

TOWN OF CHESTER ZONING BOARD OF APPEALS

MINUTES OF MEETING ~ JULY 29, 2008

ATTENDANCE: Chairman Ken Marcheselli, Sam Sewall, Mary Jane Dower, Elwood Findholt, new member John Grady, Secretary Pat Smith, and Attorney for the Town, Mike Hill. Liz Morris arrived late.

MINUTES: On a motion by Mrs. Dower, seconded by Mr. Findholt, the Minutes of the June 24th, 2008 meeting were accepted as presented. Motion carried 5/0.

CORRESPONDENCE: June 24, 2008 Zoning Board of Appeals Minutes; June 16, 2008 Planning Board Minutes; Zoning Office Activity for June, 2008; Correspondence from Bartlett, Pontiff, etal with attachments from Jill Broderick; Correspondence from Linda Taverni dated Feb. 26, 2008 and July 11, 2008.

PUBLIC HEARING CONTINUATION: #A16 for Jill & William Broderick appealing a determination of the Zoning Local Law by the Zoning Administrator with regard to properties located at 830 Atateka Drive, tax map parcel #120.11-1-2, and 826 Atateka Drive, tax map parcel #120.11-1-4.

Chairman Marcheselli addressed the continuance by stating that a Memo had been received from the Assessor's office with regard to the valuation of the structure compassing both properties, as it had been assessed in 2003, and provided both parties present with a copy. He also mentioned the additional significant correspondence from both the Broderick's and the Taverni's that had been received by the board. He continued that a lot of the issues that had been presented to the board and discussed were just not within the purview of this board to review or make decisions on. Therefore, he asked both parties, in their address, to stay within the parameters of the appeal of the determination by the Zoning Administrator, and not stray to other matters, such as property line location, ownership, trespassing, etc.

Attorney Hill spoke with regard to Mr. Grady's intensive review of the materials surrounding this appeal, and his written letter to the file expounding his understanding of it, in order that the audience might understand his seat at the desk in the absence of Mrs. Morris. (The latter arrived at 6:45 p.m.) Chairman Marcheselli explained that Mr. Grady had sent him a 3-page memo detailing his understanding of the appeal matter, and Mr. Marcheselli felt that Mr. Grady had an excellent handle on those things that had taken place. Mr. Grady then explained that he had tried to get up to speed on the matter by reviewing all of the Minutes, by observation of the properties, and all of the material that was at hand from the file, in addition to studying the Ordinance relevant to it.

Chair then opened discussion to the floor.

Mrs. Broderick was the first to speak. She stated that discussion had taken place with regard to "singular" buildings, as well as "plural" structures, and said that the Zoning Compliance form was for a single structure on Lot 4. She felt that it had to be determined that it was a detached structure on Lot 4, but if it was on Lot 2 it would be an attached structure.

She continued that the Zoning Compliance Certificate only references Lot 4.

Attorney Hill asked to speak at this point. He stated that Mrs. Broderick was speaking of a Zoning Compliance Form, but the issues before the Board arise from letters that the Zoning Administrator wrote in August of 2007, those being a letter of August 14th, 2007, and August 29th, 2007. He stated that these were the issues from which the appeal was taken, not in dealing with Zoning Compliance Forms. He added that any time for appeal on anything relating to a Zoning Compliance Form from 2005 had long since elapsed. There was some exchange between Mr. Hill and the Appellant at this point, and Appellant finally agreed to disagree.

Mrs. Taverni then spoke, stating that she believed that the position of she and her husband had been set forth in prior hearings, and she agreed with the board's position as stated by Mr. Hill.

Chairman Marcheselli asked the Taverni's whether they had received an estimate for the actual damage to the building. They had submitted a picture of the damage to the roof, but had not, themselves, had an estimate done. Based on the list of materials that had been submitted at the prior meeting, they assumed it to be a couple of hundred dollars.

Mr. Findholt asked whether the structure had always been shared, and the Taverni's stated that they had both shared the building, in fact swapping space for boat storage when the Taverni's had purchased a boat too large to fit within the confines of the existing door on their shed. They had then used the Broderick's space, and the Broderick's had stored their smaller boat in the Taverni's shed. Mrs. Taverni added that there had been no issues concerning the use of the shared driveway or anything else, having owned the property for almost 20 years until they had moved up here permanently in 2005.

Following brief discussion, motion was made by Mr. Sewall to close the public hearing at 6:25 p.m. Motion seconded by Mrs. Dower and carried 5/0.

Chairman Marcheselli asked whether the board would like to vote that evening on the draft resolution, or put it off for another month.

Atty. Hill suggested that the members take 10 minutes to review the draft decision and reflect on its provisions. Chairman Marcheselli then read the July 23rd memorandum from the Assessor's office with regard to the 2003 assessment of the entire garage/shed structure.

The board spent time reviewing the draft resolution, then Attorney Hill read the draft resolution aloud. As follows:

(Please note that this is the resolution as accepted unanimously by the Board, and had received some minor changes in wording before approval was given, such emendation being the consensus of the entire board.) pms.

TOWN OF CHESTER ZONING BOARD OF APPEALS
RESOLUTION AFFIRMING DETERMINATION
of the
TOWN ZONING ADMINISTRATOR

Introduced by: Mr. Findholt
Seconded by: Mr. Sewall

Whereas, Jill Broderick and William Broderick (Appellants) have appealed to this Board seeking review of certain determinations of the Town's Zoning Administrator that would allow repair and/or rebuilding of the shed portion of a garage/shed structure which apparently is divided by the boundary line separating their property from the adjacent property owned by Linda and Anthony Taverni, and

Whereas, on September 25, 2007 the Appellants submitted Appeal Application #A16, which includes an application form and three attached letters, identified as attachment "A" (letter from Zoning Administrator to Anthony F. Taverni, dated August 14, 2007); attachment "B" (letter from Zoning Administrator to William and Jill Broderick, dated August 29, 2007); and attachment "C" (letter from Jill and William Broderick to this Zoning Board of Appeals) (collectively, the Application), to this Board, and

Whereas, the Application seeks review of determinations by the Zoning Officer as set forth in attachments A and B of the Application, and

Whereas, this Board opened and held a properly-noticed Public Hearing on the appeal Application on January 22, 2008, and continued the Public Hearing to April 22, 2008, and further continued the Public Hearing to May 20, 2008 and June 24, 2008 and to July 29, 2008, when it was closed, and

Whereas, during the Public Hearing the Appellants' counsel, Appellant Jill Broderick, the Zoning Administrator and Linda and Anthony Taverni, among others, made comments to the Board relating to the Application, and

Whereas, since the filing of the Application and over the course of its review of the Application, this Board has received several letters about the appeal from Linda Taverni, together with attachments, enclosures and photographs and the Board has received several letters from the Appellants and their attorneys, with attachments and enclosures, including estimates of the cost to replace the entire garage/shed structure apparently located on top of the boundary line separating the Appellants' property from the Tavernis' property, and

Whereas, this Board received a Memorandum dated July 23, 2008, from the Town Assessor in response to this Board's inquiry about the assessed value of the entire garage/shed structure in 2003, and the Assessor's Memorandum states that the entire structure had a value of \$2,165 based on the 2003 assessment roll,

Whereas, this Board has reviewed relevant portions of the Town's Zoning Law and has reviewed and considered and deliberated about the Application, and

Whereas, this Board has considered the additional correspondence, photos, estimates and other materials submitted, including the Assessor's Memorandum of July 23rd, along with other materials in the Town's files, as well as the written and spoken comments made during the Public Hearing for this Appeal, and

Whereas, the members of this Board are familiar with the Broderick and Taverni properties on which the garage/shed structure that is the subject of this Appeal is located,

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

1.) Zoning Administrator's Letter of August 14, 2007 to Anthony F. Taverni

In his letter of August 14, 2007 to Mr. Taverni, the Zoning Administrator stated that the Tavernis' shed, attached to the Brodericks' garage, "*having sustained damages by nature, may be repaired or replaced.*"

The garage/shed is an accessory building apparently located in part on the Taverni property and in part on the adjacent Broderick property. Based on statements made at the Public Hearing and a review of deed records, the entire garage/shed building was built sometime before August 6, 1963 and prior to the deed/subdivision that resulted in it apparently being divided and being partially on both lots. At the Public Hearing, the Zoning Administrator acknowledged that in his view the building is a single, pre-existing, non-conforming structure under the Town's Zoning Ordinance.

The shed portion of the building is apparently located for the most part, if not entirely, on the Taverni property. The shed portion reportedly suffered damage when a tree or tree branch fell on the roof sometime in the latter part of 2003. The Tavernis' seek to repair that damage and repair and/or re-build other parts of the shed, staying on the same building footprint and not exceeding the dimensions of the existing shed. The Appellants seek a reversal of the Zoning Administrator's determination to allow repair or replacement of the Taverni shed.

Article 9 of the Town's Zoning Law governs non-conforming structures. Section 9.01 allows non-conforming structures and uses to continue in existence. According to the Zoning Administrator, a non-conforming building may be repaired or replaced without a variance as long as it remains on the same "footprint" and is not enlarged. Section 9.05 imposes a time limit for repairs where a non-conforming structure suffers significant damage from a fire or natural disaster. The Appellants contend that Section 9.05 applies in this case and that repairs or reconstruction would be untimely under that provision and therefore not permitted. Section 9.05 states:

Section 9.05 Destruction of Nonconforming Use or Structure.

Any structure or use which is nonconforming to the use, bulk or area provisions of this Local Law,

which is damaged by fire, flood, wind, hurricane, tornado, or others acts beyond the control of man, to the extent of more than fifty percent (50%) of its assessed valuation may be repaired or rebuilt according to its original use, bulk and area, provided such rebuilding or repair be accomplished within three (3) years after such damage occurs.

The Zoning Administrator stated during the Public Hearing that in his view, damage to the shed roof did not exceed 50% of the assessed value of the overall structure (the overall structure including both the shed portion on the Taverni property as well as the garage portion on the Appellants' property). Therefore, based on his reading of Section 9.05, the three-year limitation on the period allowed for repair or reconstruction was not triggered and the shed could be repaired or rebuilt as long as the building "footprint" and dimensions of the existing shed are not exceeded.

The Appellants provided estimates of the cost to replace the entire garage/shed structure, but they did not provide evidence of the estimated cost to repair only the damage done to the roof of the shed portion of the structure by the fallen tree or branch. Additionally, the Appellants did not establish the date that the roof of the shed was damaged by the fallen tree.

We agree with the Zoning Administrator's view that the three-year time limit under Section 9.05 to perform repairs is not triggered unless and until damage from fire or acts of nature to a non-conforming structure exceeds 50% of the structure's assessed value. As written, it is clear that the applicability of the time limit in Section 9.05 is contingent on damage from a natural disaster being greater than 50% of assessed value. It does not seem reasonable to apply the time limit independently of the damage threshold.

We also agree with the Zoning Administrator's view that, although apparently located partially on each lot, the garage/shed building is one single structure. There is apparently a common wall on which the Appellants' garage and the Taverni shed both depend for structural support. It is therefore reasonable to view the building as one structure, consisting of a garage portion and shed portion. So, the value of the entire garage/shed structure would be considered in determining whether damage to the shed from a natural disaster exceeds 50% of assessed value.

The Assessor's Memorandum of July 23, 2008, finds that the entire garage/shed structure had a value of \$2,165 based on the 2003 assessment roll effective at the time the shed was damaged by the fallen tree. Based on the photos of the shed showing the roof damage, we find that a reasonable estimate to repair the damage to the shed roof would be \$200 to \$400 (for a sheet of plywood, some tar paper, shingles, nails and installation labor). The cost of repairs to the shed roof would thus be substantially less than 50% of the value of the garage/shed structure at the time it was damaged. No evidence was provided to establish that damage to the roof over the shed from the fallen tree exceeded 50% of the assessed value of the entire garage/shed structure. Without evidence that damage threshold was met, the three-year time limit for repairs does not apply. We therefore find that the Zoning Administrator's determination to allow repair of the shed portion of the structure is reasonable and we affirm it. We further find that the Zoning Ordinance allows for repair or rebuilding of the shed portion of the structure.

Our affirmance of the Zoning Administrator's determination does not give the Taverni's

or their contractor(s) any rights to go onto the Appellants' property or to touch or do anything with or to any part of the structure that is on the Appellants' property. To the extent the Appellants and Taverni's disagree about the location of the boundary line dividing their properties and the structure, or about their rights in the common wall shared by the garage and the shed, those disputes must be resolved by others. This board does not have the authority to resolve them.

2.) Zoning Administrator's Letter of August 29, 2007 to William & Jill Broderick

The Zoning Administrator's letter of August 29, 2007 to the Appellants states in relevant part:

"...The existing shed to the party partition is grandfathered and therefore, can be replaced on the existing footprint. This includes all overhang measurements."

When the Zoning Administrator stated that the existing shed portion of the garage/shed structure is "grandfathered," our understanding is that he was referring to its right under Section 9.01 to continue to exist. As noted above, the garage/shed structure was built before the deed/subdivision which created the adjacent lots now owned by the Appellants and Taverni's. The dividing line between the lots apparently goes through the garage/shed structure. The portions of it on the individual lots do not meet current zoning setback requirements. The Zoning Administrator therefore views the entire garage/shed structure as pre-existing and non-conforming and governed by Article 9 of the Zoning Ordinance.

Section 9.01 of the Zoning Ordinance allows existing and otherwise lawful non-conforming structures to continue in existence. Among other conditions, Section 9.01 also states that a non-conforming structure may not be enlarged, expanded or moved unless the modification conforms to the Zoning Ordinance or an area variance is obtained. By logical implication, repairs and reconstruction that do not enlarge, expand or move a non-conforming structure are allowed under Section 9.01. We therefore affirm the Zoning Administrator's determination that the garage/shed structure is "grandfathered." We find that the shed portion can be rebuilt on the existing footprint, including all overhang measurements.

As with our decision under item number 1, above, our affirmance of the Zoning Administrator's determination of the shed's "grandfathered" status does not give the Taverni's or their contractor(s) any rights to go onto the Appellants' property or to touch or do anything with or to any part of the structure that is on the Appellants' property. To the extent the Appellants and Taverni's disagree about the location of the boundary line dividing their properties and the structure, or about their rights in the common wall shared by the garage and the shed, those disputes must be resolved by others. This board does not have the authority to resolve them.

References were made in written materials and spoken comments to building permit applications submitted to and apparently approved by Warren County. This Board has no review authority over such applications or any Building Permits issued by the County.

Duly adopted this 29th day of July, 2008, by the following vote:

AYES: 5

NOES: 0
ABSENT: 0

On a motion by Mr. Findholt, seconded by Mrs. Dower, the meeting adjourned at 7:20 p.m.

Respectfully submitted,

Patricia M. Smith ~ Secretary