



**MINUTES OF MEETING  
TOWN OF CHESTER ZONING BOARD OF APPEALS  
Regular Meeting  
February 23, 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, Marion Eagan (Recording Secretary), Mark Schachner (Town Attorney) (Via Zoom), and Jeremy Little (Zoning Administrator). Absent was Arnold Jensen, and Jack D. Bartlett (Board Secretary).

**OLD BUSINESS AND PUBLIC HEARINGS:**

**#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. **\*\*PUBLIC HEARING remained open from 11/24/2020 Meeting.\*\***

Zach Monroe with Winchip Engineering was present at the meeting representing the applicant. Chairman MacMillen advised that the Town Engineer (Cedarwood Engineering) has reviewed both engineering reports and has returned a letter with three recommendations. A discussion ensued on the Engineering Report in regards to Storm Water Calculations in regards to the Association Engineer and the applicants engineer took place. The Town Engineer also stated that there was no jurisdictional wet lands on the property.

Mary Clark asked regarding the potential spring on the property. Zach Monroe responded that reviewing the deed of the applicant, they have the right to maintain the water source; however, no other properties are connected to the spring.

Chairman MacMillen asked if the recommendations from the Town Engineer will be completed. Zach Monroe stated that they will be completed.

Chairman MacMillen entered into the Public Hearing which remained opened from the November 24, 2020 Meeting of the Zoning Board of Appeals-

John Wright (Attorney for the Valentine Park Association) stated that there is no contention on there being non-jurisdictional wetlands on the property. The Zoning Board of Appeals needs to consider the five criteria for approving a variance when making a determination on this application. One of the key criteria is will there be an adverse effect on nearby properties or the environment. The Board should get a percolation test completed. Cedarwood Engineering and the Association are both recommending that further testing be done prior to a decision being made.

Chairman MacMillen asked the Attorney for the Town if the Board was to approve the variance, could conditions be imposed with the approval. Mark Schachner, Attorney for the Town, stated that the statement was correct.

Scott Healy (Engineer for the Valentine Park Association) asked about a Stamped Engineering Plan. The Chairman stated that the Board does not require a stamped plan at the time of application, however, one is required before any permits are issued. Mr. Healy asked about the Storm Water Management Plan. Mr. Monroe stated that on the plans submitted to the Board was the calculations for the Storm Water Management Plan. Mr. Healy stated that there is existing water flowing through the property. Bret Winchip of Winchip Engineering stated that he disagrees with the assessment of the Storm Water. Mr. Healy stated that the data shows that there is standing water on the property. Chairman MacMillen gave an explanation on the APA's determination of Jurisdictional Wetlands.

Micheal Hough asked why is the water flowing down from the hill the responsibility of the applicant and not the upper property owner.

Chairman MacMillen brought up the culvert that had been installed in the roadway being too small and could be causing the water flow issues.

Scott Healy stated that there is a large amount of water flowing onto the property and that should be a concern of the applicant.

Scott Healy stated that the design of the Septic System should follow Section 75(A) (From the Cedarwood Letter) and the current design does not meet the code. New York State Department of Health Residential Handbook should be used. If this is followed Mr. Healy does not believe that the house fits on the proposed site.

Zach Monore stated that he would answer any questions from the Board.

Frank Cappabianca- Gave a history of the Culvert and how it was installed during an Emergency Repair due to flooding to the roadway and is currently draining from the flooding on the applicant's property. He stated that he feels that this application should not be conditionally approved until all questions are answered.

Barbara Kearney asked if there could be a self-contained septic system? Mr. Monroe stated that there is no treatment system that alleviates the setback requirements.

Chairman MacMillen stated that there seems to be a dispute between the Engineers on the locations of the septic. The Attorney for the Town stated that the Board can utilize the Town Engineer to answer any of the Board's questions on the Engineer Reports.

Mary Clark states that she feels that the Board should look at the Site Plan when trying to reach a determination.

Chairman MacMillen stated that conditions can be placed on approvals. The Chairman stated that he is in favor of putting conditions on approval for issuing a permit. Michael Hough also stated that he is in favor.

The Attorney for the Town stated that deliberation is occurring during a Public Hearing. All Public should be able to comment, and avoid dialogue between comments and the Board and then the Board should determine their next steps.

John Wright stated that discussion has demonstrated that the Board does not have the Engineering information needed to make a decision. Cedarwood should be consulted before a decision is being made. Error in using the term Wetland, the APA jurisdictional issue should allow the Board to consider the wet nature of the property and if the approval of the application could have a detriment to nearby properties.

A motion to close the Public Hearing by Mary Clark, Seconded by Michael Hough. A Roll Call Vote was called by Recording Secretary Eagan-

Chairman MacMillen- Yes, Ms. Clark- Yes, Ms. Kearney- Discussion began on leaving the Public Hearing open. Mary Clark feels that the Board has heard discussion from all sides. Barbara Kearney feels we don't have all of our answers to make a determination. She feels the Board could leave the Public Hearing Open and get more information rather than placing a condition.

Mary Clark withdrew her motion and asked if the Town Attorney could review the issue with the Spring and then a perc test could be completed.

The Attorney for the Town stated that it is not up to the Town of Chester or their legal counsel to review Real Property issues between neighbors, his firm can certainly do this if it is something that the Board feels is necessary; however, it should be billed to the applicant and not the taxpayers of the Town of Chester.

Michael Hough stated that based on the response of the Town Attorney and the information presented that he would be inclined to close the Public Hearing.

Motion to Close the Public Hearing at 8:12pm by Michael Hough, Seconded by Mark Clark. A Roll Call Vote was called by Recording Secretary Eagan-

Ms. Clark- Yes, Chairman MacMillen- Yes, Michael Hough- Yes, Ms. Kearney- No. The motion carries 3-1.

A motion to approve #488-V by Mary Clark with the following conditions-

1. Perc Test must be completed in compliance with the Town of Chester Septic Guidelines, as referenced in Recommendation #2 of the letter from Cedarwood Engineering dated 02/19/2021:

Due to the wet nature of the proposed site, Cedarwood recommends additional perc testing be conducted on the primary and reserve absorption areas during the normal high groundwater table season (typically May-June) to ensure the soil will meet the required rate of 5 minutes/inch which correlates to the application rate cited on the design plans. Additional test pits should be excavated in the primary and reserve absorption areas.

Ms. Clark Reviewed the Criteria to Approve a Variance as part of her motion-

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 Michael Hough. A Roll Call Vote was called by Recording Secretary Eagan-

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

The Motion Carries 4-0.

#### **NEW BUSINESS AND PUBLIC HEARINGS:**

**#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.

The Attorney for the Town stated that this has been complicated proceedings and that many supposed issues are not believed to be appropriate issues for the Zoning Board of Appeals, this includes-

1. If the Former Zoning Enforcement Officer was lawfully the Zoning Enforcement Officer at the time of issuance of the letter
2. If the Former Zoning Enforcement Officer was tainted by Friendship with the Taverni's
3. Any unethical involvement of the Town Supervisor
4. A better placement of the shed than the current location of the rebuild
5. The Zoning Board of Appeals 2008 decision is not determinate of the appeal
6. Allegations or complaints that the Town Attorney or his law firm have bias. The Town Attorney made it clear that he does not know the Taverni's or Broderick's and that he or his firm neither have bias against either party.

The Attorney stated that with disputes between neighbors, he advises the Board to not get involved in back and forth dispute between neighbors and Board should not rush a decision this evening.

Chairman MacMillen stated that issues described by the Town Attorney should not be discussed as they will not be valid to the issue at hand.

The Attorney for the Town stated the issue of the appeal for proceeding that a person representing as the Zoning Enforcement Officer on January 20th rescinded a Stop Work Order. The Boards job is to determine if the Stop Work Order should have been rescinded according to Section 9.01 and possible Section 9.05 of the Town of Chester Zoning Local Law.

Jill Broderick was present at the meeting and stated that she is appealing the letter of January 20, 2021 rescinding the Stop Work Order. Mrs. Broderick referenced and read from Sections 4.03 and 4.04 of the Town of Chester Zoning Local Law. She stated that any developments must go before Section 4.04. The building in question was demolished and no permit was issued. The Chairman stated that he would like Mrs. Broderick to focus on the appeal and not on the Variance. The Attorney for the Town stated that he felt Mrs. Broderick was focusing on the local law as it pertains to building or rebuilding of the structure. Mrs. Broderick stated that that was correct. The work on the project was commenced in August 2018 with the demolition of the structure. Thomas Thorsen referenced a 2008 decision that was for the replacement of a roof and not for the replacement of the entire structure. Mrs. Broderick asked the Board to show her in the Local Law where the rebuilding was valid.

Chairman MacMillen stated that the Board is here to determine if the determination of the former Zoning Enforcement Officer for the Stop Work Order was valid.

Jill Broderick stated that on January 9th Zoning Enforcement Officer Thomas Thorsen was at the residence of Linda & Anthony Taverni conducting Town Business against Open Meeting Law and Town Ethics Law. Mrs. Broderick believes that the letter written by Town Citizen Thomas Thorsen was invalid. She read Section 9.01 of the Zoning Local Law. The 2008 decision does not describe the 2021 Pole Barn designed by Winchip Engineering. The shed was voluntarily demolished. She respectfully requests that the Zoning Board of Appeals reinstate the Stop Work Order and follow the Zoning Local Law. The Board would be setting precedence by upholding the former Zoning Enforcement Officer's determination. The Former Zoning Enforcement Officer wrote a memo to Charles Wallace at Warren County Building Codes stating "This issue will soon go away" while serving on the Zoning Local Law Revision Committee. In June/July of 2019 the Zoning Local Law had not been changed. The Former Zoning Enforcement Officer had no authorization to withdraw the Stop Work Order while the Zoning Board of Appeals was in deliberation.

Russell Langwig (Attorney for the Brodericks) stated that the mechanism to be able to determine Thomas Thorsen's status following January 1, 2021 should be forwarded to the Town Board and the Zoning Board of Appeals should await a response. If Mr. Thorsen was not the Zoning Enforcement Officer then he could not lawfully rescind the Stop Work Order and this appeal is moot. Proposed structure is not similar to what had already been torn down. No variance has been issued and the application for a variance has been withdrawn. It is obvious

that the Stop Work Order should never have been rescinded. He gently suggested that the Public Hearing be continued and refer Mr. Thorsen's status to the Town Board.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 8:56pm.

Linda Taverni whose property is the subject of the appeal stated that she agrees with the comments of the Town Attorney had made. She also stated that she had submitted a letter to the Board regarding to their objections to the appeal and stated that there is a legal precedence to take the 2008 decision into consideration. She stated that she has the right to rebuild on their property. The torn down original structure was as per what they believed to be the Town's Laws.

When asked by the Chairman, the Attorney for the Town stated that he does not believe that there is a need to keep the Public Hearing open; however, a decision must be made within 62 days of closing the Public Hearing.

Russell Langwig stated that the Stop Work Order references a violation to Section 9.05.

Linda Taverni stayed that she believes Mr. Thorsen rescinded because he was operating under the wrong section of the Zoning Local Law.

Jill Broderick stated that she believes that the Zoning Board of Appeals should leave the Public Hearing Open until the Town Board responds with the status of the Zoning Enforcement Officer.

Chairman MacMillen stated that as advised by the Town Attorney the Zoning Enforcement Officers status is no valid to the decision of the Zoning Board of Appeals in regard to the appeal.

The Attorney for the Town stated that he agrees and in no way is he advising that the Zoning Board of Appeals need to refer that action to the Town Board.

Jill Broderick stated that if you uphold Section 9.01 via Mr. Thorsen's letter then this affects all non-conforming structures in the Town of Chester.

Motion to close the Public Hearing by Michael Hough, Seconded by Barbara Kearney at 9:07pm. A Roll Call Vote was called by Recording Secretary Eagan-

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

Chairman MacMillen stated that he would like to see the Board create a draft decision and consult with the Town Attorney. Barbara Kearney asked if the Board can discuss this matter. Ms. Kearney referenced Section 9.01(E) and how she feels that this section of the Zoning Local Law could be pertinent to the appeal based on prior discussion that the Board agrees that there is fire separation issues and may be unsafe. The Chairman asked if it is appropriate for the Board to discuss and lean towards a decision this evening. The Attorney for the Town stated that this totally appropriate.

Chairman MacMillen asked how the Board feels about renewing the Stop Work Order. Barbara Kearney stated that she believes that the Stop Work Order was rightfully issued with safety

concerns. Mary Clark agrees with Barb, Michael also agrees with Barb and would like more time to review everything. Chairman MacMillen stated that the Board has 62 days to render a decision.

The Attorney for the Town stated that a draft decision can be prepared and discussion can be continued during an open public meeting. He is happy to review a draft decision; however, he will not write the decision for the Board.

### **MINUTES:**

A motion was made by Mary Clark, Seconded by Barbara Kearney to approve the January 26, 2021 Minutes of the Zoning Board of Appeals. A Roll Call Vote was called by Recording Secretary Eagan-

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

### **CORRESPONDENCE:**

- Zoning Administrator's Activity Report for January 2021; E-mail from Scott Healey dated February 05, 2021 and received by the Planning and Zoning Office on February 05, 2021 RE: Area Variance Application #488-V-0 Valentine Park, LLC; Letter from the Zoning Administrator dated February 09, 2021 to Anthony F. and Linda T. Taverni RE: Appeal #A2021-01;
- 2021 Meeting Schedule and Submittals for Planning Board, Zoning Board of Appeals, and Town Board;
- Letter from Linda Taverni dated February 11, 2021 and received by the Zoning Office via e-mail on February 11, 2021 RE: Appeal A2021-01. Letter from Mark Schachner, Town Legal Counsel, dated February 17, 2021 to Linda Taverni RE: Appeal #A2021-01. Letter received by the Zoning Office on February 17, 2021; Last Revised 2/23/2021 3:40 PM
- Letter from Cedarwood Engineering dated February 19, 2021 RE: Review of 0 Valentine Park – Building and Wastewater Plans. Letter received by the Zoning Office on February 22, 2021; Statement from Linda Taverni dated February 19, 2021 and received by the Zoning Office via e-mail on February 22, 2021 RE: Appeal A2021-01;
- E-mail from Zoning Administrator to Linda Taverni dated February 22, 2021 RE: Appeal A2021-01 with attached letter from Town Legal Counsel dated February 17, 2021;
- E-mail from June Maxam dated February 20, 2021 with attachment and received by the Zoning Office on February 22, 2021 RE: Taverni-Broderick #A2021-01;
- Letter from Tom Thorsen dated February 20, 2021 and received by the Zoning Office via e-mail on February 22, 2021 RE: Appeal #A2021-01;
- Letter from J. Russell Langwig III dated February 23, 2021 and received by the Zoning Office via fax on February 23, 2021 RE: Broderick Appeal, Rescission of Stop Work Order.

**PUBLIC PRIVILEGE:** None

**BOARD PRIVILEGE:** None

**ADJOURNMENT:**

A motion was made by Mary Clark, seconded by Michael Hough to adjourn the meeting at 7:03pm. A Roll Call Vote was called by Recording Secretary Eagan- Chairman MacMillen- Yes, Mr. Hough- Yes, Ms. Clark- Yes, Ms. Kearney- Yes. Motion carried 4-0.

Respectfully submitted,

Jack D. Bartlett  
Secretary  
Zoning Board of Appeals