

## **BOARD OF APPEALS**

October 27, 2008

7:00 PM

**ATTENDANCE:** Board Members: Chairman William Malesh, Bob Matthews, Michael Salmon, Henry Barrett, Timothy Thompson, Code Inspector Amy Parker, Planner Mary Ann Skilling, Town Attorney Keith Baynes, Court Reporter Carol Beresh, and Planning and Zoning Coordinator Dianna Battaglia.

Meeting was called to order at 7:00 PM.

Chairman Malesh started the meeting by welcoming three new members of the Board of Appeals board: Tim Thompson, Mike Salmon, and Henry Barrett. Welcome is extended to the citizens of Perryville and new volunteers of this board.

### **APPROVAL OF MINUTES**

**Motion** was made by Mr. Matthews to approve the July 28, 2008 meeting minutes as written. **All in Favor; Motion Carried.**

### **NEW BUSINESS**

**File No. AP2008-01 – Appeal regarding denial of Zoning Certificate for existing new construction of 6'x60' overhang roof on side of dwelling; PROPERTY OWNER & APPLICANT: Joseph C. Conner; LOCATION: 538 Susquehanna Avenue, Perryville, MD; Tax Map 801, Parcel 581, Zoned R-3.**

Mr. Malesh stated the porch was added to the existing structure and does not comply with the current zoning regulations. Is there anyone here to speak in favor of this structure?

Mr. Joseph Conner was sworn in.

Mr. Conner stated that he was a Cecil County resident but no longer a Cecil County resident at this point, but I was for nine and half years, and I also would like you to understand that with respect to this building it is four individual units, and I only own two. I brought with me the owners of the other two units, Jonathan and Christie Schultz and they do live in the units themselves. As I said in my original letter, when I acquired the building some four years ago that area back there was just flat out dangerous. There were two oil tanks back there, a ton of propane gas, and we had the tanks removed. There were tanks already in the basement that were not being used for some reason, I have no idea why. So we converted over to those tanks to make that area more pleasant and easier to use. I poured concrete in there and then decided to put the roof back up. Now, there were two roofs back there originally, two smaller roofs, and two smaller stoops that came down probably within inches or as close to the property line as I have come with this new roof. The only difference is that I made the roof continuing from one

end to the other, where it was in two separate sections over the doorways. A six (6) foot one and an eight (8) foot one, I believe it was. There is a double doorway in the center and only three of the units have access to the back. In as much as the zoning violation is concerned, I kind of inherited it. It was all right there and I made a better job of the porches. There is no doubt that it is usable; it's no longer dangerous, and I find that my tenants are using it, and I know the new owners at the other end are, they love it. I haven't had any complaints from anyone about it. I don't know what else to say.

Mr. Malesh asked if Mr. Conner could give us the dimensions of the two smaller porches prior to pouring the cement.

Mr. Conner stated that actually this shows where the old ones were.

Mr. Malesh asked if they were patios or porches.

Mr. Conner stated those were actually wooden patios and roofs. Now, the concrete that is underneath it was basically the same as the area that exists now under roof but it was just that it was all broken up and where pieces were missing, people had put in like stepping stones and things like that, and then there was a big washout or cave in area there that had to be backfilled. Now of course the front, when you get up near the very front of the property, I stopped the concrete and put in pavers because underneath of that area is your access to sewage access and things like that. So pavers can just be picked up, you can open that up and clean it out, whatever you need to do, and not have to tear up the concrete.

Mr. Salmon asked if he had removed the dilapidated roofs.

Mr. Conner replied, yes I did remove them. If I had known we were going to come to this I would have photographs of the old stuff. They were not safe to walk on, and in one case the water was running back into the wall and started to rot out the sill inside; it didn't have any flashing on it or anything. But it wasn't complete when I had actually sold the last two units to these guys and part of my promise to them at the sale was that I would complete this work.

Mr. Malesh asked if they live in the last two.

Mr. Conner replied that they live in the back two.

Mr. Malesh asked if they live in one and rent one.

Mr. Schultz replied yes.

Mr. Malesh asked the board members if there were any questions.

Mr. Conner stated in summarization, I really feel like the work is within the spirit of the Ordinance. I understand that there is a property line infringement there and also I did

look around and see similar things in existence already. In my letter from Ms. Battaglia it actually opens with in order to keep Perryville an attractive and livable community it's important that property owners comply with the Zoning Ordinance. So essentially they're here to make sure that you say that it is correct, valuable, and safe. I'm really more concerned about the safety of that area than anything.

Mr. Malesh asked what is approximately the total length of your porch, is it sixty (60).

Mr. Conner replied sixty (60) feet.

Mr. Malesh responded sixty (60) feet, and it looks like approximately thirty-five (35) feet was previously cement. Any time you do any building in the Town you are supposed to get a permit.

Mr. Conner stated that he apologizes for that. I did write that in my letter to you all and apologize again to the Town for not going the right steps.

Mr. Malesh responded so you agree with the fact that you should have come to us and followed proper procedures.

Mr. Conner replied that he understands that.

Mr. Malesh said that he would be in a little better posture, saying this is what I propose, this is what I will do to improve the situation and make it the better. We have a couple of issues here: the property line could fall in the Critical Area with storm water going to the Bay, then the increased impervious surface.

Mr. Conner stated that we did leave a gutter area at the end of the property line, between our end of our cement and the fence, which our intentions were to build up the stone so the water would runoff and not sit there.

Mr. Malesh stated that it appears that the water just drains right off to the sidewalk.

Mr. Conner replied not at all. He just looked at it today, it's raining and that drain comes right down and he has about six more inches of concrete past the edge of this. Now if it was running really hard, a heavy rain, I mean I don't have gutters yet or anything on there which I intend to do.

Mr. Malesh asked so you plan to put gutters there.

Mr. Conner replied that he intends to, to put gutters in and finish the painting, but I wasn't going to do that if you were going to order me to remove this, because there's going to be enough loss incurred with that.

Mr. Malesh stated that the property line is three (3) feet from the edge of the concrete. This house was probably built one hundred years ago, and you're looking at old construction.

Mr. Conner replied that this house was early 1900's house, I believe. It was originally a commercial grange building, if I'm not mistaken, or an old fire department.

Mr. Salmon asked a grange building.

Mr. Conner responded, yes, a grange organization, for the farmers in the area. There was a grange organization in Perryville, then it was a store over the years, it was so many things. Then somewhere along the line somebody got the ability to divide that property up into four individual units.

Mr. Barrett stated that he's not sure if he can ask this question now or not but if a request had been made for him to just repair the two roofs and reinforce what was there, normally, under general circumstances, how would that be treated. If he just wanted to repair the two porches that were there and put a new roof on it.

Ms. Battaglia responded that the existing porch roofs that were there, if they were in good condition and nobody touched it, that would be a non-conforming situation. As long as it wasn't touched and nothing was done to it, it could stay there forever. As soon as we have a Zoning Ordinance and someone wants to do construction work....

Mr. Barrett asked for remodeling as well.

Ms. Battaglia replied yes, then we have to look at set back requirements and the regulations in the current Zoning Ordinance to make things comply going forward.

Mr. Salmon asked which would only allow him to put what, a roof on that side about a foot. If he were to comply with the Ordinance then a roof on that side could not be more than a foot.

Ms. Battaglia stated that architectural elements can exceed two (2) feet out from the main structure into the side setback.

Mr. Baynes stated that this is an appeal from a decision Ms. Battaglia made regarding encroaching the setback. It's not an application for a variance. While I don't like to necessarily see people come back, your sole decision here tonight was whether Ms. Battaglia's decision with this violation was correct or not. That doesn't preclude Mr. Conner coming back and requesting a variance. But I really don't think the Board tonight should sort of treat that as a variance application when it's been advertised, filed as an appeal, and advertised as an appeal. So, I'll just throw that out to you. We're here on an appeal of that decision. When we have an appeal you're really, the issue that you're looking at is whether that initial decision was right or wrong. You can say, ok the decision was right, well then Mr. Conner has two choices. Number one, he can either

remove the overhang, the porch roof, or make an application for a variance and then come back and seek approval from you for the encroachment of the setback area.

Mr. Malesh explained to Mr. Conner that Mr. Baynes is the Town attorney. He works for us. He advises us and keeps us from doing foolish things here. Let me ask you a question: if we then agree with the Zoning Board and deny this as it is, and he would like to come back in for a variance, is our Board empowered to say that we would waive the fees required with the new variance application.

Mr. Baynes replied that he doesn't know about that one; that would probably be up to Mayor and Council.

Ms. Battaglia responded that the appeal cost is \$250.00 and a variance cost is \$150.00.

Mr. Salmon stated so in that case what if we turn down the variance and he wants to re-appeal.

Mr. Malesh explained that he would be turned down today; it's the same that we agree with the Zoning Board that he violated this and if he requests a variance, he would need to pay additional to come back.

Mr. Conner said that he was advised, when I asked about this originally talking on the phone, which order to approach this in, whether I should apply for a variance first, but I was advised by Ms. Battaglia to go to the Appeals Board first. This process isn't something I'm familiar with.

Mr. Malesh stated that saying go to the Appeals Board could have meant go to the Appeals Board and request a variance too, rather than appeal the decision, per se. Well, hearing legal advice, I'm not going to speak for you gentlemen, but it seems like we should deny this and allow him to apply for a variance and come back to reconsider.

Mr. Thompson stated the Zoning Board clearly made the right decision based on all of the regulations, would he have a time limit.

Mr. Malesh stated that usually what happens is that they would follow the rules and require us to decide how to deal with it, but we have legal counsel here.

Mr. Baynes stated that it depends on when he files his application. If he were to turn around and file the application tomorrow then he would make the November meeting. So your next Board of Appeals meeting a month from now. If for some reason he couldn't do that, and there was a slight delay, it would push back another month into December. There's just a process you have to follow: it's advertised, public notice given, and you come back again.

Ms. Battaglia said that as far as the cost goes, you could probably make a recommendation when you make your decision to waive cost for variance.

Mr. Malesh stated that it just seems like whether he wins this or loses this, I don't want to kill the guy, to make him tear down the porch, and charge extra money for it, considering our salary is zero.

Mr. Malesh asked if they were a proponent for this porch, of this building (addressing the other owners of the building). Step up and give testimony as well now and request you be at the variance hearing later.

Mr. Jonathan Schultz of 532 Susquehanna Avenue was sworn in.

Mr. Schultz stated that when they looked at the house, before they bought the place, it was a mess. We bought the place and the work definitely improved the looks of it, and improved the safety of it, of getting through there. I think it serves a good purpose and looks a lot better, and all the tenants there like it. There are a few people around there that I know and they seem to really like it.

Mr. Bennett asked if it is the primary entrance.

Mr. Schultz responded no, it is a secondary entrance.

Mr. Bennett asked so if you would come in from shopping, for example, that would not be your entrance.

Mr. Schultz responded not really, no.

Mr. Thompson asked if the neighbor on this side has anything to say about it.

Mr. Schultz stated that he seems to really like it.

Mr. Malesh asked where the gutters will direct the water to the back of the property.

Mr. Conner replied probably to either side.

Mr. Malesh asked regarding water runoff, is there any information on that.

Ms. Battaglia replied that she doesn't have any information on that. I was looking at Mary Ann for that.

Mr. Malesh responded he was too.

Ms. Battaglia stated that Mary Ann Skilling now works for the Town as Planner, and has a background with the State of Maryland, especially with Critical Area, so she has a lot of experience with the Town.

Mr. Malesh said that you have a special issue here with the fact that you put cement over areas that didn't have cement, so in the critical area, 1,000 feet from the Bay, you really start getting into additional regulations.

Mr. Conner replied that he understands that but there was concrete there.

Mr. Malesh stated that is what we're trying to figure out; was there concrete under the previous porches. Was there concrete connecting the porches as well.

Mr. Conner responded that there was concrete there.

Mr. Malesh said so there was concrete there.

Mr. Conner stated that it was there but it was all broken up.

Ms. Battaglia stated that it would be considered previous condition. Now that the new regulations have come in, everything in the critical area, any rain coming down on your property is supposed to stay on the property. Mary Ann can explain that better than I can.

Mr. Malesh asked Mary Ann for any information she can give us on that.

Ms. Skilling stated that she can just mention that I believe if it is in the critical area, it would probably be IDA, Intensely Developed Area. When you have the IDA designation, it's like an overlay zone. I think what you have to look for is that impervious area that you have created, or if you haven't created it, but when you redevelop, we like to see something happen so that the runoff is somehow taken care of. And if you put that much roof in it, on that site you only had two small sections and now you have a large roof, we would have probably suggested that you would put some kind of rain gutter in there to direct it to a particular spot. Because what's happening now is the water is just running down off that roof and it could go next door. It's not allowed to move off your site. So that would have been a recommendation on the roof that gutters would have to go and it would have to be directed to a safe outlet, whether it be a storm drain or some area, to an over grassed area to help get the sediments out. That's what we would have looked at if we had seen that as a project. We would have made those recommendations as part of the whole development scheme.

Mr. Malesh said that is why we ask property owners to come to us before they do stuff. Because sometimes with a little tweaking, it solves problems like this from occurring. Would anyone like to speak against this.

Mr. Bennett asked what has been the response of your neighbors on the other side.

Mr. Schultz said that everybody that I talk to has no problems with it. They all seem to be fine with it, with all the people I talk to. They all seem to like it.

Mr. Malesh said that since it needs to get republished in the newspaper as a variance requested, they will again have an opportunity to come and state their opinion to you and to us as well.

Mr. Malesh stated that it looks to me that the motion would be to deny this appeal and we can just leave it at that if you want. He knows that we are recommending that he come back for a variance. We can deny the appeal with a recommendation to the Zoning Board that he will be returning if he wishes. Or you don't have to do this. I'm just throwing out a sample here. You can make any kind of motion you want gentlemen because you vote on it.

**Motion** was made by Mr. Matthews that file number AP2008-01 appeal regarding denial of the decision on the Zoning Certificate be denied. **All in Favor; Motion passed.**

**Motion** made by Mr. Matthews to adjourn the meeting at 7:30 p.m. **All in Favor; Motion passed.**

Respectfully submitted,

Dianna M. Battaglia  
Planning & Zoning Coordinator