

**WESTFIELD TOWNSHIP
BOARD OF ZONING APPEALS
ORGANIZATIONAL MEETING
PUBLIC HEARING
FEBRUARY 25, 2009**

ORGANIZATIONAL MEETING

Secretary Ferencz called the organizational meeting of the Westfield Township Board of Zoning Appeals to order at 7:30 p.m. Permanent Board members Daugherty, Micklas, Oiler and Simmerer and Schmidt were present. Alternate Board members LeMar and Kramer were also in attendance as well as Dustan Tryon, George Ely, Geoff Cochrane, Debra Cochrane and Lee Evans.

Election of Officers

Secretary Ferencz called for nominations for Chairman.

Mr. Daugherty made a motion to nominate Mr. Michael Schmidt as Chairman of the BZA for the calendar year 2009. It was second by Mr. Oiler. The nominations were closed.

ROLL CALL-Daugherty-yes, yes, Oiler-yes, Micklas-yes, Simmerer-yes, Schmidt-yes.

Chairman Schmidt called for nominations for Vice Chairman.

Mr. Micklas made a motion to nominate Mr. Kevin Daugherty as Vice Chairman of the BZA for the calendar year 2009. It was second by Mr. Oiler. The nominations were closed.

ROLL CALL- Micklas-yes, Oiler-yes, Simmerer-yes, Daugherty-yes, Schmidt-yes.

Board of Appeals Liaison

Mr. Micklas stated he would like to remain as the liaison.

Mr. Daugherty made a motion to nominate Mr. Micklas the Board of Zoning Appeals liaison to the Zoning Inspector. It was second by Mr. Oiler. The nominations were closed.

ROLL CALL-Daugherty-yes, Oiler-yes, yes, Simmer-yes, Micklas-yes, Schmidt-yes.

RULES & PROCEDURE

The Board then discussed the adoption of their Rules & Procedures as amended April 2000.

The following changes were proposed (see attached proposed Rules of Procedure).

Secretary Ferencz stated she would type the changes and the Board could review the document again before it was formally adopted in case there were any other changes to be made.

There was then discussion as to when the decision of the Board of Zoning Appeals is final. Secretary Ferencz stated there are two general thoughts on this 1. The decision is

final the day it is made by the Board and 2. The decision of the Board is not final until the minutes are approved and signed. Mr. Daugherty stated he would want to know the decision of the Board was final the night of the hearing. If the law is the minutes need to be signed then special meetings would need to be scheduled to sign the minutes and it would not technically be until then that the decision of the Board was final and could be sent to the applicant and then a zoning certificate secured.

Secretary Ferencz stated the applicant has 30 days to file an appeal therefore the minutes would need to be signed as soon as possible within the time-frame so the decision is final. Mr. Daugherty stated that he would like the decision of the Board to be final the night it is made. The clock starts then because if the Board only meets as required then special meetings would need to be held just to sign minutes as because often there are months before the Board has their next hearing.

Mr. Micklas asked if the minutes are not approved within 30 days does the draft become the "legal" document? Secretary Ferencz stated she did not believe it would be the legal decision of the Board without approval/signatures.

Trustee Sims stated she had a handout from a BZA workshop put on by the Pros. Office about this very issue and the Courts have been in conflict over when the clock begins but the most common view is the decision of the Board of Zoning Appeals does not become official until the minutes are approved and signed because a Board member could ask to change their vote prior to the passage of the minutes...

The Board stated they would like clarification from the Pros. Office, as to when the decision of the Board is final, when minutes should be signed (time-period) and how does that correlate to the 30 day appeal time frame.

Mr. Oiler made a motion to close the organizational meeting. It was seconded by Mr. Micklas.

ROLL CALL-Oiler-yes, Micklas-yes, Daugherty-yes, Simmerer-yes, Schmidt-yes.

PUBLIC HEARING

Chair Schmidt called the public hearing of the Westfield Township Board of Zoning Appeals to order at 8:35 p.m. Permanent Board members Daugherty, Micklas, Oiler and Simmerer and Schmidt were present. Alternate Board members LeMar and Kramer were also in attendance as well as Dustan Tryon, George Ely, Geoff Cochrane, Debra Cochrane and Lee Evans.

MINUTES

Mr. Oiler made a motion to approve the Board's December 4, 2007 minutes as amended with minor grammatical errors corrected. It was second by Mr. Micklas.

ROLL CALL-Oiler-yes, Micklas-yes, Daugherty-yes, Simmerer-abstain, Schmidt-yes.

The Board also signed their approved meeting minutes to their September 23, 2008 hearing and October 30, 2008 hearing.

VARIANCE REQUEST

Dustan Tyron-8114 Friendsville Rd.

The applicant, Mr. Dustan Tyron was sworn in by the Secretary. Mr. Tyron stated he was before the Board this evening to request an area variance to construct a new barn on the property located at 8114 Friendsville Rd. before a principal use or structure is established on the property per Section 205 A.1-5

He added that he would like to build his house where the existing horse barn is located on the property. In order to do that he would like to build a pole barn first to take the items currently being stored in the existing horse barn and put them in the new pole barn. The existing horse barn would be torn down and the residence built on that site.

Mr. Tyron stated when he bought the property it had the horse barn on it because this property was part of a larger parcel of land that was divided up. He continued that they were going to build the home off Kennard Rd. but the best place for the home to be built is where the existing horse barn is located because that is the highest point on the property. The new barn would be used for storage.

Mr. Oiler asked if the new barn would be used for agriculture? Mr. Tyron stated no it would not. Chair Schmidt asked what was the time frame for the construction of the new barn? Mr. Tyron stated he would like to get started on the new pole barn as soon as possible. He was ready to go in terms of the materials and contractor. Chair Schmidt asked about the time frame for the house. Mr. Tyron stated he has the blue prints prepared and quotes for the construction in terms of the builder and subcontractors. He added he would like to be in the house by next winter but the way the economy has been, he and his wife may not be able to have it built by then. In the worst case scenario the timetable would be 36 months. Mr. Tyron stated they have already been pre-approved for the loan but wanted to build the barn first and then the house.

Chair Schmidt asked why Mr. Tyron wanted to build the barn first? Mr. Tyron responded because there are items currently stored in the existing horse barn that would need to be moved into the proposed new barn. Mr. Tyron continued that he and his wife have a small home in Chippewa Lake with a one car garage and no basement so they have been storing items such as furniture and the like in the existing horse barn on the property because they have no storage space at all. He added there is a lot of lumber in the existing barn from the horse stalls that were torn down to make more room for storage. Mr. Tyron stated when he went to build the house the horse barn would need to be torn down so he would need to have a place to store the items that are currently in the horse barn as he did not want those items stored outside.

Chair Schmidt stated there were other alternatives to store the items in the existing horse barn instead of having to build a pole barn before the house is built such as one of the numerous storage facilities in the area. Mr. Tyron stated the existing horse barn is 32'x 60'. Chair Schmidt asked if Mr. Tyron had that much stuff to be stored? Mr. Tyron stated yes and added that he had a small pontoon boat that was currently stored in the existing barn and took up ¼ of the barn. Chair Schmidt stated that the boat could be stored outside. Mr. Tyron stated the boat would last longer if it is stored inside. Tarping the boat does not work in the inclement weather as the tarps come off, tear and fill up with water.

Chair Schmidt asked if there would be water and electricity in the new barn? Mr. Tyron stated not at first; as he was more concerned after the shell is built to get the house built. He added he would probably put electricity in the new barn but has not decided on water.

Mr. Micklas stated that it appeared the items currently being stored in the existing horse barn could be put in a storage unit facility. Mr. Tyron stated then he would be looking at a year of this extra cost and would rather build the new barn on his property. Chair Schmidt interjected that finances were not to be taken into consideration when deciding if a variance should be granted.

Mr. Daugherty referenced the letter from Bill Thorne (Medina County Pros. Office) regarding this variance request (see attached letter) in that the request is an area variance. Mr. Daugherty stated he looked through the Zoning Resolution and believed this was a use variance. Mr. Oiler agreed, as there was not a principal use on the property.

Ass't Zoning Inspector Lee Evans was sworn in. Mr. Evans stated that he and Secretary Ferencz called Bill Thorne for clarification as to if this request was an area variance or a use variance. Mr. Evans stated that Bill stated that that this property is located in the RR District and an accessory use is a permitted use in that District so it is an area variances. Mr. Evans added that the Pros. Office has stated that use variances are rarely if ever to be granted because it would be granting a use that is not permitted in the District. Secretary Ferencz confirmed the statements made by Ass't ZI Evans as she and Mr. Evans had Bill Thorne on speakerphone to ask this clarification.

Mr. Daugherty stated he did not agree with Bill Thorne's opinion as the request had nothing to do with the area i.e. acreage, side yard, setbacks, etc. Chair Schmidt agreed. Mr. Simmerer stated the standard for considering an area variance is practical difficulties and for a use variance it is unnecessary hardship. Practical difficulties exist when an area zoning requirement unreasonably deprives a property owner the use of the property. A use variance; unless granted would deprive a property owner from viably using the property.

Mr. Evans confirmed the statements made by Mr. Tyron that his property was split from a larger parcel of property with the existing barn on it. Mr. Simmerer suggested possibly this was a non-conforming structure and now if the variance was granted there would be another non-conforming structure to the property. Mr. Daugherty stated no, it would be

swapping out one structure for another. Mr. Tyron interjected that as soon as the new barn was built the existing horse barn would be torn down, as he had no use for that building to remain on the property.

Mr. Simmerer stated that outbuildings on currently vacant land are considered to be a nuisance to the community. He added the applicant stated it may take him 36 months to build a residence on the property so that would mean 3 yrs. of an unattended building on the property that could be an attractive nuisance i.e. break-ins, arson etc. that could potentially impact the rest of the community. Mr. Simmerer stated there was a purpose for the Zoning Resolution and this would be a big reversal of the code and to allow it for an extensive period of time. Mr. Simmerer continued that there were other viable solutions for storage in that the applicant could continue to use the existing horse barn for storage until the residence is built...Mr. Tyron stated the reason he stated 36 months was to give him ample time to get the house built. He added he wanted to start construction this summer but with the economy it was somewhat difficult so he wanted to give himself time. Mr. Simmerer stated if the BZA granted this variance there was no assurance that if something happens that it could forever stay a pole barn on vacant land. If something happened to the applicant or a family member that caused an economic hardship then the Township would be stuck with a non-conforming building and then what?

Mr. Daugherty stated this was a little bit different than other cases that have come before the Board. Yes the Township has gotten burned if a few incidences but we have one on Westfield Rd. that built a garage before the home was built and now there was a beautiful home on the property as well. Mr. Oiler interjected, and then we have another on Westfield Landing that is still sitting there without a residence. Mr. Daugherty stated the thing he took note of was that there was already an existing barn and if we deny the request, that existing barn can sit there forever. Chair Schmidt stated the existing barn was a non-conforming use. Mr. Daugherty stated regardless that building could sit there forever. Mr. Simmerer stated he did not know if the non-conforming use transfers once the land was split. Therefore it was probably grandfathered for the original property owner.

Mr. Daugherty asked if existing buildings on the property were considered when lot splits were signed? Trustee Kratzer was sworn in. Trustee Kratzer stated buildings on the property mean nothing when a lot is split. The lot is just checked for compliance with the Zoning Resolution for acreage size and frontage. Mr. Tyron stated the 36-month time frame he mentioned would be when the house would be completed.

Chair Schmidt stated 3 yrs. was a long time away and a lot could happen. What if you got a job offer in Alabama and leave without the house being constructed on the property? Then the Township is stuck with it. If the applicant had a signed contract with the builder that the basement would be started in September he may feel differently about it but that was not the case. Mr. Tyron stated he could not lie and say the house will be started in three months as that may not be the case and he would be dishonest. He added he and his

wife could not live in Chippewa forever. They bought this property to build a house on and they were closer to that every day. Chair Schmidt stated building a barn does not make you closer to building the house. Mr. Tyron stated he believed it did because once it was built the old barn would be torn down and the house would be built where the old barn is located. Chair Schmidt stated there is no correlation as the barn could be built in a day. Mr. Tyron stated the house would be built where the existing horse barn now is. Where would he store the stuff in the old barn if he did not have a new barn? There are clothes and baby items in the barn. Where was he supposed to store that outside? Mr. Micklas stated that was what alternative storage facilities were for. When you build an accessory building you will still have the cost of building that building and the time element to move the stuff over. Chair Schmidt stated the applicant could buy a trailer and store stuff in there. Mr. Tyron asked does the Township want to see a trailer on the property? Chair Schmidt stated that if something happened the trailer could be removed.

Mr. Geoff Cochrane (8111 Friendsville Rd.) was sworn in. He stated Mr. Tyron takes perfect care of his property probably better than most people do. If he puts a building up it would be as good as or better than the existing building on the property. It does not seem reasonable to him to deny the variance as Mr. Tyron was just replacing one building with another. The Board has granted other variances for accessory buildings before a residence was built before i.e. the garage built before the house on Friendsville Rd. Chair Schmidt stated that applicant had a definite schedule to build the home and second a ruling in one case has no precedence in another case. Each request is considered on an individual basis. Mr. Cochrane stated in the other case something could have happened to that applicant that could have precluded him from building his home as well. He added he could not see the difference in having a barn in one location or 100 ft. back? They both serve the same purpose and he is allowed to have an accessory building. Chair Schmidt stated the issue is there is no guarantee the house will be built. The code was written the way it is to protect neighbors from such an incident of an accessory building and no principal use on the property. Mr. Cochrane asked the Board to grant the variance request.

Mr. Daugherty stated that was his reasoning that there was already a building on the property and this would just be swapping that building for a new building. We are no worse off tomorrow than today even if he does not build a house on the property. At least it will be a brand new building and not the old horse barn. We are stuck with the old horse barn regardless if the applicant builds a home or not. I would rather see the applicant build a brand new building. The question he had is how does the Board guarantee that when the new building is built the old horse barn is torn down? Mr. Daugherty continued that if the old barn is not torn down then the Township would have to enforce that the building is removed and potentially pay for its removal and that is the issue that needs to be addressed.

Mr. Tyron stated he did not want to look at the old horse barn and wanted to get started on the construction of the home as soon as possible and since it would be located in the

same location as the existing horse barn he would want it torn down as soon as possible to accommodate that.

Mr. Daugherty added that there would need to be assurances that if the variance is granted the old barn has to be torn down and within a certain time-period i.e. 10 days. Mr. Micklas asked about the house? Mr. Daugherty stated I can tear down the old barn but I cannot make the applicant build the house and I am not going to build it for him but I can make sure the old barn is removed and charge him for it. There are legal procedures to make sure the old barn is torn down.

Mr. Simmerer stated if the applicant has a non-conforming use the code says such a use can be altered or enlarged 25%. Mr. Tyron stated the proposed barn is larger than the existing 35' x 60' barn.

Mr. Oiler asked what the shortest time frame would be for the applicant to complete the construction of the residence? Mr. Tyron responded, 24 months. Mr. Oiler asked the applicant, once the new barn is constructed how long would it take to remove the old barn? Mr. Tyron stated the next weekend.

The Board discussed if there could be two driveways on the property. It was determined that this line of questioning was irrelevant to the request before the Board this evening.

Mr. George Ely (8170 Friendsville Rd.) was sworn in. He mentioned another property owner had two driveways; one to his house and one to his barn. Chair Schmidt stated he did not doubt that but it may have been done prior to zoning or without the issuance of permits and did not know when the section on driveways was added to the Zoning Resolution.

Ass't ZI Evans stated the applicant was trying to do the right thing. He would obtain all the needed permits from the County to build the barn, which will fall under different criteria than an agricultural barn as agricultural buildings are exempt. Ass't ZI Evans stated he felt the new building would be better than the existing barn, which was built as a horse barn with stalls in it. If the process is made difficult then the Township will see more "agricultural barns" built and then it would become the Township's issue to enforce to make sure the "barns" are being used for agricultural purposes. The applicant is trying to follow the proper procedure in securing a variance for a barn that would be used for storage.

Secretary Ferencz asked why the existing barn was being considered a non-conforming use? Mr. Simmerer stated because it was an outbuilding on a property that is neither residential nor agricultural. Secretary Ferencz stated whether a property is vacant it is still zoned a specific zoning classification and agriculture is allowed in any zoning classification. Mr. Simmerer stated it may be zoned but it does not have an established

use. He added that once the barn stopped being used for horses for a period of 2 yrs. or more the building becomes non-conforming. The applicant stated he bought the property

4 yrs. ago so the barn has not been used for agricultural purposes for at least 4 yrs. Secretary Ferencz stated the agricultural buildings are exempt in that they do not have to follow the setbacks, side yards, etc. so she did not see why it was being considered non-conforming. Mr. Simmerer stated an agricultural barn cannot be used for storage of personal items.

Mr. Daugherty stated these were his thoughts for consideration. After the completion of the construction of the new barn the Zoning Inspector comes out and inspects and confirms the barn is weather tight then the applicant would have 10 days to remove the old barn. If the old barn is not torn down in 10 days, the Township would have the right to have it torn down and cost would be borne by the applicant.

Mr. Micklas asked if the Board was going to consider the construction of the residence? That was the reason for the variance request. Chair Schmidt stated that would come into play when one decides how they would vote. Mr. Daugherty stated we have stated in the past that a home has to be built within X amount of time after the accessory structure and there is absolutely no enforcement. He added he can't build a house for the applicant but he could tear down a barn. Mr. Micklas stated there was mention of requiring a bond to ensure the completion of the residence, but that seems like it would muddy up the waters. Chair Schmidt stated it could be a possibility. The fee would be small but the question was if it was feasible to get such a bond. Mr. Micklas asked what was the Board considering that there is not a principal structure on the property first so the proposed barn should not be built or are we saying we are replacing a barn with another barn?

Chair Schmidt asked the members how they felt about the request before the Board?

Micklas: I feel though the applicant may have good intentions about building his home after he builds the barn, but the circumstances are far too variable that it would definitely happen. There is no set time frame as to when things have to be accomplished.

Daugherty: Even if we put a time-frame for him to complete the home in 12 months we still can't make him do it. The house just has to come out of the equation. Because the applicant is replacing one building with another he had no issue with it but would like a time frame as to when the old barn has to be torn down.

Oiler: I agree with Mr. Daugherty. If we can come up with a time frame when the old barn would have to be torn down. It would be a benefit to the neighborhood and the property to have a fresh new barn on the property. Since this is an area variance the Duncan Factors need to be considered.

1. Whether the essential character of the neighborhood would be substantially altered or would adjoining property owners suffer a substantial detriment as a result of granting of the variance? They would not.
2. Would the granting of the variance adversely affect the delivery of governmental services? The answer is no.
3. Whether the property owner purchased the property with the knowledge of the zoning restriction? I assume the property owner has a copy of the zoning code and has looked at it.

Simmerer: I feel as far as the promise to build the house, I don't feel there is a reasonable guarantee despite best intentions. There are reasonable alternatives i.e. build the house first, put your stuff in storage and then build a barn. We are not denying the applicant the use of his property. Regarding the Duncan Factor about if the variance is granted it would adversely affect the neighborhood; I do not feel this is an issue because there is a structure there already and it would be replaced with a new structure. The nuisance situation then would be the same. There would be no adverse affect on the delivery of governmental services.

Did you have prior knowledge of the zoning code before you purchased the property?

Mr. Tyron stated he did not. Mr. Simmerer stated the situation could be obviated in some other manner than the granting of the variance in that the house could be built first. Lastly he added he did feel the variance if granted was keeping the spirit and intent of the Zoning Resolution in that we were taking an existing building and making it better and improve the neighborhood.

Chair Schmidt stated he did not understand if Mr. Simmerer was for or against the variance. Mr. Simmerer stated Duncan Factor #7 about the granting of the variance upholding the spirit and intent of the Zoning Resolution meant that the Township did not want someone to buy a vacant piece of land and put a structure up on it but we would be upgrading the existing structure on the property with a new structure.

Chair Schmidt commented that he appreciated the honesty and integrity of the applicant and what he planned on building and the time-frame he believed he could accomplish those tasks however I feel that the house needs to be taken out of the equation as we have been burned on it before and therefore should not be a factor to be considered. As far as the proposed structure it would be an improvement and built to specifications and inspected as opposed to just an agricultural building. Even with that said Duncan Factor #6 as to whether the situation can be obviated without the granting of a variance; we have all agreed it can be accomplished through the utilization of an alternative storage facility. The Board is to only grant variances for practical difficulties and did not feel the granting of the variance would be in the best interest of the Township.

Mr. Daugherty made a motion to grant an area variance of Section 205A 1-5 to allow an accessory structure to be built on the property located at 8114 Friendsville Rd. before the construction of a principal structure on the property because of the following reasons:

1. There is already an existing barn on the property;
2. New barn will be an improvement over the old barn;
3. Merely replacing the old barn with a new barn and not adding another structure on the property; and with the following conditions:

As soon as the new barn is deemed by the Zoning Inspector to be weather tight, the applicant has 10 days to remove the old barn. If the old barn is not removed within the 10 day time period the applicant will incur the cost of the Township to have it removed. The applicant has agreed to these terms under oath this evening and the new structure will be constructed per the application submitted which is to be attached to the minutes and referenced as Exhibit A. It was seconded by Mr. Oiler.

ROLL CALL-Daugherty-yes, Oiler-yes, Micklas-no, Simmerer-yes, Schmidt-no. Motion carried.

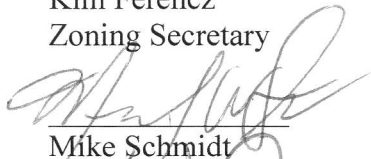
MISC.

The Board discussed the Northcoast Soccer. Ass't ZI Evans stated that the property owner, Mr. Carrasco submitted an informal site plan to ZI Harris. He and ZI Harris reviewed the plan, made comments about what needed to be included, eliminated and what variances would need to be sought. The plan and letter was returned to Mr. Carrasco and there has been nothing res-submitted. ZI Harris is out of town until Thursday. Mr. Micklas stated he believed the motion the BZA made was that an annual review needed to be completed at the end of 2008. ZI Evans stated the minutes stated October 2009 that a new site plan review would need to be completed. The reason was because the BZA really never received a proper site plan from Northcoast Soccer and did not want to grant a long-term conditional until a site plan is submitted and approved. The Board stated their intent and as understood by Northcoast Soccer is that an annual review was to be completed at the end of 2008. Please note that there are two different zoning district classifications on this property i.e. Rural Residential and Local Commercial. Ass't ZI Evans went to retrieve a copy of the applicable BZA minutes for review.

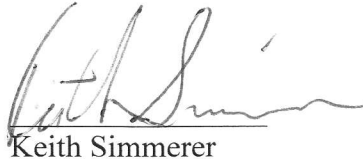
Having no further business before the Board, Mr. Oiler made a motion to adjourn the meeting. It was second by Mr. Simmerer. All Board members were in favor. The meeting was officially adjourned at 9:56 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary



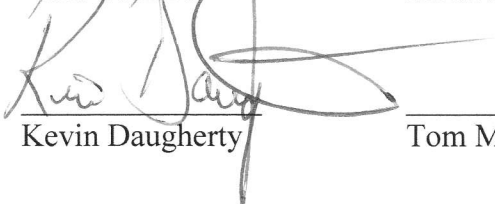
Mike Schmidt



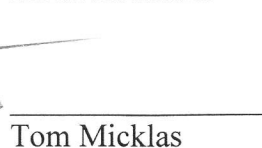
Keith Simmerer



Ron Oiler



Kevin Daugherty



Tom Micklas