

ZONING BOARD OF APPEALS ~ MINUTES OF MEETING

OCTOBER 27, 2009

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

CORRESPONDENCE: ZBA Minutes of September 21st and 22nd (combined); Planning Board Minutes of September 21st; Zoning Office Activity Report for September 2009; Letter from Mary Ollmann Rohde to Zoning Board; Warren County Planning Board Project Review and Referral Form for the Rohde project; Copies of correspondence from June Maxam; reply from Jared Lusk re: balloon fly in Pottersville; and 2nd letter from Daniel R. Brown regarding the Rohde project.

MINUTES: On a motion by Mr. Grady, seconded by Mr. Oliver, the Minutes of the September 21st meeting were accepted, as presented. Motion carried 4/0.

On a motion by Mr. MacMillen, seconded by Mr. Grady, the Minutes of the September 22nd meeting were accepted, as presented. Motion carried 4/0.

PUBLIC HEARING CONTINUATION: #390-V for Mary Ollmann Rohde. Applicant was in attendance to answer any questions for the board. Chairman Marcheselli began by reading the determination from the Warren County Planning Board Project Review and Referral Form which denies the project, without prejudice, requesting additional information in regards to Stormwater and erosion control measures, grading information and setback clarification. Chair is under the impression that perhaps the County thought that Variance was being requested for lot #86.10-1-20, when in fact it is for lot #86.10-1-26. Applicant explained that installation of culvert locations had been indicated on the plan engineered by Jim Hutchins, and did not see how any washouts could occur that would affect the neighboring properties. Board requested that applicant provide clarification of this issue by obtaining a letter from Mr. Hutchins with regard to the Stormwater plan.

Chair read portions of two letters from a neighbor, Mr. Daniel Brown, with regard to this proposal, the first being dated 9/21/09, and the second 10/22/09. Neither offered an objection to the project, and any questions that he seemed to have, he also seemed to answer himself.

There was extensive discussion on this project, but no input from the public arena. Board noted that there was a footprint for a proposed "phantom" dwelling, but there were no dimensions indicated. The lot itself is only about 109 ft. in width, and Mr. Hutchins had sited it on the best location on the lot, using measurements of 35' x 70' for a total of 2450 square feet, and falling within the setback variances requested. The board was trying to determine the minimum variance necessary. Applicant had submitted a letter suggesting that any future deed could specify that no building encroach on the setbacks beyond those that had been granted by the variance.

Following discussion, the board reviewed the summary of area variance criteria, as follows:

1. Whether benefit can be achieved by other means feasible to applicant: There is none apparent.

2. Will there be an undesirable change in neighborhood character or to nearby properties? No.

3. Whether request is substantial? Yes. Front setback in a Moderate Intensity Land Use Area is 60 ft. Applicant is seeking a 40 ft. frontline variance which would equal a 20 ft. setback. (Lot #26 is elongated and narrow). Rear setback required is 50 ft., and applicant is looking for a 25 ft. variance, having a 25 ft. setback.

4. Whether request will have an adverse physical or environmental effect. None can be found. However, board would like a letter from the Engineer, so stating.

5. Whether alleged difficulty is self-created: No. There is no reasonable alternative. (Lot #20 remains a non-buildable lot. It is being included in the project because applicant wanted to convey a greater land area when she sells. Lot 26 is approximately 1.2 acres, and combining them would give her about an acre and ½. The lots cannot be joined as one due to separation of them by a road).

The Public hearing was closed at 7:10 p.m. on a motion by Mr. Marcheselli, seconded by Mr. MacMillen, and carried 5/0.

Following review, Mr. Grady made a motion to approve application 390-V, for an area variance, for a front setback of 20' for a 40' variance, and a rear setback of 25' for a 25' variance, and subject to the following conditions:

1. Any dwelling built on lot # 86.10-1-26 be limited to a single family dwelling;

2. That the maximum square footage of the footprint of the house be limited to 2,450 square feet, exclusive of decks, porches and overhangs, but without encroaching on the approved setbacks;

3. That, included in the deed, when property is sold, that lot #86.10-1-20 have no principal building right, and all setback distances for lot #86.10-1-26 be listed as a deed restriction as outlined by the variance, subject to any Zoning Local Law in effect at the time, and subject to all building codes, and approval of a Stormwater plan as reviewed by the Zoning Administrator.

Motion seconded by Mr. MacMillen, and carried 5/0.

Stormwater Plan should be mailed to the Secretary, and County will receive a copy of it, along with the Minutes, for explanation.

NEW BUSINESS: Chair explained that a new Appeal application had been received by

June Maxam, concerning the new permit issued for Red Mountain Storage Plaza.

The application that was turned in appears to be a copy, with the notebook paper lines not showing up on the submitted pages, and the bottom information lines being cut off. Chair would like to have at least one original of the application for the file.

At the last meeting, there was some discussion about the legibility of the hand written cover letter, and the application. However, we have since received an e-mail copy of its' content, dated September 23rd from the applicant, which appears to be a word for word transcription of the application, as well as the cover letter. Board accepts that, but would like the e-mail copy returned for a signature from the appellant, or, at least, her initials, as the typewritten version of the original.

Chair went on to say that volumes of information has been received, and board will consider this an appeal to the current permit, and any arguments pertaining to it, but will not allow a re-hash of the entire history of the sign or the people involved. This is a new situation, and discussion will be limited to that. Chair stated that he would be writing the letter and give it to the Secretary to mail along with the check and other information that would be returned to Ms. Maxam for signatures, initials, etc.

Chair continued that the new sign had had an additional sign hung below it, it had been measured twice by the Zoning Administrator and a witness, had the word "Plaza" added to it, and it has had the phone number questioned as advertisement or not advertisement. The location of the sign, and the setback of the sign, and anything to do with where the sign is now, and how it got there, has been resolved by this board, and we will not be revisiting this issue over and over again. It had been approved under Section 7.04 -2 - C, and it did not require a Variance. Any new changes to the sign are for valid discussion. Chair asked for a date certain that all information needed to be received in order to be heard at the November meeting. Secretary said that she will let him know.

Ms. Redmond mentioned the sign that was supposedly erected in December and a permit had been granted for, when, in fact, the sign did not exist. Chair stated that he would need to be convinced of why that was important. It was stated that Section 7.04-2-M, last sentence, reads: " Lettering and colors of the sign may be changed so long as a new description is filed with the Zoning Administrator," and does not require a new permit for these changes. Mr. Grady also mentioned the enforcement procedure which states that any permit is granted for a sign that does not yet exist, and then after it is constructed, etc, it is certified that it is as presented with the application. Chair then stated, "this whole discussion isn't about a physical sign, it's about a piece of wood that has lettering on it, and the lettering changed. And you are calling the difference in the lettering a new sign, correct?" Discussion took place about where the sign originated from, and where it had been moved to. Chair stated that, no matter what it says, the sign itself is still the same sign. Chair added that every permit he has seen, whether it was necessary to have one or not, was still listing Charles W. Redmond as owner. Ownership of the sign has not changed. All of this can be discussed at the time that the appeal is heard.

BOARD PRIVILEGE: Discussion on Rich Greco's apartment on Theriot Avenue, and his approval being contingent on upgrading of the parking lot. A couple of board members thought the apartment had been completed, yet the parking lot had not been finished. (Secretary's note: Mr. Tennyson spoke with Mr. Greco the following day, and was informed that the project on the apartment had not yet begun, but would be started in the spring, at which time the parking lot would also be completed).

Discussion over the flying of the balloons in Pottersville for Verizon not having taken place yet.

Mr. Grady mentioned that he had spoken with Mr. Monroe regarding amendment of some of the wording in the Zoning Local Law, and he was told to seek legal counsel first, then approach the Town Board. Mr. Marcheselli said that he would be happy to discuss this with counsel, and then Mr. Grady could draft the proposed changes and if the ZBA board agrees with the draft, such proposal would then be presented to the Town Board.

ADJOURNMENT: Following discussion of all issues, motion was made by Mr. Grady at 7:45 p.m. to adjourn the meeting. Motion seconded by Mr. MacMillen, and carried 5/0.

Respectfully submitted,

Patricia M. Smith
Secretary