

ZONING BOARD OF APPEALS ~ TOWN OF CHESTER

MINUTES OF MEETING ~ MAY 20, 2008

ATTENDANCE: Elwood Findholt, Sam Sewall, Ken Marcheselli, Mary Jane Dower, and Secretary Pat Smith. Also in attendance was Zoning Administrator Walt Tennyson, and Attorney Mike Hill of Miller, Mannix, Schachner & Hafner. Absent was Liz Morris.

MINUTES: On a motion by Mrs. Dower, seconded by Mr. Marcheselli, Minutes of the April 22, 2008 meeting were accepted, as presented. Motion carried 4-0.

OLD BUSINESS: #A-16 ~ Appeal by Jill & William Broderick with regard to determination of Zoning Administrator on property tax map parcel #'s 120.11-1-3 & 120.11-1-4. Chairman Marcheselli stated that Mrs. Broderick had contacted him to let him know that the portion of the case before the Supreme Court has not yet been adjudicated, and Mr. Marcheselli assured her that no action would be taken at this meeting, but rather it would be adjourned for another month. Mrs. Taverni was in attendance and stated that the case has actually been re-scheduled to August, due to the Judge having scheduled a site visit to the property, not leaving enough time for testimony to be heard in the remaining time scheduled on the docket. She added that due to the delays, and the inability to padlock the shed, she and her husband have been the victims of vandalism on both their boat trailer, and sugar had been added to the gas tank of their lawn tractor. She objects to any further adjournment of the appeal, due to the fact that the matters before the Supreme Court are not at issue with the appeal before the ZBA. The matter before the ZBA involves an appeal against the Zoning Administrator in the issuing of permits for the Taverni's to make repairs to the shed. Chairman Marcheselli stated that he felt it was unfair to the applicant (who was not present), to continue the matter at this meeting. Mrs. Taverni also felt it was unfair to her to have to wait, when she knew it had been adjourned to the May meeting, and she had come prepared to go forward with the case.

Atty. Hill interjected that the appellant is the one who controls consideration of the matter, within reason, and given that the request was made, and that Mr. Marcheselli had told her that the public hearing would not be continued tonight, he feels that if it is the board's pleasure to adjourn the public hearing to a future date, they can do that. Additionally, considering what Mrs. Taverni had said, he stated that if the board wished to contact the appellant's, and indicate to them that under the circumstances the Taverni's have asked that the matter be moved forward, they could ask the appellant's whether they wanted to withdraw their appeal, or what they wanted to do as far as the disposition was concerned.

Mrs. Taverni stated for the record that this appeal had been filed in September of 2007, and had been adjourned at least 4 times already. She feels that if the Broderick's choose not to appear and to proceed, then the appeal should be dismissed. Mr. Marcheselli understood her frustrations, but stated that there had been two Attorney's present when the appeal was originally heard who felt that there was information before the State Court that was relevant to this case. Mr. Marcheselli then made a motion to adjourn Appeal #16-A until the June meeting, which will be held on June 24th at 6:00 p.m. Motion was seconded by Mr. Findholt, and carried 4-0.

#A-17 ~ Appeal by June Maxam with regard to determination of the Zoning Administrator on property of Charles Redmond, tax map #104.14-1-44.31. Appellant was not in attendance. Chairman Marcheselli offered his thoughts on the matters that were being reviewed for appeal, and discussion began with the board. Sections of the Zoning Local Law were read by the Chairman with regard to the signs, and comment was made that the sign ordinance needs to be revamped. However, right or wrong, the Zoning Administrator must act within the limits that he is given in the Ordinance, until or unless such time occurs that the Ordinance is amended.

Attorney Hill also expounded on the issues at hand. He advised the board that they either needed to uphold the decision of the Zoning Administrator or overturn it. He also stated that Ms. Maxam's objections to Mr. Tennyson's alleged inconsistent enforcement procedures was not within the purview of the Zoning Board of Appeals, but rather a matter that should be presented to the Town Board.

Mrs. Dower was concerned over the time, meetings, and disputes that have taken place over the past year with these issues, and wished there could be some resolution before things ever reached the point that this matter has taken.

Following discussion and review of the draft determinations, the Board moved to affirm the determination of the Zoning Administrator, as follows:

Introduced by: Kenneth Sewall
Seconded by: Elwood Findholt

Whereas, June Maxam (Appellant) has appealed to this Board seeking review of a number of asserted determinations, acts and omissions of the Town's Zoning Administrator (Walter Tennyson), and

Whereas, the asserted determinations, acts and omissions for which Appellant seeks review are set forth in Appeal Application #A-17, which includes an application form and a 4-page attachment addressed to "To Whom It May Concern" (collectively, the Application), submitted to this Board on December 5, 2007, and

Whereas, the Application asserts various deficiencies in the handling of a variance and sign permits sought by Charles Redmond, and

Whereas, page 4 of the attachment to the application form states that the Appellant is appealing:

- 1) "Tennyson's determination to allow withdrawal of variance application 379-V and refusal to place his determination in writing pertaining to relocation of sign"
- 2) "Determination to allow placement of Mountain Storage sign in its present location without a sign permit and without a variance for required frontline setback"

3) "Determination to allow increase of physical lot size of 104.14-1-44.31 and corresponding decrease of adjacent lot without application for minor subdivision or boundary

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line adjustment, site plan review or permit"

and immediately following the numbered items quoted above, the appeal attachment states

"I also object to Mr. Tennyson's inconsistent enforcement procedures."

and

Whereas, this Board opened and held a properly-noticed Public Hearing on the Appeal on January 22, 2008, and continued the Public Hearing to February 26, 2008, closing it on April 22, 2008, and

Whereas, during the Public Hearing the Appellant and the Zoning Administrator, among others, made comments to the Board relating to the Appeal, and

Whereas, on January 30, 2008, the Appellant submitted additional written information relating to the Appeal, consisting of a letter of about five and a half pages in length setting forth and re-stating various asserted deficiencies in the handling of a variance and sign permits sought by Charles Redmond, together with Exhibit's A and B attached to the letter (collectively, Application Supplement), and

Whereas, Exhibit A of the Application Supplement appears to be a collection of certain provisions of the Town's Zoning Ordinance (re-typed by the Appellant), and Exhibit B is a chronological list of events, documents and actions relating to the variance and sign permits sought by Mr. Redmond and to the Appeal and to Appellant's requests under the Freedom of Information Law, and

Whereas, this Board has reviewed, considered and deliberated about the Application and Application Supplement, together with relevant portions of the Town's Zoning Ordinance and Memorandum by the Zoning Administrator dated January 18, 2008, about the sign which is the subject of this appeal, and

Whereas, this Board has also considered materials in the Town's files on these matters along with all written and spoken comments received at the Public Hearing in connection with the Appeal, and

Whereas, the members of this Board are familiar with Mr. Redmond's "Mountain Storage" property and the surrounding neighborhood,

NOW, THEREFORE, BE IT RESOLVED that this Board finds as follows:

1-A.) Withdrawal of Variance Application 379-V

Under Section 10.04 of the Town's Zoning Ordinance, the jurisdiction of this Board

"...shall be appellate only and shall be limited to hearing and deciding appeals from and

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reviewing any order, requirement, decision, interpretation or determination made by the administrative official charged with the enforcement of this Local Law....."

The Zoning Administrator did not make any determination about Mr. Redmond's withdrawal of variance application 379-V. Therefore, there was no determination from which to appeal and no determination for this Board to review. The Town's Zoning Ordinance does not authorize or require the Zoning Officer to determine whether to allow withdrawal of a variance application, nor did the Appellant offer any evidence of such a requirement.

1-B.) Refusal to Issue Written Decision on Placement of Sign

On October 23, 2007, the Zoning Administrator reviewed Mr. Redmond's request to place a sign at a certain location (its present location) on his Mountain Storage lot. The Zoning Administrator found that Section 7.04 C-2-c of the Town's Zoning Ordinance would govern the proposed sign. That subsection does not specify any minimum setback requirement. The Zoning Administrator determined that the proposed sign would be permissible under that subsection without a setback variance. He verbally advised Mr. Redmond of his determination. Mr. Redmond sent a letter to the Zoning Administrator on October 24, 2007, apparently for the purpose of confirming his understanding of the Zoning Administrator's verbal decision about the then-proposed sign.

Correspondence in the Town's file indicates that the Appellant complained about the decision to allow the sign in its present location. However, there does not appear to be any written request to the Zoning Administrator from the Appellant asking him to put his determination into writing. Materials in the Town's file do not state whether the Appellant verbally requested a written determination. The Zoning Administrator provided a Memorandum to the Town's file, dated January 18, 2008, setting forth and explaining his determination regarding the sign and its location as proposed by Mr. Redmond on October 23, 2007. The Appellant was given a copy of the Zoning Administrator's Memorandum at the Public Hearing on January 22nd. Therefore, this element of the Appeal seems to be addressed by the Zoning Administrator's Memorandum.

2-A) Placement of Sign Without Sign Permit

Mr. Redmond installed his proposed sign in its current location shortly after the Zoning Administrator verbally informed him that no variance would be required to place it there. Mr. Redmond went ahead and installed his sign without waiting for a Sign Permit to be issued and with Planning Board approval to operate a second business (Red Mountain Real Estate) on the same parcel. After being told by the Zoning Administrator that Planning Board review would be necessary, Mr. Redmond appeared at the Planning Board meeting on December 17, 2007 and received the needed approval to have a second business on the property. No Sign Permit was

issued between the time the sign was installed and the Planning Board's approval, and no Sign Permit has been issued since then. The Zoning Administrator stated at the Public Hearing on the Appeal that Mr. Redmond submitted an application for his sign and that the sign conforms to the Zoning Law's limits on sign area and setback.

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This Board does not have the authority under Section 10.04 of the Zoning Ordinance to compel the Zoning Administrator to issue or deny a Sign Permit, nor to force him to take an enforcement action against someone who acts without a Permit. In this case, it seems that it would have been premature to issue a Sign Permit before the Planning Board approved the second business on the parcel, and the Zoning Administrator is waiting for the current Appeal to be resolved before issuing a Sign Permit. To the extent the Appellant thinks the Zoning Administrator should be performing his job differently, the Town Board is the appropriate body to which she should express her concerns.

2-B) Placement of Sign Without Variance

On October 23, 2007, the Zoning Administrator reviewed Mr. Redmond's request to place a sign at a certain location (its present location) on his Mountain Storage lot. The Zoning Administrator found that Section 7.04 C-2-c of the Town's Zoning Ordinance would govern the proposed sign. That subsection does not specify any minimum setback requirement. The Zoning Administrator determined that the proposed sign, with a setback of about 5 feet, would be permissible under that subsection without a setback variance and verbally informed Mr. Redmond that no variance would be needed.

After reviewing the Zoning Administrator's Memorandum to the file of January 18, 2008, along with Sections 7.04 C-2-b and c does not state any minimum setback requirement for signs governed by that provision. The Zoning Administrator's determination that the proposed sign would come under that sub-section of the Zoning Law was reasonable because Mr. Redmond's intent, as he explained to the Zoning Administrator, was to operate more than one business on the property. By contrast, Section 7.04 C-2-b applies where there is a single business on a property. It specifies a minimum setback of 15 feet, with greater setbacks for larger signs. No setback requirement is specified in Section 7.04 C-2-c for signs advertising a center or facility where more than one business operates. If similar minimum setbacks were intended for those signs, they could have been specified in Section 7.04 C-2-c. That section, like Section 7.04-c-2-b, does specify a maximum sign area. Unlike Section 7.04-C-2-b, it also specifies maximum sign height. These specifics suggest that the absence of setback requirements from 7.04 C-2-c was not an oversight. In any event, the Zoning Administrator is only authorized to apply the Zoning Ordinance as it is written.

The Zoning Administrator's Memorandum of January 18, 2008 states that the general setback requirements of Section 4.03 would not apply to signs because, in his view, the provisions of Section 7.04 deal specifically and exclusively with signs and therefore supersede the more general requirements of Section 4.03. The Zoning Administrator's interpretation is reasonable, especially in light of the detailed requirements of Section 7.04. We therefore affirm the Zoning Administrator's determination that no frontline setback variance is needed for placement of Mr. Redmond's existing sign in its present location.

3) Determination to Allow Increase of Physical Lot Size of 104.14-1-44.31 and Corresponding Decrease of Adjacent Lot

The Town Code does not give the Zoning Administrator authority to approve any change in the size of a lot. That power is reserved to the Planning Board under the Town's Subdivision

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Regulations. Consistent with the limits on his authority, the Zoning Administrator did not make any determination to increase the size of the lot having Tax Map Number 104.14-1-44.31 or to change the size of any lot adjacent to it. Therefore, as with number 1, above, there is no determination from which to appeal and no determination for this Board to review.

However, from the comments and materials submitted by the appellant, it appears she is actually asserting that Mr. Redmond is improperly using part of his lot adjacent to his Mountain Storage / Red Mountain Realty lot. The Appellant seems to believe that he is using his adjacent lot for purposes related to those businesses, without approval from the Planning Board, in violation of the Site Plan approvals previously issued by the Planning Board for Mr. Redmond's lots. The Appellant apparently thinks the Zoning Administrator should strictly enforce the Site Plan approvals and cite Mr. Redmond for violations.

The Zoning Administrator has the responsibility of enforcing the Zoning Law and conditions on Site Plan approvals. As a practical matter, with limited time and resources, he must exercise judgment in deciding which potential violations warrant the time, effort and expense required for enforcement.

Again, Section 10.04 of the Town's Zoning Ordinance limits the jurisdiction of this Board. It does not provide authority to compel the Zoning Administrator to enforce the Zoning Law or conditions imposed by the Planning Board on Site Plan approvals. We therefore do not have any authority to review the Appellant's concerns or provide any remedy. If the Appellant is concerned about the way the Zoning Administrator exercises (or does not exercise) his enforcement authority, the Town board is the proper body to review her concerns.

4) Objection to Asserted Inconsistent Enforcement

The Appellant asserts that the Zoning Administrator enforces the Zoning Ordinance inconsistently and states her objection to this. Her objection is not among the three enumerated items specifically identified in the Application as those she is appealing. Nevertheless, giving the Appellant the benefit of the doubt, it seemed from the context that she might intend to include her objection among her appeal items.

As noted in number 3, above, this Board does not have jurisdiction over enforcement matters or the Zoning Administrator's exercise of enforcement authority. Therefore, we do not have the authority to review the Appellant's objection.

The Application asserts various deficiencies in the handling of a variance and sign permits sought by Charles Redmond. This Resolution addresses the items appealed, as set forth in the Application. This board lacks the authority to review or provide remedies for other

deficiencies asserted by the appellant.

Duly adopted this 20th day of May, 2008, by the following vote:

AYES: 4

NOES: 0

ABSENT: 1

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ADJOURNMENT: On a motion by Mr. Sewall, seconded by Mrs. Dower, the meeting adjourned at 7:30 p.m. Motion carried 4-0.

Respectfully submitted,

Patricia M. Smith ~ Secretary