



**MINUTES OF MEETING
ZONING BOARD OF APPEALS
TOWN OF CHESTER
May 28, 2019**

The meeting was called to order by Chairman MacMillen at 7:00pm

Chairman MacMillen introduced himself and welcome the public to the meeting.

ATTENDANCE:

Chairperson John MacMillen, Barbara Kearney, Michael Hough, and Arnold Jensen, Mary Clark (Alternate), Jack D. Bartlett (Secretary) and Jeremy J. Little (Zoning Administrator) and Attorney for the Town, Mark Schachner..

OLD BUSINESS:

#448-V: CK Franchise Mgmt. Corp. (Kevin Wickert) is requesting an area variance for a 10 ft. extension attached to an existing dock that currently extends 40 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 9 Woodside Ln., identified by Tax Map Parcel # 86.15-1-41, in Zone Classification Moderate Intensity.

Chairman MacMillen read the Variance Information to the Board and advised that this variance as still tabled as the Board has not received anything back from the Adirondack Park Agency who is currently reviewing.

#449-V: James M. Crandall is requesting a 20 ft. backline setback variance and 2.5 ft. right sideline setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct a 16' x 16' storage shed. Property is located at 64 Clarkson Rd., identified by Tax Map Parcel #: 86.19-1-51, in Zone Classification Moderate Intensity.

Chairman MacMillen read the Variance Information to the Board. The Variance would be tabled until the applicant returns to a Meeting of the Zoning Board of Appeals.

NEW BUSINESS:

Chairman MacMillen reminded the General Public present at the meeting before we moved into the Public Hearings that everyone present would have the chance to speak and address the Board.

#459-V: John and JoAnne Nick are requesting a 28 ft. frontline setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct an addition to an existing garage. Property is located at 53 East Shore Dr., identified by Tax Map Parcel #: 69.18-1-17, in Zoning District Moderate Intensity.

Chairman MacMillen read the Variance Information to the Board. John Nick who is the property owner requesting the variance, presented variance request to the Board. Mr. Nick advised the Board that he had spoken to his neighbors to get their input on where to place the addition, and he felt that where he was placing the addition would best hide it from the road. Chairman MacMillen asked if the addition and garage would still be visible from the road. Mr. Nick responded that the addition would be visible partially from the road, and completely visible from the lake but hidden from the neighbors. Ms. Kearney asked a clerical question regarding a typo on his application in comparison to the plans provided to the Board. Mr. Nick responded to the question by showing Ms. Kearney the information on the plans and application before her. Chairman MacMillen asked Mr. Nick the distance from the edge of the garage to his leach field. Mr. Nick responded that the distance with the proposal is 10 feet and he stated that he had checked with the Zoning Administrator and according to the current septic setback requirements, the distance from the septic is measured to the dwelling and not to the garage, and he also spoke with Smith's Septic Service who installed his system and they advised that the addition to the garage would not have any effect on the operation or maintenance of the system. Mr. Hough asked if the mound marked on the plans was the septic, and Mr. Nick responded that it was and extra 1000 gallon tank and a leach field, with the pump station noted. Mr. Hough asked if there would be a car bay, and Mr. Nick responded that it would. Ms. Kearney asked if there would be a driveway going directly to the garage, and Mr. Nick responded that the driveway already goes to the garage so there would be no change.

Having being duly advertised, Chairman MacMillen opened the Public Hearing at 7:07pm.

There was no response from the Public during the Public Hearing.

Mr. Jensen stated that he felt that the Board had already granted a variance for building the garage, and he personally felt that the Board should not approve an additional variance to approve something that was out of compliance to begin with. He stated in this specific case, he did not feel that it was a big deal because it would not cause any major changes to the neighborhood that he was aware of. Mr. Jensen responded that he was aware and he wanted it on the record that he would not normally approve this type of variance. Chairman MacMillen stated that from looking at the plans, he believes that this is the best plan to not interfere with the neighbors. Mr. Jensen says he agrees in this specific case. Chairman MacMillen stated that if the neighbors did not agree with it, then he may not be in favor of approving the request. Chairman MacMillen read a letter received by the Board from Gordon B. LeRoy in favor of the variance request.

A motion was made by Arnold Jensen, seconded by Barbara Kearney to close the Pubic Hearing at 7:10pm. All Board members present in favor, non-opposed, the motion was carried 5-0.

The Board Reviewed the Criteria for a Variance for the Application-

- 1.) There was no undesirable change would be produced in character of the neighborhood or a detriment to nearby properties.
- 2.) There is no 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 agreed that the alleged difficulty is self-created.

All Board members present agreed on the above Criteria for Variance in regards to # 459-V.

A motion by Mary Clark, seconded by Arnold Jensen to approve Variance # 459-V for John and JoAnne Nick who are requesting a 28 ft. frontline setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct an addition to an existing garage. Property is located at 53 East Shore Dr. With all Board Members in favor, non-opposed, the motion was carried 5-0.

Chairman MacMillen advised Mr. Nick that he needed to go and see Zoning Administrator Little to get his Zoning Certificate. Mr. Nick thanked the Board for their time.

#460-V: Wayne Williams is requesting a 50 ft. frontline setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct a 20' x 26' barn. Property is located at 124 Cobble Creek Rd., identified by Tax Map Parcel # 32.-1-35, in Zoning District Rural Use.

Wayne Williams, the property owner at 124 Cobble Creek Road, presented the variance of how he would like to construct a barn on existing slab that was there when he purchased the property. He feels that constructing a garage is the best use of the slab. Mr. Jensen asked if Mr. Williams knew the distance from his house to the road. Mr. Williams stated that his house is approximately 25 feet off of the road. Mr. Jensen stated that he felt good that the request is for a structure that is going to be farther back from the road than the actual house. Chairman MacMillen asked if there was an existing structure or if it was just a slab. Mr. Williams stated that he could not speak to this; however, he felt that someone was going to build something and did not end up doing it. Mr. Williams stated that he had not received any bad feedback from his two neighbors. Chairman MacMillen stated that he was not against this variance at all and that the Board had not received any letters in opposition of the Variance.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 7:15pm.

No Public Comment during the Public Hearing.

A motion was made by Arnold Jensen, seconded by Mary Clark to close the Public Hearing at 7:16pm. With all Board Members in favor, non-opposed, motion carried 5-0.

The Board Reviewed the Criteria for a Variance for the Application-

- 1.) There was no undesirable change would be produced in character of the neighborhood or a detriment to nearby properties.
- 2.) There is no 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 agreed that the alleged difficulty is self-created.

All Board Members present were in favor of the above Criteria for Variance in regards to #460-V.

A motion was made by Arnold Jensen, seconded by Barbara Kearney to approve #460-V: Wayne Williams requesting a 28 ft. frontline setback variance, according to Section 4.03 of the Town of Chester Zoning Local Law, in order to construct a 20' x 26' barn. Property is located at 124 Cobble Creek Rd. With all Board Members in favor, non-opposed, the motion was approved 5-0.

Chairman MacMillen wished Mr. Williams the best of luck with his project.

Chairman MacMillen apologized to the Board Members and Members of the Public Present as the Attorney for the Town, Mark Schachner, was planning to be at the meeting around 7:30pm-7:45pm. Chairman MacMillen recessed the meeting at 7:18pm to re-open upon the arrival of the Attorney for the Town.

The Meeting was called back to order at 7:36pm by Chairman MacMillen.

#461-V: Hill Park Property Owner's Association are requesting area variances for the construction of four (4) docks that will each extend 50 ft. offshore where 40 ft. is required and for the use of more than one-half of the shoreline for docking and beaching, according to Section 7.03(B)(4), 7.03 (B)(5), and 7.03 (B)(7) of the Town of Chester Zoning Local Law, in order to construct a total of four (4) docks. Property is located at 192 Hill Park Rd., identified by Tax Map Parcel #: 120.-14-1-23, in Zoning District Moderate Intensity.

Chairman MacMillen read the Variance Information to the Board. Greg Taylor, Larry Estill, and Robert DeLuke representing the Hill Park Property Owners Association presented the Variance requests. Mr. Taylor stated that this was the third time that they had presented to the Board in regards to this variance. The Property Owner's feel that this is the best option to move forward with a variance. Mr. Taylor explained the changes that they have made to their application in comparison to the one presented at the April 23rd Meeting. Ms. Kearney asked why they had changed 3 feet to 4 feet on their application. Mr. Taylor responded that after speaking to the staff at the Marina that they must buy 4 foot docks, and the Marina would have to cut down the docks to 3 ft. He further stated the 4 foot docks are more stable for people with special needs, and age to move around on the dock easier. Mr. Jensen asked in regards to the comparison to the plan brought by Larry Estill at the April 23rd meeting and the amount of shoreline that is being used. Mr. Taylor responded that the changes reflect a better idea for less usage of the shore. Mr. Jensen asked why there is larger space between the docks. Mr. Taylor stated that they are spaced out for safety so that no one hits another person's boat. Mr. Jensen states that he feels that this too large of a space between the boats. Mr. Estill responded that he had contacted the dock company and asked them what they use for space between docks for boats and they stated that with the wider boats that are being manufactured that there is a definite need for larger spacing between docks and they are continuing to get bigger each year. Brendan Mooney, owner of property located at 205 Hill Park Rd., stated that his Pontoon Boat requires a larger space than most of the other boats to be docked at the Beach lot. Mr. Taylor stated that we are not all going to be here forever and that they must consider the future and this proposal is going to give them the best option for the group, and they are not going to make everyone happy, however, this is going to be the best option to meet the needs of safety and to give everyone who has a right to dock a boat and have access to the waterfront parcel. Mr. Taylor showed the Board a current picture of the dock and boats. Mr. Jensen stated that the plans before them are not the same as the diagram given at the meeting in April. Mr. Taylor responded that he wasn't sure what plan Mr. Jensen was referring to. Mr. Jensen referenced the six dock system. Mr. Taylor reviewed the logistics for moving the docks and how the feet is represented on the plan. Mr. Taylor also stated that there is a better plan from the six dock system and that the previous plan presented did not allow for the safety of the boats. Mr. DeLuke responded that the difference in feet is because of the requests that were given by the Board. Mr. Jensen stated that on the prior plan they were requesting less usage of the shoreline, which would not require an additional variance. Mr. Jensen also stated that the property owners feel that they cannot have 30 feet between the docks and he does not agree with this based on his own experience. Mr. DeLuke stated that they are trying to balance many things with the most important being the ideas of the property owners and that there is no perfect plan but this has been a group effort to get them where they are. Mr. Taylor stated that he and Mr. DeLuke had gone out into the lake and had placed stakes and string to mark and plan out where the docks would be going and they discovered a large rock that they are able to cover with one of the docks. He also stated that with the work of this property and dock system they are building a sense of community within the Association for the beach, and have received requests from the property owners to do other things on the property like creating a seating area, in which they have created a plan for all of the property owners. Mr. Taylor gave a copy of their improvement plan to the Board, including adding a porta potty and handicapped parking for use by the property owners. Mr. Taylor also stated that by the property owner's working together he feels that this is going to improve their Association and create a sense

of community with all of them. He does feel that this is the best plan, however, if the Board would like to enact changes that the Association would entertain the changes to appease the Board and the Town. Ms. Kearney asked how many boat slips there would be, and Mr. Taylor responded that there would be sixteen (16) boat slips. In response, Ms. Kearney stated that there is a homeowner with two dock rights and Mr. Taylor responded that that was correct. Ms. Clark asked if the property owner would be allowed to park two boats if she so wished, and Mr. Taylor responded that this was correct and the Association has elected four (4) dock captains who are helping organizing the docks with members of the Association. They have also created A, B, C, D positions that they are allowing property owners to pick from. He stated that most of the C positions have been taken. Chairman MacMillen stated that he personally likes the more room between the docks for safety and likes the fact that their beach is going to be about twice the size that it is now.

Having been duly advertised, Chairman MacMillen opened the Public Hearing at 8:02pm.

Tom Walsh of 212 Hill Park Road-- Is requesting permission from the Board that if the property owners are able to tighten the docks up and get more beaching area. He stated that he had discussed with Dock Doctors regarding this.

John Daley of Hill Park Road-- Adding on to what Tom Walsh had stated. He said that they are discussing 6 feet. He feels that it is a great idea to create more beaching area, but feels that shrinking the space between the docks will make it more difficult. He would also like to thank the committee for their work on getting this docking system created. He feels that this has made the community better.

Tom Silva of 38 Clarkson Road-- Wanted to follow up on a statement made that the deeds preceded the APA. Mr. Taylor responded and asked which deed he was speaking about. Mr. Silva stated that he was following up on a previous statement. Mr. Silva stated that he had an additional question which is what are the size of the Marina's docks. Mr. Taylor stated that he was not sure as all Marina's were different. Chairman MacMillen stated that he could not answer that. Mr. Silva stated that he was discussing the distance between them. Mr. John Nick stated that the Marina docks are very close together. Chairman MacMillen stated that a member of the Association had spoken with Dock Doctors and they stated that they felt that 32 feet between the docks was a minimum and he felt for safety reasons that this was a good idea. Chairman MacMillen stated that for a Marina the distance may work, but for this particular situation he feels that safety is important. A member of the Public stated that not all boats are the same and that they are all different.

John Nick of 53 East Shore Drive- Mr. Nick has a few questions, ideas, and concerns that he would like to bring to the Boards attention. In the opinion of Mr. Nick Section 7.03 is important to regulate Water Quality, Safety, and property value. The width of the boat is typically 8 foot long. Mr. Nick stated his belief that the amount of docks on a lake are the direct correlation to the amount of boats that are found on a lake. The increased amount of boats will affect the Water Quality, Safety, and the Property Values. When the Board makes a decision on an exemption, it opens itself up to possibly having to make the same decision again. There is a fundamental difference in regards to the

amount and types of boats that are found on Friends Lake in comparison to Loon Lake. A lot of people have deeded dock rights, however, this does not mandate that you must have a dock because you must stay within the Town Zoning Local Law, there is a lot of properties sold with docking rights than there are properties with docks. Mr. Nick does request that if the Zoning Board of Appeals makes a decision that they consider what is going to happen to the whole Town.

Greg Taylor of the Hill Park Property Owners Association- commented to Mr. Nick and addressed his comments., Mr. Taylor believed that there is no correlation between the amount of boats on the lake and docks in the water and the property owners have the right to dock a boat according to their deeds.

John Nick of 53 East Shore Drive- Mr. Nick responding to the comment of Mr. Taylor stated that the Town of Chester Zoning Law is what regulates what a property owner can do with their boats, no matter what a deed says. Hill Park could have a docking system that could take up less than half of the shoreline by having a dock that is 60 feet long.

Chairman MacMillen stated that the Board had received the letter and deed from Margaret Terry, owner of property located at 16 Hill Park Road, on May 28, 2019. The letter from Mrs. Terry was read out loud by Chairman MacMillen. He also read an e-mail from Brendan Mooney in regards to his support for Variance # 461-V.

Chairman MacMillen addressed Ms. Terry asking her why she sent her letter out today. Ms. Terry responded that they had a Hill Park meeting on Saturday and she wrote the letter on Monday. Mr. Jensen asked the Attorney if he felt that the Board should take the grandfather laws under advisement when making their decision. Mr. Schachner stated that he does not understand why the grandfather laws would mean anything as it sounds like the Association is applying for a variance for a four dock system, and although he has not heard the words he believes that the application has been modified for 48 foot docks. He stated that the Town is not in the place to approve property rights, the Board is there to approve a variance, approve a modified variance, or approve a variance with modifications and conditions if the Board so wishes to propose such, or deny a variance. If the Board approves a variance and a property owner feels that they have been infringed on their property rights, they would not have a claim versus the Town or Board, they may have a private civil claim before their neighbors.. Ms. Kearney asked Mr. Taylor if the Terry deeds had been submitted with the original deeds. Mr. Taylor responded that he believes that they did, however, he referenced the April 28th Board Meeting where Board Member Christine Hayes requested copies of the deed and was very frank about the authenticity of the deed and that there was no secondary right for docking and boating. Mr. Jensen reviewed what had occurred at the previous board meeting in regards to the Terry deed. Ms. Kearney reviewed both of the deeds submitted by the Terry's for the two properties that are owned. Both deeds have the language for docking a boat. Marion Eagan, Deputy Supervisor for the Town of Chester and Assessors Clerk, stated that she has the original deed that precedes the deed prepared that allows for one dock right for the property. Mark

Schachner stated that the Board does not need to worry itself with whether or not a private property owner has the rights to dock a boat or not.

John Nick of 53 East Shore Drive- Asked what had priority the Zoning Law or Deeded Property Rights. Mr. Schachner stated that neither has the priority, however, the property rights listed in a deed do out rank what is listed in a deed. The understanding of Mr. Schachner is that the Homeowner's Association does take into consideration Local Zoning Laws by submitting a variance on the provisions of local zoning.

Mr. Taylor responded that the Association is trying to right a wrong that was created years ago.

Tom Walsh of 212 Hill Park Road- Responding to Mr. Nick in regards to the 60 foot long docks stated that he feels that the dock installers would not feel comfortable installing a dock that long for length and for the depth of the water in that area.

Chairman MacMillen recapped the facts of the property for the public present..

Larry Estill of 188 Hill Park Road- Mr. Estill stated that docks are being left in the lake year round, which is causing destruction and is the main reason why docks need to be replaced year after year. The Association has come up with a solution to help the property owners to not have to replace their docks year after year. With so many property owners having been in Hill Park for years, the people are afraid of losing their docking space, so they leave their docks in the lake so no one can come along and take their spot. With the new plan, every property owner that has the right to dock is going to have a guaranteed spot and will not have to worry about anyone stealing their spot. The plan being presented is less invasive and rights are being given to those that have rights.

Pat Dunagan of 134 Blythwood Island Road- Mr. Dunagan is wondering how the Board would approach this variance knowing that a precedent is going to be created that could allow for a private property owner to request the same type of variance. There should be no difference between an Association and a Property Owner when it comes to precedent. Chairman MacMillen responded to Mr. Dunagan stating that each variance is reviewed based on its own merits.

Mr. DeLuke of the Hill Park Property Owner's Association- In response to the comments made by Larry Estill, he feels that the Association is stronger and that everything is now fair because of the process that they have been through to create this variance.

Mr. Jensen stated that he would like to see less space between docks in the water and that based on the representation given to the Board that some of the docks could be moved to create more beach area. Mr. Jensen recommends moving one of the docks, but Mr. Taylor responded that this is the dock that is currently covering the large rock that was discussed earlier in the meeting.

Larry Estill of 188 Hill Park Road- Docks should have no bearing on the decision of the board. Chairman MacMillen thanks Mr. Estill and all of the members of the public who came out tonight to speak on this issue.

A motion was made to close the Public Hearing at 8:45pm by Mary Clark, seconded by Michael Hough with all members in favor, non-opposed, the motion was carried 5-0.

Micheal Hough asked if the Board is granting a Variance to the Homeowner's Association or to each of the individual property owners. Mark Schachner, Attorney for the Town, responds that the unpopular opinion that he is about to present is that the main issue that the Board should be concerned with is that they're about to grant a Variance to a group of people that are requesting to build docks on a property that they do not own. The owner of the property has not given authorization. The owner of the property is Mae Brittell and the Board does not have her authorization or any representation of her. The ownership is supposed to sign off. This is a legal issue. If the Board is considering granting this variance then they need to protect themselves and the Town. The Variance is being applied to by the Association and have authorized Mr. Taylor and Mr. DeLuke to be their representation. The property is owned by Mae Brittell or her estate. Mr. Schachner is recommending that as a condition, should the Board approve the Variance this evening that either Ms. Brittell or her representative sign off on this. The other way to protect the Town is to have all of the property owners who are benefiting from the variance to sign off and waive any claim against the town for having docks built on a property that they don't own. They may pay the taxes on the property, however, they don't own the property.

Arnold Jensen asks if the Association was formed would it surpass the initial condition. Mr. Schachner responds that this is a yes, unless the Association acquires ownership of the property. What is currently happening here is someone owns property, another person owns property, and now the first person is applying for a variance to complete work on the second person's property. There is no authorization for the work to be completed. Mr. Jensen asks about the application being legal. Mr. Schacher responds that an application must be submitted by the owner or someone who has a vested interest in the property. Currently the Board does not have that specific person who is the owner of the property, a proxy, or a representative of the property owner. Ms. Kearney states that she agrees with the Attorney's statement. Mr. Taylor states that the property owner's all have a vested interest in the property. Mr. Schachner states that all of the owners must sign off, or the owner of the property comes forward to give permission and sign off. He also states that the Board should not worry themselves with whether or not the Association actually forms and Association. This matter should have no precedent on the approval or denying of a variance application.

Brendan Mooney of the Association presented some history of the property for the Board which is in regards to him being president of their association and a municipal official at the county level contacting him stating that the taxes had not been paid on the property that is being used as the Hill Park Beach and that if he and the association wanted to pay the taxes to avoid the property going to tax auction then they could do so. Mr. Mooney stated that he has documentation of this. He identified the County Municipal as Michael Swan the Treasurer for the County of Warren. He stated that the Municipality got the Association into this catch twenty two situation that they are currently in.

A motion by Micheal Hough, seconded by Mary Clark to approve of **Variance #461-V**, granting area variances for the construction of four (4) docks that will each extend 48 ft. offshore where 40 ft. is required with 32 ft. space in between each dock, as per application modified, and for the use of more than one-half of the shoreline for docking and beaching, according to Section 7.03(B)(4), 7.03(B)(5), and 7.03(B)(7) of the Town of Chester Zoning Local Law, in order to construct a total of four (4) docks. Variance approval of #461-V is contingent on one (1) of two (2) circumstances: (1) Either the owner is found and approves of the variance on their property; or, (2) All of the property owners on record approve and sign off to hold the Town not liable for any future legal ramifications. With all members in favor, non-opposed, the motion was carried 5-0.

The Board Reviewed the Criteria for a Variance for the Application-

- 1.) There was no undesirable change would be produced in character of the neighborhood or a detriment to nearby properties.
- 2.) There is no 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 agreed that the alleged difficulty is self-created.

All Board Members Present were in favor for the above Criteria for Variance in regards to #461-V.

MINUTES:

A motion was made by Arnold Jensen, Seconded by Barbara Kearney to approve the April 23, 2019 Minutes of the Zoning Board of Appeals. All Board members present in favor, non-opposed, the motion was carried 5-0.

CORRESPONDENCES:

The Zoning Board of Appeals received the following Correspondences-

-Zoning Administrator's Activity Report for April 2019

-APA Request for Consultation dated April 17, 2019 and received by the Zoning Office on April 19, 2019 RE: APA Permit 1976-0035CR.

-Letter from the APA dated April 30, 2019 and received by the Zoning Office on May 02, 2019 RE: APA Permit 1976-0035CR.

-Letter dated 2019-05-09 from Carol Monaco concerning #461-V.

-Letter from Margaret Terry dated May 28, 2019 and received by the Zoning Office on May 28, 2019 RE: #461-V.

PUBLIC PRIVILEGE:

There was no business conducted during Public Privilege.

BOARD PRIVILEGE:

There was no business conducted during Board Privilege.

ADJOURNMENT:

A motion was made by Arnold Jensen, Seconded by Mary Clark to adjourn the meeting at 9:14pm. All Board members present in favor, non-opposed, the motion was carried 5-0.

Respectfully submitted,

Jack D. Bartlett
Secretary
Zoning Board of Appeals