



**MINUTES OF MEETING
ZONING BOARD OF APPEALS
TOWN OF CHESTER
OCTOBER 28, 2014**

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

ATTENDANCE:

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

Present in audience: Frederick and Karen Griffen and Barbara Repp. Representing Application #413-V was Attorney Frank DeSantis and Randy Frasier.

CORRESPONDENCE:

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

PUBLIC HEARING:

Having been duly advertised, the public hearing for Variance Application **#413-V** was opened by Chairman Marcheselli at 7:18 p.m.

#413-V - Randy Frasier seeking a 42.4 ft. Easterly frontline variance, an 87.5 ft. Southerly frontline variance, and a 22.3 ft. Northerly sideline variance, 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.

Attorney Frank DeSantis represented Mr. Frasier and presented the proposal.

Attorney DeSantis stated to further make it clear as to the variance requests Mr. Frasier is proposing, that he would use the proper identification of the highways (County and Town). To help the Board better understand the requested variances and to minimize confusion with directions, it was clarified and defined to the following:

Proposed Variances on Site Plan

Front (East): 42.4 Ft.
Front (South): 87.5 Ft.
Side (North): 22.3 Ft.

Attorney DeSantis' Clarification on Identifying Proposed Var.

42.4 Ft. Proposed Frontline Variance "Pottersville-Olmstedville Rd."
87.5 Ft. Proposed Frontline Variance "Kohl Rd."
22.3 Ft. Proposed Sideline Variance to Adjoining Property Owner

Attorney DeSantis explained to the Board the frontline variance request to the Pottersville-Olmstedville Road and that the requirement for Rural Use Zone Classification is a 100' setback from the public right-of-way. He stated the County has ownership from the "boundary line of Mr. Frasier's property to the right-of-way" and that small parcel of land is vacant. In previous meetings, it was discussed regarding Mr. Frasier's interest to acquire the parcel; however, no response has been received as of yet from the County, according to Attorney DeSantis.

Attorney DeSantis addressed to the Board the definition of a "prior pre-existing non-conforming lot" in the Town of Chester Zoning Local Law (*Section 8.01: General Exception to Minimum Lot Area Requirements*). He believed there should be amendments to the Zoning Ordinance concerning pre-existing lots.

Attorney DeSantis stated that Mr. Frasier is proposing the construction of a dwelling that is in character with the neighborhood and has "as minimal as possible impact." The impacts of each of the variance requests were discussed by Mr. DeSantis. He believes the variance request towards the Pottersville-Olmstedville Road and the variance request towards Kohl Road has minimal to no impact. Furthermore, he mentioned to the Board the variance request that should have the most impact is the sideline variance towards the adjoining property. There was discussion by Attorney DeSantis whether the alleged difficulty was self-created. He believed that it was not self-created due to the approval of the Area Variance to the Laushe's in 1997 and the issuance of the Zoning Certificate in August 31, 1999 with renewals being issued up to the year 2006. To substantiate his belief that it was not self-imposed, he stated a Zoning Certificate as well as a Warren County Building Permit were issued in 2014 to Randy Frasier regarding construction of the dwelling. Shortly after the approval, Mr. Tennyson explained to Mr. Frasier the necessary variances for the project and that he should submit a variance application before such work could be done.

No correspondence was received in relation to application #413-V.

There was discussion by Mr. Griffen and the Board about the ownership of property parallel to the Kohl Road. Mr. Grady stated the only survey that should be relied upon is the survey by Darrah Land Surveying, PLLC, which was submitted as part of the Variance Application. He also stated that the survey references the current deed and the prior mapping that took place. Mr. Griffen stated to the Board that the Town is allowing for the construction of "homes right on top of each other".

Ms. Barbara Repp, who owns property at 528 Olmstedville Road, believed that the property is too small to place a dwelling on it. Mr. Oliver mentioned the fact of the widening of Kohl Road and the ditch that runs alongside the road. His concern is if the variances are approved, there will be no room between the dwelling and the ditch and the road. Mr. Marcheselli questioned those in the audience as part of the public hearing if there were any further comments. Mrs. Griffen and Ms. Repp lastly stated it was "too close to the road."

Mr. Grady made a motion to close the public hearing concerning Variance Application #413-V at 7:51 p.m.; seconded by Mr. Oliver. Motion carried 3-0.

Mr. Marcheselli stated that before the variance can be approved, the variance application must be sent to the Warren County Planning Department for referral. Attorney Hill stated that in a circumstance like the one presented for a variance being applied for a property that is located within five hundred feet of a State or County Highway, the variance application is to be submitted to the Warren County Planning Department for referral before a vote can be taken.

Mr. Marcheselli suggested to the Board that a special meeting be tentatively scheduled for Monday, November 10, 2014 at 7:00 p.m. providing that the referral is received before the Tenth. Mr. Marcheselli strongly suggested to those in attendance at the meeting including Mr. and Mrs. Griffen and Ms. Repp, to contact the Secretary a couple days before the meeting to ensure the referral has been received and the meeting remains scheduled for November 10th.

Mr. Marcheselli addressed his concern regarding the variance requests. Mr. Marcheselli had no issue with the frontline variance request of 42.4 ft. towards Pottersville-Olmstedville Road. However, in regards to the sideline variance request of 22.3 ft. towards the Alford property, Mr. Marcheselli was concerned about the total separation of distance between the two structures. Mr. Frasier stated that at the special meeting held on August 12, 2014, it was suggested that he move the dwelling closer to the Kohl Road and further away from the Alford property. Mr. Marcheselli stated his concern in relation to the variance request towards Kohl Road and believes that it is quite substantial.

Mr. Grady was not convinced that the Board should be applying the current zoning regulations and stated that “the old variance vested and at that time it locked in the old zoning.” Attorney Hill stated that “the old zoning in its entirety does not apply and that the variance still remains valid for that particular setback in question. Due to the change of the zoning ordinance, the new requirements for the other setbacks on the property become applicable and new variances would be needed.” **(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.)**

A short discussion ensued regarding the acreage of the lot. Mr. Grady made the clarification that the deed by which Mr. Frasier took possession contains the correction in lot size as .47 acres.

A DISCUSSION ENSUED PERTAINING TO THE ISSUANCE IN APRIL OF THE ZONING CERTIFICATE AND BUILDING PERMIT FOR MR. FRASIER.

Mr. Grady requested a clarification regarding the vesting of rights. He stated, “Rights must also vest after the issuance of a Permit but before the zoning amendment becomes effective. When a Court finds that a property owner has vested rights to a validly issued Permit, the effect is to immunize the approved project from all changes in zoning and other land use regulations. This judiciously created doctrine is called ‘Common Law Vested Rights’.”

During the discussion, it was determined that the structure would have to physically exist for the above to apply.

Mr. Frasier questioned the Board if there any suggestions that he could do differently on the Site Plan to satisfy the Board. Mr. Frasier stated that he could build a 20' x 40' dwelling on the parcel. Mr. Marcheselli said that he did not believe there was anything he could do with modifying a structure that could make a substantial difference in the decision of the Board. Attorney Hill mentioned to the Board that consideration should be given if the applicant offered to change the size of the structure. Therefore, if the dimensions were to reduce in size, it could possibly result in a lesser variance request(s) being proposed to the Board. The Board left it up to Mr. Frasier to decide whether he would like to change his Site Plan and proposal.

There was discussion whether Mr. Paul Alford, the prior owner of the adjoining property, was notified of the Public Hearing. According to the Town of Chester Assessor's Office, it was determined that the property was recently purchased from an individual to whom the notice of public hearing was sent.

Attorney DeSantis asked the Board to consider submitting the variance proposal (as is) to the Warren County Planning Department and to set a tentative date of November 10th at 7:00 p.m. for the next Zoning Board of Appeals meeting to proceed with the review of the application.

The Board agreed to set a tentative meeting date of November 10, 2014 at 7:00 p.m. pending the receipt of the referral from the Warren County Planning Department.

OLD BUSINESS: None.

NEW BUSINESS: None.

BOARD PRIVILEGE:

THERE WAS A SHORT DISCUSSION ABOUT WHICH BOARD MEMBERS CAN/SHOULD VOTE ON APPLICATION #413-V DUE TO THEIR ABSENCE AT PREVIOUS ZBA MEETINGS CONCERNING VARIANCE APPLICATION #413-V.

IN ADDITION, A DISCUSSION ALSO ENSUED PERTAINING TO THE APPROVAL OF VARIANCE #318-V IN 1997 AND THE PAST AND NOW PRESENT SIZE OF THE PARCEL.

MINUTES:

It was decided that the July, September, and October ZBA meeting minutes will be accepted or amended at the next ZBA Meeting, tentatively scheduled for November 10, 2014 at 7 p.m.

ADJOURNMENT:

Mr. Oliver made a motion to adjourn the meeting at 10:31 p.m.; seconded by Mr. Grady.
None opposed. Motion carried 3-0.
Respectfully submitted,

Jeremy J. Little

Secretary

Zoning Board of Appeals