



BOROUGH OF WIND GAP

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ZONING HEARING BOARD

IN ATTENDANCE: Members: Mark Sharp, Deborah Roseberry
Sam Nittle and Kelly Ronalds
Professionals: John Molnar, Solicitor
John E. Blick, Zoning Officer
Mildred Del Negro, Zoning Secretary / SALDO Officer

The Zoning Hearing Board meeting of May 5, 2004, was called to order at 7:30 p.m.

Robert and Virginia Matlock Case No. 3-2004-CONTINUANCE

Zoning Officers exhibit number one is a copy of the application, plot plan, list of residents within 200 feet and Northampton county tax records. The meeting has been advertised for the last meeting and the property has been posted.

Mr. Molnar asked if this is a variance request for the fence requirements. The issues are for the height requirements, front yard requirements and the location of the fence, Section 314 3.h no fence will be placed within 6" of the property line. Mr. Jordan is the attorney for Mr. McNamara and said that when Mr. McNamara put up a shed, that was brought into the Zoning Hearing Board in the year 2000 and that because there was a Quiet title action pending to determine where the lot line was, there could not be a ruling until the quiet title action was resolved. The decision was from the February 2, 2000 hearing.

Mr. Jordan has a three potential property lines, we have the one that Mr. Matlock says it is, and in support of that position he has a survey. The one that Mr. McNamara says it is and that is according

to East Penn Engineering the line is 4.5 feet off of what Mr. Matlock said is. The line was marked with a line of hedges and Mr. Matlock cut them down and we have a third possible boundary line, we had an agreement that was listed for trial in June and again in December of 2003. Mr. Jordan said Mr. Matlock refuses to sign

Mr. Molnar said the Board couldn't get involved with a boundary line issue. And since there doesn't appear to be an agreement with the boundary line, and the placement of the fence on both sides the board should take testimony, review it and make a decision. The decision would probably be hinged on the property line and we do not have one.

Mr. Matlock 346 Alpha Avenue states he is being sued for adverse possession. Mr. Matlock went around the town and took pictures of fences in Wind Gap and submitted them and they were marked as A-1. He wants to procure a variance and get this argument done. The six-foot fence would stop at the corner of his house and then continue with a four-foot fence to Alpha Avenue. Mr. Matlock said Mr. Jordan requested a continuance at the last meeting and Mr. Jordan said that is not true. Mr. Molnar thinks it was a joint continuance. Mr. Molnar asked what is the line that you are placing the fence on? Mr. Molnar said there are three boundary lines, one I will call the Collura line, the other is the East Penn line and the third is the proposed agreement line. Mr. Matlock is proposed to put this on the Collura line. Mr. Matlock agreed to split the cost of having Mr. Collura to come out again, to get a new survey line. Mr. Molnar stated that this is difficult for the Board to rule on without a boundary line. He said there are two options, we can go on to rule on this or you can continue the proceedings until there is a line agreement. Mr. Jordan stated that the disputed area, which is 4.5 feet should be split down the middle and the exact line is to be determined by Mr. George Collura. Mr. Matlock has not signed that agreement even after it was revised. Mr. Jordan agrees to the continuance.

Mark Sharp stated that there are five things that need to be met before the Zoning Hearing Board can grant a variance:

1. Unique physical conditions
2. Not possible to develop in conformity.
3. Not self created
4. Not detrimental to the neighborhood
5. Variance is minimum

Mark asked Mr. Matlock how he feels he meets with all of these qualifications. Mr. Matlock stated he thinks he meets all of these. Mark said the ordinance says you cannot have a six-foot fence in a residential area, unless you are next to a commercial area and why do you feel you should have this variance? Mr. Matlock said Mr. Blick is aware he had given permits to residents with a six-foot fence. The hardship Mr. Matlock has is because of the garbage dump in the neighbors yard and proceeded to submit pictures of the garbage in the neighbors yard. Marked--A2 & A3.

Mr. Jordan, Michael McNamara's attorney asked if Mr. Matlock's hardship is that he does not want to look into Mr. McNamara's backyard. Mr. Matlock said that is correct. Mr. Jordan asked why he cut down the avidities that were there and growing for 30 years? Mr. Matlock responded he did not want them anymore. Mr. Jordan asked if they provided a line so Mr. Matlock could not see in the yard anymore? Mr. Matlock said; he does not know and he planted the trees. Mr. Jordan asked if they blocked his view? Mr. Matlock responded no, they blocked Mr. McNamara's view of his yard.

They are one-way avidities. Mr. Jordan stated that everyone involved tried to have a stipulation in a quiet title action since January and Mr. Matlock refused to sign. Mr. Matlock will not sign it. Mr. Jordan asked if he would sign anything other than a Collura line? If the fourteen feet can go past the house he will sign it and that is all that is holding it up. Mr. Matlock would like to put his fence in front of the driveway. That is where the line is.

Mr. Molnar said you could agree on a boundary line or continue the proceedings. We are looking at about six months. Mr. Jordan said maybe a November listing. Mr. Molnar asked Mr. Matlock if he would like to ask the Board to grant a continuation? Mr. Matlock said yes. Mr. Molnar said this could go on for a long period of time. Mr. Molnar asked the Board what their preferences would be, if they want to complete the testimony tonight or to entertain a continuance request.

Deborah said there is nothing to rule on. Kelly cannot vote unless she knows where the boundary line is. Mr. Molnar said there is still a variance request on the height. And that would lead to an appeal. Sam asked: if Mr. Collura does a new survey, would both parties agree on his findings? Mr. Jordan said that is what was done. Mr. Jordan said Mr. McNamara would pay for the survey. But, if Mr. Matlock does not sign it, we wasted this money. Mark said he would like to grant the continuance for Mr. Matlock. said the only cost there will be is the advertising cost for the continuance. Either Mr. Matlock pays for it or the cost will be split between both parties. Mr. Matlock would like to split the cost. Mr. Matlock does not want to pay for the advertising and he is withdrawing the application now. Mr. Molnar said therefore, there would not be a need for a written decision of the Board or any action of the Board. There has been a request by Mr. Matlock to return his photographs. Mr. Jordan has no objections.

Deborah, made a motion to return Mr. Matlock's photographs, Kelly seconded the motion. All in favor

Deborah motions to adjourn the meeting. Kelly seconded the motion. All in favor.

Meeting was adjourned at 8:40 PM.

Mildred Del Negro
Zoning Secretary / SALDO Officer

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