

TOWN OF CHESTER ZONING BOARD OF APPEALS

MINUTES OF MEETING ~ JUNE 26, 2007

ATTENDANCE: Sam Sewall, Elwood Findholt, Mary Jane Dower, Ken Marcheselli, Elizabeth Morris, Pat Smith, Secretary, and Walt Tennyson, Zoning Administrator. Also in attendance, Mike Hill, Esq. of Miller, Mannix, Schachner and Hafner, Counsel for the Town of Chester.

MINUTES: On a motion by Mrs. Dower, seconded by Mr. Sewall, the Minutes of the April 24th meeting were accepted, as presented. Motion carried 4/0.

CORRESPONDENCE: Planning Board Minutes of May 21, 2007; Zoning Administrator's Activity report for May, 2007; and letter opposing project #379-V.

Chairman Marcheselli opened the meeting at 7:00 p.m., and recused himself from the Chair, taking a seat in the audience.

Having been duly advertised, Vice-Chairperson Dower opened the public hearing on application #379-V for Charles W. Redmond, on relocation of an existing sign at 6229 State route 9, tax map parcel #104.14-1-44.31. Mrs. Dower explained that applicant proposed moving of the sign from the south side of the lot to the north side, keeping setback distances the same, at 5 feet on the sideline, and 12 feet from the front. Applicant had not yet arrived, so there was no explanation or discussion on the proposed project, and comment was opened to the floor.

First to speak was June Maxam, property owner on the west side of Mr. Redmond. Her first comment was to ask that all testimony be given under oath, stating that she had no problem speaking under oath, nor did she believe the ex Mrs. Redmond to have a problem speaking under oath. Additionally, she was asking that applicant's testimony, should he appear, be taken under oath.

Followed by a query from Mrs. Dower regarding swearing in, Attorney Hill stated that normal procedure is not to formally require remarks made at a public hearing to be made under oath. The assumptions are that remarks made by the applicant and anyone commenting are truthful and accurate to the best of anyone's knowledge. Ms. Maxam alluded to a history with the applicant, and Atty. Hill commented that his recommendation to the Board would be to just follow the normal procedure for a public hearing.

Ms. Maxam then stated that she noticed one member of the Board had recused himself, and she wanted the reason for the recusal stated for the record. Brief conflict between Ms. Maxam and recused member, at which time Atty. Hill explained: "I think it's up to the member who is recusing himself...typically a member who recuses himself or herself from service on the Board and considering an application will provide a brief reason or explanation as to why he or she is recusing himself or herself. Under the circumstances, I would recommend that the recusing member briefly state, for the record, the reason why he's recusing himself."

Ms. Maxam stated: "I so request." Mr. Marcheselli replied, "I recuse myself because I have done business with both Mr. and Mrs. Redmond," and he did not think it would be fair for him

to be making a decision regarding this application.

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Ms. Maxam then asked if there was any other member of the Board that may have a conflict of interest, having done business with Mtn. Storage, Inc. or Extra Room Storage.

Atty. Hill began to state that it was up to any individual Board member...interruption by Ms. Maxam (unintelligible on the tape)...Atty. Hill continues, "Excuse me...it is up to any individual Board member to decide whether or not there is a conflict of interest, that would require him or her self, in his or her judgment, to recuse him or her self. It's at the judgment of the individual."

Ms. Maxam: "I believe there has to be a disclosure...the public has to be aware if there is. So you're saying they can sit there and say, yeah, I own six shares, but I don't feel that I'm (muffled), so I don't have to disclose it."

Atty. Hill: "I'm saying that it's not necessary for any member to recuse him or her self, unless, in that member's individual judgment, there is reason for him or her to do so."

Maxam: "Well then how are we going to know if there's a potential conflict or not if they don't disclose any business interest?"

Atty. Hill: "I think you've asked the members to disclose..."

Maxam: "And we haven't had a response..."

Mrs. Dower: "I rent from Penny."

Maxam: "Okay. Anyone else?"

Mrs. Dower: "I don't feel that I have a conflict."

Maxam: "I don't have a problem with you, Mary Jane...you've been on the Board long enough...you've been fair and impartial." (Muffled, with regard to other members disclosures...)

Atty. Hill: "Then I will ask the other Board members here, have any of you had any business dealings or other relationships with the applicant, such that you feel that you're unable to be impartial in your review of the application?"

Remaining members stated that they have had no dealings with the applicant, and have no reason to recuse themselves.

Maxam: "That's satisfactory."

Maxam continues: "We're here tonight to review this application, as you know, however, there's never been a sign permit application..."(very garbled, unable to determine what is being said)...."we're just automatically into a variance application. How did we arrive at that juncture?"

Atty. Hill: " I think at this point we need to turn to our Code Enforcement Officer, and ask him

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how we have arrived at this point in time. Walt, do you have a comment you can offer, any light that you can shed?"

Walt Tennyson: " All I can tell you is he wants to move the sign that was on the south end of the lot to the north end of the lot."

Maxam: " I understand what the proposal is, however, where is the request in writing to do that? Where is the sign application with the required fee ...(garbled...) I believe affidavit? I'd like to see the sign application. You can't (muffled) to a variance application unless someone's made the request. There's no written request that I can see. My second question would be, why are we moving the sign from where it was?"

Mrs. Dower: "That's what we'd like to know."

Maxam: (Seriously garbled)... "and the only reason the variance application came to be is because Penny and I challenged it. Now I don't feel we can go forward with this variance application because this whole procedure isn't legal. You're putting the cart before the horse. (Garbled)..."

Atty. Hill: "Was there any sign application that was filed or completed here, Walt?"

Tennyson: "No. (garbled)..."Real Estate..."

Maxam: " Which was after the fact."

Atty. Hill: "And the existing sign...the one on the post, that has apparently been removed, and the one that is sought to be relocated, was that sign approved as part of the Site Plan Review for the mini-storage facility?"

Discussion on original sign application, after ascertaining that there had been a separate application filed for it, then:

Maxam: " There is a sign application for that one, submitted in the name of Wendell Ross. Not Charles Redmond. So therefore (muffled) that permit is obviously null and void anyway, once you move it you don't ...that sign no longer exists. Besides, it's in a different name."

Atty. Hill: "Was any application ever made for the Red Mountain Real Estate sign?"

Maxam: "After the fact, after it was challenged."

Further discussion regarding Red Mountain Real Estate sign, (not clear on tape) then Maxam: " I have the hearing notice here, there's nothing on the hearing notice anything about a Red Mt. Real Estate sign. We're here tonight to discuss a variance application for ... application 379-V for Charles Redmond seeking relief for required front yard sign...blah, blah, there's

nothing here about a Red Mt. Real Estate sign. So therefore I don't believe we can discuss that here tonight. It has not been advertised."

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Atty. Hill then asked Ms. Maxam if she had any further comments, and she replied: "Oh yes, I have a lot of comments, oh yes I do. (Garbled...) I just don't believe this hearing can go forward."

Atty. Hill: "I don't know. It's now fifteen minutes after the hour. The applicant hasn't arrived. I guess I would ask the Board for (garbled) information, that in the opinion of the Board, what the Board needs so this process can go forward."

Maxam: "I would like to see the diagram...(extended garble)...what are you approving, that's what I don't follow, what are you approving?"

Atty. Hill: " I think the idea here is the approval of the relocation of the existing sign. That's..."

Maxam, interrupting: "But I don't see how that sign...I want to see that sign...I want to see what it says on that sign and...(garbled) ...there's been no sign application."

Maxam, continuing: "I can go out and construct a house which is in essence what he has done. He has constructed a structure. Pursuant to the ordinance, a sign is a structure. He has gone out without an application, without a permit, and erected a structure. (Garbled...)"

Mr. Findholt: "It looks to me like he is saying, or at least implying that it's the same sign he's moving from point A to point B."

Maxam retort is extremely garbled. Then: "Why are we even here. I still don't understand why we need to relocate the sign. What is the purpose of relocating it from where it was?"

Findholt: "That's one of the questions I think we're all going to ask Mr. Redmond."

Maxam: "Wouldn't it be nice if Mr. Redmond were to appear? I think we're going to have to close the hearing, and" (garbled)...reschedule...(garbled)."

Atty. Hill: (In response to question from Mrs. Dower, not discernible on the tape)... "I think it's up to you to ask if Ms. Maxam is done at this point and wants to see..."

Maxam: "No, I am not done at this point."

Atty. Hill: " Ms. Maxam, do you want to allow her to make a comment, (referring to Penny Redmond who may have had her hand raised at this time) or do you want to continue to comment?"

Maxam: "The floor is hers."

Ms. Redmond stated that she was not ready to comment yet, but wanted to mention that the

sign application was not in his name, it wasn't transferable, and you can't assume that it's the same sign. She then asked if anyone had gone to see what they were talking about, explaining the framework that had already been relocated in preparation for the sign, without any approvals.

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Maxam: " That was my other question. (Addressing Mr. Tennyson)... Under normal procedure, when someone wants to install a sign, you would submit an application. Correct? Then you pay your fee. Correct? Then you would install your sign. Then you would go down and look at it to see if it complied with what you are requesting. Correct? Was that done in this case?"

Tennyson: "Well, he's got two posts in the ground. I went over there and I told him he couldn't do that, he needed a variance. But, I did not get a sign permit application from him, and I agree with you that the other one's in Wendell's name, and I agree with you, yes, he should put an application in that is in his own name."

Maxam: " Okay. But to follow it through..."

Tennyson: "But I did stop him. He did not put the sign up."

Maxam: "My next question was gonna be, you didn't inspect anything because there is no sign there."

Tennyson: "There's nothing there. There's two posts in the ground (Maxam & Tennyson talking at once, can't discern). Two separate conversations taking place...not discernible.

Tennyson stated that maybe he was going to put two flags up, that the posts could be flag poles.

Atty. Hill: "At this point, it is now twenty minutes past the hour. The applicant still hasn't appeared. Ms. Maxam has raised some issues with respect to the procedural posture of the matter, noting that apparently an application form regarding the proposed sign has not been received. Our regulations on page 62, under Section 7.04, Signs, subsection "H" on page 62, beginning at the bottom of page 62 provides for an application procedure and an application form with supporting information that's to be provided when somebody wants to apply for a sign. That material, that application form and that material have apparently not been received for the proposed sign, is that right? Okay. And so, we're here as a board with appellate jurisdiction, and that implies that there would have been a denial of an application for the sign, because, presumably, at least as we understand it at this point, Mr. Redmond's proposal apparently would be for a sign that, if an application had been completed and all the information had been submitted, it apparently would not comply with some of our sign regulations. Is that your general understanding, Walt?"

Tennyson: "That's right.

Atty. Hill: "Okay. In addition, there is a second sign on the property for Red Mt. Realty, or Red Mt. Real Estate, excuse me, for which an application has been received, and no permit has been issued yet, on that. And, there is a question about whether or not that is an allowable

sign or not. At this point with no application having been received for the main sign in question, with the applicant not in attendance to be able to provide additional information, it would seem at this end with the Board apparently having questions, and desiring additional information about this, and the public, also desiring additional information, it would seem appropriate at this point to adjourn the public hearing, until such time as the applicant can be

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present and provide additional information. In the interim, it would seem to be appropriate to ask the applicant to complete a sign application and provide the necessary information for the sign. And then, if the previously existing sign would not comply with the zoning when it's moved, and if the Red Mt. Real Estate sign would not comply with the zoning, then it would seem to be appropriate for the Zoning Officer to issue denials of permits for those signs. And then that would trigger the variance application for the relief on setbacks, and numbers of signs or whatever for this Board to consider. So that would be the recommendation, to continue the public hearing, table the matter, pending receipt of additional information from the applicant, and pending receipt of denials from the Code Enforcement Officer."

Chairman Dower then asked if Penny wanted to speak. Ms. Maxam spoke that she wanted to see an application, to reserve final comment after she sees what Mr. Redmond is proposing. She stated that what he's got there now is not in compliance.

Atty. Hill: "In light of the questions that have been raised, I think it would be more productive to table this matter, to adjourn the public hearing to a future date, and to hold any further substantive comment until that time. Now that being said, you did have a request for...(addressing Ms. Redmond with regard to a letter that she wanted to read)." Atty. Hill stated that she could certainly submit it in writing, and she could certainly have the opportunity to comment at a future resumption of the hearing. Atty. Hill added that he did not know how productive it was to go into lengthy comment...

Ms. Redmond thought that some people were not aware of the situation there. Ms. Maxam spoke: "Let him submit his proposal. He hasn't submitted his proposal yet. There's nothing formal in writing. This really cannot go forward."

Atty. Hill: "I think my suggestion to the Board would be to receive that (Ms. Redmond's letter) in writing to distribute that for the Board members so they have it for review, but I don't think it's necessary at this point to go into a lengthy reading..." Discussion with regard to Ms. Maxam's outline which she had given to Mrs. Dower, and Atty. Hill stated that the Board would then have it for review. He continues, "so that would be my recommendation to the Board, to adjourn the public hearing, do you have a regularly scheduled date for the ZBA ... (clarified the fourth Tuesday), I think I would make a recommendation that one of you make a motion to adjourn the public hearing until the fourth Tuesday in July, and table this matter pending receipt of an application and all necessary supporting material from the applicant, and pending receipt of permit denials from our Code Enforcement Officer, assuming that the proposed signs don't comply with zoning." Motion so moved by Mr. Sewall, seconded by Mr. Findholt, and carried 4-0.

The date will be July 24th. Atty. Hill asked Mr. Tennyson if that would give him enough time for what he had to do, and Mrs. Dower stated that if all of the information was not provided, then the matter would have to be put off until August. Atty. Hill stated that we would need to wait

to see what is submitted, and then to meet to see if they have a complete application.

Following discussion on re-advertising or not, Atty. Hill then stated, the public hearing had not been closed, but it had been adjourned, and the matter has been tabled pending receipt of

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additional information, "and obviously the folks in attendance here tonight, you are of the understanding or are aware that this Board has adjourned the public hearing to it's regularly scheduled meeting next month on the fourth Tuesday of the month at 7:00 p.m."

Atty. Hill then responded to a question from Mr. Sewall regarding receipt of an application and stated that if there was no application submitted, then Walt would have no basis for denial for the permit application. If no application is submitted, then it is a moot issue, and there is no basis for a variance application. He explained the need for such procedure due to the scrutiny involved in this issue.

Brief discussion followed with regard to the technical requirements that needed to be met.

ADJOURNMENT: On a motion by Mr. Findholt, seconded by Mrs. Dower, meeting adjourned At 7:35 p.m.

Respectfully submitted,

Patricia M. Smith ~ Secretary

Please note: Quotations are directly from the tape, as near discernible as my understanding of what was being spoken. Pms