

**Town of Chester
Zoning Board of Adjustment
April 19, 2022
Town Hall
7:00 PM
Approved Minutes**

Members Present:

Chair Billie Maloney
Vice-Chair Kevin Scott
William Gregsak
Rick Snyder, Planning Board Ex-Officio Liaison
Jason Walsh, Alternate

Members Absent:

Jack Cannon

Guests:

Royal Richardson
Susan Richardson
David Lincoln
Laura Lincoln
John Reardon, Southers Construction

Agenda

- 1. Call to Order/Roll Call**
- 2. Approval of March 15, 2022 Meeting Minutes**
- 3. Non-Public 91-A:3(II)(i) if needed**
- 4. Correspondence**
- 5. Updates – Rules of Procedure (tabled)**
- 6. Public Hearings**
- 7. Other Business – Date of Election of Officers**
- 8. Adjournment**

1. Call to Order

Chair Maloney called the meeting to order at 7:00 PM. By Roll Call were present: Billie Maloney, Kevin Scott, Bill Gregsak, Rick Snyder, and Jason Walsh. Chair Maloney indicated Alternate Jason Walsh would be active

2. Approval of Minutes – March 15, 2022

Chair Maloney and Mr. Gregsak recommended edits.

Mr. Snyder motioned to approve the March 15, 2022 minutes as amended. Mr. Gregsak seconded the motion. A vote was taken. Vice-Chair Scott and Mr. Snyder abstained. The motion passed 3-0-2.

4. Correspondence

5. Updates

a. Rules of Procedure (tabled)

Chair Maloney noted she had revisions to make to the section entitled "Legal."

Ms. Hoijer noted the Rules of Procedure call for election of officers in May or June but last year it was done in August. She asked if the Board would like to amend the Rules to elect officers in August so that the officers would have a full year term or do the election in May or June. Chair Maloney indicated she would like to keep it as May or June.

b. Application

Chair Maloney asked if the application instructions had been corrected and Ms. Hoijer noted they have been corrected and posted on the webpage by TA Doda.

c. Training

Chair Maloney asked if anyone would like to review the Conflict-of-Interest publication from 2010. Mr. Walsh and Mr. Gregsak indicated they would like to review it.

6. Public Hearings:

1. The application of Southworth Construction on behalf of David R. Lincoln and Laura A. Lincoln
For a Variance

From Article 5, Section 5.7, Subsection 5.7.8 Table 2 (Table of Dimensional Requirements –
Wetlands

Of the Ordinance

To permit the existing 10'x29' deck (originally permitted as a 12'x16' deck – see below) to be
expanded by adding a 12'x13' section to the right side with t-shaped stairs to the center 17' wide
so that the new section of deck will be approximately 70' and the stairs will be approximately 72'
from the edge of wetlands where 75' are required

and

2. The application of Southworth Construction on behalf of David R. Lincoln and Laura A. Lincoln
For an Equitable Waiver of Dimensional Requirement

Pursuant to Article 11, Subsection 11.6.2 of the Zoning Ordinance

To permit a 10'x29' attached deck which has existed for more than ten (10) years situated less than 75' from the wetlands as required by Article 5, Section 5.7.8 Table 2 (Table of Dimensional Requirements)

On the premises known as and numbered Map/Lot 002-050-004, 34 Town Farm Road in the R-1 Residential zoning district

Vice-Chair Scott read out loud the Public Hearing Notice.

Mr. Reardon of Southers Construction presented the application on behalf of the Lincolns. He explained that Jeff Genest who filed the application no longer worked there and this was his first time seeing the application (a copy was provided to him this evening by the Administrative Assistant). The Lincolns also had not seen the application and noted the contractors were Southers Construction not Southworth as stated on the notice.

Chair Maloney recommended hearing the Equitable Waiver application first and explained that the original deck was built bigger than was permitted.

Chair Maloney directed the applicants to Sections 11.6.1.c , 11.6.1.d and 11.6.2 of the Town Zoning Ordinance which explained that the owner must demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected and that this relief would only be for dimensional conditions and not use; that the violation does not constitute a public or private nuisance, nor diminish the value of other property in the area and that the degree of past construction or cost of correction far outweighs any public benefit to be gained. Mrs. Lincoln noted the home was built in 2001 and the deck existed at that time. The builders had made changes to the location of the fireplace and the sliding door required a larger deck. Mrs. Lincoln noted the wetland setback had changed in the early 2000s from 50' to 75.' Mr. Gregsak agreed the setback changed sometime after 2001 or 2002. Chair Maloney reminded that they were hearing the application for the Equitable Waiver and that concerned the application for the variance to be heard after. Mr. Snyder stated that you could go back to the time the deck was built and see on *Google Earth Pro*. Mrs. Lincoln stated that she measured the deck, and it is 14.1' by 29.' Mr. Lincoln stated he measured the deck as 12' x 29.' Ms. Hoijer noted the tax cards have two different measurements, in 2006 and 2019 showing 10'x29' and most recently in 2022 showing 12'x29.' The Board noted sometimes the features are measured when an assessment is done and sometimes, they are not.

Chair Maloney opened the hearing to the public at 7:15 PM and being no comments or questions closed the hearing for deliberations. Vice-Chair Scott noted he was comfortably satisfied and all members agreed that the conditions for equitable waiver were met.

Chair Maloney motioned to grant an Equitable Waiver to permit a 14.1'x29' attached deck which has existed for more than ten years. Mr. Snyder seconded the motion. A vote was taken. Vice-Chair Scott abstained. The motion passed 4-0-1.

Mr. Reardon together with the Lincolns presented the application for a Variance from Section 5.7.8 Table 2 (wetlands setback).

Mr. Reardon explained that a corner of the deck is encroaching now by 5' and the change in orientation of the stairs will encroach by 3'. Mrs. Lincoln showed the original plan set.

Mr. Snyder noted the applicant is repairing the existing deck and making the stairs safer. Mrs. Lincoln explained the provide stairs access to their walkway from the driveway to the house as well as the pool which is why they need to be oriented the way they are proposed to be. Mr. Snyder noted it is reasonable to have safe stairs.

Vice-Chair Scott recommended continuing the hearing to next month to get a clean application because it is difficult to read and cautioned against providing the applicants with too much assistance. Also the facts were not know as to the actual size of the deck.

Ms. Hoijer added that a clean copy of the application was never dropped off as promised and should be provided so the record is preserved for the Court in the event of appeal. Mr. Snyder noted he felt comfortable moving forward and Chair Maloney and Mr. Walsh agreed as did the abutters who were present. Chair Maloney noted the officials have a duty to assist the applicant without providing the answers for them, every application is different and does not set precedent. The contractor who filed the application is not here and so the applicants require limited assistance.

Chair Maloney opened the hearing to the public at 7:52 PM.

Royal Richardson stated that he and his wife Sue supported the application.

Chair Maloney closed the hearing to the public at 7:52 PM for deliberations.

Mr. Snyder noted the application was not contrary and all parties affected are not showing any objection. There is a minor change to existing conditions and the Spirit of the Ordinance is to protect the wetlands. There is a 75' setback encroached by two or three feet. They are not adding a lot of impervious surface. Substantial Justice exists to be able to have a deck and want to continue to use it. The stairs will provide safety and values are enhanced because a dilapidated deck would not help the property values of the owners or the neighborhood. The use is reasonable even though not in strict conformance.

Mr. Gregsak agreed that the application was not contrary to public interest. The setback is 3' difference and the deck was done prior to the new setback change. The Spirit is observed and not detrimental to any neighbors or their property values. The variance would do substantial justice. There is just a minor change to the stairs which will not impact values and the use is a reasonable one.

Mr. Walsh agreed with Mr. Gregsak that the request was not contrary, the deck and stairs are not visible to the neighborhood. The Spirit of the Ordinance is observed as there is not a major incursion and safety is a factor. Substantial Justice is done because this will improve values over an unrepaired deck. The use is reasonable and is not a major incursion, the deck and stairs need repair, maintenance and safety.

Chair Maloney noted she would vote yes to all five points. The request does not alter the character of the neighborhood. There is a benefit, not harm to the public, no decrease in surrounding property values and there are special conditions of the property because of the wetlands. The use is reasonable.

Vice-Chair Scott noted he had no reason to question the answers provided but he is uncomfortable voting on this when he is not certain how big the deck actually is. The tax cards don't balance. The stairs are being changed. He added that he is uncomfortable taking an

182 application that no one can read, the applicant can't read, and the contractor can't read resulting
183 in the applicant needing to be provided with a little too much help and coaching from the Board.
184 Vice-Chair Scott disagreed with Mr. Snyder's comment that the Building Inspector had determined
185 the size of the deck, the denial does not state that anywhere.

186
187 ***Mr. Snyder motioned to approve a variance of Section 5.7.8 Table 2 of the Ordinance to***
188 ***allow a 14.1' x 29' deck, portions of which will be within 70' of the wetlands and a portion***
189 ***of the stairs of which will be within 72' of the wetlands where 75' are required. Mr. Gregsak***
190 ***seconded the motion. Chair Maloney voted yes, Mr. Gregsak voted yes, Mr. Walsh voted***
191 ***yes, Mr. Snyder voted yes and Vice-Chair Scott voted no. The motion passed 4-1-0.***

192
193 Vice-Chair Scott read out loud the 30-Day Notice of Appeal.

194 195 **7. Adjournment**

196 ***Vice-Chair Scott motioned to adjourn the meeting at 8:19 PM. Mr. Gregsak seconded the***
197 ***motion. A vote was taken, all were in favor, so moved.***

198 Respectfully submitted,

199
200 Nancy J. Hoijer,
201 Recording Secretary