

Dover Township
Zoning Hearing Board
January 15, 2020

Chairman Jane Ginter called the meeting to order at 7 p.m. Members present: Steve Barkdoll, Phillip Brown, Robert Wright, and Richard Pope. Also present: Zoning Officer John McLucas, Solicitor Mike Craley, Stenographer Tammy Rinehart, Recording Secretary, and three citizens.

I. Reorganization

Motion by Wright, second by Pope, to nominate Jane Ginter as Chairman. Motion by Ginter, second by Barkdoll, to nominate Robert Wright as Chairman. Show of hands vote for Robert Wright: Barkdoll and Ginter; show of hands vote for Jane Ginter: Brown, Wright, Pope. Jane Ginter will serve as ZHB Chairman for 2020.

Motion by Brown, second by Pope, to nominate Robert Wright as Vice Chairman. All members voted aye; motion carried. Robert Wright will serve as Vice Chairman of the ZHB for 2020.

Motion by Barkdoll, second by Ginter, to nominate Phillip Brown as Chairman Pro Tem. All members voted aye; motion carried. Phillip Brown will serve as the ZHB's Chairman Pro Tem for 2020.

II. Minutes

Motion by Brown, second by Barkdoll, to approve the minutes of the meeting of October 16, 2019. All members voted aye; motion carried.

III. Zoning Case

- A. ZHB 19-4, Anthony Randacciu, 1474 Windmere Place (Faire Wynd development); application for Variance to permit an enclosed structure within the rear setback; R-3 District; Section 27-502.1 and Section 27-503.C.5.

Two members of the audience were sworn in. Attorney Craley's conclusion, drawn from a review of the Planning Commission minutes and recommendation and discussions with the Zoning Officer, is that the Zoning Officer may want to reevaluate this case and make a decision. The ZHB cannot grant a Variance for personal reasons or for health reasons, and there's plenty of case law to support this.

Zoning Officer John McLucas explained the situation, noting that the current deck is in the setback, shown on a recorded plan. Free-standing decks can be erected with no problem, but once it is attached to the house, it's considered part of the primary structure and may not encroach into the rear setback.

Applicants can appeal that determination, but they've elected to request a Variance. Mr. Brown feels that the deck is free standing because its four posts are not attached to the house. Mr. McLucas feels that the ordinance has discrepancies. The ordinance outlines the definition of accessory structures in Section 27-502 and Section 27-503 identifies patios, porches, but not decks. Mr. Brown drove by the property and feels that the deck is free standing.

Attorney Craley affirmed that covered decks become part of the principal building and can't be in the rear setback. Does Mr. McLucas want additional time to try to work out a solution with the applicants? The ZHB tonight can only rule on a Variance.

It is unlikely that the ZHB would grant a Variance tonight based on personal reasons of the applicant.

The Zoning Officer must determine which part of the ordinance applies here. For appealing a Zoning Officer's decision, the reason can't be personal; that has nothing to do with the property.

When the applicants applied for a building permit for the deck, Mr. McLucas refused their request because the ordinance says it can't be in the setback. This deck is attached to the house. As built, the Township approved it, and it should not have been approved because it wasn't supposed to be attached. Is this considered a non-conformity? The Township attorney recommended if an ordinance is at odds with itself, the decision should be ruled in favor of the applicant. Because of this, Attorney Craley feels that Mr. McLucas should be able to work this out with the applicants.

Mr. McLucas thought they could do an interpretation hearing and then move into a Variance hearing, but that's not the case. Mrs. Randacciu feels that they had to pay \$600 for a Variance request/hearing unnecessarily.

Mr. Brown asked if the applicants would have to pay another \$600 for another hearing. He feels that this is a case where the Township has things mixed up in the first place. So they shouldn't have to pay another \$600.

Mr. McLucas will issue another determination. The applicant requested a continuation indefinitely to give all parties time to work this out.

Tom Harsch from the audience, a neighbor, asked if he wants to enclose his ground level concrete patio, would he have to come before the Township? He'd need a permit certainly.

Mr. Randacciu noted that at 3246 Faire Wynd, that property owner has a screened-in porch and their lot is smaller than Mr. Randacciu's -why was that project approved? Unknown, and Mr. McLucas can investigate.

The hearing was *continued indefinitely* until such time as the applicant requests the ZHB hear the case.

IV. Other Business

Nothing at this time.

The meeting adjourned at 7:22 p.m., with a vote but no motion or second!

Respectfully submitted,

Julie B. Maher,
Recording Secretary