

**WESTFIELD TOWNSHIP  
BOARD OF ZONING APPEALS  
PUBLIC MEETING  
October 30, 2008**

Chairman Schmidt called the public meeting of the Westfield Township Board of Zoning Appeals to order at 7:30 p.m. All Permanent Board members were present except for Mr. Jack Poe.

**MINUTES**

The Board signed the amended meeting minutes of their August 12, 2008 meeting as previously approved.

**DETERMINATION OF RECONSIDERATION OF VARIANCE REQUEST  
TOM BOMBARD- 6015 Greenwich Rd.**

Mr. Bombard stated back in June 2003, he came before the BZA with a use variance request that his property be able to have some of the uses permitted in the LC District. (The property is zoned Highway Commercial). He wanted to be able to use the property for a real estate office-Realty Mart though there were other uses in the Local Commercial District he applied for as well. Mr. Bombard stated there were three hearings held and at the end of the third hearing his request was denied. (The vote was 3 to 2). One of the questions that was raised and was pertinent at the time was if there was water and sewer available to the property. Currently the property is on a septic and well. Mr. Bombard produced a letter from the EPA (see file) that stated that the existing septic and well were adequate for the proposed use of a real estate office. He added that Zoning Inspector Harris told him at the time that water and sewer were available. However, after all the meetings that were held (last hearing was held on June 10 2003) and the variance request denied, the County Sanitary Engineer wrote a letter that there is no available water or sewer connection for tap in at 6015 Greenwich Rd. and there are no lines in close proximity per their records.

Mr. Bombard continued that another reason for reconsideration of his request is that he is having an issue with renting out the house on the property. He added he also knew the Township was not happy with the current tenant and all of the outside "items" on the property and the general upkeep of the property. Mr. Bombard stated another new circumstance was that he was unaware that ODOT was going to put in extra ramps closer to his property. Mr. Bombard stated that another issue that was brought up previously was the signage for the real estate office from the centerline to the street. One of the centerlines was from Lake Rd. After Lake Rd. was widened, the centerline was moved away from the house. Mr. Bombard stated he felt that would have been a moot point had that happened prior to the sign going up. Mr. Bombard stated that these were just a few circumstances that have occurred since the original request. Mr. Bombard reiterated that he was before the Board this evening to ask for a determination of reconsideration of his variance request.

ZI Harris stated that when he called the County about the availability of water and sewer the County told him it could be available if Mr. Bombard was willing to pay to bring it down to his property. Mr. Bombard interjected that the County told him sewer and water were not available period and he had a letter from the County. (See file). Mr. Daugherty stated he did not feel that sewer and water was even an issue considered at the last hearing.

Mr. Micklas asked if the property conformed to the LC lot size requirements. Mr. Bombard stated no, not at all. Mr. Micklas stated based on that even if water and sewer was available there was probably not much that could be done with the property in regards to Highway Commercial which is what the property is currently zoned. Mr. Micklas stated that one of the new facts Mr. Bombard was presenting for reconsideration was that the Dept. of Transportation had started and still is storing fill and equipment on the adjoining properties. Mr. Micklas stated that was a temporary issue and will eventually go away. Chair Schmidt stated the BZA granted ODOT and various companies' conditional uses with specific time frames for completion for the storing of fill and equipment on certain properties. He added he believed the only company and location remaining is at the old truck stop. Mr. Bombard stated the issue of the highway has changed from the time of the original application.

Mr. Micklas asked if Mr. Bombard was asking for the reconsideration of the use variance in Highway Commercial or was he looking to have the property rezoned to LC? Mr. Bombard stated he was looking for the reconsideration of the variance for the property as it was originally presented. Mr. Micklas then began to discuss the signage. Chair Schmidt interjected that Mr. Thorne was very clear in that the Board could entertain a reconsideration of the variance request based on new evidence circumstances and events. Mr. Daugherty then read a portion of Mr. Thorne's letter dated October 8 2008 which stated, "...In order to grant a motion for a rehearing however the Board needs to be presented enough information that it can review and make the determination that everything else being equal, if this information had been before the Board, it may have resulted in a different verdict." Mr. Daugherty stated though things may have changed in that area, it had to be things that would have affected the decision of the Board. Mr. Bombard stated that is a difficult task, and added that there was much more discussion at the meetings than the minutes reflect. Mr. Bombard continued that he believed that for a couple of the Board members who were on the Board during these meetings, the issue of sewer and water was raised as well as the signage. Now that it is in writing that there is no sewer and water available would some of the Board members who heard the original application have considered that a hardship and voted differently remains to be answered as all of the Board members who were present at the original meetings are no longer on the Board today. The vote was 3 nays and 2 ayes.

Mr. Daugherty asked Mr. Bombard if the three referenced items in his document were his opinion that new circumstances and changes have occurred that warrant a reconsideration

of the variance request. Mr. Bombard stated yes but he felt there was more than those but the three highlighted issues were:

1. The widening of Lake Rd.
2. The Dept. of Transportation had started and still is, storing fill and equipment on adjoining properties
3. ODOT has put extra rampage closer to the applicant's property.

Mr. Daugherty stated his opinion has not really changed and he did not have a problem with a real estate office on the property but what he was struggling with was if those highlighted items were enough evidence, circumstances or changes that would warrant the reconsideration of the variance request. Mr. Daugherty continued that he did not feel the temporary storage of fill on adjoining properties was a circumstance that would warrant reconsideration.

Mr. Bombard stated there were other members on the Board at the time that had some real problems with the signage. Mr. Daugherty stated as he recalled per old documentation he still had on the original request, the issue was not that the sign was too close to Lake Rd. it was that it was too close to Greenwich Rd. so the one item Mr. Bombard mentioned about the widening of Lake Rd. did not seem to be a circumstance that would have affected his vote on the original application. Mr. Bombard stated the circumstance that changed was that the sign was taken down. Mr. Daugherty stated that the sign was removed because it was 3 ft. to close to Greenwich Rd. Mr. Oiler interjected that the pillars of the sign were still there.

Mr. Oiler then asked, what economic issues did Mr. Bombard have that would substantiate an economic hardship? Mr. Bombard responded that before his current tenant, whom he knew personally, he had a real hard time keeping tenants due to the nature of the area for residential use. Mr. Daugherty stated that he read in the minutes from the previous hearings that Cogar's had a similar use in that area. Secretary Ferencz stated that in the March 17, 2003 minutes it read, "Kevin: Read Section 205, Accessory Uses and Structures. Also your property is not unique if there are two of them (the other property belongs to Mr. Cogar)." Mr. Daugherty commented that there must have been something going on the Cogar property that did not make Mr. Bombard's property unique. Mr. Bombard responded he did not know but maybe it was the size of the property. Mr. Bombard continued that they have a big drainage ditch in the back of the property.

Mr. Daugherty stated he did not feel the proposed new circumstance regarding the rampage was substantial to this property. Mr. Bombard stated it was the noise factor that will not go away. Mr. Daugherty continued that the temporary storage of fill was not a significant or substantial circumstance either. Regarding the widening of Lake Rd., the situation he saw as new was the lighting. Mr. Bombard stated that was the problem for his tenant who is there right now. He stated that he considered the lighting and the noise in the same category as the rampage. Mr. Daugherty then asked if all the "stuff" that was

outside all over the property in various stages of disrepair was the current tenant's? Mr. Bombard stated yes.

There was then discussion if the highway commercial district zoning had been changed since 2003. Ass't ZI Lee Evans stated on his old map it showed the district only coming up to Greenwich Rd. There was a spot for Reidel but the new map shows that the Highway Commercial District was taken all the way down to the highway. Mr. Evans stated he believed to keep Reidel's from being spot zoned the HC designation was taken all the way down to the highway. The new zoning map shows the area being zoned Highway Commercial.

Mr. Daugherty stated he felt lighting could be a new circumstance that was not in existence at the time of the original application. Trustee Kratzer interjected that he did not feel lighting should be a consideration for rehearing the variance as lighting had nothing to do with his property and/or rezoning request. Mr. Daugherty stated that things were encroaching in that area that were possibly unsuitable for it to remain a residential use. Chair Schmidt stated it could also be looked at that the more encroaching things become it could be considered more of a Highway Commercial area and Mr. Bombard's proposed use is not a permitted use in the HC District. Chair Schmidt stated he did not have a problem with the property being used for a real estate office and he did not have a problem before when the application was originally presented. However, he did not see that circumstances have changed enough to revisit the variance request.

Mr. Daugherty asked what would or could happen if the Board felt there was not enough evidence to warrant a reconsideration of the variance request. Could Mr. Bombard continue to reapply and reapply? Secretary Ferencz stated there may be an issue of res judicata and that Township legal counsel would have to be consulted to make sure that was or would not be the case. Secretary Ferencz continued that even though what was being requested for reconsideration is a use variance, it appears the property would need several area variances due to the fact that the size of the property does not meet the minimum lot requirements as well as other requirements of the HC District. Mr. Daugherty stated that if the use variance was granted, Mr. Bombard would then need to go before the Zoning Commission for a site plan review. The Commission would list where Mr. Bombard's property was deficient in meeting the requirements of the District and then he would need to apply for all the variances he would need before the BZA. Mr. Oiler stated that this property already has a legal non-conforming use currently and if the Board agrees to rehear this variance request and grant the variance, it would be increasing that non-conforming use.

Mr. Micklas asked if the property could have a condition placed on it that it could only be used for a real estate office...Chair Schmidt stated the Board was getting off track. What the Board was to consider this evening was if there are new circumstances and evidence which Mr. Bombard listed in his document and presented this evening that did not exist at

the time of the original hearing that may have warranted a different outcome by the Board.

Mr. Bombard stated what it all boiled down to was the noise and the traffic. With Lake Rd. being widened there is more traffic and additional lighting which are a change of circumstances. He added that there was much discussion previously about the availability of sewer and water and again reiterated that there is a letter from the County Sanitary Engineer that water and sewer are not available to the property.

Trustee Kratzer stated regarding the issue of temporary storage of fill, Ruhlin's should be out of there (old truck stop location) in early spring of 2010. He added he believed they had a conditional use through September 2010.

Ass't ZI Evans stated that though Lake Rd. was widened it did not encroach on Mr. Bombard's property. The lights were an inevitable part of progress and he did not believe anything had changed. He continued that had the State taken some of Mr. Bombard's property to put in the extra rampage that would be a new circumstance but that has not occurred. Mr. Bombard interjected that his opinion was different and the economic hardship has changed. The new circumstances are the rampage, the highways i.e. more noise and lighting. He added this is something he did not create.

Mr. Oiler stated that in his opinion it appears there are have not been any new or significant changes or circumstances to warrant a reconsideration of the variance request.

Mr. Daugherty stated while he did not think the items presented in the document submitted by Mr. Bombard offer enough evidence to warrant a reconsideration of the variance request, he agreed the road has been widened and the lighting is and will be an issue. Another consideration he felt was the fact the property is yielding less and less economically which substantiates a hardship and he could find a reason to go ahead and rehear the variance request.

Mr. Micklas stated he could agree with both Mr. Oiler and Mr. Daugherty. Technically the three items Mr. Bombard presented as new circumstances and evidence do not impact the decision to rehear the request. However, there are circumstances that are not mentioned in the document that could make it possibly worthwhile to rehear the variance request. Mr. Micklas stated that in his opinion, what was submitted in documentation this evening by the applicant, does not warrant a rehearing of the variance request.

Chair Schmidt stated he too did not believe the documentation submitted by Mr. Bombard warranted a reconsideration of the variance request but did feel the lighting was an issue but not one unique to this property as it effected those across the street as well as all along Greenwich Rd. and even going down to north of Lake Rd. Regarding noise it will probably be less of an issue with a smoother transition instead of trucks accelerating and decelerating. At the original hearings he felt this was a good use but given the offered

new circumstances and evidence this evening, did not feel it was enough to warrant a new hearing.

Mr. Micklas made a motion to approve the reconsideration of the variance request by Mr. Bombard for the property located at 6015 Greenwich Rd. as presented with supporting documentation submitted by the applicant and so noted as Exhibit A. It was seconded by Mr. Oiler.

ROLL CALL-Micklas-no, Oiler-no, Daugherty-yes, Schmidt-no.

Mr. Bombard asked about applying for other uses in the LC District. He stated he would ask for a real estate office different than what was originally applied for. Secretary Ferencz then asked Mr. Bombard, would you still be asking for a real estate office in the HC District? Mr. Bombard stated yes, but not the same usage he asked for. He stated he asked for other commercial uses and believed there was an exclusion at the end of the permitted uses in the LC District for insurance, mortgage and or title agency that was in the original application. Chair Schmidt stated that the Board would have to contact legal counsel to get an opinion on any future applications.

Mr. Bombard stated his tenant wanted to know if he could apply for a conditionally permitted use for a salvage yard in HC. Mr. Daugherty stated a salvage yard was not a conditionally permitted use in the current zoning resolution. Mr. Bombard stated then that was a condition that has changed since 2003 because a salvage yard was conditionally permitted use in the HC District.

### **NEW BUSINESS**

The Board wanted to know how long the conditional use was for Northcoast Soccer. Secretary Ferencz read the minutes from the Board's April 2008 hearing:

Mr. Daugherty made a motion to grant a temporary conditional use permit for Northcoast Soccer based on the following:

All the conditions previously required under the temporary conditional use permit except for #2

1. Provide for mowing of landscaped area to control weeds
2. A representative from Northcoast Premier Soccer, the Zoning Inspector Gary Harris and Joe Hanna meet at a time convenient to inventory the existing landscaping and be prepared to discuss within 60 days of today's date, a plan for improving the landscaping discussed this evening to the satisfaction of all parties.
3. Contact County to discuss the increased size of the parking added on the eastern most point of the rear soccer fields by the Chippewa Ditch
4. No portajohns to be placed adjacent to the Hanna property line  
This temporary conditional use shall expire on October 31, 2009 at which time Northcoast Soccer shall submit to a site plan review
5. Condition #9 shall be modified to state that there shall be an annual review at the end of 2008 season and all other conditions discussed this evening.



The Board asked that Northcoast Soccer be notified to come in for their site plan review which should be completed and approved before the beginning of the 2009 soccer season.

The Board also asked that Bill Thorne be contacted on the following:

1. Joint meeting with Mr. Thorne and both zoning boards to include how the zoning boards are to proceed with the site plan review of Northcoast Soccer because of the split zoning on the property
2. Bombard decision this evening and potential results thereof (res judicata)

Mr. Daugherty asked ZI Harris about Mr. Bauman's property. ZI Harris stated that Mr. Bauman completed the landscaping. Mr. Daugherty asked if the fence, lighting etc. had been completed. ZI Harris stated Mr. Bauman did not believe he needed to put up the fence. Chair Schmidt stated the Zoning Commission did the site plan review and he believed there were no timeframes given for completion. Asst ZI Evans stated Mr. Thorne was present and Mr. Bauman was given approval for his site plan to be done in stages. When is the stage for the fence to be completed? No one made it specific that the fence needed to be erected before the business opened. Chair Schmidt stated he reviewed the minutes and Mr. Bauman mentioned stages for building the storage unit facility but the Zoning Commission never mentioned stages in their approval. Mr. Daugherty stated Mr. Bauman insisted on a fence because he did not want to build such a facility without a fence. The code only permitted a 4 ft. fence in the front yard and Mr. Bauman wanted a 6 ft. fence and a variance was granted to him for a 6 ft. fence. Mr. Daugherty continued that the building of the units would be completed in stages but not the landscaping or the fence. Asst ZI Evans stated the paving is currently gravel and it's supposed to be hard surface paved per the requirements in LC.

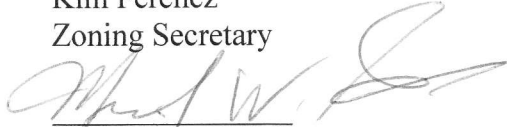
The Board asked Secretary Ferencz to pull the file and it could be reviewed for compliance. Ass't ZI Evans stated time frames needed to be stated when the Board gives approvals so the Township has control. The Board also asked if Bill Thorne could be given the file as well before the joint meeting is scheduled.

Having no further business before the Board, Mr. Oiler made a motion to adjourn the meeting. It was second by Mr. Micklas. All members were in favor. The meeting was officially adjourned at 8:46 p.m.

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Respectfully Submitted

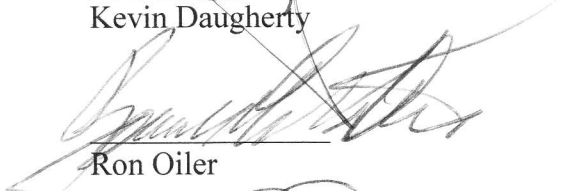
Kim Ferencz  
Zoning Secretary



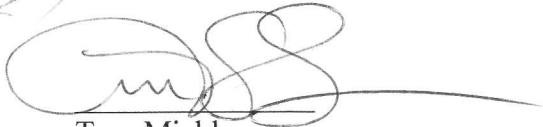
Mike Schmidt



Kevin Daugherty



Ron Oiler



Tom Micklas