



**MINUTES OF MEETING
ZONING BOARD OF APPEALS
TOWN OF CHESTER
SEPTEMBER 30, 2014**

Chairman Marcheselli called the meeting to order at 7:04 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).

CORRESPONDENCE:

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

APPLICATION REVIEW:

Chairman Marcheselli began by stating that after the July 22, 2014 ZBA meeting, a letter was received from Attorney Frank DeSantis, who represents Mr. Frasier. Attorney DeSantis requested a meeting with Chairman Marcheselli, Walter Tennyson (Zoning Administrator), Michael Hill (Town Counsel), Frank DeSantis, Randy Frasier, and Jeremy Little (Secretary). The meeting was held on August 12, 2014. Mr. Marcheselli explained to the Board that during the meeting, it was determined that Mr. DeSantis (on behalf of Randy Frasier) would submit three new variance requests with one application. Further, a public hearing would also be scheduled after the application is deemed as complete.

Mr. Grady was confused as to why the prior application for Randy Frasier (**#411-V**) is no longer being heard and still pending. Attorney Hill responded that the application is still pending; however, the intent of the applicant is to withdraw **Application #411-V** and proceed with the new application. Mr. Hill further went on to explain that there was a tie vote concerning **#411-V** and under New York State Law there is a limited period of time during which the Zoning Board of Appeals can revisit the application and re-vote. According to Mr. Hill, the allowable period of time (30 days) under New York State Law has elapsed for the ZBA to give further consideration or to vote again on the application. Mr. Marcheselli asked Attorney Hill if he would enlighten the Board of the significance of a tie vote. Mr. Hill stated, "Under NYS law it constitutes a no action and that the application is neither approved nor denied. There is a provision under NYS law that would allow the Board to go back and 're-visit' and re-vote on the application..."

Mr. Marcheselli questioned Mr. Hill if the applicant should withdraw Application #411-V. Attorney Hill stated he would study more deeply the provisions of the State law regarding the withdrawal of an application that could essentially be characterized as a “dead letter”. **(Please see Meeting Minutes from November 10, 2014, specifically Counsel’s Comment #1 regarding this section of these Minutes).**

In regards to the prior variance that was granted in 1997 to the Laushe’s, Mr. Marcheselli proposed a question to Mr. Hill with the following:

Mr. Marcheselli: Let’s assume that the variance from 1997 was granted and still valid today. If that is true, what does that variance or any variance grant? What does it give an applicant? They apply a variance for a setback from a main road and it is granted. Two years later, let’s say, the ordinance changes, and the ordinance makes that particular situation impossible. When I say that, they apply for a 10 ft. variance from the front. They have 50 ft. in the back. Two years from now the ordinance changes and the new ordinance says 75 ft. from the back. They have a variance for 10 ft. from the front line and have no variance to the back line. So my question is what set of requirements do they have to comply with?

Mr. Hill: Because the ordinance has changed with respect to the rear setback in the hypothetical example that you are giving, the owners of the property, despite the change in the ordinance, they would have a limited period of time within which to act on their project and construct that project without having to meet the 75 ft. setback requirement and would still need to comply with the previous 50 ft. setback requirement. But, if they could meet that requirement during this limited window of opportunity, they would not need a variance and would not have to comply with the 75 ft. setback requirement. . .there is a provision in NYS law that governs this. The period that someone is grandfathered (in regard to the old ordinance) depends upon exactly what rules and regulations are in effect in the Town at that point. **(Please see Meeting Minutes from November 10, 2014, specifically Counsel’s Comment #2 regarding this section of these Minutes).**

Mr. Hill stated that there is “no grandfathering” that would be applied to the parcel any longer and that the Town’s code provisions are effective with regard to this parcel. Mr. Hill said that a variance runs with the land, do not expire, and is not specific to applicants. He explained that if a variance has been granted and no change in the ordinance has occurred, the property owner has the advantage and benefit of that variance for purposes of a project. In response, Mr. Grady stated, “New York State law dictates that once a variance vests, then it is locked in literally forever and subsequent changes in zoning do not apply. That is the vesting of the variance that was granted actually locks in the zoning regulations that are in effect at the time.” Further, Mr. Grady explained that the time frame is inconsistent with NYS law as well. In response, Mr. Hill stated that he would look further into the New York State law regarding what constitutes “vesting” and would get back to the Board with an answer. **(Please see Meeting Minutes from November 10, 2014, specifically Counsel’s Comment #3 regarding this section of these Minutes).**

Mr. Oliver questioned what “bearing” the original variance (#318-V) has if the parcel was based on 1.6 acres in 1997, and now has a total acreage of .46 +/- acres at the present time. Mr. Marcheselli stated that the 1.6 acres is one factor; however, he believes that the dimensions of the parcel are more significant. His opinion is that a structure cannot be built

on the parcel to the dimensions that were submitted originally in 1997. In reply, Mr. Hill suggested to the Board that there should not be a great deal of focus on what was granted in the past. Further, he explained to the Board that the focus should be primarily devoted to the new application with the 3 new variance requests to construct the proposed dwelling.

With concern to the variance granted in 1997, Mr. Grady stated, “The area or size of the lot tends to dictate whether or not you even have a buildable lot. Once you determine that you have a buildable lot, then you have to conform to specific setbacks. In this particular case, nobody has raised the issue that it is not a non-conforming pre-existing lot. The issue of area is immaterial.” In response, Mr. Hill explained that there is not an issue that this parcel is a lawfully existing lot; however, he stated that the size of the lot can still be a factor in regard to the decision making when reviewing/granting a variance request.

Mr. Oliver questioned the Board regarding the letter from Frank DeSantis explaining Mr. Frasier’s interest in acquiring the unused portion of the Warren County Right of Way, which is adjacent to Mr. Frasier’s parcel. The unused portion of land is between Mr. Frasier’s parcel and Pottersville-Olmstedville Road. No further correspondence has been received from Mr. DeSantis regarding Mr. Frasier obtaining the land. Mr. Marcheselli stated that at the special meeting on August 12, 2014, the agreement was that as long as there was a “positive response” from the County that the unused portion would be conveyed to Mr. Frasier, the Board could take that into consideration. Attorney Hill also explained that the variance granted needs to be based upon the existing property line.

The property adjacent to Mr. Frasier’s parcel was recently for sale and formerly owned by Paul Alford; however, it was discussed during the meeting that it has been sold. During the discussion, it was resolved that the new property owner should receive the notice of the public hearing. There were questions whether the transfer of the property has occurred. Mr. Hill stated that in this situation, the Assessor’s Office could further convey information regarding the transfer and the name(s) of the new property owner, if such transfer has occurred.

To make this application complete, Mr. Marcheselli requested that the following be placed in the file for Variance Application **#413-V**: (1) James Nestor Survey Map of Jerry and Linda Laushe dated September 13, 1988; (2) “Map of a Proposed Plot Plan: Lands Now or Formerly of Randy Frasier” – Survey Map dated July 14, 2014 performed by Darrah Land Surveying, PLLC; (3) Copy of the most recent deed, as amended; (4) Jurisdictional Determination (*J97-213A*) dated August 05, 1997 from the Adirondack Park Agency. All of the above documents will be included as part of the file and to satisfy the requirements to deem the application complete. As part of the application, Mr. Frasier also provided a Site Layout which shows the “Proposed Building” and the “Previously Approved Building Footprint.” The previously approved building footprint is in correspondence with Variance Application **#318-V**, approved on October 28, 1997.

Mr. Hill explained that at the special meeting in August, “it was requested that the dimensions needed to be shown on the Winchip drawing and to make sure that it was clear the measurements of the necessary variances could be accurately calculated and determined. Our measurements go from the overhangs...and Bret Winchip’s drawings show the measurements of the overhangs to the property lines and to the road.” Attorney Hill

questioned the Board if they were satisfied that the correct details and the necessary measurements have been provided. The Board concurred.

Mr. Grady made a motion to deem application #413-V as complete and a public hearing to be scheduled for next month's meeting on October 28, 2014; motion seconded by Mr. Oliver. None opposed. Motion carried 4-0.

BOARD PRIVILEGE: None.

OLD BUSINESS: None.

MINUTES:

Mr. Grady asked Attorney Hill the process of amending previous Board Minutes. Mr. Hill recommended to the Board rather than inserting a lengthy statement into the minutes of the June 24, 2014 ZBA meeting, a short "parenthetical" should be included after the statement the Board member is referring to. For example, it should state, "See correction/clarification in the July 22, 2014 Meeting Minutes."

Mr. Grady mentioned that in the July 22, 2014 ZBA Meeting Minutes, there was a statement made by him during the meeting that had not been inserted about the vested rights of property (please see July 22, 2014 Minutes, Page 3, Paragraph 3). It was determined that the Minutes from June, July, and September ZBA Meetings will be accepted/amended at the next meeting in October.

ADJOURNMENT:

Mrs. Dower made a motion to adjourn the meeting at 8:50 p.m.; seconded by Mr. Oliver. None opposed. Motion carried 4-0.

Respectfully submitted,

Jeremy J. Little

Secretary

Zoning Board of Appeals