

MINUTES OF THE MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS HELD MONDAY, MARCH 12, 2007, IN THE TOWN HALL MEETING ROOM

Chairman Makowski called the meeting to order at 7:10 p.m. Roll was called by the secretary with the following Board members present: Mr. Gorka, Mr. Ziganti, Mr. Makowski, Mr. Skully. Mr. Swartz was not available for this evening's meeting.

Procedures of the Board of Zoning Appeals at a public hearing explained by the Chairman.

Appeal 2006-10 Chester Properties, Inc. Attorney Paul Murphy asked for a postponement to the April BZA meeting in order for him to file a withdrawal.

Mr. Skully moved to continue appeal 2006-10 to the April BZA meeting. Mr. Gorka seconded. No discussion. Call vote: Mr. Gorka, yes; Mr. Ziganti, yes; Mr. Makowski, yes; Mr. Skully, yes. Motion passed.

Chairman Makowski announced that appeal 2006-10 has been continued to the April BZA meeting.

Appeal 2007-1 – Thomas and Dorothy Herrick request a variance for a five acre lot split but fail to meet the 250 foot minimum frontage on lot at 9578 Mulberry Road, Chester Township and fail to meet the requirements of Section 5.00.02(A), Regulations Over Uses, Area, Yards, and Height of the Chester Township Zoning Resolution.

Three people sworn in by Chairman Makowski.

Mr. Herrick described the grandfathered lot to the Board. They moved to Chester Township about 35 years ago and purchased 22 acres. They gave five acres to their younger daughter. Last summer they decided to sell off a five acre parcel and utilize that grandfathered lot which is comprised of three-tenths of an acre. They had a surveyor come in and he went over all of the property and staked off and drew up a legal description of what had to be added to the grandfathered lot in order to come up with the five acres. Since it was a grandfathered lot, they presumed they had done all they needed to do since they could use it as the driveway into the new part. They then proceeded to try and sell the lot and sold it fairly quickly. It started to go through and they got a stop from the Planning Commission stating it did not meet the 250 foot frontage requirement. That's where they are now. He spoke with the Chair of the Zoning Commission, who could not be present this evening and who was going to speak on their behalf, but she has no objection to this action.

BZA
3-12-07

Mr. Makowski asked Mr. Herrick at what point in time did they acquire this grandfathered lot?

Mr. Herrick said it was part of the original purchase. This is a separate parcel. Their property consists of three separate parcels that were purchased at the same time 35 years ago.

Mr. Makowski continued, other than the frontage, the new lot will meet the minimum lot size. Until someone comes in to construct a house, we won't know if any other setbacks are an issue.

Mr. Herrick said it shouldn't affect that; the issue is just with the roadway. The prospective buyer of this lot has already had perk tests and has already been approved for a septic system.

Mr. Makowski asked about the other narrow strip on the western edge of the property.

Mr. Herrick said that is a strip between his property and his daughter's property. That is a separate parcel. They have the three-tenths of an acre, and 15.8 acres and that parcel is almost nine-tenths of acre.

Mr. Ziganti asked Mr. Herrick to point out the three separate parcels.

Mr. Herrick explained the parcels to the Board. There have been no objections from their neighbors regarding this new five acre parcel.

Mr. Ziganti asked Mr. Herrick if the center of this proposed five acre section is a buildable area?

Mr. Herrick replied, yes. It is hilly but there is plenty of room. There is a path which goes up into the area which he has used to exercise the dogs. The path comes up around the back and goes down around the lake.

Mr. Skully asked what is the total amount of the frontage that presently exists along Mulberry?

Mr. Herrick said roughly around 700 foot plus the 60 foot frontage of the grandfathered lot.

Mrs. Herrick gave the history of the property at the time they purchased the land which was 22 acres.

Mr. Herrick said if this works out, they will have a little over 11 acres left.

BZA
3-12-07

The Zoning Inspector confirmed the facts being presented by the Herricks.

Mr. Herrick said they have extended the Purchase Agreement.

Mr. Ziganti questioned the driveway in the proximity of the accessory building.

Mr. Joyce said they could choose the location of the driveway; there should not be a problem.

Review of the actual description of the property from the Auditor's Office by the Board and the Zoning Inspector.

Mr. Skully noted that there would be enough frontage for three separate buildable lots had they melded the two parcels together. Due to the location of the existing house, they are now unable to do this.

Chairman Makowski called the public hearing on appeal 2007-1 to a close. At the conclusion of the hearings on the various applications, the Board will deliberate the vote at that time.

Appeal 2007-2 – Matthew Whiting request a variance to construct a home at 11418 Heath Road, Chester Township, but fails to meet the requirements of Section 5.01.01 D, Permitted Principal Buildings, Structures and Use.

Three people sworn in by Chairman Makowski.

Mr. Whiting said he needs to have a variance so he can build a new house. He can't take the existing house down since the belongings of his father, his wife's family and his own are being stored in the house. His father passed away seven months ago, and he needs the house for storage of all his belongings. The house is vacant. There is no heat or water in the house, which is used for storage.

Mr. Makowski said the request is to maintain the house up to a year after completion of the new house. Do you (Mr. Whiting) really need a year?

Mr. Whiting said it is in the deed that he can't live or maintain the house.

Mr. Makowski asked Mr. Whiting how long he requires to start building a new house?

Mr. Whiting said he needs more than a few months. He has his septic permit and all of the permits except for the building permit. He is putting in a new septic system.

BZA
3-12-07

Mr. Joyce said he did verify that with the Health Dept. because it has been longstanding not to have two septic systems on one parcel. As of 1-1-07 the County has been forced to adopt the State's rules which states one septic system per house with no limit as to the number of houses on a lot. Therefore, this property can have two septic systems if they have the two houses. That was one reason we could not downgrade the house to any other kind of a building because even if he destroyed the septic system, they could just go out and get a permit for another one.

Mr. Gorka asked where will the new septic system for the new house go?

Mr. Whiting referred to the sketch he provided and added that there is enough room for a new septic system.

Mr. Ziganti asked if the physical shape of the existing house was such that you (Mr. Whiting) are required to build a new home?

Mr. Whiting said he wants to build a new home with a style which his family would like to live in.

Mr. Ziganti asked if the physical nature of the existing home is such that your contents will not be damaged or the house might become a danger where it might cave in?

Mr. Whiting replied, no. That house has been there a long time; they don't build them like that anymore. He wants to build a different style for his family which should take four to five months to construct. He hopes the Board, if they approve this request, can allow him to get the permit in less than 30 days.

Mr. Makowski said they can't shorten the process on that and explained the timetable to the appellant if the variance is approved.

Mr. Joyce said the new home would be to the rear of the existing structure. A variance to have the existing barn in the side or front yard and its overall size because the existing home would be used as an accessory building. The total square footage of the accessory buildings would be over the allowed square footage.

Mr. Gorka addressed the other existing structure on the property next to the house.

Mr. Whiting said he would take down the accessory building which is next to the house (1 foot away from the house).

BZA
3-12-07

Mr. Makowski said the request is for two temporary variances. A variance to have the existing barn in the side or front yard and the overall size because the existing home would be used as an accessory building. Overall between the three buildings, the total square footage of the accessory buildings would exceed the permitted square foot maximum, but that would go away with the removal of the existing house and the small shed. That would be a variance of a permanent nature of having the accessory building which would remain and of not being to the rear line of the new house, which appears to be the result of having to wait until the new house is built to remove the old house.

Mr. Joyce said the barn once was agricultural but no longer is but probably exceeds the 1280 square feet in its own right. It appears to be larger than the house. He is not real comfortable with calling this structure agricultural since it no longer falls under the agricultural use since it is being used for storage. When this happens, Mr. Joyce feels a variance should be obtained for that building.

At this time the Zoning Inspector exited the meeting to obtain information in the Zoning Office for the history of the existing barn.

Mr. Whiting said he would take down the accessory building next to the house.

Mr. Whiting referred to the sketch he provided to the Board. The existing house will not be tied into the new septic system.

Mr. Skully asked Mr. Whiting why he requested one year after the new home was finished to tear down the old home? He is just storing things in the old home.

Mr. Whiting said he would like the year because the house has been in the family for almost 100 years. For him, you get to the point where I am having five people tell me to tear my father's house down. If it was up to him, he would say ten years. I'd take 50% of it down and say it's down. Now it's considered down. That's not how it works.

Mr. Makowski said the issue is that the Township developed regulations to have one house on a lot.

Mr. Whiting said he would like to just get a variance to have that house be a storage building in front of the new house he will build.

BZA
3-12-07

Mr. Makowski said he would definitely have the size issue to deal with and having storage in front of the main residence.

Mr. Whiting said, or, switch it back over to agricultural. Then he could have a bigger building; barns could be big. He made reference to a lot up the street with three houses on one lot. They split off the lot. He figured he could do the same, and it didn't fly for him.

Mr. Makowski said some things were permitted under earlier zoning which are not permitted today.

Mr. Ziganti said he does not want Mr. Whiting to think that the Board is suggesting tearing down his father's house must be very difficult for him. It's just that the rules are very different now. This must be very difficult for him.

Mr. Whiting said he feels one year to tear down the existing house is fair. He has already talked with the County Prosecutor who also felt one year was fair but did ask him why he needed a year. Mr. Whiting said anyone who has gone through what he has gone through would understand.

Public Input:

Charles Barnes, 11385 Heath Road. You shouldn't even be bringing this stuff up to him. He's going to take the house down. He understands rules, too, so there's no reason to be denied. All the neighbors are here. If there are any complaints, Mr. Barnes is sure it will be brought up. As far as he is concerned, it is fine.

Pat Mula said she sympathizes with Mr. Whiting and he is reluctant to take his parents home down. But you can't have two bites of the apple. Our zoning was put in place for a reason – health, welfare and safety. We don't allow rear housing because of that. It creates a burden to the township to allow another home to be erected on the same lot.

Mrs. Mula said she has never heard of a temporary variance. Is it a condition of the variance, which she knows the BZA can put conditions on, fine. The problem, as you all well know, is when it is not followed through.

Mr. Makowski said if the condition is not followed through, it then becomes the Zoning Inspector's job. It would be a variance with a condition for removal of the house.

Mrs. Mula asked, then when it is not removed in a year, what happens?

Mr. Makowski said the burden is on the part of the Zoning Inspector. That's the Zoning Inspector's job.

BZA

3-12-07

Mrs. Mula asked if there is any jurisdiction with the BZA to abandon the existing septic system?

Mr. Makowski said the BZA does not have any jurisdiction; check with the Health Department. The appellant said, under oath, that the new house will not be tied into the new septic system.

Mr. Whiting replied, that is correct. It is laid out where the new septic is going. He is not building the house himself; Schumaker Homes is the builder.

Mr. Whiting asked Mrs. Mula about the safety issue of having two houses?

Mrs. Mula said that was taken out of our zoning many years ago at the concern of the Fire Department regarding more than one house on a parcel. Both fire and police had problems with it.

Richard O'Connor, 11405 Heath Road, sworn in by the Chairman.

Mr. O'Connor is right across from where Mr. Whiting wants to build and sees no problem with the way he wants to go about it. Most of the neighbors are here. Tim is right across the street from his house, and he has no objection to the building.

Sam Whiting sworn in by the Chairman. When does the house have to be torn down? Is it a year from the time the permit is issued or when the new house is completed?

Mr. Makowski said it appears the request was submitted for one year from completion of the new house. If it takes four or five months from the issuance of the permit, then that's suggesting about 16 to 17 months from now.

Mr. Sam Whiting asked if he is going to be forced to tear it down when the new house is finished?

Mr. Makowski said as he understands the request, the request is the structure be permitted to remain for up to a year from the completion of the new construction.

Henry Timperio, 9090 Ranch, sworn in by the Chairman. That's why we have variances put in place because there are variances to the rule. In view of the circumstances, this man should have what he needs to have. It is not a burden on the Township or the people, and Mr. Timperio thinks he should have it.

BZA
3-12-07

The Zoning Inspector said the barn was built in 1975. It is 16 x 20 according to the building records and he would not need a size variance based on the other building being taken down which is 1,100+ square feet.

Chairman Makowski called the public hearing on this application closed for deliberation by the Board.

Discussion of appeal 2007-1 – Herrick.

Mr. Ziganti asked for a clarification of the number of variances for appeal 2007-1.

Mr. Joyce said the frontage is the only question that would allow it to be changed to a buildable lot with a variance on the frontage and then the house would have to be built within the requirements of the Zoning Resolution.

Mr. Ziganti asked that the Geauga County Planning Commission, once the variance for 60 foot frontage is approved, would then allow the splitting of the 4.7 acres and the merging of the .344 to occur.

The Zoning Inspector said that is correct. That is the only characteristic that would not meet current zoning requirements. The Planning Commission would not allow it to go forward because our Resolution states you cannot create a lot that is nonconforming. Once that variance is granted, they can then create a nonconforming lot.

The Zoning Inspector explained a flag lot which is no longer allowed by the Zoning Resolution. This is not an access road, it's a driveway. If it were an access road, it would have to be built to County standards which costs approximately \$150.00 per foot and would have to be about 1,100 feet long.

Mr. Skully moved to grant a variance for the split of 4.65 acres off the existing 15+ acre lot to join it with the existing .344 acre lot having 60 foot of frontage on Mulberry Road. Mr. Gorka seconded.

Mr. Skully said he was originally against this request but didn't realize how large the frontage was for this lot.

Mr. Makowski said it exists as a separate parcel and you cannot build anything on it.

Mr. Skully asked if this hardship would be self-imposed?

Mr. Joyce said the lot was pre-existing when they purchased it. He would assume it was not self created.

Mr. Ziganti asked if there is a specification for the residential driveway?

The Zoning Inspector replied, not at this time.

The Board members concur that this is setting a precedent.

Mr. Makowski said the Board is not looking for an unnecessary hardship. It meets the practical difficulty standard toward the area variance. It wouldn't appear the neighborhood would change because of this variance. You would end up with a five acre building site instead of one-third of an acre. It would appear you could not construct anything on the existing lot without getting a variance.

Mr. Gorka said this would be about a 76% variance.

Mr. Makowski said getting back to whether this is a self created issue, it appears to be an issue under the unnecessary hardship standard for a use variance which is created by the actions of the applicant.

Call vote: Mr. Gorka, yes; Mr. Ziganti, yes; Mr. Skully, yes; Mr. Makowski, yes.
Motion passed.

Findings of Fact: The application is a request to split off 4.65 acres from an existing 15+ acre lot to join it with an existing separate tax parcel containing .344 acres that would result in a lot having 60 feet of frontage on Mulberry Road. The existing 15+ acre lot has approximately 740 feet of frontage on Mulberry Road. The applicants had purchased a total of 22 acres approximately 35 years ago originally consisting of four separate parcels including the third of an acre lot, the 15+ acre lot, a very narrow strip to the west of the 15+ acre lot and an additional five acre lot. There is not a proposal by the applicants for construction of a house. They are in the process of selling a lot which would total five acres, or a little more. The minimum lot size in the area is five acres, so the resulting lot would meet the minimum size requirement. To effectively create such a separate lot can't be done other than the granting of a variance with regard to the frontage. The minimum frontage requirement in this zoning district is 250 feet. The request is for 60; that results in a 76% variance which is substantial. The Board is balancing various factors here in making the determination to grant the variance. In conclusion, with this split and joinder resulting in a lot with 60 feet of frontage that the residential character of the neighborhood will not be substantially altered or changed. The testimony was that the applicants purchased the property without the knowledge that there were four separate parcels combined to add up to 22 acres and that they were not aware of the zoning restriction which, 35 years ago, would have been 250 feet of frontage. As far as the spirit and intent behind the zoning, the granting of a variance actually produces a residential lot that meets the five acre minimum size.

BZA
3-12-07

Mr. Skully moved to approve the Findings of Fact. Mr. Gorka seconded. No discussion. Call vote: Mr. Skully, yes; Mr. Makowski; Mr. Ziganti, yes; Mr. Gorka, yes. Motion passed.

Chairman Makowski announced the request has been approved. Upon approval of the minutes at the next meeting a letter will be written by the secretary so stating the approval. Upon presentation of said letter to the Geauga County Planning Commission, they will allow them to create the new lot.

Discussion of appeal 2007-2 – Whiting.

Mr. Makowski explained that the request is for three variances. 1. To construct a second residence on one lot. 2. To end up having an accessory building which will not be located behind the rear line of the proposed new residence. 3. With the existing residence being used for storage in combination with the existing accessory building without removal of the existing house, there would be a situation of exceeding the maximum square foot area for accessory buildings on the property.

Mr. Ziganti said the Board needs to decide if it is considered to be a second residence.

Mr. Joyce said having talked with the Prosecutor's Office, the Assistant Prosecutor could not think of a way that we could guarantee that any given house could be down graded to an accessory building. From zoning and from the Prosecutor's Office, it would be considered to be a second residence on the property as opposed to two buildings used for storage.

Mr. Makowski clarified that the request is down to two variances. One for having an accessory building not behind the house and one to have a second residence on a single lot.

Mr. Makowski asked for a motion to grant the variance as requested with the condition that the existing residential structure be removed within a period of up to one year from the completion of the construction of the new house.

Mr. Ziganti said the applicant did agree to remove the small accessory building next to the existing home at the time that he would tear down the older home.

Mr. Gorka added that the Board has a feel for the minimum time that the existing home would be taken down. In case there were delays, whether foreseen or unforeseen with building the house, do we want to impose a maximum time? So that if the house gets unduly delayed, that the existing house has to come down.

BZA
3-12-07

The Zoning Inspector said the Zoning Certificate states construction must begin within six months and completed within two years.

Mr. Makowski said if the variance is granted, it would be practical to impose a maximum.

Discussion by the Board if a condition is imposed to remove the existing home and the new home is not constructed, what happens to the condition that was imposed to remove the existing home?

Mr. Makowski said the Board's goal is not just to say we want that house torn down. That would come about when he builds his new house.

All Board members concur.

Mr. Makowski said if the variance is granted and if the Board says the existing house must come down within 18 months from the date of the start of the construction of the new house, that would put the removal in September, 2008. If he doesn't build the new house, then there's not an issue because he won't have two houses on the lot.

Mr. Skully moved to grant the variance request for construction of a second house at 11418 Heath Road upon a condition that the existing residential structure and the smaller of the two accessory buildings be removed no later than 18 months from the start of construction of the new residence and granting a variance from Section 5.01.03 requiring that an accessory building be located to the rear line of the main residence on a lot. Mr. Gorka seconded. Discussion ensued.

Mr. Makowski said with the condition of the removal of the existing residence, in effect there won't be a variance condition once the existing structure is removed. It becomes a practical situation that if you have to wait for the new house to be built, to remove the existing, there is no way to get around the existing accessory building without picking it up and moving it to a new foundation. Again, he does not see any evidence that the

BZA
3-12-07

residential character of the neighborhood will be changed. The lot size is met. There is no other setback issue. Several neighbors appeared to speak in favor of it and no testimony from any of the affected neighbors opposing the variance. Even with the one structure under construction, the existing structure being there, there doesn't appear to be any spacing situation that suggests a problem to fire fighting in the event that there would be a fire to the structure while they would both be on the property.

Call vote: Mr. Ziganti, yes; Mr. Gorke, yes; Mr. Skully, yes; Mr. Makowski, yes.
Motion passed.

Mr. Joyce read a statement from the Prosecutor's Office regarding enforcement of this variance which is attached to the minutes.

Findings of Fact: Mr. Whiting has a proposal to construct a new residence at 11418 Heath Road behind an existing residence which had been owned and which was the residence of his father who is deceased. He is anticipating beginning construction of a new residence in four to five months. He would like a period of time to maintain the existing residence for storage purposes and had requested that he be given up to one year from the completion of construction of the residence. The applicant also stated under oath that he would not hook up the existing house to a new septic system that would be for the new house and agrees to remove an existing small storage shed which is adjacent to the residence. The grant of the variance is conditioned on removing the existing house within 18 months from the beginning of the construction of the new house and removal of the existing storage building. The accessory building that will remain after the conditions are met has been indicated to be 320 square feet and as indicated will be located entirely in front of the new home that will be constructed next to the new dwelling. Three neighbors of Mr. Whiting indicated their acceptance of his proposal and one of our citizens was against due to their safety concerns with the proposed layout. The Board has considered the existing house as a second residence when the second home is built rather than an accessory building. When Mr. Whiting re-conveyed title to himself and his wife in February of 2007, he imposed a deed restriction that the existing house could not be repaired, upgraded or used as a dwelling for human occupation now or in the future.

Mr. Skully moved to approve the Findings of Fact. Mr. Gorke seconded. Call vote: Mr. Skully, yes; Mr. Ziganti, yes; Mr. Gorke, yes; Mr. Makowski, yes. Motion passed.

The next meeting of the BZA will be held on April 16, 2007.

BZA
3-12-07

Chairman Makowski announced appeal 2007-2 have been granted. Upon approval of the minutes at the April 16 BZA meeting, a letter will be sent by the secretary so stating the approval. Upon presentation of said letter and payment of the appropriate zoning fee, a zoning certificate will be issued by the Zoning Inspector.

Minutes of January 8, 2007. Mr. Makowski moved to approve the minutes dated January 8, 2007. as written. Mr. Skully seconded. No discussion. Call vote: Mr. Gorka, yes; Mr. Ziganti, yes; Mr. Makowski, yes; Mr. Skully, yes. Motion passed.

Mr. Ziganti said he would like to request that the BZA meet with the Board of Trustees because he feels as if the trustees do not understand how the BZA is operating or coming to its decisions. Explanation of his conversation with a trustee regarding the Drug Mart appeal when two requests were granted by this Board and one was not granted, which was the denial of the Hardman's request.

Mr. Makowski said these are public hearings and the trustees are welcome to attend. They have a different level of authority when something goes to court to an appeal in connection with litigation. A decision to settle an appeal in Chardon amounts to a reversal of the decision that the BZA has documented in the minutes.

Mr. Ziganti said if the BZA is not going to have a meeting with the Board of Trustees to better explain ourselves, we better be aware of the fact that by dealing with the variance issues separately, we are opening ourselves up to interpretation.

Mrs. Mula said she disagrees with Mr. Ziganti. As a former trustee, she attended many BZA meetings over the years because she was interested in a particular case. If any one trustee cares enough, they can come to a meeting. The trustees do receive all of the information which the Board receives and can speak with the Zoning Inspector if they have a question. A judgment entry has a little more teeth in it than an appeal.

Mr. Ziganti said he does not feel that the trustees have the time to consider what the BZA considers. The Board of Trustees does not understand our methodology of how the Board works.

Mrs. Mula said the burden is on the trustee to come to a BZA meeting.

Mr. Makowski said there have been other cases which have come before the BZA with more than one part to the case. We should not have to justify our decision further beyond

BZA
3-12-07

what we put in the minutes and the tapes which are also kept in the file. The trustees meet in an Executive Session when there is a question before them on a decision which is made by the BZA and the BZA is not included in such a session.

Continued discussion regarding the functions of the Board of Zoning Appeals.

There being no further business before the BZA, Mr. Makowski adjourned the meeting at 9:20 p.m.

Respectfully submitted,

Approval Date

Mary Lou Fende, Secretary

Richard Makowski, Chairman

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