



**MINUTES OF MEETING  
ZONING BOARD OF APPEALS  
TOWN OF CHESTER  
JULY 22, 2014**

Chairman Marcheselli called the meeting to order at 7:06 p.m.

**ATTENDANCE:**

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

*Present in audience:* Frederick and Karen Griffen, Paul H. Alford, Brett Winchip and Zack Monroe (Winchip Engineering), Randy Frasier, Eric Isachsen (Eric and Eric), and Jason Bradley.

*Six ZBA Members were present (including Bill Oliver (alternate)). Chairman Marcheselli noted that only five could be present on the Board and suggested that Bill Oliver remain on the Board and include his vote due to his full attendance in reviewing Application #411-V. Mrs. Dower stated she would recuse herself and her position on the Board concerning Application #411-V.*

**CORRESPONDENCE:**

Zoning Administrator and Sanitary Code Enforcement Officer's Activity Report for June 2014.

**MINUTES:**

Mr. Grady made a motion to make an amendment (in bold) to the following paragraph on Page 3 found in the previous minutes from the June 24, 2014 meeting:

Mr. Tennyson explained to the Board that on October 28, 1997, an area variance was approved by the Zoning Board of Appeals to place a 24' x 40' one-bedroom dwelling on the parcel (#318-V). However, the approved variance is not transferrable from one property owner to another. Mr. Tennyson stated that it has no effect on the current variance being requested. **I, John Grady, respectfully disagree with the statement herein that approved variances are not transferrable from one property owner to another. My firm belief is that variances run with the land and,**

**"absent a specific time limitation, it continues until properly revoked".**

Mr. Grady made a motion to accept the amended minutes with the above read statement; motion seconded by Mr. Oliver. Motion carried 5-0.

**PUBLIC HEARING:**

The public hearing for Variance Application #411-V was continued from last month's meeting at 7:15 p.m.

**#411-V** - Randy Frasier seeking an eighty-one point four ft. (81.4') frontline variance, a twenty-five ft. (25') frontline variance, and a thirty-one point four ft. (31.4') sideline variance (see below), according to Section 4.03 of the Town of Chester Zoning Local Law in order to meet frontline and sideline setback requirements located at the 2 Kohl Road on .47 acres, identified by Tax Map Parcel #: 34.-1-16, in Rural Land Use Area.

Bret Winchip and Zachary Monroe from Winchip Engineering were in attendance to present the proposal. Randy Frasier was also in attendance.

Mr. Grady questioned Mr. Monroe, "The zoning that is applicable requires an acre... you have .47 acres, so why aren't you asking for an area variance as well as the other setback variances?"

In response Mr. Monroe stated, "This is not for the creation of a new lot. It is a pre-existing non-conforming lot."

Mr. Monroe began by stating the variance request has changed as the dwelling has been shifted downward on the Site Plan. As a result, Mr. Monroe affirmed that Mr. Frasier has three variance requests, two of which had changed due to the shift, and are requested as the following (as marked on the Site Plan):

**PRIOR SETBACK VARIANCE REQUEST:**

**Front (South): 83.5 Ft.; Side (North): 31.4 Ft.**

**NEW SETBACK VARIANCE REQUEST:**

**Front (East): 25 Ft.; Front (South): 81.4 Ft.; Side (North): 31.4 Ft.**

**A SHORT DISCUSSION ENSUED BETWEEN THE BOARD MEMBERS, MR. MONROE, AND MR. AND MRS. GRIFFEN CONCERNING THE SURVEY MAP AND PROPERTY LINES.**

In addition, Mr. Grady stated, "We have a licensed survey by a professional in the State of New York and I think there is no question that we need to go by that unless there is some equally pertinent documentation... if you can't show something in writing or anything of

substance pertaining to a survey, I do not see how we can as a Board do anything other than go by the survey that was submitted.”

Mr. Marcheselli was concerned about the amount of the parcel’s road frontage on the Kohl Road. The Board reviewed and compared the old and new survey maps. After careful review, Mr. MacMillen told the Board that from a legal perspective, the amount of road frontage is determined by the most recent survey. He also added that the most recent survey should be the only one utilized and reviewed by the Board. As a result, Mr. Marcheselli stated that according to the new survey map, the parcel does “contain enough road frontage.”

Mr. Alford was concerned with the dwelling being shifted downward approximately twenty-five ft. and its impact/position of the well. Mr. Monroe stated that the position of the well and septic has not changed. Mr. Alford also expressed another concern regarding Mr. Frasier’s parcel. It was to Mr. Alford’s understanding that the lot was purchased with the supposition that it was larger than it was. In addition, Mr. Alford asked that all property lines should be respected concerning the variance proposal.

Mr. Grady said, “I have specific research and can show you this case law and so forth. When a variance is granted, it has to be that there are rights that have to be vested. Those vested rights run with the property once they are vested. The key here is even if the zoning changes after the rights have vested, it has no effect. The question becomes when do those rights become vested?” **(Please see Meeting Minutes from November 10, 2014 with clarification to these Minutes from Counsel on duration of approved variances and vesting of rights granted by a variance.)** Mr. Grady continued to state and report his findings (according to New York Statute/Case Law) to the Board to substantiate his argument. Mr. Grady believed that the intent was to allow the applicant for **#318-V** to build a dwelling. Therefore, he believed that a variance is not necessary and therefore, not required.

Mrs. Griffen questioned if the variance that was granted to Jerry and Linda Laushe on October 28, 1997 (**#318-V**) was based on the .47 acres or 1.6 acres.

A Jurisdictional Determination (*J97-213A*), dated August 05, 1997 from the Adirondack Park Agency, was read by Chairman Marcheselli. Mr. Marcheselli read to the Board the APA Jurisdictional Determination which stated that a permit was not necessary from the Agency for construction of a single family dwelling and that under Description (1), it reads: “The property is a vacant 1.6 +/- acre nonshoreline parcel...” The approved variance application in 1997 (**#318-V**) along with the provided site plan was discussed and reviewed by the Board. The minutes from the October 28, 1997 Zoning Board of Appeals meeting were also read by Mr. Marcheselli.

Mr. Marcheselli stated that according to his perspective, the physical dimensions of the property have not changed and Mr. Monroe and Mr. Winchip concurred.

Mr. Grady made a motion to close the public hearing concerning Variance Application **#411-V** at 8:18 p.m.; seconded by Mr. MacMillen. Motion carried 5-0.

Mr. Marcheselli questioned Mr. Frasier what the end result would be if the variance was not granted. Mr. Frasier stated if the variance is not granted, he would suffer a loss of money and he would construct a dwelling that would meet the setback requirements. He stated it would not be “as pretty or as nice as the house that is proposed.”

Mr. Jensen and Mr. MacMillen agreed that if the Board refers to the interpretation stated by Mr. Grady, it might possibly be a legal risk if it is interpreted in the wrong manner.

Following discussion, 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 be an undesirable change in neighborhood character. All concurred that if the request is granted, the structure would be closer to the road; however the dwelling will be substantially similar to surrounding structures/dwellings on nearby properties.
- 3.) The Board agreed that the request is substantial, as the applicant is requesting the following setback variances:  
Front (East): **25 ft.**; Front (South): **81.4 ft.**; Side (North): **31.4 ft.**
- 4.) The Board did not believe there would be adverse physical or environmental effects;
- 5.) The Board was not unanimous in agreement that the alleged difficulty was self-created. A discussion ensued concerning whether Variance Application #318-V in 1997 was granted and based on erroneous information.

Mr. MacMillen made a motion to classify this project (Variance Application **#411-V**) as a Type II action which does not require further review under SEQRA and to declare a negative declaration due to the project having no significant impact on the environment. Mr. Grady seconded the motion. None opposed; motion carried 5-0.

Mr. MacMillen made a motion to approve Variance Application **#411-V** which is requesting a twenty-five ft. (25') setback variance for Front (East), an eighty-one point four ft. (81.4') setback variance for Front (South), and a thirty-one point four ft. (31.4') setback variance for Side (North). Motion seconded by Mr. Jensen. Mr. Oliver and Mr. Marcheselli opposed. Mr. Grady abstained. No majority vote, 2-2; Variance Application **#411-V** not granted.

Having been duly advertised, the public hearing for Application **#412-V** was opened by Chairman Marcheselli at 9:08 p.m.

**#412-V** – Jason Bradley seeking a twelve ft. (12') sideline variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct an 18'-6" x 8' deck with

stairs, on property located at 1 Pine Street, identified by Tax Map Parcel #: 104.10-3-2, in Moderate Intensity Land Use Area.

Mr. Eric Isachsen from Eric and Eric was present to represent Mr. Bradley. Mr. Bradley was also present at the meeting.

Mr. Isachsen began by stating that the proposal is to construct a deck with stairs to a structure which already exists on the property. In addition, the structure will have a second story with living quarters. He also said that the deck addition will be on the side of the property towards James McDermott's property.

Mr. Grady said that he had a conversation with Mr. McDermott and he stated that he was in favor of the project. Mr. Grady visited the property and believed it was practical where the deck addition is proposed. He mentioned that if the deck with stairs were to be placed "towards the rear," it would negatively impact the courtyard and pavers.

Mr. Oliver made a motion to close the public hearing concerning Variance Application #412-V at 9:14 p.m.; motion seconded by Mr. Grady. Motion carried 5-0.

Following discussion, 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 twelve ft. (12') sideline variance.
- 4.) The Board agreed that the request will not have adverse physical or environmental effects;
- 5.) The Board agreed that the alleged difficulty is not self-created.

Mr. MacMillen made a motion to classify this project (Variance Application #412-V) as a Type II action which does not require further review under SEQRA and to declare a negative declaration due to the project having no significant impact on the environment. Mr. Grady seconded the motion. None opposed; motion carried 5-0.

Mr. MacMillen made a motion to approve the twelve ft. (12') sideline variance for the construction of a deck with stairs addition, in reference to Variance Application #412-V; motion seconded by Mr. Grady. None opposed; motion carried 5-0.

**NEW BUSINESS:** None.

**BOARD PRIVILEGE:** None.

**OLD BUSINESS:** None.

**ADJOURNMENT:**

Mr. Grady made a motion to adjourn the meeting at 9:18 p.m.; seconded by Mr. MacMillen.  
Motion carried 5-0.

Respectfully submitted,

Jeremy J. Little

Secretary

Zoning Board of Appeals