



**MINUTES OF MEETING
ZONING BOARD OF APPEALS
TOWN OF CHESTER
NOVEMBER 10, 2014**

Chairman Marcheselli called the meeting to order at 7:03 p.m.

ATTENDANCE:

Chairman Ken Marcheselli, John Grady, Mary Jane Dower, Bill Oliver, Michael J. Hill (Town Counsel), Walter J. Tennyson (Zoning Administrator), Jeremy J. Little (Secretary). Absent were John MacMillen and Arnold Jensen.

Present in audience: Mr. Frasier. Frederick and Karen Griffen and Barbara Repp were also present.

CORRESPONDENCE:

Zoning Administrator and Sanitary Code Enforcement Officer's Activity Report for October 2014.

MINUTES:

Attorney Hill suggested amendments to the approved Zoning Board of Appeals Minutes for the June 2014 meeting and to the draft Minutes for the July, September and October 2014 meetings. He made the following comments on the June 24th Meeting Minutes:

On page 3 of the Meeting Minutes for June 24, 2014 there is a statement made by Zoning Administrator Tennyson that an "...approved variance is not transferrable from one property owner to another." Legally speaking, variances are not personal. A variance benefits a property and "runs with" the property. Unless a time limit is imposed when a variance is granted or a provision in the Town's Zoning Code imposes a time limit on variances, an approved variance continues to be effective, regardless of changes in the ownership of the property, unless or until the variance is properly revoked by the ZBA.

Discussion by the Board; no further revisions proposed.

Mr. Grady made a motion to amend the Minutes from the Meeting held on June 24, 2014 by replacing the parenthetical note in bold type in those Minutes with the following:

(Please see the Meeting Minutes from July 22, 2014 and November 10, 2014 for emendatory statements by Board Member Grady and Counsel, respectively, on those

dates regarding these Minutes and providing corrective information to the statement by the Zoning Administrator shown in italicized type above.)

Mr. Oliver seconded the motion. All Ayes, amendment to Minutes approved.

Mr. Hill then made the following comments on the draft July 22, 2014 Minutes:

On page 3 of the draft Meeting Minutes for July 22, 2014, there was a comment and question by Board Member Grady about variances and when the rights granted in a variance become vested. To clarify, an approved variance continues in effect unless a time limit is imposed when the variance is granted or a provision in the Town's Zoning Law imposes a time limit on variances, regardless of changes in the ownership of the property, unless or until the variance is properly revoked by the ZBA. Rights granted by a variance become vested when the property owner does substantial work and incurs substantial expense in reliance on the approved variance. Once vested, the ZBA may not revoke the variance. A variance "runs with the property" and does not have to vest in order to continue in effect when ownership of the property changes.

Discussion by the Board; no further revisions proposed.

Mr. Grady made a motion to amend the draft Minutes from the Meeting held on July 22, 2014 by adding the following parenthetical note in bold type in the specified location and to approve the draft Minutes as so amended:

(Please see Meeting Minutes from November 10, 2014 with clarification to these Minutes from Counsel on duration of approved variances and vesting of rights granted by a variance.)

Mr. Oliver seconded the motion. All Ayes, draft Minutes amended and approved.

Mr. Hill then made the following comments on the draft September 30th Minutes:

COMMENT #1: On the first page of the draft September 30, 2014 Meeting Minutes, there is a discussion about the status of the prior application, Application #411-V. The Public Hearing on that application was closed on July 22, 2014. A vote was taken on a Motion to approve the requested variances, which resulted in a tie vote of 2-2, constituting "no action." Under NYS law, where a motion is made to grant a variance and a tie vote results, the Board can amend the motion and vote on the application again as long as the vote occurs within the time allowed (62 days) for a decision after the close of the Public Hearing. If no further vote is taken within the 62-day period, the application is deemed denied ("default denial"), which is what happened in the case of Application 411-V. Application 411-V was not still pending at the time of the September 30, 2014 meeting because more than 62 days had expired since the close of the Public Hearing on July 22, 2014. Upon the expiration of the 62-day period, the application likewise expired, so there was nothing further that the Board needed to do about it and no withdrawal by the applicant was needed or would be appropriate because the application had expired and was no longer pending.

COMMENT #2: On page 2 of the draft September 30, 2014 Meeting Minutes, there is a discussion about a hypothetical example posed by the Chairman. In it, the Town's Zoning Code changes after a variance is granted, necessitating a variance from a setback from a different property line than the previously-granted variance. The Chairman essentially asks whether the property owner needs to comply with the requirements under the old Code or the new Code for the variance from the different property line. Counsel's response noted a provision of NYS law that grants a limited period of time after a change in the Code during which the requirements of the old Code would continue to apply. However, that provision of NYS law applies only to lots created by a recent subdivision. In such cases, the time period during which the old Code would apply is measured from the date the lot comes into existence. The Chairman did not specify whether the lot in his hypothetical example was recently created or not. In situations involving older lots, such as the Frasier variance Application 411-V, the provision of NYS law referred to by counsel would not apply because the lot was created many years ago.

COMMENT #3: Also later on page 2 of the draft September 30, 2014 Meeting Minutes, Counsel remarked that "...if a variance has been granted and no change in the ordinance has occurred..." the property owner would get the benefit of the variance. Board Member Grady then stated his understanding that "...once a variance vests, then it is literally locked in forever and subsequent changes in zoning do not apply....the vesting of the variance that was granted actually locks in the zoning regulations that are in effect at the time." Counsel stated that he would get back to the Board with clarification of "vesting." Counsel is providing the following clarification: A variance "runs with the property" and does not have to vest in order to continue in effect. An approved variance continues in effect unless a time limit is imposed when the variance is granted or a provision in the Town's Zoning Law imposes a time limit on variances, regardless of changes in the ownership of the property, unless or until the variance is properly revoked by the ZBA. The variance continues to be effective even if there is a change in the Town's Zoning Code to make it stricter and to otherwise require a greater variance. Rights granted by a variance become vested when the property owner does substantial work and incurs substantial expense in reliance on the approved variance. Once vested, the ZBA may not revoke the variance. The granting of a variance does not prevent future changes in the Zoning Code from applying to other development requirements for a lot. For example, take a hypothetical situation where a variance is granted from the front setback requirement. Assume that no time limit is imposed on the variance, and assume there is no time limit in the Town's Zoning Code. The owner does not build the project. Five years later, the Code is changed to increase both the front and rear setback requirements. The property owner must now comply with the new, stricter rear setback requirement (or get a variance from it) even though the approved variance is still in effect and eliminates the need to comply with the stricter front setback requirement.

Discussion by the Board; no further revisions proposed.

Mr. Grady made a motion to amend the draft Minutes from the Meeting held on September 30, 2014 by adding the following parenthetical notes in bold type in the specified locations and to approve the draft Minutes as so amended:

(Please see Meeting Minutes from November 10, 2014, specifically Counsel's Comment #1 regarding this section of these Minutes.)

(Please see Meeting Minutes from November 10, 2014, specifically Counsel's Comment #2 regarding this section of these Minutes.)

(Please see Meeting Minutes from November 10, 2014, specifically Counsel's Comment #3 regarding this section of these Minutes.)

Mrs. Dower seconded the motion. All Ayes, draft Minutes amended and approved.

Mr. Hill then made the following comments on the draft October 28, 2014 Minutes:

On page 3 of the draft October 28, 2014 Meeting Minutes, slightly more than halfway down the page, there is a discussion about whether the current Town Zoning Code should be applied to Mr. Frasier's Variance Application #413-V. As previously noted, the granting of a variance does not prevent future changes in the Zoning Code from applying to other development requirements for a lot. And if a proposed project is changed so a previously-granted variance will not be relied upon, then, depending on the proposed changes, a new variance similar to the one previously granted may be needed. In the case of Application #413-V, Mr. Frasier is proposing a different location for the house and is not relying on the variance from Kohl Road that was granted in 1997. Under this new proposal, the house would not meet the required setback from Kohl Road, so a new variance from Kohl Road would be needed and he has applied for it, along with other needed variances.

Discussion by the Board; no further revisions proposed.

Mr. Grady made a motion to amend the draft Minutes from the Meeting held on October 28, 2014 by deleting the last sentence of the fourth paragraph on Page 3 and by adding the following parenthetical note in bold type in the specified location and to approve the draft Minutes as so amended:

(Please see Meeting Minutes from November 10, 2014 with additional clarification to these Minutes from Counsel about: 1) applicability of changes in zoning requirements to other aspects of proposed development on a parcel for which a variance was granted in the past, and 2) about the effect of changes in a proposed project on a parcel for which a variance was previously granted for a similar project.)

Mr. Oliver seconded the motion. All Ayes, draft Minutes amended and approved.

OLD BUSINESS:

#413-V - Randy Frasier seeking a 42.4 ft. frontline variance towards Pottersville-Olmstedville Road, an 87.5 ft. frontline variance towards Kohl Road, and a 22.3 ft. sideline variance towards adjoining property, according to Section 4.03 of the Town of Chester

Zoning Local Law in order to meet frontline and sideline setback requirements located at 2 Kohl Road, identified by Tax Map Parcel #: 34.-1-16, in Rural Land Use Area.

Recommendation from Warren County Planning Department was received and it was determined that the project has no significant impact on County properties or resources.

Mr. Marcheselli stated that at last month's meeting held on October 28th, Mr. Frasier had been undecided on changing the dimensions of the house in order to possibly lessen the variance requests. Mr. Frasier said that he would be agreeable to change the dimensions of the house and what is proposed if it would allow for him to build on the property. Mr. Frasier explained to the Board he recently received a phone call from Warren County and it was discussed that they (Warren County) would be willing to sell to him the vacant portion above his parcel towards Olmstedville Road.

The Board discussed the significance of the focus on the variance request towards the Olmstedville Road. They discussed if the small portion owned by the County were to be acquired by Mr. Frasier, the Board would not be so concerned as to that particular variance request.

Mrs. Dower was concerned about where Mr. Frasier was proposing to place the dwelling on the parcel.

Mr. Marcheselli stated that in 1997, the Laushe's proposed to construct a 24' x 40' dwelling with a setback of 65' from the center line of Kohl Road. He questioned Town Counsel whether the variance would still apply if Mr. Frasier changed the dimensions of the dwelling but still maintained the distance of 65' from the centerline of Kohl Road. Town Counsel stated that if the applicant is proposing to construct a reasonably similar dwelling in size to the structure stated in the granting of the setback variance in 1997, that as long as it were not too significant or substantial, the variance would still apply.

Mr. Oliver questioned Mr. Frasier about the placement of the wooden stakes on the parcel to show the placement of the proposed dwelling. Mr. Oliver stated that he measured from the "back corner stake" to the edge of the adjoining property line (which had a line of stakes to which he measured). His measurement was 18'-6". Mr. Oliver was concerned that on the Site Plan, it showed the measurement to be approximately twenty-nine ft. (29'). Mr. Frasier explained to the Board the stakes were not the exact location of the house and that it applied to the previous variance application he filed (#411-V), not to Application #413-V. Mr. Oliver was also concerned about the back corner stake towards Kohl Road being too close to the ditch. Mr. Frasier explained that a culvert would be placed in the ditch and it would be filled and leveled with the existing ground.

Mr. Marcheselli stated his concern of the variance requests towards the Alford property and the Kohl Road.

Mr. Marcheselli questioned Mr. Frasier if he could construct a residence that would meet the original variance from the centerline of Kohl Road. Mr. Frasier replied, "Yes." Mr. Marcheselli asked Mr. Frasier what the dimensions of the dwelling would be and the setback requirement. Mr. Frasier said that on the provided Site Plan, it showed the "previously

approved building footprint” to be approximately 51.8’ from the centerline of Kohl Road. In reply, Mr. Marcheselli stated, “The original variance request was granted to a 65’ setback from the centerline of Kohl Road to the corner of the house (as shown on the site plan).” Mrs. Griffen questioned that since the Kohl Road has changed if it would have any effect on the Board’s discussion referring to the variance granted to the Kohl Road.

Mr. Hill referred to Sheet 2 of the provided Site Layout and explained that the request of the applicant to the engineer was to draw the house where it was located per the application in 1997. Further, it was discussed that the Site Layout (in relation to the “previously approved building footprint”) correctly and appropriately corresponded with the variance request that was granted in 1997.

DISCUSSION ENSUED PERTAINING TO KOHL ROAD AND THE DIRECTION TO WHICH IT CHANGED.

Mr. Marcheselli stated that his concern is the setback/variance request proposed to the Alford property. Mr. Marcheselli explained to the Board that he believes before a discussion can take place, the variance requests would need to be “defined”.

Mr. Frasier stated that he believed the 28’ x 28’ dwelling had the least impact on the parcel as opposed to plotting the “previously approved building footprint” in 1997 with dimensions of 24’ x 40’, which he stated would have more of an impact, in his opinion.

THERE WAS DISCUSSION REGARDING WHETHER A DWELLING COULD BE SITUATED ON THE PARCEL IN ORDER TO MINIMIZE THE IMPACTS.

Mr. Marcheselli questioned Mr. Frasier if his position has changed on his proposal for the three variance requests. Mr. Frasier affirmed that his proposal has not changed.

Town Counsel stated that if the Board determines that an “alternative layout... either proposed dimensions of the house or location of the house or both... would be less impactful and help to minimize variances and the Board would be more receptive to that, Mr. Frasier has made a willingness to work with the Board and come up with something different.”

The Board discussed whether the proposed change of the dwelling from 28’ x 28 to 24’ x 40’ would be a significant factor.

Mr. Oliver expressed his concern on the variances being requested and stated the size of the proposed house on the .47 acre parcel is excessive. Mr. Oliver was also concerned if the variances were granted, it is possible in the future that “the land across the Road could be subdivided and developed...and if we allow this house to be built 14’ from the Road, we have to look to the future.” Mr. Hill stated that the 28’ dimension of the proposed house from Kohl Road to the Alford property could be reduced by 4’. As a result, it would minimize the variance request from Kohl Road. Mrs. Dower agreed with Mr. Oliver’s statement and believed that the 87.5’ proposed variance towards Kohl Road is excessive. Mr. Grady stated that he believed “Mr. Frasier purchased the property in good faith, relying

on the existing variance with the belief that he could build on it... and that Mr. Frasier has conformed to and continues to conform to our request to minimize impact.”

Mr. Grady believed that the frontline variance request towards Pottersville-Olmstedville Road is not an issue, the sideline variance towards Alford property is “not a material problem of any kind.” He also stated that with regards to the variance request towards Kohl Road, he believed it had minimal amount of impact. Mr. Marcheselli stated that he had no issue with the variance request towards Pottersville-Olmstedville Road. With regard to the variance towards the adjoining property, Mr. Marcheselli said that his concern had not changed.

There was discussion regarding the Zoning Certificate and Warren County Building Permit that was issued in 2014 prior to the variance application being filed. Mr. Marcheselli had concern whether the difficulty was self-created. The Board and Mr. Frasier discussed the matter about the alleged difficulty being self-created.

Town Counsel suggested to the Board to table this application for next month to allow for the Board members to review this application further and to gather thoughts individually so that a vote can be issued at the meeting in December. Town Counsel also discussed that the next month’s meeting would allow for an opportunity to question the Zoning Administrator about the circumstances/discussion between Mr. Tennyson and Mr. Frasier prior to Mr. Frasier’s purchase of the parcel.

Chairman Marcheselli questioned the Board if they were prepared to vote. Mr. Grady stated he was. Mrs. Dower and Mr. Marcheselli would like to question Mr. Tennyson regarding the discussion he had prior to Mr. Frasier taking ownership of the parcel.

The Board agreed to table Application #413-V scheduled for December 4th, 2014 at 7:00 p.m.

NEW BUSINESS: None.

BOARD PRIVILEGE: None.

ADJOURNMENT:

Mr. Grady made a motion to adjourn the meeting at 10:32 p.m.; seconded by Mrs. Dower. None opposed. Motion carried 4-0.

Respectfully submitted,

Jeremy J. Little
Secretary
Zoning Board of Appeals