TOWN OF CHESTER ZONING BOARD OF APPEALS

MINUTES OF MEETING ~ JULY 28, 2009

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

MINUTES: On a motion by Mr. Grady, seconded by Mr. Sewall, the Minutes of the May 19th, 2009 meeting were accepted, as presented. Motion carried 5/0.

CORRESPONDENCE: May 19th, 2009 Minutes of the Zoning Board of Appeals; Planning Board Minutes of March 16th, May 18th, and June 15th meetings; and Zoning Office Activity Reports for May and June of 2009.

NEW BUSINESS: Appeal application #A-18 for June Maxam, appealing a determination of the Zoning Local law by the Zoning Administrator with regard to issuance of sign permits and related issues pertaining to the property of Charles W. Redmond, 6229 State Route 9, Chestertown, NY, tax map parcel #104.14-1-44.31.

Chairman Marcheselli called the meeting to order at 6:00 p.m. He began by explaining the documentation that he had in hand, consisting of the Appeal application, two pages describing an alleged error or erroneous interpretation which constituted the grounds for the appeal, copies of 4 Zoning Certificates, and a diagram of the sign, which, he assumed, pertained to all of the Certificates. He then checked with the Secretary to be sure that he had the copies as corresponded with the appeal application. Regarding the diagram, he asked whether it pertained to all of the Certificates. Mr. Redmond agreed that it did, and Ms. Maxam, who inspected it, stated that it was altered. Discussion ensued. It was determined that the diagram had come with the original application.

He then stated that of the 4 Zoning Certificates, 3 were referenced in the Appeal application with dates of 12/22/08, two dated 12/30/08, both with the same number, but one having VOID written across the face of it with a date of 5/28/09. The 4th Zoning Certificate had a date of 5/29/09. He continued that the time for appeal on the first three had expired, and therefore the only one to be considered was the Certificate dated 5/29/09.

He then gave some background information to the new board members who had not been present at the prior meetings with regard to this particular sign. He explained where the original sign location had been proposed in the Northeast corner of the fence which resulted in setback issues, etc., and it was then moved to its' current location along Route 9. There had been a question at that time as to the applicability of business signs with regard to the Ordinance, found under Section 7.04-2, B or C. The Zoning Administrator had made the determination that this particular sign fell under Section 7.04-2-C. He then read the section: " In the case of a sign advertising a center or facility where more than one principal activity is conducted, only one sign not

exceeding 40 square feet in area or 20 feet in height may be erected. The sign may identify the center as a whole, and list the individual names of any businesses at the site, but may not contain any advertising matter. An overall sign design plan for any such center or facility shall be required which shall include the sign design plan or plans for each principal activity therein, and shall reflect a reasonable uniformity of design, lettering, lighting and material."

He explained that the Zoning Administrator had determined that the sign fell under this paragraph (7.04-2-C) and a permit had been issued. He was not exactly sure why, but that Zoning Certificate was reissued as #S2009-03 dated May 29th, 2009. As a result of that determination and that activity, he continued, we now have this appeal.

He then proceeded to read some correspondence that had been received from Mr. Charles Redmond, Managing Member Red Mountain Storage LLC. To wit:

"Dear Board Members; I would make the following observations with regard to the matter before you of the sign on my property identifying 'Red Mountain Storage' & 'Red Mt. Real Estate' @ 6229 Rte 9, Chestertown, NY.

1. In the fall of 2008 your board rendered a decision on a complaint from June Maxam, regarding this same sign. The location and signs' sizes are the same, your board ruled the Zoning Administrator had the authority to approve the location and signs as they were, and still are. The question before you is the same question, only from a different angle, and should be determined to have been settled and the present complaint moot.

2. The second point I would make is that when any public authority, whether Federal, State or Municipality enacts any rule, regulation or law, the authority which enacts such rule, regulation or law, has a public responsibility to assure the public that no person will be allowed to use those rules, regulations or laws as a tool of harassment.

The matter of my sign at Red Mountain Storage being grieved and complained about over these past two plus years by June Maxam are repeated acts which tend to annoy, and serve no legitimate purpose and does constitute harassment. I would further point out that the harassment is not only directed at myself, but rather the Zoning Administrator and the Office of Zoning. I would further request that board members review the numerous complaints and grievances filed by June Maxam. In the process of reviewing, just ask yourself, is the intent of these complaints to assist and assure the compliance of the Town of Chester Zoning?"

Letter was signed by Mr. Redmond.

The second letter was addressed to Mr. Tennyson, to wit:

"It has been brought to my attention that the make up of my sign, located at Red Mountain Storage and Red Mt. Real Estate at 6229 Rte 9, Chestertown, NY, does not meet the most stringent standards of the ordinance. It is suggested that the

following changes to the sign be made to bring total, complete, and undisputable compliance to this sign. Further, this should put an end to this continuing and unending complaints and grievances by the complainant June Maxam.

1. The addition of the word PLAZA to the main sign.
2. The addition of a sign RED MOUNTAIN STORAGE LLC. A total of 5 sq. ft. hung below the present Red Mt. Real Estate sign."

A drawing was attached, and passed around, and both letters were dated July 28th, 2009.

Mr. Redmond was asked when the picture of the sign was taken. He said that the photograph and the picture were taken and given with the re-application and that is when the word "Red" was added. He continued that, during this two years, Mt. Storage used to be a "C" Corporation, and because this proceeding has been drawn out, (and, he stated: "for other reasons"), he changed his Storage to an "LLC". In NY State you can't keep the same name and change Corporations, so he added the word Red to Mt. Storage, which had resulted in the re-application, and that was when the picture had been provided. Chairman Marcheselli asked if this was how the sign looked now, and Mr. Redmond responded: "yes".

Mr. Grady then asked to speak, addressing Mr. Redmond, and referring to his recent letter which addressed suggested changes to the sign, asked whether he was committing to make those changes? Redmond stated that it had been explained to him that those changes would make it irrefutable, that it would cover the most stringent standards as outlined in the ordinance. He stated that, personally, he thought that the present sign met those standards and he just wanted an end to the harassment. He said if it satisfied everybody else in the world, he would be willing to do it, but felt that the board had rendered a decision in the Fall of 2008, and that that decision should have settled the matter once and for all. Mr. Grady stated that in advance of his proposing to make changes, they could not render any opinion on that at this time, but wanted to clarify the intent of the letter as to whether or not it was his (Redmond's) intent that those changes should be made. Redmond countered that he was not suggesting that they be made, but suggesting that it might be a solution for him to do it if the board saw fit to recommend it.

Ms. Penny Redmond stated to the board that the sign did not say the same thing as it had at the time that the permit was issued in December. Chairman Marcheselli told Ms. Redmond that he would be glad to take public comment at such time that the hearing was opened. He was at this time just trying to get everything laid out.

Mr. Grady then asked to speak before the public hearing was opened, and brought the board's attention to the Appeal application. He pointed out that at the bottom of the application, it is stated: "Submit filing fee and five (5) copies of the completed application to the Zoning Board of Appeals." He then stated that he saw what appeared to be in the same handwriting as the applicant, the comment: "For $50.00 - the Town can pay for the copying." In connection with that, he wanted to determine whether those copies were attached to the application when it was filed, and if not, he wanted to

make a motion to table the application indefinitely based on the fact that it was incomplete. The chair then asked the Secretary if the copies had been attached, to which she replied that she had made the copies.
Ms. Maxam stated that she had been charged $100.00. (It was later explained by the Secretary that Mr. Tennyson had written her a letter explaining that he had inadvertently told her the wrong fee amount, in that the fee of $100.00 had just been an increase for a Variance, approved by the Town board at their March meeting, and not for an Appeal. Ms. Maxam actually paid $50.00 for the filing fee of the Appeal, the fee for which had been approved by the Town Board by Resolution #165 at their July 9, 2002 meeting).

Mr. Grady then made a motion that Appeal #A-18 be tabled indefinitely because the application pertaining thereto was incomplete. Second was made by Mr. MacMillen. Mr. Grady added that before a vote was taken, it was more than just opinion, but the board had an obligation to uphold the law as it is written. He spoke of Section 12.04, page 95 which reads, in part: "Appeals shall be made on forms prescribed by the Zoning Board of Appeals. Completed forms shall be accompanied by whatever further information, plans or specifications as may be required by such forms."

Chairman Marcheselli then stated that before a vote was taken, they would inquire of the applicant why the copies had not been provided. Applicant did not respond. Chair started to speak, and a heated discussion began. Mr. Sewall questioned Mr. Grady regarding his statement to "table indefinitely." Mr. Grady corrected his motion to "take no further action until it is deemed complete." Extensive discussion ensued. Following this discussion, Mr. Grady then withdrew the previous motion, and made an amended (or new) motion: "to prevent this situation from happening in the future, take whatever action this board has to take in order to ascertain that applications are complete, prior to their being advertised, and prior to the public hearing being scheduled." He stated that he would be more specific if he knew what that action needed to be.

Mr. Marcheselli felt that in the end, who is being hurt? Mr. Sewall agreed, adding that we have always tried to accommodate the parties involved. He asked Mr. Grady exactly what he was looking for. Mr. Grady stated "that the board needed to follow the law as it is written, and the law states that we need a completed application. Why are we even acting on or entertaining an incomplete application?" He added that his motion was directed at preventing this situation in the future. Additionally, he stated, his attention had not been drawn to this item until the remark showed up at the bottom of the application. At this point, the motion was voted on, and carried 5/0.

(Ms. Maxam had left the meeting and went home to run off the copies. She returned with them.)

Chairman Marcheselli then addressed Ms. Maxam, and stated that we were now going to proceed on this appeal, because the plain fact is, we're here, we have this application, and there is no point in adjourning this meeting for another month or two. Therefore the board would proceed, with the recommendation that any future applications (appeals or otherwise), meet with the board requirements.

Mr. Grady then asked for the floor, again, to address another issue before proceeding to the public hearing. He wanted to make a motion to determine the amount of escrow that should be imposed for this appeal, based on Section 12.05-D of the Town of Chester Zoning Local Law: "In addition to the other fees provided herein, the Zoning Administrator, Planning Board or Zoning Board of Appeals may charge an additional fee to developers or applicants for projects requiring legal and/or technical review. The fee charged to the project developer shall reflect the actual costs of the reasonable and necessary legal and/or technical assistance. An appropriate escrow deposit may be required to secure payment of these review fees. Any balance remaining after review fee reimbursement to the Town shall be returned to the applicant."

Ms. Maxam asked where the precedence for such an action was. A lengthy discourse ensued between Ms. Maxam and the Chair, then she suggested the board read the section of the Ordinance found on pages 61 and 62, and after they had interpreted it, she stated that the Attorney for the Town had said in a prior determination that the Zoning Administrator was required to administer the Zoning Ordinance as it was written, and, she added, "so are you." She continued that it was her right to sue without any escrow account, and said she would see the board in court. She then left the meeting.

The board continued discussion, with comments by Mr. MacMillen and Mr. Grady. Mr. Grady reiterated his opinion that significant amounts of money, time and effort have been, and will continue to be consumed unless they start enforcing the law, which is their obligation. They are not changing anything, nor voting on constitutionality, they are simply looking at Section 12.05-D which has been in place since 2005, and he feels it is their obligation to enforce it. He continued that the board's next step would be to determine what the last appeal cost the town, and then determine what would be the appropriate reasonable amount of escrow. Until such time, he did not feel that the board had the legal right to go any further.

Following a comment from Ms. Redmond regarding this procedure, Chairman Marcheselli stated that he has not seen this on the ZBA. He stated that we have never been around the block like this with anyone else, for any other reason, ever.

Ms. Redmond countered that it might be because of the other person involved. Chair stated that she might be right, but the plain fact was, the application was here. He said the board does not necessarily have to accept an application, or have a public hearing, discuss it, vote on it, and settle it, all in one night. Historically, he added, the board has always tried to do that, because it makes it easier on everyone involved. Typically, the applicant is not looking for the moon, but a response or a resolution, and the board tries to provide that. He continued that the last appeal took a long time, several meetings, legal opinions, draft determinations, etc. Ms. Redmond stated that Ms. Maxam may bring it to light, but it was not all because of her. Chair continued, he wouldn't say that it was all because of her, but the plain fact is, it cost the town about $10,000. 00 to do something that, in his opinion, should have been done in a night. He stated that there are other tangents that they keep having to deal with, with every little thing being a problem, and he does not honestly feel that it could be resolved tonight. He continued that they would be getting into sign dimensions, and all sorts of stuff, and if we needed a civil engineer to go measure the sign, then the ordinance says that the applicant is

going to pay for it. It's not going to be the town's responsibility, and as much as he would like to see it all resolved and go away, he knows' it's not going to, and as much as the applicant has walked out for the second time tonight without any indication that she would be back, he would start by addressing John's motion. He then had Mr. Grady restate the motion.

Mr. Grady again made the motion, pursuant to Section 12.05-D of the existing zoning law, that the next act the board takes is to determine the amount of the escrow the board will require before discussing the merits of Appeal #A-18.

Ms. Redmond asked if that would be the action for every appeal that they might hear.

Mr. Grady continued that this is the action they would be taking on *this* appeal, because it was his opinion that this particular appeal would be likely to cost the town legal review fees, and pursuant to Section 12.05-D, it should be the board's next obligation to the town to get the escrow in place before proceeding.

Ms. Redmond then questioned what the escrow fees would be used for. Chairman Marcheselli answered, "the actual cost of the reasonable and necessary legal and/or technical assistance." Should there be money left over, it will be returned to the applicant.

Ms. Redmond then asked if the applicant was correct in their appeal, and the person on whom the appeal was brought was incorrect, what happened then? Chair responded that that was a good question, in that it was not addressed herein.

Discussion among the board regarding the charging of an escrow account, and it was stated that the board was not obligated to, but "*may* charge…", and each application had to be judged on its own merit, not on any other case. The board feels that they will incur legal expenses, and perhaps technical expenses in this particular case, and therefore feel that they are justified in seeking to impose establishment of an escrow account. They felt that the board should be aware of this stipulation with all applications, but it did not necessarily *have to be applied* to all applications.

Chair then called for a second to the aforementioned motion. Motion seconded by Mr. MacMillen, and carried 5/0.

Mr. Grady thought perhaps, to be fair to both applicant and the town, to establish a small amount as a fee, and if time revealed that it would be an extended project, to reserve the right to increase it to the extent necessary to anticipate the ongoing charges. A long discussion ensued. Chairman Marcheselli stated that he felt we needed some legal assistance to determine what things exactly are included in Section 12.05-D. What could we reasonably charge a fee for, and what can't we? To ask an Attorney for his opinion on what the paragraph means, obviously the applicant cannot be expected to pay for that. Mr. Marcheselli made a motion that the board would not be setting a fee at this meeting, and the Chairman did not want to do so before consulting with legal counsel. Secondly, it was determined that the applicant has a right to know that there may be a fee imposed. Lastly, since the applicant was not present,

the public hearing would be postponed until the August 25th meeting, at 6:00 p.m. Motion was seconded by Mr. Grady, and carried 5/0.

Following brief discussion, Chairman Marcheselli returned to the letter that Mr. Redmond had written with regard to the changes to the sign. Redmond stated that the changes had been suggested by Walt.
Mr. Redmond continued that his first letter was dated the date of the meeting, even though he had written it a week earlier. His feelings on this matter:

"I felt last fall, when that same diagram was brought before this board, and legal opinion was gotten, and you made the determination that Walt had the authority to allow the setbacks that are in place now, and that sign has not been changed. None of the sign has been changed. The only thing that has changed on that sign, as I stated before, when it went from a "C" Corporation to an LLC, the State requires you change the name. …Red was added to the Mountain Storage, and it became an LLC. That is the only change. I felt this whole matter had been settled, because whether the face of the sign is 29.03 feet, you ruled on the mathematics that were before you, and are presently before you now in the application. And…if that ruling has any merit, it should be as valid today as it was last fall. And that argument I still stand by. The second letter was my attempt, at the advice of the Zoning Administrator, to try to be as amenable as I could be to settle the matter."

Chairman Marcheselli then outlined for the board the two changes that were written in the letter. He asked Mr. Redmond why he was doing what he was doing.

Redmond said he was tired of this matter being continually brought before the board. Mr. Marcheselli stated that at the last time this sign was brought before the board on appeal, it was to determine whether Section 7.04.-2 B or C applied. It had been ascertained that Section 7.04-2-C was the applicable section, and the existing sign was determined to be a legal sign by the Zoning Administrator under Section C. He added that he had visited the site earlier in the day, and saw no changes to the sign. He then reread Section C.

"In the case of a sign advertising a center or facility where more than one principal activity is being conducted, only one sign, not exceeding forty square feet in area or twenty feet in height, may be erected. This sign may identify the center as a whole and list the individual names of any businesses at the site, but may not contain any advertising matter. An overall sign design plan for any such center or facility shall be required, which shall reflect a reasonable uniformity of design, lettering, lighting and material."

He explained that Mr. Redmond actually had two businesses on the site. The sign reads "Red Mountain Storage", and has a telephone number. The suggestion was made to add the word "Plaza" to the sign, i.e. "Red Mountain Storage Plaza" to reflect the fact that there are multiple businesses, meaning two. He affirmed this fact with Mr. Redmond.

The sign cannot exceed forty square feet in area. In order to comply with the forty

feet, the main sign is less than 30 square feet. Underneath the main sign, there is a "Red Mountain Real Estate" sign, a little over five feet in area, and it was suggested that he add an additional sign of five square feet, reading "Red Mountain Storage, LLC" underneath, using similar lettering as the Real Estate sign. Total of all signs would total less than 40 square feet. He again affirmed these facts with Mr. Redmond.

He continued that the Zoning Administrator cannot guarantee that the board will accept that proposal, but he made that determination. Secondly, none of us can guarantee that there isn't going to be a lawsuit filed, or an appeal, or some kind of legal action. But that is the purpose of Mr. Redmond's letter.

Because it was not specifically stated, Mr. Marcheselli asked Mr. Redmond: "Are you saying you're going to make these changes?"

Mr. Redmond, emphatically, "No!"

Chair: "Are you saying you're not going to make these changes?"

Redmond: "No. I'm saying, at the behest of the Zoning Administrator, offered this as my willingness to cooperate with the board in any way or fashion. My determination is, to reiterate this, is, I felt last fall when the same sign, the same location, the same size, the same everything, when the board ruled on that, that this matter was a settled matter. And that's why I put in my statement that I feel this should have been settled, and this complaint should have been moot, because all this complaint is, is trying to get the same determination from another angle."

Chair again asked about the status of these changes by stating: "So, they're not going to occur, is that what you're telling me?"

Redmond: "No….this is not…this is…."

Mr. Grady: " Excuse me. Are you saying that if the board specifically asks you to make these changes, that you would be willing to?"

Redmond: "I would be willing to make them."

Grady: "But only in the event that you know that we are then gonna be okay with it?"

Redmond: "That's correct."

Grady continues: "Okay then. So it's clear what he's saying. I think we need to advise him, though, that we are not in a position to guarantee that, is that correct?"

Chair: "Between us and the Zoning Administrator, I think we can…he is entitled to know that if he makes those changes, they are in compliance with the ordinance. What we can't say is that we're not going to get sued over it."

Redmond: "If it's the feel of the board that there may be questions as the sign

presently is, if the board feels comfortable, and the Zoning Administrator feels comfortable that with these changes, everybody's on the same page, fine!"

Chair: "So if this is the solution to this whole thing, you'll do it, is that what you're saying?"

Redmond: "Yes."

Discussion on whether a new permit was needed, and Chair said it would be left up to the Zoning Administrator.

Mr. Redmond then wanted to know if the fee for an escrow account would be established prior to the next meeting so he would not have to waste another night.

Mr. Marcheselli stated that Mr. Redmond would be notified, as a public hearing would be held on August 25th at 6:00 p.m. If there was no public hearing to take place on that night, he would be notified. He stated that there may not be an escrow account established, but there may just be a fee established for a certain number of dollars.

ADJOURNMENT: On a motion by Mr. Sewall, seconded by Mr. MacMillen, the meeting adjourned at 8:00 p.m.

Respectfully submitted,

Patricia M. Smith ~ Secretary