

**CHESTER TOWNSHIP ZONING BOARD OF APPEALS MINUTES**  
**Meeting of July 13, 2023**

Chair Tim Wurm called the meeting to order at 7:00 with the pledge of allegiance. Other members present: Jon Denhof, Mike Dunnuck, Rob Haack, Ross Leiffers. Attorney Ron Redick and Planner Julie Lovelace were also present.

**APPROVAL OF AGENDA**-Motion by Denhof, second by Dunnuck to approve the agenda as written, motion carries.

**APPROVAL OF MINUTES OF August 11, 2022**-Motion by Dunnuck, second by Leiffers to approve the minutes as written, motion carries.

**CITIZENS COMMENTS REGARDING ITEMS NOT ON THE AGENDA**-a resident pointed out that the website still shows Sammons as Treasurer.

**PUBLIC HEARING-Hyde variance request**

Planner Lovelace gave an overview of her memo.

**PUBLIC HEARING**

Motion by Denhof to open the public hearing at 7:02pm. Second by Haack, motion carries.

The applicant stated that the fence is needed as a matter of safety. They misinterpreted the ordinance. The old wall was bad from neighbor's runoff. New retaining wall built. Three-foot wall would not protect from falls.

Carl Elliot 2532 Crockery Shores. View is a big portion of the value of the property. Opposed.

Lesha Gustin 2417 VanDyke. Questioned the side and rear yard. There are 6 fences on the lake now, 2 go to the lake edge. Why are they allowed and not this one? In Favor

Diane Berenbrock 2143 VanDyke. Applicant could plant trees and take away view. Safety and insurance is an issue. In Favor

Randy Peltier 2187 VanDyke. This is a self-created hardship. If granted would allow others to build fence. Opposed.

Julie 2835 VanDyke. Her mother has lived there for 30 years. No one has fallen. Opposed.

Josh, grandson, His children play on the property. Not worried about falls. Opposed

Steve Menn 22796-24<sup>th</sup> Ave. This is not an OSHA workplace, building codes apply to this. A six foot fence is not necessary. Mesh would work also. Opposed

Sally Barritt 2175 VanDyke. Fence is an eyesore. Neighbors are family. Should enjoy the lake. Opposed.

Bill Berenbrock 2143 VanDyke. Is in Favor of fence

Alysha 2165 VanDyke. The fence was in violation for over a year before a variance was applied for. Opposed.

Evelyn Coxen 21360 Squires. This is a safety issue. Applicant wants to block view of the other side of the fence. In Favor

Tim VanLaan, 2354 Crockery Shores. There are six other fences that are on the lake what are you doing about them?

Greg Slater 2500 Crockery Shores. If you let a few everyone will want a fence and block view. Opposed.

Karen Peltier 2187 VanDyke. If you want privacy move to 10 acres. If township allows this it will open a can of worms. Opposed.

David Hyde-There is a lot of misinformation. The assumption is that the view is blocked, but only view of the yard is blocked.

Julie- Hill has always been there. There is no safety issue.

Greg Slater-Ordinances are there to follow rules. Go with love not hate and work things out.

Jonne Sanderson 2165 VanDyke. Would like fence taken down so she can see.

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Jody Hyde 2155 VanDyke. They did come to Zoning Administrator first to get the rules. They are not trying to break the rules. They disagree with staff interpretation. The ordinance should be changed. It depends where the home sits on the property as to where the fence starts. Zoning permits should be required. Make it a distance from the lake.

Public Record: Two anonymous letters were received. Where not read into the record.

Marcy Savage letter was summarized and she is in Favor

Jody Hyde already summarized her letter. She is in Favor

Motion by Lieffers to close the public hearing at 7:48pm. Second by Denhof, motion carries.

ZBA discussion and decision.

Attorney Redick stated that the comment that the township could be sued by someone who is injured by the applicant's retaining wall, if the variance was to be denied, is incorrect.

The township has governmental immunity regardless of whether variance is or is not granted.

Denhof stated that safety is important. Look to insurance for protection. Has not been shown that the situation cannot be remediated another way.

Chairperson Wurm read the conditions to be met:

a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district.

**Applicant comments:** The Applicant relays safety concerns regarding the height difference between the neighbor's lot and the subject lot due to the significant grade difference and retaining wall.

**Staff comments:** The Applicant argues safety concerns regarding trespass onto his property. While Staff appreciates the Applicant's safety concerns, the ZBA cannot use speculation regarding trespass to approve a variance request. A fence up to three feet in height on top of the retaining wall in the required front yard is permitted to help address this concern. Additionally, the CTZO permits the fence to be up to six feet in height south of the front wall of the house, which is where the wall is the highest. The ground slopes toward the lake. This slope is not exclusive to the subject lot, but extends across many lots around the lake. All properties are tasked with addressing grade and soil retention. Therefore, there are not conditions applying to this property that do not apply generally to other properties in the same zoning district. If the ZBA agrees, this standard may not be met

**Roll call vote:**

Denhof: No

Leiffers: No

Wurm: No

Dunnuck: No

Haack: No

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**The Zoning Board of Appeals agreed that the standard is not met.**

b. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

**Applicant comments:** The Applicant cites safety concerns, stormwater runoff issues, and conflict with the neighbors.

**Staff comments:** It is a substantial property right within this zoning district to have a three-foot fence in the required front yard, transitioning to a six-foot fence at the front building wall. There is nothing prohibiting the Applicant from this property right. If the ZBA agrees, this standard may not be met.

**Roll call vote:**

Denhof: No  
Leiffers: No  
Wurm: No  
Dunnuck: No  
Haack: No

**The Zoning Board of Appeals agreed that the standard is not met.**

c. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this Ordinance or the public interest.

**Applicant comments:** The Applicant cites issues with the neighbors.

**Staff comments:** Staff finds that a six-foot tall privacy fence within the required front yard would have a substantial detrimental effect on neighboring parcels. This would block the viewshed. As a result of pending public comment at the public hearing, we expect evidence to be provided that the fence is substantially detrimental to the neighboring parcels. If the ZBA agrees, this standard may not be met.

**Roll call vote:**

Denhof: No  
Leiffers: No  
Wurm: No  
Dunnuck: No  
Haack: No

**The Zoning Board of Appeals agreed that the standard is not met.**

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d. That the condition or situation of the specific piece of property, or the intended use of said property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

**Applicant comments:** The Applicant cites the difference in grade between the subject parcel and the neighbor to the west.

**Staff comments:** In looking at the topography on the Ottawa County Property Viewer, this significant slope from the road to the lake appears to affect most lots. However, Staff is unaware of recurrent requests from other properties within this zoning district for this issue that would require the formulation of a general regulation for this condition. As such, this standard may be met.

**Roll call vote:**

Denhof: Yes  
Leiffers: Yes  
Wurm: Yes  
Dunnuck: Yes  
Haack: Yes

**The Zoning Board of Appeals agreed that the standard is met.**

e. That the situation is not due to a self-created hardship.

**Applicant comments:** The Applicant cites stormwater runoff damaging the previous retaining wall and the narrow space between the house and the lot line.

**Staff comments:** Staff finds this appeal is exclusively regarding the fence height. The fence was installed in violation of the Township Zoning Ordinance. Staff finds that this is a self-created hardship. If the ZBA agrees, this standard may not be met.

**Roll call vote:**

Denhof: No  
Leiffers: No  
Wurm: No  
Dunnuck: No  
Haack: No

**The Zoning Board of Appeals agreed that the standard is not met.**

f. For a use variance, that compliance with the Ordinance would cause undue or unnecessary hardship. For a non-use variance, that there are practical difficulties in complying with the Ordinance.

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**Applicant comments:** The Applicant cites safety and privacy issues as practical difficulties in complying with the ZO.

**Staff comments:** Any practical difficulty must arise from unique circumstances of the land and not from the personal actions of neighbors, however objectionable they may be to the Applicant. There is nothing in the CTZO that prevents the Applicant from having a fence. In fact, a six-foot fence from the rear lot line to the front building wall, which extends across much of the grade difference, is permitted. The fence must transition from six feet to three feet when it is even with the front building wall. There is no practical difficulty in removing the section in violation. The Applicant states they want privacy from the neighbor. This is a civil matter and is not part of the ZBA's purview. As such, Staff finds that there is no practical difficulty on complying with the ZO and this standard may not be met.

**Attorney comments.** Before voting on this standard, the Township attorney explained to the ZBA that the "practical difficulty" standard is currently in flux under Michigan law. For 27 years, since the 1995 Court of Appeals' opinion in *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, the law has always been that the concept of "practical difficulty" in zoning law relates to problems inherent in the property itself, not the personal conditions of the occupants. However, a subsequent panel of the Court of Appeals departed from this rule in its 2022 decision in *Pegasus Wind Energy v Tuscola County*, holding that "practical difficulty" can be shown by (a) denying the owner the use of the property, (b) showing that compliance would be unnecessarily burdensome, or (c) that granting a variance would do substantial justice to the owner. However, the Michigan Supreme Court is reviewing that decision, and it may be overruled, given that the Court will decide the case on the application, rather than requiring full briefing.

The attorney explained that this uncertainty appears not to be relevant to this particular variance application, because neither formulation of the "practical difficulty" standard would be satisfied. Under *Pegasus*, the owner obviously has a reasonable and valuable use of his property, without consideration of fence height; it is not unreasonably burdensome to construct a fence that complies with the zoning ordinance; and, the applicant does not need the variance to have substantial justice done, because the same front-yard fence standards apply all around the Lake in the LR District, and can readily be met by the owner. Further, under *Davenport*, the applicant has not shown that there is a problem inherent in his land that would prevent him from complying with the fence height and construction standards of the zoning ordinance. The record evidence from staff indicates that the slope on the applicant's property is not exclusive to the subject lot, but extends across many lots around the lake. The applicant has not produced any contrary evidence.

The ZBA can make its own determination on these standards, but should be aware of the broader sense in which "practical difficulty" should now be considered.

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**Roll call vote:**

Denhof: No  
Leiffers: No  
Wurm: No  
Dunnuck: No  
Haack: No

**The Zoning Board of Appeals agreed that the standard is not met.**

Motion by Leiffers, second by Wurm to deny the variance based on standards a,b,c,e, and f. not having been met for reasons stated in zoning administrator's report and as articulated by zoning board of appeals members during their discussions. Motion unanimously passed, 5-0.

**OTHER MATTERS TO BE REVIEWED**

Board report-Trustee Mike Dunnuck-Clean-up day in the fall. The roof was replaced on the township hall. Lights in the office were replaced. Upgrade of McNitt cemetery driveway. Master Plan is close to wrapping up. The Senior Luncheon takes place quarterly. The exercise program is on Monday and Wednesday. Foot care is available for all seniors.

Planning Commission report-Denhof discussed the Master Plan update. This is the 10-year review. It is the townships opportunity to set goals and direction of the future of the township. Public input was reviewed. Next step is to go to Planning Commission for public hearing. Then to the Township Board for adoption.

**BOARD MEMBER DISCUSSION**-none

**ADJOURNMENT**-Motion by Haack to adjourn at 8:38pm. Motion carries.

Helen Dietrich  
Chester Township Clerk

*(Any document referenced in these minutes is on file in the Clerk's office)*