton McKenna (Contractor) for Word of Life was present at the meeting. He stated that the property is an existing "Lake House" that was purchased by Word of Life. He reviewed the plans submitted in regards to original construction as well as reviewed the Variances and the reasons for their requests.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 8:11pm

No comments were made during the Public Hearing.

A motion to close the Public Hearing at 8:12pm by Mary Clark, Seconded by Michael Hough. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

A motion to approve #497-V by Michael Hough with the following Criteria Reviewed-

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 not self-created.

Mr. Hough stated that this is a Type II Action and No County Impact was found.

The motion was seconded by Arnold Jensen. A Roll Call Vote was called by Secretary Bartlett-Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

#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.

Tom Luciano, Maria Willette, and Stephanie Bitters (Attorney) were present at the meeting. Ms. Bitters presented the request of the applicants.

Arnold Jensen asked about the lot line proposals. Ms. Bitters stated that the applicant is ensuring that each daughter has a piece of land. There is a huge mound of dirt on the property from the northway being installed. Mr. Jensen asked if there were specific locations for buildings. Ms. Bitters stated that they were proposed due to terrain.

Chairman MacMillen asked about the Pole barn Barn location. A discussion took place on alternatives. The Chairman asked if the APA had previously approved the property. The applicant stated that that was correct. The Chairman asked how they were assessing the property. The applicant stated by the right curve on Carl Turner Road.

Arnold Jensen asked about moving the proposal closer to the property line. The applicant stated that they are open to alternatives. Mr. Jensen would like to go and see exactly what they are dealing with. Barbara Kearney stated that she would like to see dimensions on the plans instead of on the chart. Chairman MacMillen stated he would like to see the proposals staked out on the property and then tweaking can be done if necessary. Michael Hough asked if the houses had already been designed, the applicant responded that they had not. Chairman MacMillen asked if the Board could see copies of the letters from the APA with the original approval.

Zoning Administrator Jeremy Little read the 2006 Decision of a Variance by the Town of Chester Zoning Board of Appeals.

Ms. Bitters reviewed the requests of the Board for the next meeting.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 8:58pm

No comments were made during the Public Hearing.

The Public Hearing remains open.

MINUTES:

A motion was made by Mary Clark, Seconded by Michael Hough to approve the March 23, 2021 Minutes of the Zoning Board of Appeals with the amendments as presented. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Abstained, the motion carried with 4 in favor and 1 abstained.

CORRESPONDENCE:

- Zoning Administrator's Activity Report for March 2021;
- Letter from Jill Broderick dated March 25, 2021 and received by the Zoning Office via e-mail on March 26, 2021 RE: Appeal #A2021-01.

PUBLIC PRIVILEGE: None

BOARD PRIVILEGE: None

ADJOURNMENT:

A motion was made by Barbara Kearney, seconded by Mary Clark to adjourn the meeting at 9:02pm. A Roll Call Vote was called by Secretary Bartlett- Chairman MacMillen- Yes, Ms. Clark- Yes, Mr. Hough- Yes, Ms. Kearney- Yes Mr. Jensen- Yes, the motion carried 5-0.

Respectfully submitted,

Jack D. Bartlett
Secretary
Zoning Board of Appeals