

TOWN OF CHESTER ZONING BOARD OF APPEALS

MINUTES OF MEETING ~ MARCH 24, 2009

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

CORRESPONDENCE: Minutes of Zoning Board meeting, January 24, 2009; Zoning Administrator's Activity Report for February 2009; and Letter from Attorney Dan Smith in re: McDowell-Murphy Family Properties.

MINUTES: On a motion by Mr. Grady, seconded by Mrs. Morris, the Minutes of the January 24th, 2009 meeting were accepted, as written. Motion carried 4/0. (Mr. Sewall abstained, as he was not in attendance at the January meeting, and Mrs. Dower had left the meeting at the time the motion was made).

PUBLIC HEARINGS: Having been duly advertised, the Public Hearings were opened at 6:00 p.m. by Vice Chairperson Dower. (As Mrs. Dower had to leave the meeting early, the final project was heard first, as board member Sewall was recusing himself to present it, and then resumed his seat on the board, taking Mrs. Dower's place as the Chair).

#387-V ~ Robert Jordan seeking a sideline setback variance in order to construct an addition to an existing dwelling, on property located at 8761 State Route 9, tax map # 19.-1-3, a Low Intensity Land Use Area. Mr. Sam Sewall recused himself from the board in order to present the project to the board. Applicant wishes to expand the existing attached garage another 18 feet, and add a 28 foot two story addition to the dwelling, matching the existing roof line, in order to create a two family dwelling/mother-in-law apartment). The house is set back from the road quite a distance, and the addition will not be visible from the road. The proposed addition will not be closer to the immediate neighbor, but actually further away from their home location. Letters from both adjoiners have been received, and neither have any objection to the project.

It was determined that the angle of the sideline setback was incorrect, and once amended, actually increased the amount of the variance being sought to 17.5 feet. Following discussion by the board, it was determined:

1. There was not really another means feasible to the applicant for construction of the addition. Putting it on the other side of the house would cause harm to the property, needing the driveway to be relocated closer to the neighbors property line, disturbing the aesthetics of the landscape, as well as harming the integrity of the existing dwelling.

2. There would be no undesirable change in character of the neighborhood or to nearby properties with the proposed addition.

3. The request is substantial, but both of the neighbors favor the proposal and do not see any adverse effects to their property as a result.

4. Project will not have any adverse or physical environmental effects to either the property or the community.

5. The alleged difficulty is self-created.

Applicant acknowledges the need to appear before the Planning Board for Site Plan Review on the proposed addition to create a second apartment in the dwelling.

Following this discussion, and the criteria findings, motion was made by Mr. MacMillen, seconded by Mrs. Morris, to approve application #387-V for Mr. Robert Jordan for a 17ft. 5inch sideline setback in order to construct an addition to his existing dwelling, finding that the neighbors offer no objections, and the construction will not make any visible impact. Motion carried 4 Aye, 1 Opposed.

At this point, Mrs. Dower exited the meeting, and Mr. Sewall filled the position of Chair. Alternate Jensen filled the vacant seat on the board for a five member panel.

Attorney Dan Smith of Smith & Simon, LLC, was in attendance to represent the Vanderwalker/McDowell project. He asked, since both were neighbors, and both involved in the same scenario, whether both could be reviewed at the same time. Board consented.

#385-V and #386-V ~ Joe & Janet McDowell ~ Anne Murphy Vanderwalker, both proposing "after the fact" variances, McDowell for sideline variance, and Murphy-Vanderwalker for road frontage. Some time ago, Mrs. Murphy-Vanderwalker (hereinafter referred to as "Murphy"), had asked Attorney Smith to do some deed corrections for her property on Friends Lake Road in accordance with a survey that had been done by Jim Hughes dated November of 2008. On the Hughes survey, the pool and deck encroach onto a parcel owned by Murphy's son Kenneth and his wife Helen. Project was submitted to the Planning Board as a lot line adjustment and the board agreed to sign the Hughes map as it related to the pool for a lot line adjustment.

Going back to 1988, Joseph and Janet McDowell had their property surveyed by Jim Nestor, and that map was filed in the office of the County Clerk. Noted on that map, the Murphy title passed through the McDowell house. Jim Nestor then did a map showing a proposed 20 foot conveyance from Murphy to McDowell and a deed was subsequently filed. Referring again to the 1988 Jim Nestor survey, there is a 46.34 feet proposed conveyance to McDowell to encompass their garage, shed and parking area. Unfortunately, no deed was ever filed for this conveyance, and neither party knows why.

Prior to 1986, Murphy had a combined frontage on Friends Lake Road of 94.37 feet consisting of the 26.99 feet shown on the Jim Hughes map, the 47.38 feet shown on both maps and the 20 foot parcel conveyed to McDowell in 1987. After the 1987 conveyance to McDowell, Murphy was left with 74.37 feet. Murphy intends to convey to McDowell, measured along the road, 47.38 feet so that McDowell can own their garage, for which a certificate of occupancy had been issued. This leaves Murphy with 26.99 feet of frontage, requiring a variance of 173.01 feet.

Returning to the 2008 survey by Jim Hughes, the McDowell garage (eaves) is 2 feet from the

lot line. Thus, McDowells' need a sideline variance of 23 feet, as the properties are both located in a Low Intensity Land Use Area requiring 25 foot sideline setback, and 200 feet of road frontage.

The board finds as follows:

With regard to the Murphy property, application #386-V:

1. No benefit can be achieved by other means feasible to the applicant at this point, since this is an "after the fact" situation.
2. There will be no undesirable change in the neighborhood character, or to nearby properties, as these conditions are and have been in existence for close to 25 years.
3. The request is definitely substantial.
4. Request will not have any adverse physical or environmental effect. (See # 2).
5. Alleged difficulty is definitely self-created by failure to have properties surveyed all those years ago before construction began.

Therefore, in order to clean up and correct the conditions, despite the substantiality of the requested variance, the board hereby grants application #386-V for Anne Murphy-Vanderwalker, a road frontage variance in the amount of 173.01 feet on property located at 1233 Friends Lake Road, on tax map parcel #103.-1-42.1, on a motion by Mr. Grady, seconded by Mr. MacMillen, and carried 5/0.

With regard to the McDowell property, application # 385-V:

1. No benefit can be achieved by other means feasible to the applicant at this point, since this is an "after the fact" situation, with structures already constructed and in existence.
2. There will be no undesirable change in the neighborhood character, or to nearby properties, as these conditions have been in existence for many years, and the damage has already been done.
3. The request is definitely substantial.
4. Request will not have any adverse physical or environmental effects. (See # 2).
5. Alleged difficulty has been self-created due to failure to have property surveyed and structures plotted by a licensed surveyor.

However, in order to correct an existing condition, after the fact, the board hereby grants application #385-V for Joseph and Janet McDowell, a sideline variance in the amount of 23 feet, on property located at 1239 Friends Lake Road, on tax map parcel # 103.-1-41, on a motion by Mr. Grady, seconded by Mr. Jensen, and carried 5/0.

BOARD PRIVILEGE: Date for the April meeting determined to be April 28th, 2009 at 6:00 p.m.

ADJOURNMENT: On a motion by Mr. Jensen, seconded by Mr. MacMillen, the meeting adjourned at 6:55 p.m.

Respectfully submitted,

Patricia M. Smith ~ Secretary