

Memo

To: Members Town of Chester Zoning Board
From: Robert J. Dickover
Date: 2/21/2018
Re: Keel Application for Extension of Temporary Construction Trailer

1. The Issue.

Andre Keel has requested an extension or a renewal of the "variance" granted him to allow a temporary construction trailer to remain at his premises located at 40 Well Sweep Lane.

2. History:

On an appeal taken from the Building Inspector's letter dated 1/15/15 denying application for a temporary job trailer as a "permitted building" under Sec. 98-11 of the Town Code, the applicant sought an "interpretation" of Section 98-11 that such a use was permitted.

By written decision dated April 15, 2015, the Town Zoning Board of Appeals ("ZBA") granted permission to locate a temporary construction trailer on a vacant residential lot while construction of a bridge was to be completed. That "interpretation" was to expire five months hence, to wit: September 15, 2015.

On an application for an extension of the previous approval, by an unsigned decision dated September 2015 the prior approval, now called an "area variance", was granted to May 15, 2016.

By letter dated May 26, 2016 the applicant sought a further extension of the then expired "variance" and the ZBA by written decision dated September 15, 2016 granted an extension to September 21, 2017.

Now, by letter dated January 8, 2018, the applicant seeks an extension or a renewal of the variance which by its terms expired on September 21, 2017.

At a meeting before the ZBA held 2/8/18 the applicant was advised of the probable need for a new application for the relief sought due to the prior variance having expired. By application dated March 17, 2018 the applicant now seeks the same relief as previously granted by the Board.

3. The Law as to "Temporary Buildings".

Town Code § 98-2 defines "ACCESSORY BUILDING, STRUCTURE OR USE" as:

A permitted subordinate building, structure or use which is clearly incidental to, customarily in connection with and located on the same lot as the principal permitted use. An accessory building attached to a principal building shall be deemed to be part of such other building in applying the bulk regulations to such building.

By its prior determination on this project the ZBA has deemed the subject temporary construction trailer to be an accessory building under the Code subject to a condition that it be permitted only for limited duration of time.

4. Discussion:

Though Code § 98-31¹ would seem to have been the better avenue for the applicant's request, by virtue of its prior jurisdiction over the subject matter, the ZBA can hear the newly filed request for a variance should it choose to do so.

On the assumption that the ZBA will entertain the newly filed application the applicant should be apprised of the mailing and publication requirements for a public hearing.

5. Conclusion.

The ZBA can hear the newly filed application or decline to do so in which event the applicant could pursue a building permit for a temporary building from the Planning Board.

I trust the foregoing will be of assistance to the Board in its review of this matter.

Respectfully,

Robert J. Dickover, Esq.
Counsel to the Zoning Board of Appeals

¹ § 98-31 "Building permits for temporary buildings" provides:

The Planning Board shall have the power to grant a building permit for a period not to exceed one year for a temporary nonconforming building, structure or use incidental to a building or other construction project, including such uses as the storage of building supplies and machinery and a real estate office located on a tract of land where individual properties are being offered for sale, provided that such temporary permit shall be issued only upon written agreement by the owner or his agent to remove such building or structure upon expiration of such permit, and further provided that such permit shall be subject to such reasonable conditions as said Board shall determine to be necessary to protect the public health, safety and welfare of the Town. Such permit may be renewed annually at the discretion of the Board over a period not to exceed three years.