



**MINUTES OF MEETING
ZONING BOARD OF APPEALS
TOWN OF CHESTER
JUNE 26, 2018**

The meeting was called to order by John MacMillan at 7:01PM.

ATTENDANCE:

Mary Jane Dower, John MacMillan, Arnold Jensen, Tom Thorsen and Bill Oliver. Also, in attendance was Ed & Michelle Wallace, John Nick, Al Muench, Frank Gabriel, Tony Ovchinnikoff and John Figurski.

PUBLIC HEARING:

John MacMillan opened public hearing at 7:02PM.

#444-V: Edward and Michelle Wallace are requesting a 22 ft. frontline setback variance and 30 ft. left sideline setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to place a mobile home on the property. Property is located at 72 Ferriss Rd., identified by Tax Map Parcel #: 103-2-17, in Zone Classification Rural Use.

Ed and Michelle Wallace, speaking on their own behalf, stated the new mobile home will go on existing footprint but is larger than the old mobile home that was taken out resulting in the need for this variance. Over the years a shed was built making the area tighter so a variance is needed for larger mobile home.

Arnold Jensen stated that the building could be set back further and would another 10 feet make that much difference?

Ed Wallace stated that yes it would because new home is 16 ft wide vs. old one was 14 ft. wide. It would not leave enough space for snow removal etc... between home and shed.

Michelle Wallace stated when they bought the property there was only a small pathway less than arms length wide if you put them out to your side.

Arnold Jensen asked how far does your property extend back. Ed Wallace stated 200 ft. Michelle Wallace stated there is a small amount of acreage there.

Arnold Jensen stated that he understands it is all woods behind it. Ed Wallace concurred. Ed Wallace stated if he moved it back then he would have to move the shed and other things.

John MacMillan clarified that there was a smaller existing mobile home and it is on exact location/footprint just the new mobile home is larger. A variance is needed because local zoning law had changed.

Mary Jane Dower stated she likes the placement of it after she went and looked at it.

Arnold Jensen concurred. And asked if it was much further back from the road? Ed Wallace stated no.

Arnold Jensen also stated that it was approximately the same distance from the road as others in the area.

Tom Thorsen asked if there were any comments from the neighbors? Michelle Wallace stated that they have had only positive comments from neighbors as they have done a lot of cleaning up and moving out the old mobile home. They agree that it is positive improvements they have been making.

John MacMillan asked if any letters were received for or against the project. The answer was no. Nothing was received.

John MacMillan read a letter received from Warren County stating “the project will not create any significant inter-municipal or county-wide impacts identified in GML &239.

Bill Oliver made motion at 7:06PM to classify this project (Application #444-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. Seconded by Mary Jane Dower. All in favor. 5/0.

Area Variance Criteria-

1. Can benefit be achieved by other means? No.
2. Is it a detriment to nearby properties or an undesirable change in neighborhood? No.
3. Is the request substantial? Yes.
4. Physical or environmental effects to neighborhood? No.
5. Is difficulty self-created? Yes.

Arnold Jensen made motion to approve application #444-V as proposed. Seconded by Bill Oliver. All in favor. 5/0.

John MacMillan moving on to application #443-V Loon Lake Heights Homeowner’s Association are requesting variances for the replacement of four (4) docks that will extend 53 ft. offshore where 40 ft. is required , according to section 7.03 (B) (4) of the Town of Chester Zoning Local Law. Property is located at 59 Kingsley Lane Ext., identified by Tax Map Parcel #: 86.14-1-1, in Zone Classification Moderate Intensity.

John Figurski is here to represent the association. John MacMillan asked if he was the president of the association? John Figurski stated yes.

John Figurski stated that the docks are in very shallow water and they are in like a cove type area of the lake. They need to extend them. He has photos of new docks and has copy of a couple of pictures of the neighbors that are across the cove from them. They are in a dead end cove and the only boat traffic is the coming and going of the local residents that live there. He showed the board members the paperwork he brought with him.

Arnold Jensen asked if they are just replacing what currently exists? John Figurski stated yes.

John Figurski stated they have 2 wooden docks in need of replacement as they replaced the other 2 already. They referred to the photos and John Figurski stated they are approx. 90 ft from dock to dock which is the Loon Lake Club across the cove from them. At the other end of docks it was 95 ft. leaving plenty of waterway to navigate.

Tom Thorsen asked if the docks that are in now are they the old or new docks? John Figurski stated 2 new and 2 old.

Tony Ovchinnikoff, here with John Figurski representing the Loon Lake Heights Association, stated that they are just replacing exiting docks that are already there. The wooden docks have buckled up over the winter with the ice and are unsafe. He also stated they are just trying to get in compliance with the zoning law with proper permits and variances.

Arnold Jensen asked if they did in fact measure the current docks? John Figurski stated that the ones they have now which date back to original owner Tom are at 53 ft.

Arnold Jensen stated he felt that they were longer than 53 ft. John Figurski disagreed as Walt Tennyson was out there and it was measured at that time.

Mary Jane Dower asked if the permit was only for 40 ft? John Figurski stated they put in for 40 but didn't realize how much longer they would be due to shallow water. They contracted the work out and something was lost in communication over how far they extend out.

John Figurski stated they just want to be in compliance with the zoning regulations. He reiterated the fact they are in a dead end cove and the only boat traffic is local residents.

Arnold Jensen stated the docks are more than 40 ft now but do not block anything at all. He refers to the records we have on file at the Zoning Office.

John MacMillan , reading from the files, stated that in 1995 there was one dock. 16 ft. float with a 26 ft fixed and a 28 ft fixed.

John Figurski disagreed with that. John MacMillan stated that is what you were permitted for in 1995.

John MacMillan stated in 2006 you proposed a 79 ft by 64 and 79 by 89. Those were denied. In 2007, you applied and received permit for one 40 ft by 3 ft dock. This makes 3 docks total. Now today, there are 4 docks, all at 53 ft. So, no permit was granted for the 4th dock.

John Figurski could not explain as he was not president and involved at that time. He bought his property in 1987 from Tom Stewart and docks existed then.

John MacMillan also has a drawing of 2007 of the docking system that was approved. It was for a 3rd dock at 40 ft long. Now there is 4 docks all over the 40 ft requirement.

John Figurski reiterated they just want to be in compliance that is why they are at meeting.

John MacMillan stated his issue is that (3) 40 ft docks were permitted and now somehow they are 13 ft longer than requirement and a 4th dock has appeared.

John Figurski stated that at the shoreline it is very shallow only allowing a jet ski or very small boat if any at all. Our association rules don't allow for any boats over 20 ft and no more pontoon boats. There is currently one pontoon boat but when the property is sold there will be no more of them allowed because they take up too much space. This will allow for more room. They currently have enough dock space for everyone. They do have enough shoreline if they had to add another dock.

Tony Ovchinnikoff stated that after the wooden docks were damaged after the winter that may have been when the dock got extended.

John MacMillan stated that they would have to do an "as built" variance as they already exist.

John Figurski asked if any were grandfathered in after Tom? He did the subdivision back in 1985 and there were existing docks then. Arnold Jensen stated it was actually 1976.

John MacMillan asked you are not asking for more than what already exists? John Figurski stated that was correct.

John Figurski reiterated once again they are trying to get proper approvals so they are in compliance . He explained that this variance is for the 2 new docks that are in and they want to replace the other 2 next year possibly but need permits/variances so they are in compliance. He stated the 2 wooden docks are unsafe.

Mary Jane Dower stated that recently, a letter from sent out from the town asking dock owners to put down what they currently have. She asked if they complied with that?

John Figurski stated yes he did. He had received a letter personally but the Association never received a letter. Mary Jane Dower stated they should have. John Figurski stated he gave his to Mindy in the Chester Office. He also met with Walt and here we are.

Mary Jane Dower stated that if you sent it back then they would just issues the necessary permits on what you had.

John Figurski stated they live up the hill from the lake. The residents share a common beach area that is 1.73 acres. They just want to be in compliance.

Bill Oliver stated you are not in compliance now at 53 ft. John Figurski concurred.

Tom Thorsen asked if Walt Tennyson, Zoning Administrator, had been out to inspect this? John Figurski replied yes. The new docks were 29 ft out but then when the floating dock was added it exceeded 40 ft at that point.

Arnold Jensen asked if the 2 new ones were the 2 northern most docks? John Figurski replied yes.

John MacMillan stated you were permitted for 3 40 ft. docks and now have 4 53 ft docks. Do they have to extend 53 ft? He feels they are asking for a lot in this variance request. You are asking for forgiveness instead of getting prior permission.

John Figurski reiterated that it is a dead end cove with no extra boat traffic just the local residents.

John Figurski stated he does not know where the 4th dock came from but it is there now. He reiterated that Tom always had docks in there with a float.

John MacMillan stated that you were permitted for (3) 40 ft docks and have (4) 53 ft docks. There are no other permits on file since 2007.

Tony Ovchinnikoff stated that is why they are there to try to get proper permits to be in compliance.

John MacMillan asked if there was any give and take or they just need (4) 53 ft docks and that's it? John Figurski stated yes. They are less than the required 240 sq. ft. and are only at approx. 21.6 % allowed for dock space. He stated they want to be in compliance so in years to come there are no issues.

Arnold Jensen stated you can make then all 40 ft and add another dock.

John Figurski stated they don't want to do that and cut down on more beach space. It is very shallow which is why they have to extend further.

Tony Ovchinnikoff stated that as an association they are trying to police themselves by restricting boat size so they can maximize space they have.

Frank Gabriel was in attendance and stated he is in favor of what the association is trying to do. He wants to know how they define "shallow". A 40 ft ordinance is practical. What is shallow defined as 1 ft, 2 ft, 3 ft? Is 3 to 4 ft sufficient? If a variance is based on shallow water it has to be defined so everyone will start making the same claim. He stated many docks are less than 40 due to deeper water and some are not. So, what is the depth we are talking about?

Rich Crumb from Loon Lake stated he understands that they are trying to achieve compliance and this is a procedural issue as it already exists and the 4 docks exceed the 40 ft requirement. So, there is 100 ft of undocumented stuff out there. So, how do you make that comply? Is it a waiver board or Walt who decides? Or the planning board? Who blesses or denies this?

John MacMillan assured him it was a Zoning Board of Appeals matter and they are the ones who make the determination. They have to come in front of this board to get approvals to be in compliance.

Rich Crumb stated so they are asking for forgiveness at this point? John Figurski immediately stated no we are not and he was totally wrong. John Figurski stated they paid for 2 permits to replace 2 existing docks. And paid another fee for the variance. They are not trying to pull the wool over anyone's eyes they just want to be in compliance.

Rich Crumb stated he wasn't trying to say they were trying to do something shady. He is just trying to figure out how they got from point a to point b. One dock has never been permitted and the others are 13 ft too long.

Al Muench also present in the audience stated he many things to say. Let's start with the shallow issue. Where he lives they have 14 dock spaces in water ranging from 2 ft to 3.5 ft. They are all used and some by power boats and some by pontoon boats. He is confused on how the zoning board can rule on this when no enforcement of these violations of the zoning law. It should go back to Walt for enforcement first. He stated he had a similar situation on Friends Lake 2 years ago. The Indian Springs Association wanted to significantly increase their dock space well above the 40 ft requirement. There were 26 lots and 20 were sold with dock spaces. He asked if they were trying to make more dock spaces for their association.

John Figurski stated that in their association there are no deeded dock spaces. Al Muench stated that is not what he said.

Tony Ovchinnikoff stated they have 16 dock spaces not all are currently used.

John MacMillan stated that in reference to the Indian Springs variance it was much different as he felt it encroached too much on the neighbor so it was denied. This situation is a bit different as it is a dead end cove. Each variance is decided on a case by case basis.

Al Muench stated he wrote to the board at that time saying he felt the request was far too large. They argued the same points as it would not affect neighbors. It does have affects on all other property owners as the increased boat traffic can be an issue reducing the amount of space per boat. There are associations on all 3 lakes in the town who would love to do the same. And how many already have illegal docks? He read some minutes from the Indian Springs meeting and stated that in 2016 Arnold Jensen stated that existing dock system already exceeds zoning allowances and is unlikely to be approved in any configuration. Arnold Jensen also stated we do not want to set precedence in this kind of case. All the associations on the lake have the same issues.

Al Muench also stated that this case would be setting the same kind of precedence. He suggests that this get tabled for now until more information is available. The property owners also are not yet here for the summer so it would be better if it was later in season. He stated that Arnold Jensen also stated that there were ways around these issues by sharing or alternating dock spaces. He also said that John MacMillan stated that is not the zoning boards responsibility to solve errors that were made previously and it would be a mistake to set precedence by approving variance. Al Muench stated that everyone who is not in compliance could just come to the board and get a variance approved instead of taking proper enforcement action. He stated the questionnaire that went out is a result of 30 years of non-enforcement. This is just the tip of the iceberg as far issues that will arise. So the board has to really consider the precedence it would be setting and approving something that is clearly in violation of the zoning law.

John MacMillan reiterated that he was against the Indian Springs proposal mainly because of the encroachment on the neighboring property line. It wasn't because another dock was going to be added.

Tom Thorsen stated it was from a safety aspect.

Arnold Jensen stated the only ones that could possibly have an issue would be the Loon Lake Club across the cove.

John Figurski stated that the president of the Loon Lake Club called him today and she asked if the docks were going to be extended further out. He said no. She said ok fine they do not have any issues with that.

John Figurski reiterated the 90 and 95 ft distance between each dock set up. There is plenty of room for incoming and exiting boats.

Arnold Jensen stated this situation is radically different than Indian Springs.

Al Muench stated the big difference is that they are already in violation of the zoning law and Indian Springs was not.

Al Muench reiterated the board's decision that they did not want to set precedence at the Indian Springs meeting.

John MacMillan agreed they are already in violation.

Tony Ovchinnikoff in response to the statement about the summer residents are not here yet he stated that a letter was sent out to notify all near- by residents and they had the opportunity to come to the meeting to state their opinions. John MacMillan concurred. Tom Thorsen anyone within a 500 ft radius of property should have been notified. John MacMillan also stated that it gets put in the paper as well so it was out there.

John Kober from Loon Lake stated over the past few years he has heard discussions amongst neighbors about docks. He is concerned about the # of docks in relation to the size of the lake not where the docks are going. No one is blocked in or anything like that. The extra 13 ft on each dock will add more boats to the lake. He already is hearing the boat traffic on the lake is too much now.

Tony Ovchinnikoff stated there is no way to get 3 boats on each dock. It just can't be done. There is 2 boats on each side. That is what it has been and that will not change.

John Kober stated if deed states they can access to the lake that might not necessarily mean they can have a dock. Some use a marina or trailer it. He can remember one other meeting where 90 ft docks were proposed years ago when 400 people showed up to meeting against it. You can't have that # of boats operating on the lake safely and the ones who do can't enjoy it.

John Figurski explained to John MacMillan that no one has deeded dock space in their association. They share the common beach area which they pay for in their taxes. They pay a % to be on the lake for usage even though they don't actually live on the lake. As of now they have more than enough dock space for everyone who wants one.

John MacMillan asked if they have space for more docks why can't they add docks and keep under the 40 ft requirement?

John Figurski asked him to look at the pictures he presented. Arnold Jensen agreed that in that regard there is no issue with interference of boat traffic.

John MacMillan just does not like the fact they are in violation now with the way it is.

John Figurski is unsure of how the 4th dock ended up there.

Tony Ovchinnikoff stated if you look at the docks there is no way more boats can be added.

John Nick from East Shore Drive asked how many boats are there now? Tony Ovchinnikoff responded they have 16 slips not all are used.

John Nick asked how do they know another 11 boats won't appear at some point? Are you willing to commit in writing that the association will not increase the # of boats and keep it at 16.

John Figurski stated no. They could not do that. They are only at 21.6% or the 50% allowable dock space. He stated they have never come across that issue of needing dock space they didn't have. Tony Ovchinnikoff stated they will never have enough dock space for the 28 lots.

John Nick feels his figure is inaccurate. John Figurski stated they figured 4 ft docks with 8ft clearance on each aide. They are not currently planning on anymore boats. But, he can't answer that for the future as they don't know.

John Nick wants to know how many more docks and boats will end there in the future? John Figurski stated he doesn't know. He can't speak to that only to what is currently happening.

John Figurski stated they have full time residents who live there but do not have boats. Also, people move. Currently, they are fine with what they have. They just want to be in compliance. If they run into an issue down the road they will have to come back to the board at that time.

Tom Thorsen stated all the facts we have are murky. We can't make a decision based on that. He feels it should be tabled for now.

John MacMillan stated we can vote on it tonight if you want the board to but if you table it you can come back next month with more info to help make the decision.

Tom Thorsen would like to see depths of the water along the docks and what the actual measurements are for the docks.

Bill Oliver stated that Walt has to enforce the law.

Tom Thorsen stated we need that info to properly make the right decision.

Arnold Jensen concurs with Tom Thorsen.

John Figurski reiterated they are not adding more boats.

John MacMillan stated it is the right of the board to ask for more info if they so choose. Possibly have a depth survey done and a drawing of how it sits right now with location of each boat and spacing. A letter from the Loon Lake Club in favor of it would help.

John Nick concurs they need depth information to make decision. If you look at average boat density for the lake you have 11.2 acres per boat as per LG Park Commission. He wants them to understand where the public comes from. Loon Lake allows for about 42 to 44 boats operating at the same time safely. There is almost 500 boats on the lake. People may be more comfortable if they commit to the # of boats allowed regardless of dock space available.

Frank Gabriel agrees that everyone has shallowness to deal with to some extent. He asked if the northern side was wetlands?

Tony Ovchinnikoff stated they have not been classified as such.

John MacMillan stated you can table this and come back with the info asked for or we can vote on it tonight as is. Come back and show us the depths and some pictures to help decide.

Arnold Jensen feels there is adequate water for the boats more than 1 ft. At every 10 ft of dock if we had a depth measurement it would help in making a decision. They could then gauge how large the problem is.

Tom Thorsen asked if the extra 13 ft on each dock is because you can't dock any closer to the shoreline? John Figurski stated yes and Tony Ovchinnikoff concurred. Tom Thorsen then stated then you have to prove that to us.

Al Muench thinks that sounds suspicious. Arnold Jensen stated you can legally put in more docks and keep them at the 40 ft requirement. No variance would be needed. There are other ways to achieve what you are trying to do.

John Kober reiterated that you have permits for 3 40 ft docks and have 4 53 ft docks and now need a variance for compliance? Is that correct?

John Figurski stated that Tom Stewart took out the necessary permits when he put docks in. They applied for 2 permits for 2 new docks.

John Kober stated that theoretically you have dock space for more boats but can't dock them due to shallowness. You have more space you can use for docks but don't want to use that space?

John Figurski concurred.

John Kober suggested they come to the board with a couple of ideas instead of just this one.

John Figurski said they would table it for now and next month bring depths and more photos.

Tom Thorsen wanted to make sure they bring actual dock measurements as well.

Bill Oliver stated he is reluctant to approve any over the 40 ft mark. If this is granted it sets a precedence.

John Figurski stated that there are many docks on the lake that are more than 53 ft.

John MacMillan concurred.

Arnold Jensen stated the fact is the 2007 paperwork which is the last the town has on file gave permission for 3 40 ft docks and they are not in compliance. He said if you had evidence the docks existed before when it was subdivided in 1976 ok but the 2007 paperwork disproves that.

John Figurski presented original paperwork from when Tom Stewart did the subdivision and it was 1985.

John MacMillan stated that was irrelevant.

John Figurski agreed to table it and reiterated the info they are asking for. Bring a letter from Loon Lake Club as it all helps.

John MacMillan stated that if you come back next month with required info that does not guarantee approval.

Arnold Jensen made motion to table this until next month. Seconded by Mary Jane Dower. All in favor. 5/0.

CORRESPONDENCE: Zoning Administrator and Sanitary Code Enforcement Officer's Activity Report for May 2018.

NEW BUSINESS: See above.

OLD BUSINESS: None.

MINUTES: Tom Thorsen made motion to approve minutes from May 22, 2018. Seconded by Mary Jane Dower. All in favor. 5/0.

PUBLIC PRIVILEGE: None.

BOARD PRIVILEGE: None.

ADJOURNMENT: Mary Jane Dower made motion to close meeting at 8:22PM. Seconded by Bill Oliver. All in favor. 5-0.

Respectfully submitted,

Brandi Bessette
Secretary
Zoning Board of Appeals