

**TOWN OF CHESTER ~ ZONING BOARD OF APPEALS**

**MINUTES OF MEETING ~ AUGUST 25, 2009**

ATTENDANCE: Elizabeth Morris, John Grady, Ken Marcheselli, John MacMillen, Bill Oliver, and Secretary Pat Smith. Absent was Mary Jane Dower and Arnold Jensen.

CORRESPONDENCE: ZBA Minutes of July 28<sup>th</sup>, 2009; Planning Board Minutes of July 20<sup>th</sup>, 2009; Zoning Office Activity Report for July, 2009; Letter dated August 5<sup>th</sup>, 2009 from June Maxam, and an addendum to the August 5<sup>th</sup> letter from Ms. Maxam dated August 7<sup>th</sup>, 2009.

MINUTES: Motion was made by Mr. Grady, seconded by Mr. MacMillen, to accept the Minutes of July 28<sup>th</sup>, 2009, as presented. Motion carried 5/0.

Chairman Marcheselli called the meeting to order at 6:00 p.m. Prior to the opening of the public hearing, he explained the difference between a public meeting and a public hearing. He continued that all of our meetings are public meetings, advertised, scheduled, opened to the public, wherein the public has a right to attend, and to hear any discussions, other than an executive session, (which has never happened in the Chair's tenure); they have a right to hear what the board does and how they do it. The public, however, does not have the right to speak. The board may request certain information of the public, and may entertain discussion at their discretion, but it is not the inherent right of the public to speak at a public meeting. A public hearing, on the other hand, is an invitation for the public to speak to the board. It gives the board an opportunity to learn certain facts, and to hear what the general public has to say. He added that the information received at a public hearing is for the board's interest, and not as a debate about the merits of a case between the members of the public body.

Mr. Grady had asked for the opportunity to speak before the public hearing, to wit: Pursuant to Section 12.05 - d (with regard to a monetary amount to be imposed upon the appellant and held in escrow, etc. as discussed in the July meeting), and the basis of a motion made by him at the prior meeting, he still feels that there needs to be a provision in the ordinance that provides for review fees for legal fees, and any technical fees. However, in re-reading the verbiage of the section, and in fairness to the appellant and with an eye to moving on to the matter at hand, Mr. Grady made a motion to rescind the board's prior decision to make Section 12.05-d applicable in this particular appeal. He thought that in re-reading that Section, it was ambiguous in content. He added that the intent of that Section was well founded, but was not well worded, and therefore should not be applied to this particular appeal. Motion was seconded by Mr. Marcheselli, and carried 5/0.

Mr. Grady then made a motion that the ZBA board should petition the Town Board to change the wording of Section 12.05-d that it might be applicable to any and all appellants, since appeals are all that the Zoning Board hears. Motion seconded by Mr.

MacMillen, and carried 5/0.

PUBLIC HEARING: Chairman Marcheselli opened the public hearing at 6:15 p.m. for Appeal application #A-18 ~ June Maxam appealing the decisions of the Zoning Administrator. Chairman stressed that the board would receive comment from the public, but that all comments were to be directed toward the board. He asked the appellant to present her case, but stated that he had a couple of questions for her.

The first question was with regard to the application itself, which, Mr. Marcheselli stated, was specific in asking for the relief sought. He did not see it in the application, and asked Ms. Maxam the relief that she was seeking.

Ms. Maxam began by asking for the Chairman's recusal, stating that he has had a conflict in the past, and asking each board member present whether they had known of any ex parte communications with Mr. Redmond, including the one that took part on the porch steps this evening, and she did not feel that Mrs. Morris should be allowed in this proceeding, as she had not been present at the past meeting. (Mrs. Morris had, in fact, been present at the meeting, but was seated in the audience as she had arrived after the meeting had started, and the board was filled. She remained until the end of the meeting).

Chairman Marcheselli stated that this was a matter of an appeal of a decision of the Zoning Administrator by the appellant, June Maxam. This is not a matter that concerns anybody else. With regard to recusal, he explained that any of his previous relations with either Mr. or Ms. Redmond had been terminated, he saw no reason that he could not participate or act as chairman, or why he could not make a reasonable and just decision.

With regard to the members of the board, he asked the members: "With regard to public meetings, and the open meeting law: ('an open meeting is the official convening of a public body for the purpose of conducting public business.' It goes on to say: #1, in order to conduct public business, there must be notice, and there must be a quorum). A quorum, in this case, would be three people. He continued, "since I have not participated in these, I'll ask the other members, are there any who have participated in a meeting of 3 or more people with regard to this matter?"

Bill Oliver: "No."

John MacMillen: "No."

John Grady: "No"

Elizabeth Morris: "No."

Chair: "Therefore, that is as far as we're going to go with that. As far as any discussions being held, part of our job is to familiarize ourselves with the situations, the appeals, the questions that come up, and there is just no reason to get into our personal discussions." He suggested to Ms. Maxam that in this regard, she was really stretching it, and asked her again what relief she was seeking in this hearing.

Ms. Maxam replied: "So that's a no. None of you have had any ex parte communications outside of this..."

Chair interrupted, "Ma'am, you are not here to question the board. You are here to make a public statement. Part of your statement is, what is the relief sought."

Ms. Maxam: "So anybody that comes before this public hearing is not allowed to ask a question of the board."

Chair: "You're not here to question the board. You're here to make a public statement."

Ms. Maxam: "You people are digging yourselves in so deep. I'm so glad this is on record, (indicating that she might be taping the meeting) ."

Ms. Maxam then addresses the board: "What is my relief sought?"

Chair: "Yes, Ma'am."

Ms. Maxam: "Voiding the sign permit of 5/29/09. Reason, Section 13.04, page 98."

Chair: "Excuse me. You can give us all of your reasons as part of this public hearing. You don't necessarily need to do it now, because you're gonna need to do it again anyway." Chair continues: "Void the sign permit, I'm sorry, what date? What date?"

Ms. Maxam: "Oh, you can ask me questions, but I can't ask you any."

Chair: "Yes ma'am."

Ms. Maxam: "So we can play your game both ways. I gave the information."

Chair: "Ok. Void the sign permit of some date that I failed to listen to. The next question is, with regard to the ordinance, the ordinance says that any person can file an appeal, that is defined as an aggrieved person, or members of the government, the town, the town board, etc. So, for the record, I'd like you to tell us in what respect you are an aggrieved person."

Ms. Maxam: "I'm a taxpayer of the Town of Chester and an adjoining property owner."

Chair: "Ok. I think when I read this, I read Post Office Box, can you give us your physical address please?"

Ms. Maxam: "No. It's on the assessment records."

Chair: "It's not on the appeal application, and we don't have it available."

Ms. Maxam: "Well, gee, I don't remember it at the moment."

Chair: "That's fine. Thank you very much. Alright. You can make your statement now if you'd like."

Ms. Maxam: "Well that's very generous." Long pause. "The Zoning Administrator is required to administer the Town of Chester Zoning Law as it is written. Permit #S-2008 for Mtn. Storage, and Red Mt. Real Estate, was issued on 12/22/08, in violation of 7.04, paragraph E, subsection 6."

Chair: "Ma'am, your appeal does not apply to that, you realize that."

Ms. Maxam: "Sir, I believe it does. And you are not the Appellate court to hear that."

Chair: "I'm sorry. I'll have to be the Appellate court then. In accordance with the Zoning Ordinance, your Appeal must be filed within 60 days."

Ms. Maxam: "My Appeal was filed within 60 days."

Chair: "With regard to the Zoning Certificate issued May 29, 2009."

Ms. Maxam: "And all the underlying permits preceding that are applicable to 5/29, which is why 5/29 had to be issued. My appeal is on record. If we're not gonna go any further then that, I stand on the papers, and that's where we'll go from there."

Chair: "Well, you now have an opportunity to speak. I'm just getting this for the record. If you're gonna walk out, we're continuing this public hearing."

Ms. Maxam: "We're not gonna play these games, whatever you're playing."

Chair: "We are not playing games..."

Ms. Maxam: "I have been to a lot of public hearings, I have been to a lot of courts, I have been to a lot of public meetings. I have never seen one conducted in such a manner as this one has been."

Chair: "I am explaining to you..."

Ms. Maxam: "...(garbled)...my appeal, my reasons, my statements, are on record. If you can't go from that, so be it."

Chair: "We will accept what you have given us on the paper."

Ms. Maxam: "That's very generous."

Chair: "Are you leaving permanently, or are you coming back?"

Ms. Maxam: "Are you my mother?"

Chair: "No ma'am. I just want to know if you..."

Ms. Maxam: "I don't think I have to be accountable to you. I have made my case..."

Chair: "You are not accountable to me. You just keep in mind, we are continuing this public hearing, and we don't intend to stop."

"Ms. Maxam: "It sounds like a threat to me."

Chair: "It's not a threat..."

Ms. Maxam: "Just remember...you're on tape..."

Chair: "I know I'm on tape..."

Ms. Maxam: "Good, because from now on, whatever transpires, will be heard by someone else. And it's time that this arbitrary and capricious proceeding cease. You can continue..."

Chair: "We were severely criticized last month for not having a public hearing, for which you did not attend..."

Ms. Maxam: " (garbled)...do your thing."

Chair: " Are you leaving?"

Ms. Maxam: "I think I'll go down to the bathroom. Wanna come?"

Chair: "I wanna know if you are leaving?"

Ms. Maxam: "I wanna know. What is this?! What is this. Government oppression...I want to know if you're leaving!"

Chair: "Do you want me to suspend the meeting for five minutes so you can do whatever you wanna do?"

Ms. Maxam: "...garbled...Chair & Ms. Maxam talking at once..."I don't care what you do."

Chair: "Do you wanna make a request that we do, or do not?" Pause...no answer. "Ok. Then we'll continue. Anyone else care to speak on this?"

Chair recognizes Mr. Redmond: "Yes...last month I submitted two letters to the Board, and for purpose of clarification, the first letter regarded the decision by this board rendered in the Fall of 2008 regarding this same matter. In that letter, I stated that the sign is in the present location it's at. The only change in the location, size, verbiage, is the addition of the word "Red" before Mountain. And I also stated in that letter, that it was my opinion that the rendering of the decision by the board at that time, this was a settled matter. That is still my opinion. The second letter I wrote, stating, if requested by the board, and/or the zoning administrator, I would be willing to make the changes I stated in that letter. And I just state this for clarification purposes. One, that it's my

opinion that this matter has been settled, and I still hold that. And, if requested, I would be willing to take the action I've stated in the second letter. And that's all I have to say."

Chair thanked Mr. Redmond, then asked: "Anyone else?" Long pause. No one cares to speak? Extended pause. Ok. Then, I'd like to have a motion that the public hearing be concluded." Ms. Maxam had left the room.

On a motion by Mr. Oliver, seconded by Mr. Grady, the public hearing closed at 6:30 p.m. Motion carried 5/0.

**BOARD PRIVILEGE:** Before continuing discussion, Mr. Oliver mentioned that he had received two letters from Ms. Maxam at his house. He felt that in his capacity as a board member, any mail addressed to him should have been forwarded to the Zoning Office, and not his home. Mr. MacMillen agreed, as did Mr. Grady, who stated that the first letter came from the North Country Gazette, and the second one was received without any return address. Not all board members received a letter, but all concurred that town business should come to the town hall address.

Following this discussion, the Secretary read a letter of resignation from Sam Sewall. Mr. Sewall has added work related responsibilities in another state that will prevent him from serving on the board at this time. Motion was made by Mr. Marcheselli, seconded by Mr. MacMillen, to send a letter of appreciation to Mr. Sewall for his services to the community as a board member. Motion carried 5/0.

At this time, Chairman Marcheselli asked Mr. Redmond if he would write down the conversation that took place on the town hall steps before the meeting, between the two of them. He added that he would do the same thing, and then each would just hang on to them for awhile.

In view of the early hour, the board decided to begin discussion on Appeal #A-18. Mr. Oliver asked if another application for the sign should be applied for. Mr. Redmond said he would like to have a little input. He stated that over the past two years, he had made 5 applications for that sign permit. He added: "I think this is probably the longest tenured sign permit application in the history of the Town of Chester. And, it certainly is not because I have not complied, at the direction of the Zoning Administrator. It is in direct response to continuous and varying different complaints by one person. And I think my first letter clearly states my position. I think this board reviewed in totality, the sign that is presently erected, last fall. They made a decision on it, under law that's considered a settled matter. And, really, I think this is just somebody taking a shot from a different direction, for the same reason. I certainly understand your position, but, as in any other thing, there has to be a day of reckoning. Things have to come to a determination, and you must stand behind the decision, and I think that's where we're at. To continue to make applications has no merit. I think that I've tried to be as responsive as any person can be. I don't know anybody else in town that's ever gone through the amount of complaints and hearings that I have for any project, and I think the board should really consider that this person does it for one reason, just as you have stated with the letters. It's a harassment."

Chair then stated, "All of these zoning certificates show Charles W. Redmond. Are you the owner of the property?"

Mr. Redmond: "Yes, I am."

Chair: "Still the owner?"

Redmond: "Yes."

Chair: "Have you always been the owner?"

Redmond: "Yes. I have owned the property for an excess of 35 years."

Chair then continued. "The questions that have been raised here, I'm gonna try to highlight as many as I can out of the application, since that's what we're dealing with. One question is the size of the sign. That's probably the easiest one, because it just takes a ruler to go down there, which has really already been done, and determine the size of that sign.

Next question is, material facts. Now, I have a serious problem in looking at these applications, and I am still a little confused as to which name existed at which time, and so on, but if we go to the most recent application of May 29, it shows Red Mtn. Storage on the application. Now, here's my question. When I read this ordinance, I don't see any requirement for specification of what it says on the sign. My thought is, if he chooses to put up a sign that says 'Mc..... Hamburger's, 2 miles, he still states he's the owner of the property. So, I don't see, in my mind, any material misstatement of fact. There may be a situation, and we can look into it if the board thinks it's necessary, as to which organization existed at which moment of time. I think they're all different, but, you take your pick."

Mr. Grady, at this point, pointed out Section 7.04 - L, which reads in part, "no sign permit shall be assigned or transferred to another by the holder thereof *unless it is a continuation of an existing use.*" Mr. Grady continued, that it was his belief that this is clearly a continuing use, so the exact entity name is moot. The town's concern is the sign itself.

The point was made that every time he changed the sign, he had gotten another permit. Mr. MacMillen stated that even if somebody were erecting a building, and had neglected getting a permit, they could still get a permit, as long as they complied with the local zoning laws, even though the project was started before the permit was gotten.

Mr. Oliver asked whether another sign permit should be gotten. He said that Ms. Maxam wanted the sign permit voided, and he didn't understand what she was looking for. Chair stated that if that permit is voided, and it necessitates another sign permit, then we go back to square one. Chair continued talking about the letter offering the changes to the existing sign. He said, he thought that we should take these changes

and make them a requirement. He added that the board had the power to direct the Zoning Administrator. Making these changes would bring the sign directly into compliance, and then direct the Zoning Administrator to issue a Certificate upon completion of the changes, there can be no appeal, at least, not in this forum. There can be no further appeal against the Zoning Administrator if the board directs the action. He then stated that historically, they had already determined that the sign was legal. The only thing that the board needed to consider with this particular appeal are the things like, is the changing of the name, or the differences in the name a material fact, and does that constitute a fraudulent act. If signs have reasonable uniformity or design, Chair felt that didn't mean they have to be identical, but at least in harmony. Another comment in the appeal was about prohibited advertising. The only thing on the Redmond sign is the name and telephone number. Mr. Grady did an approximate count of signs from Rte. 8 to the end of town, and back again, and came up with approximately 39 signs, 40% of which had phone numbers on them.

Discussion ensued regarding what constitutes "advertising." The board does not feel that listing a phone number is advertising.

Chair would like to write out a determination for discussion at the next meeting. Discussion continued over Section 7.04-C, and proposed changes to the sign. No action taken. Board has 62 days to render a decision.

ADJOURNMENT: On a motion by Mr. Oliver, seconded by Mr. MacMillen, the meeting adjourned at 7:00 p.m.

Respectfully submitted,

Patricia M. Smith  
Secretary  
Town of Chester ~ Zoning Board of Appeals