
MINUTES FOR THE REGULAR MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS HELD MONDAY, DECEMBER 9, 2024, IN THE TOWN HALL MEETING ROOM. AUDIO RECORDING ON FILE.

Chairman Barton Ziganti called the Regular December 9, 2024, Chester Township Board of Zoning Appeals meeting to order at 7:03 p.m.

Roll Call

Members present: Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/yes; Ms. Sritalapat/yes, Mr. Ziganti/yes, Ms. Denamen/yes; Mr. Dobrzynski/yes

Zoning inspector: Mr. Alusheff

Admin present: Ms. McCarthy

Mr. Ziganti led the audience in reciting the Pledge of Allegiance.

Approval of Minutes

Motion to approve the minutes of November 12, 2024

Ms. Fadorsen motioned to accept the November 12, 2024, minutes as presented. Ms. Klemm seconded the motion.

Ms. Fadorsen/yes; Ms. Klemm/yes; Ms. Muehling/yes; Ms. Sritalapat/yes; Mr. Ziganti/yes.

Motion passed.

Mr. Ziganti read the public hearing Purpose and Procedures of the Board of Zoning Appeals.

Mr. Ziganti recognized Ms. Sritalapat, and offered thanks for the dedication and years of service to the citizens of Chester Township, as this is her last meeting as a BZA member.

Appeals to be heard:

**APPEAL ZA-2024-14
Thomas L. Adams
Area Use
8240 Merrie Lane**

All persons wishing to give testimony were sworn in.

Mr. Alusheff reviewed the handouts of the Summary Addendum.

Mr. Adams – The reason we put the shed where we did is because of the water flow behind the house. {Using Nearmap (displayed on the monitor), the difficulty of the water flow was indicated.} When I put in the shed, I was not aware that I needed to place the shed 20' from the side of the house. I did put it as far back as I could.

Mr. Ziganti reviewed the standards as written on Form 4 – pg. 3. known as the Duncan Factors.

{Reference Section 4- Area Variance, of Form No, 4 for the written responses of the appellant.}

1. Does the current zoning requirement that you seek a variance for unreasonably deprive you of a permitted use of the lot? Appellant answer: No.

No questions from the Board.

2. Will the lot in question yield a reasonable return without the variance? Appellant answered, Yes. No questions from the Board.
3. Is there any beneficial use of the lot without a variance? Appellant answered, Yes. No questions from the Board.
4. Is the variance substantial? Appellant answered, No.

Mr. Muehling – Typically, anything over 25% is thought to be substantial. This is a 100% variance.

Ms. Klemm asked that the Board explain to the appellant why it is a 100% variance

Mr. Ziganti – This shed needs to be 100% behind the rear line of the residence. Because it's located in the side yard, which is not permitted, it's 100% variance to have it located somewhere other than where the Zoning Resolution allows.

No other questions from the Board.

5. Will the essential character of the neighborhood be substantially altered or will adjoining lots suffer a substantial detriment as a result of the variance? Appellant answered No.

Ms. Muehling – This home appears to be in a subdivision. Essentially, the neighbors seem to have the same sheds that he has. So, his shed is not totally out of line with his neighbors. How this home was built on this lot without a variance, I will never understand.

6. Will the variance adversely affect the delivery of governmental services? Appellant answered No. No questions from the board.
7. Did the lot owner purchase the lot with knowledge of the zoning restriction? Appellant answered No. No questions from the board.
8. Can the lot owner's predicament feasibly be obviated through some method other than a variance? Appellant answered No.
Mr. Ziganti asked if the structure is on a skid?
Mr. Adams – Yes.
Mr. Ziganti – So it is moveable?
Mr. Adams – Except for where the septic system goes.
9. Will the spirit and intent behind the zoning requirement be observed and substantial justice done by granting the variance? Appellant answered Yes. No other questions from the Board.
10. Other criteria that is related to determining whether the zoning regulation is equitable: Appellant answered – Loss of trees, topography and flooding during heavy rains.

Mr. Ziganti – I want to look at the dimensions of the structure we have in front of us.

Ms. Muehling asked when the shed was put on the property.

Mr. Adams – About two years ago.

Ms. Muehling – What caused you to think you needed this storage?

Mr. Adams – After a rain, we couldn't get to the back shed, so we needed something closer to the house.

At this point, Mr. Alusheff brought a cell phone video sent from the appellant showing the water flow in the yard after a rain.

Group discussion on how far the existing shed is from the home and the side yard. Referencing the submitted drawing of the lot and shed, it was determined that the side yard dimension should be 26 ½ feet and the closest exterior wall of the shed is 12 feet from the exterior wall of the house. (Measurements were changed on the original documents submitted with the application.)

Mr. Ziganti asked how many variances we have to consider in this appeal.

Mr. Alusheff said both items are in the same section of the Zoning Resolution, 5.01.03.

Mr. Ziganti – In the past, we always considered that to be two separate variance requests. However, it comes from one place in our Zoning Resolution. My question is, how many variance requests do we have in front of us – one or two?

Ms. Denamen – Could I make sure I understand? This is all coming from one Section of the Zoning Resolution?

Mr. Ziganti – It is two separate issues in the same section of the Zoning Resolution. In years past, we looked at this as two separate variances because it worked in the favor of the appellant.

Ms. Muehling – In light of what you just said, it doesn't hurt to have it as two. Does he just submit his request to two variances?

Mr. Ziganti – We would just modify it. I don't want to complicate this too much.

Ms. Muehling – Well, I may be complicating it. In the Zoning Resolution, it says corner lot owners pick their front yard. Which line on Nemap shows the setback? The review indicated that his home should not even be situated where it is.

The side yard definition was reviewed again from the Zoning Resolution. "in the case of a corner lot, any yard which is not a front yard, shall be considered a side yard." That means to me that Mr. Adams has no rear yard. That doesn't make sense to me. I understand what Mr. Alusheff did. He took the piece from the house sideways and said that is the side yard. That makes so much common sense, but it is not what the resolution says. I maintain that he may not have a rear yard. If he doesn't have a rear yard, then he has a strong practical difficulty.

Mr. Alusheff – While I may not fully agree with Ms. Muehling’s interpretation of this, I do fully understand where she is getting this. When there is a question of this nature, you go to Section 1.03.0 Provisions of Resolution Declared to be Minimum Requirements. “This resolution shall therefore be regarded as remedial and shall be liberally construed so to further its underlying purposes.” I would agree with Ms. Muehling. We can’t say for sure he has a backyard, then it would be appropriate to base this on the fact that he does not have a backyard.

Mr. Ziganti – If our Zoning Inspector wishes to modify the file to state that is the case, then all we have is the issue of how close the shed is to the residence.

Mr. Alusheff – Even if it is interpreted that he does not have a backyard, he still needs a variance from Section 5.01.03 and that is the reason for denial.

Ms. Denamen – So Bart, does that answer your question if we have one or two?

Mr. Ziganti – It depends on what the Zoning Inspector comes up with. What was presented to us is that we have two issues out of one section of the Zoning Resolution.

Mr. Alusheff – Would you like to just get rid of Section 2, #2 on Form Four? Get rid of everything before the “&” sign?

Mr. Ziganti – Yes, if that is what we are agreeing with. And now we are down to a single variance request. It should read, “The shed location of less than 20’ from the house shall be allowed to remain.”

Ms. Muehling – I think I have not made my point. His shed is built. We are after the fact trying to bring it into compliance. Then we will bring up the point that he is 12’ from the house and that’s a 48% variance. It then becomes a matter of safety.

Mr. Ziganti – We are going to discuss the variance as “Keep shed located less than 20’ from the house.” That’s the variance that we are discussing now.

Ms. Sritalapat – Margaret, looking at the Zoning Resolution definition of “Lot Line, Front (Frontage)”, it says: “means the boundary of a lot which abuts a public or private road. In the case of a corner lot or through (multiple frontage) lot in a residential district, the front lot line shall be designated by the lot owner, provided that all other provisions of this resolution are met.”

Ms. Muehling – He gets the right to choose which one is the front. Even if he switched to the other street, it wouldn’t work.

Ms. Sritalapat – I just wanted to read, Lot Line, Rear. :”means a lot line, other than a front lot line on another street which is parallel or with forty-five (45) degrees of being parallel to the front lot line. If the rear lot line forms a point, then the rear lot line shall be a line ten (10) feet in length within the lot, drawn parallel to and the maximum distance from the front lot line.” Does that mean, if they choose which lot line is their front, that sort of dictates where the rear will be?

Ms. Muehling – When you have a corner lot, that cuts that line out. It’s not logical, but it’s possible according to the Zoning Resolution. (By the way, that should be changed because it certainly doesn’t make any sense.)

Ms. Denamen – For now, are we agreeing that we have one variance request?

Mr. Ziganti – We have one variance request in front of us which is to allow the shed location to be such that it is closer than 20' to the house.

Ms. Fadorsen – Currently it is 12'?

Mr. Ziganti – Presently, it is 12'.

Mr. Ziganti – The proximity is between the shed and the northeast corner of the house. Should the structure be moved to the north, that diagonal line of separation would grow. Now, you mentioned water. It's a skid structure, you could put down a gravel bed and put it right on that. This is a simple solution. The gravel raises it above the water and the problem is solved.

Several other BZA members mentioned it would then wash away. Mr. Ziganti indicated this would not occur if properly constructed with the gravel base confined within a timber form.

Mr. Ziganti – Based on your testimony from Duncan Factor #8 the shed is movable. You could push the structure back. A variance is something that goes with the land forever. There are simple solutions here. I think you should consider making it so you don't have to have a variance request.

Meeting Opened for Public Comment

Mr. Ted Diadiun – We don't know each other well. I walk my dog past his home all the time. It's a neat, well-kept home. I don't know if observations matter, but it doesn't seem to me that it is hurting anything. It would cause this man difficulty to move this thing and I would think common sense would argue toward allowing him to leave the shed where it is. I came only to speak to common sense.

Ms. Denamen {speaking in the Public Comment section as she is serving as an alternate today} asked Ms. Muehling about the house placement not being conforming.

Ms. Muehling – In my estimation, that house should never have been built.

Ms. Denamen – Doesn't the house placement limit where the shed can be built? Probably because the rest of the lot is wet. I feel like we're not setting some kind of standard. For the record, the homeowner should not be excused for not knowing the rules and permitting any kind of structure on your property. That may hurt you in this case.

Public Comment portion of meeting was closed

Ms. Klemm – I would like to restate what was just said. It seems like the whole house is non-conforming. The wet nature of the lot places restrictions on where any accessory building can be placed.

Mr. Ziganti – He's hoping it's not a non-conforming structure. If it is, every time he wants to make any changes to his residence, he's going to have to come in front of us to seek a variance. I don't even want to go there.

Ms. Klemm – In my opinion, I think he has shown a practical difficulty. The water running like it is, is a problem.

Ms. Sritalapat – If the deck is going away, could the shed be moved to that area?

Mr. Adams – No, because the water runs through that whole area.

Ms. Sritalapat, I see two prominent streams on the topographical map that run north and south. I see more difference in the swales.

Mr. Adams – Right now the water runs from the front yard, around the house and out the back.

Ms. Muehling – What type of things do you store in your shed?

Mr. Adams – I have a lawn mower and some carpentry tools. Yard equipment stuff.

Ms. Sritalapat – I do think this problem is solvable with backfilling or gravel.

Mr. Ziganti – Simple solution. We're talking about granting something that goes with the land in perpetuity. This is a simple situation. He can move it back 7' and atop a raised bed of gravel.

Mr. Adams – The question I have is if I move it back and I still don't get the 20', do I still have to come back and get approval?

Mr. Ziganti – You would move it back for a 20' clearance. That's the whole objective here.

Ms. Muehling – Addressing Mr. Adams – Did you say you have raised your shed where it is right now?

Mr. Adams – Yes, about 2'.

Ms. Muehling – If you moved it back, taking the contour of the land into account, how much more would you have to raise it?

Mr. Adams – Because of the slope to the creek, at least 18" at the front of the shed and 3 ½' to the rear.

Ms. Sritalapat – My main concern is Life safety, particularly, fire access. This is a major contributing factor on why these structures are to be 20' away from each other. Could a fire truck reach the back of these structures if needed?

Ms. Muehling – I think the key point is, would the Fire Department have any trouble accessing the shed? Does it have to come down the driveway or could it be on the side street?

Ms. Sritalapat – Yes, does that shed block their access to the back of the house? I know we have a general statement from our Fire Department about the need for the 20' separation

Mr. Alusheff – That was a general statement. They said 20' away was good, but not necessarily 20' behind. Every time they add a 100' length of hose, they lose some pressure. The way he explained it to me, they're probably not driving the fire truck up his driveway. They're leaving it on the road.

Mr. Ziganti – There being no more comments, we’re going to close the public presentation of the meeting now and we’re going to deliberate.

Ms. Fadorsen moved to approve the Area Variance, ZA-2024-14; Ms. Sritalapat seconded the motion.

Ms. Muehling – I would like to be clear on the motion. Ms. Fadorsen repeated the move to approve Variance, ZA-2024-14.

Ms. Muehling – Well then, what are we asking a variance for?

Mr. Ziganti – The variance requested is to allow the shed to stay where it is which requires a variance because it is 12’ away from the residence and it needs to be 20’. That will be a 40% variance.

Ms. Fadorsen – I do think there is a practical difficulty. The water is running there and putting it back any further will create a bigger issue. He doesn’t have any other place to put it. Trying to build up gravel under a structure like that is a lot of buildup.

He also stated in the beginning that they had dug a basement for the house and it filled with water so they ended up filling it in and building it on a slab.

Mr. Alusheff – That was not official testimony during the hearing. He offhandedly mentioned that just before the hearing.

Ms. Muehling – So that’s part of the testimony?

Mr. Alusheff – No, that’s just something he mentioned before the hearing got started.

Ms. Muehling – So it’s not part of the record?

Mr. Ziganti – It’s not part of the record.

Ms. Muehling – And it cannot be made part of the record?

Mr. Ziganti – Who gave the testimony? It’s hearsay.

Ms. Klemm – I think the situation can be obviated by bringing in gravel fill, but I think the cost to the homeowner would be enormous and that would place an unnecessary hardship. The amount of fill he would need and cost of moving the shed would be large. I understand the variance goes into perpetuity, but I think this is a unique case and I think we should take that into account.

Ms. Sritalapat – I think it’s unfortunate this was already built and not caught ahead of time. The most important part to me is the life safety aspect with fire access.

Ms. Muehling – I think we’ve been over some things like whether the property will yield a reasonable return, and I think that is yes.

- Is the variance substantial?
 - Yes, it’s substantial, but not as substantial as it was in the beginning because now, we are talking about a variance of 40%. Duncan Factors do not necessarily have more

weight than another. When they are connected to other items, it may weigh less than it would in other consistencies.

- Would the essential character of the neighborhood be substantially altered?
 - No, I don't think it is. His structure is very similar to those on the surrounding properties.
- Government services affected?
 - The only thing I would ask is I would like it noted that I do not think the fire risk is high.
- Apparently he did not know there were zoning restrictions on his property.
- Whether the owner's predicament feasibly be obviated through some method other than a variance.
 - Here we get to the fact that it is on skids and that we can move it. There has been testimony that moving the shed would be costly and require quite a bit of gravel and the question remains, if there is a creek running nearby – how will they secure the fact that the gravel will stay there?
 - The only neighborhood person that came was in favor of the variance.
- I think these factors – one at time – do not represent a practical difficulty. I think all of the above factors add up to a practical difficulty.

Mr. Ziganti – This shed is 160 square feet. I think that people should look at how much gravel is really needed to raise this structure up. The problem is we have an existing structure that shouldn't have been placed where it was. Had the area been properly prepared, I think this would require a rough estimate of four cubic yards of gravel which is nothing as far as cost. You keep it in place by building a form around it. That is a very low-cost solution to this problem. A quick calculation says the shed would need to be moved about 10'. We're supposed to look at practical difficulties. There is no practical difficulty here. The biggest difficulty is having to remedy the situation now that the building is in place.

Roll call:

Ms. Sritalapat/no; Ms. Klemm/yes; Ms. Fadorsen/yes; Ms. Muehling/yes; Mr. Ziganti/no

The motion passes.

**Conclusions of Fact:
ZA-2024-14**

Thomas L. Adams of 8240 Merrie Lane came before the board to seek a variance request to allow a 16' x 10' shed to remain in place located 26 ½ feet from the east property line and within 12' of the residence. The house is a non-conforming structure. It should be noted that a formerly built shed exists on the rear of the property totaling 188 square feet. The applicant indicated that the existing location for the 16' x 10' shed was selected to place it in an area that is drier during rainfall and would not consider moving the shed to establish a twenty-foot separation from the house. This is a 40% variance. The applicant indicated that the 160-square-foot shed is used for ancillary storage of gardening equipment. One neighbor spoke in favor of the appellant's request.

We the Board of Zoning Appeals incorporate into these Conclusions of Fact the application forms, documents, and exhibits including all corrections, clarifications and additions discussed or presented at this hearing.

Ms. Fadorsen moved to approve the Conclusions of Fact. Ms. Sritalapat seconded.

Roll call:

Ms. Sritalapat/yes; Ms. Klemm/yes; Ms. Fadorsen/yes; Ms. Muehling/yes; Mr. Ziganti/yes

The motion passes.

***At the January 13, 2025 BZA Meeting, Ms. Muehling asked that the variance be clarified to include the position of the shed and to read, "The Area Variance granted to Section 5.01.03 addresses that the shed is located 12' from the residence not the required 20', a 40% variance, and the setback from the east property lot line of 26 ½ feet in order to allow the shed to remain at the location on the lot as shown on the plan." ***

New Business:

Ms. Klemm gave an overview of the Riparian Setback workshop which was put on by the Chagrin River Watershed Partners. Riparian setbacks can help the community keep the groundwater clean. This may add a regulatory burden to the Zoning Inspector. Chesterland seems to have more ephemeral streams. This tool is best used in a planning stage and needs to be administered carefully. It's within the property owner's best interest to consider this information.

Mr. Alusheff will begin working on preparing a new summary of the BZA hearing to provide background information on the case about to be heard. (This could include pictures taken from the road.)

Next meeting scheduled for January 13, 2025

- Organizational Meeting scheduled
- Plan to watch the November 2024 OTA seminar, The Role of the BZA.

Meeting closed at 9:12 p.m.

Approval Date January 13, 2025

Kathleen McCarthy, Admin. Assistant

Barton Ziganti, Chairman

Deana Sritalapat, Vice-Chair

Alternate
Mindy Denamen

Kathy Fadorsen

Christina Klemm

Margaret Muehling