

**WESTFIELD TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
June 3, 2009**

PUBLIC HEARING

Chair Schmidt called the public hearing of the Westfield Township Board of Zoning Appeals to order at 7:32 p.m. Permanent Board members Daugherty, Micklas, Oiler, Simmerer and Schmidt were present. Alternate Board members LeMar and Kramer were also in attendance as well as Tim Kratzer, Lee Evans, Gary Harris and Mr. Zuber.

MINUTES

Secretary Ferencz passed out the draft meeting minutes from the Board's May 27, 2009 hearing. They will be approved at the next meeting of the BZA accordingly.

VARIANCE REQUEST

Glen Zuber variance request-5833 Greenwich Rd.

The applicant, Mr. Glen Zuber was sworn in. Mr. Zuber stated he would like to build a 50'x80' barn on his property. He stated that he was a victim of eminent domain and that was why he was before the Board this evening. The State came along and took quite a bit of his land and buildings. Before that happened Mr. Zuber stated he had 9,000-sq. ft. of storage under roof. Mr. Zuber stated he would like to build another building to replace the storage he lost. Where he wants to put the building is an odd shaped piece of land (triangle) which is inefficient for farming. If he could put the building at this location it would save the remaining land he had for farming which was square and would be better to run farm equipment on. Mr. Zuber stated if allowed to place the building where proposed, he could take advantage of the existing piece of slab where one of the buildings that the State took was previously located. Another reason for the location was so that he could use his existing driveway.

Mr. Zuber stated he also supplied the Township with the name of the gentleman from ODOT if any board member wanted to talk with him and ask him if the State had any distance specifications for a building from their fence. Mr. Zuber stated the gentleman told him the State did not care how close a structure was built to the fence other than it needs to be maintained from your side of property. Mr. Zuber noted that the State built their fence 13-ft. from one of his existing buildings.

Chair Schmidt asked how big and what condition the buildings were in that the State took in their eminent domain? Mr. Zuber stated one building they took down was 20'x20' and the other was 40x90 with an L-shaped addition on the end that was 20'x40'. All the buildings were two-story. That was roughly 9600-sq. ft. if you take the outside measurements. Chair Schmidt asked if all the buildings were in shape to store property? Mr. Zuber stated yes. When the State was finally going to take the property, one of the buildings was starting to collapse so he could not see putting money into it for repairs

once the State was going to take it. The State would only pay \$1.00 for a building no matter what size or shape it was in.

Chair Schmidt asked what the proposed building would be used for? Mr. Zuber responded storage for his equipment. Chair Schmidt asked what type of equipment? Mr. Zuber stated farm equipment. Chair Schmidt asked, so it is agricultural? Mr. Zuber stated yes. Mr. Micklas stated when he was first requested to look at this application as the zoning liaison; he spoke with Ass't ZI Lee Evans who stated this building was not going to be used for agricultural purposes. Mr. Zuber interjected that he had four tractors, two balers, a hay rig, a mower, and snow blower that would be placed in the building. Mr. Daugherty asked if Mr. Zuber used these pieces of equipment? Mr. Zuber stated he has had no place else to put them for years. Mr. Daugherty asked if the listed equipment was functional? Mr. Zuber stated yes. Some need a little repair but he intended to do that.

Mr. Oiler asked if Mr. Zuber would have any cows or farm animals or would he be raising any livestock? Mr. Zuber stated he would not have any cows and didn't know if at any time he would have anything else but added that he always had geese. Mr. Zuber added he used to bale hay and sell it and his tax duplicate still classifies him as agriculture.

Mr. Simmerer asked if Mr. Zuber applied for an ag exemption status for this building from the Township? Mr. Zuber stated he did not know he could do that. Mr. Daugherty stated the tax map shows Mr. Zuber has 4.999 acres. He asked Mr. Zuber if he intended on farming that land? Mr. Zuber stated at one time he rented 100 acres. He added he has not farmed recently as he did not know what his settlement was going to be from the State until this past year. Mr. Daugherty asked how much land did the State buy? Mr. Zuber stated 3 acres. Mr. Simmerer asked Mr. Zuber if he still planned on working the fields that are to the east? Mr. Zuber stated yes. Mr. Micklas asked how many acres? Mr. Zuber stated maybe 3 acres. Mr. Micklas asked Mr. Zuber how long it has been since he has raised any crops? Mr. Zuber stated it has been a few years. He added it took him 4 yrs. to get a settlement from the State.

Chair Schmidt asked who helped Mr. Zuber complete his application? Ass't ZI Evans stated he helped Mr. Zuber write the correct numbers in for the size of the proposed building. Mr. Micklas asked for confirmation from Ass't ZI Evans that it was discussed that the proposed building by Mr. Zuber was not an agricultural use? Ass't ZI Evans was sworn. He stated he asked Mr. Zuber if the building was going to be used for agricultural and he said no it was for storing his "stuff". Mr. Daugherty stated that under Section 202 A 1. it states, "Except as provided in Subsection 202 A.2. below, nothing contained in this Resolution shall prohibit the use of any land for agricultural purposes of the construction or use of buildings or structures incidental to the use for agricultural purposes of the land upon which said buildings or structures are located..." He added it appears the Board needed to decide if the proposed building that would store a bailer and some tractors is incidental to the use for agricultural purposes. Chair Schmidt interjected that it also does not state for every acre of land you have to have a tractor either.

Mr. Zuber stated when the Zoning Inspector asked about agricultural he thought it meant if he was going to have cows or something of that nature. Mr. Daugherty stated that under Section 202A.2.b it states, "On lots greater than one (1) acre but not greater than five (5) acres, all buildings or structures incidental to the use of land for agricultural purposes shall comply with the regulations of the district relating to setback lines and height." Therefore the proposed building had to comply with those zoning requirements.

Mr. Zuber stated when he went to do his taxes this year he contacted the IRS, and they sent him a special publication for those who are or have been victims of eminent domain. It is publication 5044 and Mr. Zuber handed it out to the Board members. Mr. Zuber continued that the publication stated in several places that you have the right to restore your property to its former usefulness.

Mr. Micklas asked Mr. Zuber, prior to the State taking property and buildings, was all his equipment under cover? Mr. Zuber responded no not all of it but he had a lot more "stuff" at that time. When the State first came Mr. Zuber stated he contracted with Wooster Iron and Metal and they sent him a semi-truck twice and filled them with equipment he decided he would not longer be in need of. Mr. Zuber added he got rid of a lot of items before he received a letter by the Township stating they were displeased with the way his property looked. Mr. Zuber stated he also agreed with the State to allow them to empty out the buildings they were going to take. The State was there for 3 weeks unloading the buildings. Mr. Micklas asked if Mr. Zuber farmed the property prior to the State taking it? Mr. Zuber stated yes he did and a lot more property. At one time he rented over 100 acres. Mr. Micklas asked Mr. Zuber what prevents him from renting 100 acres now? Mr. Zuber responded because a lot of the land he rented back then is now the golf course.

Mr. Simmerer stated regarding the setback request, was there anyway the building could be moved close to the road? Mr. Zuber responded yes he could. Mr. Simmerer stated the reason he asked was because he was concerned with the 10 ft. variance request on the rear for the ability of emergency vehicles to have access in event of a fire. Mr. Zuber stated he thought the concern would be more to the front than the rear, but the building could easily be moved closer to the road. Mr. Micklas asked where Mr. Zuber took the rear measurement from? Mr. Zuber stated he measured the 10-ft. to the State's fence. Mr. Simmerer asked how far was the fence to the property line? Mr. Zuber stated the gentleman from the State told him 2 ft. Mr. Simmerer stated it doesn't appear to be a safety issue and the nearest neighbor is the Highway so the building would not adversely affect the area.

Mr. Micklas asked what the building was between the house and the proposed building? Mr. Zuber stated it was the garage. Mr. Daugherty asked Mr. Zuber if there was a reason why the proposed building had to be 80 ft. deep? Mr. Zuber stated no. He added he did not know what the Board's main concern would be; to the front or to the back. Mr. Daugherty stated the size of the proposed building was causing the non-compliance with the setbacks. Mr. Daugherty stated if modifications were made to the size of the building he doubted whether Mr. Zuber would even need a variance. The Board agreed.

Mr. Simmerer stated due to the configuration of the lot (45 degree angle) no matter if Mr. Zuber tried to make the building shorter or wider...Mr. Daugherty interjected that he was not talking about compensating he was suggesting to chop 10 ft. off the building and make it smaller. Mr. Zuber stated he would like at least 20 ft. between the garage and the proposed building because he had a large fiberglass tank that holds 4,000 gallons of water that could be used by the Fire Dept. for an emergency water source. This will be at the southwest corner of the building to catch the rainwater. Mr. Zuber stated he also wanted that distance to be able to get through there with his tractor. Mr. Zuber added that would also give ample room for fire truck access as well.

Mr. Simmerer stated that the barn could be put on the other side of the property and not require any variances. Mr. Daugherty concurred that one of the Duncan Factors does state, " can the property owner's predicament be obviated in some other manner other than the granting of a variance?" Chair Schmidt stated it was possible but there were a lot of extenuating circumstances. Mr. Simmerer asked if the variance request was substantial? Mr. Daugherty stated he believed it is if Mr. Zuber wants to build a 50' x 80' building.

Mr. Micklas stated that Mr. Zuber testified he wanted to take advantage of an exiting slab. Mr. Zuber stated that was correct. Mr. Micklas asked how big was the existing slab? Mr. Zuber stated he would guess 12' x 30' but part of the slab goes underneath the State's fence into their right of way. Mr. Micklas stated if that was the case Mr. Zuber could only end up using about a foot of the slab. Mr. Zuber stated he should have measured the slab.

Mr. Micklas then asked what Mr. Zuber was keeping in the existing garage? Mr. Zuber stated a couple of old cars and some lumber for this proposed building as well as for some repairs on his home. Mr. Micklas stated the slab was not sufficient to use so if Mr. Zuber moved the proposed building to the east side of his house where a barn used to be there would still be ample room for him to farm. Mr. Zuber stated triangle shaped pieces of land were hard to farm.

Mr. Daugherty asked when was the last time there was a crop on this property? He added he has lived in Westfield Township a long time and could not recall a crop on the property. Mr. Micklas stated he has not seen any crops either. Mr. Zuber stated there has not been a crop on the property for the past 20 yrs.

Mr. Zuber stated there were two buildings to the east that don't even show up on the aerial because there are trees blocking the view. Mr. Micklas asked the size of those structures? Mr. Zuber stated one was approximately 42' wide by 50' long; and the other one is 40x60 but he did not go out and measure them. Mr. Zuber stated when he first got a letter from the State they were considering taking all of his land. He added he did not make any plans after he got his first letter on making any improvements to his property or buildings. Mr. Micklas asked how long ago was this? Mr. Zuber stated approximately 5 yrs. ago. He added it took him 4 yrs. and a lawyer to get a settlement from the State.

Mr. Daugherty stated the IRS document Mr. Zuber passed out appeared to be a tax document. It explains the tax ramifications as a result of what the State did to Mr. Zuber to show a gain or a loss on his taxes. This is treatment of the settlement. Mr. Zuber stated it was more than that. It says he has the right to either buy other property of equal value or usefulness or bring up the property to its former usefulness. Mr. Daugherty stated the document says if part of your property is condemned, you can treat the cost of restoring the remaining property to its former usefulness at the cost of replacement property. This is tax treatment of how you show a gain or loss of your property. It does not give you any other property rights. Mr. Zuber disagreed. Mr. Daugherty stated this is a tax document that tells you how you can treat your loss. Mr. Micklas stated the document also states what severance damages can be given to restore fences, wells etc. Mr. Zuber stated the State took two barns and he wants to build one. The reason he wanted to build the proposed building at that location was so that he could keep the other land as clear as possible to farm. Chair Schmidt asked if the reason Mr. Zuber wants to keep that land clear was so that he could sell it? Mr. Micklas interjected that the property was not large enough to split off and sell.

The Board looked at all different configurations for the proposed building but in all cases, unless the building was moved to the east, a variance or variances would still be required. Mr. Micklas asked if the existing smaller buildings were needed if Mr. Zuber was proposing to build a 50'x 80' building? He added instead of having to repair two smaller buildings to build a 50x80 or even larger building behind the house to the east could probably accommodate all Mr. Zuber's items. The corncribs on Mr. Zuber's property were also being used for storage and if the items in them were put in the new building those cribs could be eliminated as they could be a potential fire hazard. Mr. Zuber stated the corncribs were metal. Mr. Micklas stated there was probably some wood construction in them somewhere. Mr. Zuber said yes, the roof.

Chair Schmidt stated what the Board needed to consider was if the proposed building made sense and could be put on the property that does not inhibit anything Mr. Zuber really wanted to do and would not create a situation that would require a variance. It appears there is enough room to place the proposed building behind the house. Mr. Zuber stated that would put the end of the barn right up against the house. Chair Schmidt stated they made these types of buildings in all different sizes and one could be configured to fit accordingly.

Mr. Kramer was sworn in. He stated it appeared the biggest problem seems to be the frontage requirement from the road and what Mr. Zuber was proposing. Mr. Kramer suggested turning the building sideways. Mr. Daugherty stated it wouldn't fit because Mr. Zuber wants the building to be 80 ft. long. That northwest corner would still be an issue. Secretary Ferencz stated if Mr. Zuber was not willing to make any concessions on his request then the Board needs to consider what is before them.

Mr. Simmerer stated even if Mr. Zuber did not build a building he still had a use of his property. If Mr. Zuber decides to build the building he could still do so if he moved the building to the east and without the requested setback variances. Though this was

something Mr. Zuber did not want to consider as he wanted to keep the most amount of tillable acreage, the Board does not have to give the best use of the property. Mr. Simmerer continued that the proposed location seems like it may cause an issue with emergency access to the rear as well and the variance as requested is substantial. Mr. Simmerer stated he would be inclined not to grant the variance.

Mr. Oiler stated he agreed with Mr. Simmerer. He added there were other ways the proposed building could be accommodated without the granting of a variance; however the applicant has respectfully declined to consider that. Mr. Oiler continued that for him he questioned also if the proposed building i.e. hoop barn fit the essential character of the area.

Mr. Daugherty stated he too agreed with Mr. Simmerer and Mr. Oiler comments. Mr. Micklas stated he was in agreement with the other three members of the Board. He added there were other alternatives in the position and placement of the proposed building by the applicant, which would negate the need for a variance and would better suit the area.

Chair Schmidt stated he was in agreement with the other Board members. He added if a smaller building was put up...but Mr. Zuber did not want to consider that option, then the only place for the building size he was proposing was on the east side, which would not require variances.

Mr. Micklas made a motion to deny the variance requests for reduced setbacks by Mr. Glen Zuber to construct a 50x80 building on the property located 5833 Greenwich Rd. PP#. Based on the following Duncan Factors as discussed and agreed upon by the Board members:

1. Will the property yield a reasonable return or a beneficial use without the variance request? Yes
2. Is the variance substantial? Yes
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? Yes.
4. Will the granting of the variance adversely affect the delivery of governmental services? Yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? Yes.

The application and all pertinent documents to be attached and submitted as exhibits to the approved minutes. It was seconded by Mr. Oiler.

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

The variance request was denied.

Mr. Zuber asked if he moved the building where the Board suggested did he need a permit? Secretary Ferencz stated if Mr. Zuber met all the zoning requirements he could

apply for a permit from the Zoning Inspector. ZI Harris was in attendance so the Board directed Mr. Zuber to speak with ZI Harris accordingly.

MISC.

The Board decided they would table review and approval of their Rules of Procedure and set a meeting date in the next few weeks if no business came before the Board to take care of unfinished business i.e. minute approval, Rules of Procedure and Notice of Board Action.

Secretary Ferencz also discussed the proposed changes to be made to the zoning applications. The wording would be to the effect that applications that are not complete or not accompanied by the appropriate fee will not be accepted and/or may result in a delay in the processing of the application. This wording would be added to all the applications. Also regarding use and area variance applications, Secretary Ferencz stated the Duncan Factors would be attached to the area variance applications, and the standards of Unnecessary Hardship would be attached to the use variance application. Secretary Ferencz added that if the Board does not want to hear use variances that could be done but it would have to be spelled out in the Zoning Resolution and a text amendment proposed and approved accordingly. The Board stated they would take that under consideration.

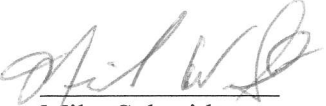
Secretary Ferencz continued that on the area variance applications the question would be asked if the structure would be used for agricultural use and a yes/no answer required. This should negate any confusion as to what a building would be used for and then the appropriate application or form (ag exempt form) would be completed. Hopefully this would clear up any confusion like what occurred this evening regarding Mr. Zuber's request.

Mr. Simmerer stated he would like to see the signage variance application modified as he felt that application was unclear and lacking needed information. Secretary Ferencz stated she would take a look at the application and make some proposed modifications and forward to the Board for review accordingly.

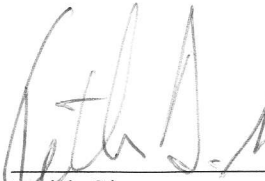
It was questioned by the Board if motions had to be made in the affirmative. Secretary Ferencz stated she had a letter from the Pros. Office that addresses this issue and would forward to the members accordingly.

Having no further business before the Board, Mr. Simmerer made a motion to adjourn the meeting. It was second by Mr. Micklas. All Board members were in favor. The meeting was officially adjourned at 8:58 p.m.

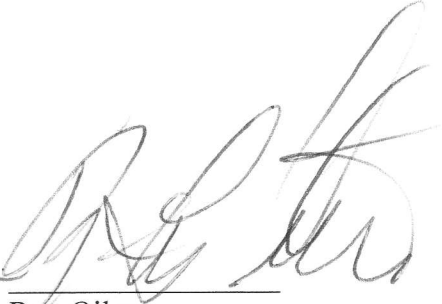
Respectfully Submitted,
Kim Ferencz
Zoning Secretary



Mike Schmidt



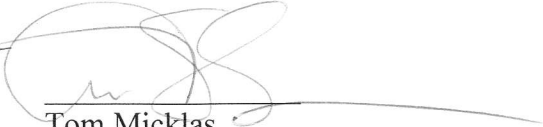
Keith Simmerer



Ron Oiler



Kevin Daugherty



Tom Micklas