

## **TOWN OF CHESTER ZONING BOARD OF APPEALS**

### **MINUTES OF MEETING ~ JUNE 24, 2008**

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

MINUTES: On a motion by Mrs. Dower, seconded by Mrs. Morris, the Minutes of the May 20<sup>th</sup> meeting were accepted, as presented. Motion carried 5/0.

Chairman Marcheselli called the meeting to order at 6:10 p.m. On the agenda, Appeal #A-16 for Jill and William Broderick, appealing a determination of the Zoning Administrator with regard to property located at 830 Atateka Drive, and neighboring property at 826 Atateka Drive belonging to Anthony and Linda Taverni.

Chairman Marcheselli explained the reason that it was on the agenda, stating that, typically, the board is guided by the desires of the applicant. When there is a delay, or a postponement or a withdrawal, there is usually not a problem because it concerns the applicant's own property, and the board is pretty agreeable to any delay. However, this is a case where there is an appeal to a decision which involves another party, the Taverni's, and, as a result, he has been asked to have the board consider whether or not to continue the public hearing and try to resolve this matter as soon as possible, or to continue to table it. At the April ZBA meeting, the board had agreed to table it because the Supreme Court would be hearing their portion of it in May, and it was hoped that resolution could be reached at that time. However, that didn't happen, and the entire matter has been put off until some time in August. The Chair then offered to allow both of the involved parties in attendance a chance to speak, and to offer their thoughts on the matter.

Jill Broderick, as appellant, spoke first. She stated that she had spoken with her Attorney, who had spoken to Atty. Mike Hill, and they had reaffirmed their position to defer until after the trial date.

Chairman Marcheselli asked appellant the reason why.

She stated that there seemed to be an opinion that the property line was in dispute.

Chair explained that he understood that the property line was in dispute, but that was the matter before the Supreme Court. What this board has to consider is an appeal to a determination by the Zoning Administrator that the existing shed to the party partition is grandfathered, therefore it can be replaced on the existing footprint, including all overhang measurements. That is the basis for the appeal. The board cannot change property lines, and cannot make any determination with regard to the Supreme Court. The only thing the board can do is determine whether or not the appeal with regard to this particular decision applies, and whether it's valid. The board needs to know how this matter is going to be affected by the Supreme Court decision. They won't be addressing this matter, as far as the Chair could see.

Appellant stated that according to the January Minutes, Mark Cerasano, Esq., with

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Bartlett, Pontiff, Stewart & Rhodes, said that they will be addressing both sides of the property line.

Chair stated that he remembers him saying that, but does not understand how the Supreme Court can address a decision of the Zoning Administrator or the Zoning Board, that hasn't been made. He then stated that he would leave it up to the board members, he just wanted to understand.

Broderick stated that the Minutes of January 22<sup>nd</sup> needed to be corrected. She stated for clarification that the tax map number needed to be changed to #120.11-1-2. The Minutes of January 22<sup>nd</sup> have already been accepted by the board, as stated by the Chair, and he said that matter could be discussed during the public hearing.

Mrs. Taverni stated that the boundary line between the properties may be at issue in the Supreme Court proceeding, but where the property line is has no bearing, whatsoever, on whether or not they, the Taverni's, have a right to repair the shed, which is on their property. The issue of the property line is not in the written appeal that the Broderick's filed, it was brought up after the fact. She continued that what they, the Broderick's, are trying to allege, despite the fact that all the deeds refer to the property line as being on the party wall which divides the two sections of the building, they are now claiming that the line is six inches south of that line. She said she provided case law to the board that says that even if they are absolutely correct, even if the line is 3 feet over, they still have an absolute right to go in and fix that property up, even if they have to go on the Broderick property to do it. It's a party wall. There is case law that refers to the fact that implicit easements allows them to repair party walls, and to repair their side of the property. There is nothing before this board, and nothing that is to be determined by the Supreme Court action that has any bearing on this issue that's before the board.

Chair stated that the board's issue was strictly with the determination of the Zoning Administrator, and who was to repair what, and how, they will leave to somebody else.

Mrs. Taverni stated that she has an existing building permit that allows them to repair this shed. This appeal has a number of points that apparently they seem to have abandoned, she says, and they are relying now on this spacious argument about where the property line is.

Chair asked Mr. Tennyson if the "stop work" order was still in effect. Mrs. Taverni said there was no "stop work" order. The letter Mr. Tennyson had sent to her suggested that they table the repairs on the shed until the matter of dispute between the two parties had been resolved. She added that they had held off, hoping for all of this to be resolved.

Chairman Marcheselli then made a motion that the board re-open the public hearing this evening, to continue this matter, and pursue it or address it, as necessary, as opposed to postponing it until August. He added that he had to make some sort of motion in order to have a vote to decide on how the board would proceed. Mrs. Dower seconded the motion, and it was carried 5/0.

Mr. Sewall added, following the motion, that the responsibility of the board is to determine whether the Zoning Administrator made a correct decision, and to postpone the matter until August or September would be unfair to the party waiting to begin repairs. Mrs. Dower agreed.

Attorney Hill added that it was worth noting, with respect to Mr. Cerasano's comment that all issues would be resolved at the Supreme Court relating to this, it did not seem at all clear that there would be any resolution of this particular issue, which is to say the interpretation and determination of the zoning administrator being correct. He stated that that issue cannot possibly be before the Supreme Court, or be eligible for the Supreme Court's consideration unless this board first acts and renders a determination on the matter. To the extent that it was desired to have all issues before the court, it would seem more appropriate for this board to proceed with the matter, so that a decision can be made by the board, and the issue can then be taken to the Supreme Court if anyone had a desire to do that. That way, all issues would be before the Supreme Court. This was from Mr. Hill's legal perspective, and in reiteration of Mr. Marcheselli's earlier statement.

Public hearing continuation: Tax map parcel numbers were established.

Chairman read portions of the letter written on August 29<sup>th</sup> by the zoning administrator which said: "the existing shed to the party partition is grandfathered, therefore it can be replaced on the existing footprint. This includes all overhang measurements." He went on to clarify part of Mrs. Broderick's response of September 25<sup>th</sup> which states: "I am contending that this structure is non-conforming, according to Article 9 of the Town of Chester Zoning Law, on page 87, Section 9.05," and he went on to question why, if it was grandfathered, it would be non-conforming. Mrs. Broderick said she believed they were one and the same, that a grandfathered structure would be a non-conforming structure.

Atty. Hill stated that Sect. 9.05 deals with the continuation of non-conforming structures, and it says that "subject to the provisions of this article, any lawful building, structure or use of premises substantially existing at the time of the enactment of this Local Law or any subsequent amendment thereof applying to such building, structure or use of premises may be continued..." That is essentially putting into the code the concept of grandfathering, that a pre-existing, non-conforming structure is grandfathered for the purposes of the Town code, and may continue in existence or use. That is the basic intent of that section of the code.

Broderick added that it is hard to dispute an empty file. She stated that there was no application on file, only a Compliance Certificate. She was disputing replacement of the shed with regard to size, etc. She again cited Sect. 9.05 which talks about height, bulk, etc. She was upset that Atty. Hill had stated at a prior meeting that, as the appellant, the burden of proof was hers. Due to the fact that part of this structure is also on her property, Atty. Hill suggested that the board, in their rendering of a determination, their determination should apply to the portion of structure as it exists on the Taverni property only, and not that which is

or might be located on another property. This board does not have any jurisdiction to allow anyone to go on anyone else's property for purposes of construction, repairing, re-constructing, etc. He continued that questions of that nature were properly within the purview of the

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Supreme court.

Mrs. Broderick referred to the assessed value of the property, which Sect. 9.05 refers to, and Atty. Hill stated that it is referred to as a threshold in determining the degree of damage to a property. Mrs. Broderick said that she sent the Assessor a Certified letter on Feb. 19<sup>th</sup>, asking for his help, but she had not heard back from him. She supplied the board with a copy of the letter that she had sent him, and also a copy of an estimate from Professional Building Inspections and Consultation, estimating the cost to remove and replace the storage shed structure with similar techniques and finishes, including cost of materials and labor to be in excess of \$3800.00. She also stated that she had a copy dated 12/2003 of a report from the Assessor's office showing the assessed value for the portion of the structure on tax map parcel #120.11-1-4 to be \$1,380.00, referred to as an FC-1, shed, wood or machinery structure. When asked if she had an amount for the assessed value today, she stated that the Assessor does not keep track, individually, of accessory structures.

Mrs. Broderick was asked when the structure was built, and she said prior to the 1950's by her husbands' grandfather, William White. Mr. White created the line and the deed separating the now Broderick and Taverni parcels. Taverni's had purchased from VanLaak, prior owner. Due to the line being along the party wall of the structure, it was determined that the subdivision of the properties took place prior to Subdivision Regulations being in the Zoning.

Mr. Taverni stated that the cost of repair to the shed roof would be minimal, in that the hole could be covered with a sheet or two of plywood and some roofing material. Overall, they were looking to reconstruct the shed to make it safe and secure which was their choice to do, over and above the cost of repairing the damage that had been done to the roof in 2003 by a falling tree limb.

Extensive discussion took place back and forth, with much reiteration of the subject.

Attorney Hill advised that the board contact the Assessor's office to ascertain the assessed value of the entire structure as it was in 2003. He also stated that revisions could be made to the draft decision that had been made for the board by counsel. He also advised re-advertisement of the appeal before the July meeting.

Chairman Marcheselli stated that he would hold the public hearing open, hoping it could be ended at the July meeting. Information would be forthcoming from the Assessor's office, and after determining that documents submitted by both parties had been received, advised that any further information that either party wished to submit should be received by July 8, 2008.

A motion was then made by Mrs. Dower to continue the public hearing until the July meeting, to re-advertise the appeal, to obtain the necessary information from the Assessor for

the value of the entire structure as it was in 2003, and that any additional information to be submitted be done so on or before July 8<sup>th</sup>. Motion was then seconded by Mr. Sewall and carried 5/0.

BOARD PRIVILEGE: There was a discussion over the next scheduled date of the meeting, and

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it was decided to hold the meeting on the 5<sup>th</sup> Tuesday, which would be July 29<sup>th</sup> at 6:00 p.m., since the 22<sup>nd</sup> would not work for everyone.

Chairman Marcheselli read a letter of resignation from Elwood Findholt. Mr. Findholt wished to resign from the board as soon as a replacement could be found for him, as his term expires at the end of this year anyway. Chair asked Mr. Findholt if he would remain in his seat for the next month, as he has followed the Broderick appeal from the beginning, and was familiar with all of the aspects, as a new board member would not be. Mr. Findholt agreed.

ADJOURNMENT: On a motion by Mrs. Dower, seconded by Mr. Sewall, the meeting adjourned at 7:45 p.m.

Respectfully submitted,

Patricia M. Smith  
Secretary