



**MINUTES OF MEETING
ZONING BOARD OF APPEALS
TOWN OF CHESTER
NOVEMBER 22, 2016**

The meeting was called to order by Mary Jane Dower at 7:01PM.

ATTENDANCE:

Chairperson Mary Jane Dower, Bill Oliver, John MacMillan, Arnold Jensen and Tom Thorsen. Also, in attendance was Bob Walp (Board Alternate), Walt Tennyson (Zoning Administrator), Craig Leggett (Town Supervisor), Rand Fosdick, Nancie Welch, Frank Gabriel, Tom Wheeler, Al Muench and Jill Broderick.

PUBLIC HEARING:

Mary Jane Dower opened public hearing at 7:02PM.

#435-V: Frank Gabriel is requesting a 35' shoreline setback variance, according to Section 7.01 (B) (4) of the Town of Chester Zoning Local Law, in order to construct a post and rail fence with wire within the shoreline setback area. Property is located at 837 Atateka Drive, identified by Tax Map Parcel #: 120.7-1-5, in Zone Classification Moderate Intensity.

Frank Gabriel rose to podium to speak and thanked board for letting him come. He asked if all board members had received corresponding paperwork explaining fence line. He apologized for not doing a good job at the May meeting and has modified his request. He stated he has a 1926 home in which he just remodeled the old part of the house and an addition. He spent a lot of money because he loves the house and this area and wants to keep the historical characteristics. He has installed a new septic system. Windows, stairwells, etc.. have same style as 1926.

Frank Gabriel continues to explain that the geese are really his issue which causes his dog to chase them. He also stated that he believes there is no truth to anything said in Chris Liddle's letter. He also claims he has all permits and permissions he needs for the work he has done. He said he has a history of getting proper permits when necessary. His septic system in the "wetland area" was approved by APA.

Frank Gabriel stated he moved fence back to 15 ft. to help satisfy the board and because of the geese problem which he will explain to board. Now he would only need a 35" ft variance.

Mary Jane Dower stated that we really did not need to hear about the geese problem , we are here to decide if this variance should be granted or not. Frank Gabriel stated the reason for variance is the geese. Mary Jane Dower stated the geese can fly right over the fence and we do not need to spend all night discussing it. Frank Gabriel stated that it is a health and safety issue. The zoning regulations say they want to promote safety and health. Mary Jane Dower stated that when she visited the property last week there was a lot more than just goose droppings in his yard. She stated that you had to pick and choose where you stepped because it was so bad. Frank Gabriel stated you know why that is? Mary Jane responded and said yes

because of the dog droppings. Frank Gabriel insists that it is goose droppings not dog droppings. She disagreed but he still insists it is goose droppings. Frank Gabriel stated you should have a strong appreciation of my situation. Just think of my grandchildren walking through that.

Frank Gabriel stated he spoke to Walt Tennyson and said local zoning law may not apply to fences in this regard but further looking into it. The APA regulations do state a variance is required if in that type of area.

Frank Gabriel stated it was said at the last meeting that this may set a precedent on the lake. There are post and rail fences already on the lake in same type of zone.

He also stated that the APA regulation has a practice of excluding post and rail fences from the 50 ft setback area. He provided a letter in his packet from APA.

Frank Gabriel, now to discuss the goose problem. He states that is his main issue on property. He mowed extremely low to try to take care of some of the problem. It is not unusual to see 450 geese at one time. He also states it's an undisturbed area where no boats enter and wetland area so the geese come right up on property.

Frank Gabriel came prepared with material from the NYS DEC website that talks about geese problems as they are the State Agency that manages these issues. They publish controls and literature and it states that geese have been uncontrolled and is becoming an issue with all the excessive droppings. The DEC literature talks about health and safety issues the droppings can cause. They also list ways to control them. The best way is to have trained dogs but another effective way is fencing installed close to the water's edge. Gabriel stated he has a golden retriever and has used him to chase the geese from the property.

Also, US Fish and Wildlife Services, is in agreement that excessive droppings are a health concern and have contributed to beach closures.

Lakeaccess.org states it can cause excess algae growth in the lake which can harm fish and contaminate water supplies. Also geese could defecate from 28 up to 92 times per day.

The Humane Society states best way to scare geese is with trained goose herding dogs.

Lastly, the Washington Dept of Fish and Wildlife, states thatopen sight line (distance from the geese to place where a predator could hide) of less than 30 ft will generally cause geese to move to more comfortable grazing area. Frank Gabriel states this is the reason he moved fence to 15 ft.

Frank Gabriel stated that a nationwide article from Sept 2016 states that they poop everywhere and it includes comments from Cornell University. City of Ithaca has a city ordinance to not feed the geese.

Frank Gabriel stated to Mary Jane Dower if you were at the property after I mowed and it was still bad imagine what it was like before the mowing. He mows grass short to help eliminate the droppings and what is left over will mildew.

Frank Gabriel turned the attention to another packet of correspondence which has photos that explain where fence will go. One side of the property has trees and wooded areas so the goose droppings are not an issue so he moved the fence away from shoreline further. About half the fence is outside the 50' ft setback and half is not.

Frank Gabriel refers to his drawings/photos to try to explain main goal and all projects going on, as John MacMillan had requested an engineered master plan of all shoreline development to ensure proper preparation with silt-fencing, etc, so sediment does not enter the lake.

John MacMillan stated this is a very different plan than what was submitted in May. The plan in May had several projects going on and this one does not.

Frank Gabriel refers to his photo of the shoreline development he already has done which was an extension of a retaining wall (a 15ft section) which he met with DEC and the Army Corps of Engineers to review. He also removed a deck that was not esthetically attractive. John MacMillan stated that all Frank is requesting at this point with just a fence no excavation equipment is needed so this is very different.

Frank Gabriel stated he dug the other post holes himself and it was not easy. It was rocky so some posts had to be moved a bit. He used pilot holes to try to help. He now plans on digging all post holes himself with no excavation equipment needed. Approximately, 60 to 75 ft of the fence would be in 15 to 20 ft from the shoreline. Left side of fence will not be seen from the lake.

John MacMillan asked on his last application he also wanted side fencing as well? Frank Gabriel stated yes but he has wire fencing there for the winter.

Frank Gabriel shows a photo of the post and rail fence at his Gansevoort home which mimicks the one for his variance request. It is esthetically attractive.

John MacMillan stated once you put wire on top it is no longer just a split rail fence. That makes it different in his opinion. The APA letter states "split rail fence" so once he adds the wire it no longer is just a split rail fence. Frank Gabriel stated Hill Park uses wire fencing. Only some people have sideline fencing on their property and are wire.

John MacMillan asked why he can't just move the fence to the 50ft mark and no variance would be needed? Frank Gabriel stated that the geese would still be a problem.

John MacMillan stated one side is way over 50 ft and one is not. He wants to know his reasoning for fence besides geese even though he understands the geese problem. He has alternatives like moving the fence outside of setback or get invisible fence and let your dog have at them. Frank Gabriel feels the invisible fencing generally does not work and DEC recommendation was fencing close to the water's edge. He stated geese are not very intimidated by people as he can get within 10 ft of them. Frank feels if fence was at 50 ft mark the geese problem will continue. The geese tend to navigate toward the beach area where the children play generally when the kids are not at the beach. He continues to explain the 30 ft line of sight distance.

John MacMillan stated the geese are not there because of the wetlands they are there because he has nice grass. Frank Gabriel disagrees as they migrate toward the wetland area where lily pads etc are that they feed on.

Tom Thorsen points out that if he is gone all week the geese will hang there all week long as he has the same issue at his place.

Frank Gabriel feels he can significantly reduce the problem with the fence. That is better for lake and environment. He also stated he was glad Mary Jane visited the property and said what she did. She should have appreciation for his issue.

Bill Oliver stated he is asking for a substantial setback and does not understand why he can't just move back to the 50 ft mark and be done with it.

Frank Gabriel referred to the DEC regulations about putting a fence close to the water's edge. Bill Oliver stated that does not matter. Everyone has duck and geese problems if they have waterfront. If you have nice green grass you will have geese. Bill's issue is with the setback and the precedence it might set if granted.

Frank Gabriel stated that if any others have the problem with geese that he has he would hope the Town would be considerate of the health concerns of his grandchildren walking through it. Frank feels everyone should have a fence if it that bad at their place.

Bill Oliver stated we are still just talking about the significant variance request.

Tom Thorsen asked what kind of safety/health problems/issues would be created if a fence were installed, if any? Or environmental problem? If fence as at 15ft it would not cause other problems. Only an esthetic issue for neighbors.

Arnold Jensen stated he does not see an issue esthetically so if that was the only concern it's not a big deal.

Bill Oliver also stated that this could have been brought forward in the summer when his neighbors were around to review/discuss. You came in May when no one was up and now in November when no one is up? Although, some correspondence was received. Frank Gabriel stated it was not until July and August when they had to constantly pick up the droppings that they felt the geese were an issue.

Bill Oliver feels Frank's timing of this was very poorly set up. Frank Gabriel claims he did not realize the issue until July and August. And the APA letter that exempts split rail fences excited him as he knew they were on board.

Frank Gabriel state that himself and Walt, looked through the APA documents and they set the threshold that they need a variance. Then an APA document stated fences were exempt. But, at this point it is a Town decision not the APA.

Frank Gabriel also prepared some answers to some of the questions that have arose over this variance referring to the end of his packet in hand. He stated that the purpose of the law is for health safety and general welfare. Advantages and disadvantages should be weighed. But no detriment can be seen as far as safety and health. Frank feels if he can stop geese from coming on his lawn the lake will have less geese. He reiterates what DEC website documents state and goose droppings being an issue and nutrient loading of ponds, health concerns on

beaches, etc... Frank stated he has to have fence he has no other choice. Is it really a detriment to community?

He also states that Town of Chester feels they may have an issue with geese. So 15 ft is better rather than 50.

John MacMillan stated if he puts up a fence at 50 ft he can put up whatever type he wants. That is correct. A stockade fence could be put up with no variance.

Frank Gabriel insists he will not do any type of fence except post and rail because that is what he likes.

Frank Gabriel talked about other solutions like mylar tape, chemicals, balloons or noisemakers. He does not want that as they do not look attractive. He states DEC said it has to be 6 ft in height to be effective. He feels this is the best alternative but knows request is substantial. Frank calculated that the surface area is about 95 sq ft inside the zone. He feels he can make the lake more environmentally friendly.

Frank Gabriel stated that his neighbor claims the algae blooms are from Frank's septic system. The same septic system is in place that has been. John MacMillan states that that has no bearing on this variance request.

John MacMillan is thinking about the alternative measures that could be taken. Within the setback eliminate some of the lawn and put some type of vegetation in with bark mulch or river rock. He is not necessarily opposed but options are available. Frank Gabriel agrees there are other alternatives.

John MacMillan also states put a 6 ft high stockade fence at the 50 ft mark which may not be as nice as the post & rail he is asking for.

Frank Gabriel concludes that in the master plan it talks about water properties including water quality, public safety and preserve esthetics. This will help water quality as geese will go away and public safety of his grandchildren would improve. He states having the fence at 50 vs 15 makes it almost in the center so it's kind of disjointed. Decision should be based on health and safety of the residents. He stated the problem has grown over the past 5 years and is much worse than it was 10 years ago. He feels it will help environmental quality. Also, esthetics and historical preservation. He finishes with imagine you are walking your grandchildren through that barefooted?

Al Meunch stated he has deeded rights to the lake and wants to emphasize the particular part of the zoning law we are dealing with states to try to minimize the impact on shoreline environment and it's natural character. He feels that does not do that. A couple more points to be mentioned are the goose problem is a red herring (mute point). Every lake front property has this issue. If you don't want to deal with geese you should not live where you are living. It will not improve the environment by putting fence inside setback. It will just move the geese to a neighboring waterfront property. If board feels there is a serious goose problem then it should be addressed by the Town Board. Unsure if town can regulate a federally regulated bird or not. He stated he used to work for DEC and can ensure us there are no regulations on geese management. They state it is illegal to control migratory birds.

Frank Gabriel stated that is not true. Al Meunch asked him to please address his comments to the board.

Bob Walp stated if we do have a goose problem it is an issue for the Town Board not the ZBA. He has sympathy for the goose problem has a pond as well. The geese will just move and not leave the lake. Granting a variance of this nature may set precedence but variances are considered on a case by case basis. If ZBA grants this others will want the same. In essence then we are now changing the ordinance. It is up to the board to grant or deny variances based on law in place now. It is irrelevant if they believe the law is wrong or not needed. The planning board should be involved. Bob visited the property and did not see any goose droppings at all.

Arnold Jensen stated he was there 2 weeks ago and it was unbelievably bad.

Mary Jane Dower asked Walt Tennyson if we have a geese problem? Walt was unsure if we do or not.

John MacMillan stated a fence may not cure his issue.

Jill Broderick stated that because we have a strict 50ft setback is why we have so many different birds and she is worried about their welfare. The wildlife should be protected around the lake. Development of your property is great but the setback should be adhered to because that is why we have it. Anything closer could hurt the birds and environment. It's an obstruction and the issue is self imposed. DEC can help him with some ideas about management. She feels the strict setback should be adhered to. She works in the Town of Johnsbury and they had issues for years. A fence did not cure the issue.

Frank Gabriel read from the DEC documents that “ no federal or state permits are needed to scare, herd or chase geese away by any means including dogs or noisemakers as long as no birds are harmed. Al Meunch agrees.

Mary Jane Dower closed the hearing at 8:07PM.

Tom Thorsen feels they should wait to make a decision and talk to the Zoning Committee that is working on updating the local zoning law to see if any setback changes are needed when specifically talking about fences.

John MacMillan stated it is winter and the problem will not be bad at this point for a few months. And any changes may not have any bearing on this variance.

Tom Thorsen stated it will be a while before any decisions are made.

Arnold Jensen wondered if split rail fences should they be viewed the same as other fences or not? And there are other alternatives in dealing with the goose problem. He does appreciate the issue. Possible alternatives that are better for environment. Esthetically, the fence would be better than mylar tape.

John MacMillan stated there will be complaints even if fence is at 50 ft esthetically speaking. He feels 15 ft vs 50 ft from the lake will not look that different. But there are alternatives and that is something we have to consider when granting variances.

Arnold Jensen stated so the question is if the alternatives are really better or not.

John MacMillan asked why he can't just plant trees or vegetation instead? Vegetation can only be planted so close as well. 15 ft they believe it is. Frank Gabriel stated he could let that area grow wild. John MacMillan stated a barrier with natural vegetation could be planted and no fence is needed. Frank Gabriel stated he needs a fence and will have a fence. He will let the 15 ft grow wild for vegetation.

Arnold Jensen believes this is a real issue but alternatives should be tried first. If problem persists it needs to be revisited. We don't know that any of these ideas will take care of the issue including the fence.

Frank Gabriel is trying to follow DEC recommendations on goose management. Arnold Jensen feels other alternatives need to be examined.

Mary Jane Dower stated a letter from Warren County was received and they do not have jurisdiction over this. Also, 3 other letters were received and all were against the project.

Arnold Jensen and John MacMillan agree that in order to grant a variance there can be no other possible alternatives. In this case there is. That is one of the criteria they have to look at.

Motion made by Arnold Jensen at 8:35PM to deny variance request #435-V for reasons stated above. Seconded by Bill Oliver. Arnold Jensen voted yes/all others no.

Open hearing at 8:25pm by Mary Jane Dower for #436-V: AJ Signs are requesting two variances, according to Section 7.04(E) of the Town of Chester Zoning Local Law, in order to erect an illuminated sign for Hudson Headwaters Chester-Horicon Health Center. Property is owned by the Town of Chester and located at 6221 State Route 9, identified by Tax Map Parcel #: 104.18-1-3, in Zone Classification Hamlet.

Tom Wheeler from AJ Signs was present to represent HHHN. They are requesting a variance for an internally illuminated sign to replace the current HHHN sign. The sign is smaller than what is currently there and only the letters of the logo light up not the whole face of the sign. This was a more practical and softer approach than external spotlights that could distract drivers. Even though the sign is smaller a variance is needed as they want a 17 sq ft sign vs. the 15 sq ft that is allowable.

Mary Jane Dower asked Why do they need a new sign? They do not need a lit sign at night as they are not open.

Tom Wheeler stated that they are changing their signs network wide and all buildings are getting new signs so they all are consistent in size and color.

Bill Oliver asked if Tom Wheeler sought out HHHN or did they contact him? Tom Wheeler stated HHHN put the job out to bid and that is how they got the job.

Bill Oliver stated it is not open at night and everybody knows where it is. He feels a sign is not needed.

Bill Oliver asked what size is the sign? Tom Wheeler replied that it is 17 sq ft. HHHN has a standard size of 84 x30 for all new signage. He also stated he has no problem shrinking the sign to 15 sq ft if that would appease the board.

Arnold Jensen stated he still needs a variance for the internal illumination but does no longer need it for the size if he shrinks it to 15 sq ft.

Mary Jane Dower asked if the roof was going to stay on the sign?

Tom Wheeler replied that the roof would no longer be present. And that it is just a rectangle sign.

Mary Jane Dower asked if just the letters light up?

Tom Wheeler stated that just the letters would be lit not the whole brown rectangle. The red and white of the logo will be lit and it will be in the exact location it is now.

Bill Oliver stated that considering only the letters are of the sign are lit and you would willing to shrink the size to 15 sq ft then only one variance is needed.

Tom Wheeler stated he can proportionately change the two dimensions to get to the 15 sq ft. Everything will be approximately 2 inches smaller.

Arnold Jensen was concerned it could be too small in the daytime. Bill Oliver disagrees. He doubts that if letters are 2 inches smaller it will make any difference in the daytime.

Tom Thorsen stated that the sign code is hard and people seem to like the smaller signs but sometimes they are not visible from the road.

Tom Wheeler stated that smaller signs cause more traffic distraction because drivers are busy trying to read the sign instead of paying attention to driving.

Arnold Jensen feels it should not make any difference the sign is not ugly and it is smaller. Bill Oliver agrees.

Arnold Jensen was more concerned that it will be readable when driving by.

Bill Oliver stated that do not take walk-ins, only appointments.

Arnold Jensen stated he does not know why we have the zoning law and all these lit up signs in town.

Tom Thorsen said they are not LED lights that will protrude out into traffic.

Bill Oliver stated he highly doubts that sign will be an issue after they drive by Tops and Rite Aid.

George Hilton in the audience commented that he lives on Tannery just down the street and the stop sign on the HHHN property is being ignored. Many times he has to stop for traffic

ignoring the sign. He just wanted it to be put on record and maybe if gets back to the property owner the issue could be resolved. This has no bearing on the variance request.

Goose neck lighting is an alternative but may cause glare to drivers.

Arnold Jensen stated it comes back to the question why does the sign have to be lit at all?

Bill Oliver asked if the existing sign has any lights? The response was no. By Mary Jane Dower and Tom Wheeler.

Al Meunch stated he was just making an observation that the board has a good handle on this and does not understand why the zoning law is as such.

John MacMillan stated he believes that the sign code was adopted because they were trying to eliminate a 15 sq ft sign totally lit up.

Bob Walp stated that the zoning law states no internally illuminated signs and it is not the ZBA job to decide if law is right wrong or indifferent. It's the ordinance that is in effect now and should be followed. It should be enforced as is.

Tom Wheeler stated that it gets dark around 4:25 so they want people to be able to identify the building if they are sick, etc...

Bill Oliver stated that he feels the goose neck lighting that George Hilton spoke of would be more likely to cause driver distraction.

Tom Wheeler stated that the goose neck lights get ice and snow on them forcing them to bend possibly making the light for drivers worse. They look nice in Saratoga on Broadway but not practical for HHHN. This sign will give off a lot less light.

John MacMillan asked if he had any info on the intensity of the bulbs for the sign?

Tom Wheeler stated he can get the info but the light is all filtered thru an acrylic lens. Each bulb is less light than a Christmas bulb.

Craig Leggett stated according to Zoning Law Section 7.04 bulbs can be no more than 40 watt fluorescent.

John MacMillan asked if this has to be done right away? We just need to know that it conforms to rule on intensity of lighting.

Tom Wheeler stated that it is a total of about 30 watts filtered thru an acrylic lens.

Arnold Jensen stated once again it comes back to the question does it have to be lit at all? He understands why HHHN want their signs to be the same across the board. He also stated he is not against the sign.

Tom Wheeler pointed out if the sign was externally illuminated a variance would not be needed.

Al Meunch stated if the concern is consistency across the corporate structure a good example is Dollar General. They wanted to do things the same way and the building is much better than the corporate requirements. Some exterior changes were made, etc...

Tom Wheeler stated that the light is much less intense than Stewarts, Tops, Rite Aid and all those variances were granted.

Jill Broderick made an observation and stated you should want to promote the assets in town such as HHHN and a sign lit up at night would be a positive thing. People like to see light when they are in your community.

2 letters were received against the variance.

Warren County letter stated they had no jurisdiction per Mary Jane Dower.

Bob Walp stated that we just required the last variance request to prove hardship. There is no hardship present here. In essence the board would be changing the ordinance. There are alternatives available. Granting the variance for no reason may set a precedence.

John MacMillan stated that a precedence has already been set.

Bob Walp stated that each variance is granted on a case by case basis. The Dollar general and Rite Aid got their variance approved because they had a good reason. They must have proven they need that sign. And it should be proven that there is no alternative.

Mary Jane Dower asked if there has been opposition in other towns? Tom Wheeler replied No, not at all.

John MacMillan stated that he is 95% sure when the zoning law was made this technology was not even thought of. The zoning needs to be rewritten taking into account this new technology.

Arnold Jensen stated in this case the alternative is not as good. He still wonders if the sign has to be lit.

Tom Wheeler stated that once this sign is up you will like it and it will provoke changes in the zoning law.

Mary Jane Dower asked if Tom Wheeler could get some info to the representative to consider when looking at the zoning law. This would be good to have. He stated he can get the info for them.

Tom Thorsen stated a meeting is set for Dec 1 and would love to have the info by then.

Tom Wheeler provided his card and said to email him. He can send out the info to the board.

Motion made to close hearing by Arnold Jensen at 8:49PM. Seconded by Bill Oliver. All in favor. 5-0.

Bill Oliver made a motion at 8:50PM to classify this project (application #436-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 Arnold Jensen. All in favor. 5-0.

Area Variance Criteria-

1. Can benefit be achieved by other means? Yes, but alternative is not better.
2. Is it a detriment to nearby properties or an undesirable change in neighborhood? No.
3. Is the request substantial? No.
4. Physical or environmental effects to neighborhood? No.
5. Is difficulty self-created? Yes.

John MacMillan made motion to approve variance request #436-V under the contingency that the sign be reduced to 15 sq ft. from 17 sq ft. Seconded by Arnold Jensen. All in favor. 5-0.

CORRESPONDENCE: Zoning Administrator and Sanitary Code Enforcement Officers Activity report for Sept and Oct 2016.

NEW BUSINESS: None.

OLD BUSINESS: Mary Jane stated that there should be better communication about what board members are doing pertaining to not knowing about John's fireman classes.

MINUTES: Arnold Jensen made motion to approve minutes from September 27, 2016.. Seconded by Tom Thorsen.. All in favor. 5-0.

PUBLIC PRIVILEGE: None.

BOARD PRIVILEGE: None.

ADJOURNMENT:

John MacMillan made motion to close meeting at 9:01 PM. Seconded by Bill Oliver. All in favor. 5-0.

Respectfully submitted,

Brandi Bessette
Secretary
Zoning Board of Appeals