

**WESTFIELD TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC MEETING
MARCH 16, 2009**

PUBLIC MEETING

Chair Schmidt called the public meeting of the Westfield Township Board of Zoning Appeals to order at 7:40 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 Carolyn Sims and Lee Evans.

MINUTES

Mr. Oiler made a motion to approve the Board's February 25, 2009 minutes as amended with minor grammatical errors corrected. It was second by Mr. Micklas.

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

RULES OF PROCEDURE

The Board then discussed the adoption of their Rules of Procedure as amended at their February 25, 2009 meeting.

The following changes were proposed at this evenings meeting (see attached proposed Rules of Procedure).Secretary Ferencz stated she would make 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.

Mr. Evans suggested that a copy of the Rules of Procedure of the Board of Zoning Appeals be given to each applicant as well as copy of the Duncan Factors so they would be aware of the standards the Board would consider during a hearing. It was also suggested that a receipt be signed by the applicant that they have received these documents. The Zoning Inspector would be responsible in giving out the documentation to the applicant.

Regarding the ability of the Chair to call a meeting, it was stated that the Chair has the authority that is given to him in the Rules of Procedure. In the event that a quorum of the Board wanted to call a meeting they had the authority to do so under the heading, "Time of Meeting (b) Meetings thereafter shall be held at the call of the Chairman, and such other times as the Board determines." It was also suggested that in the Rules of Procedure under VI. Special meetings it should read, "Special meetings shall be held at the call of the Chairman **or the quorum of the Board** to determine procedural or organizational matters."

Regarding the reference to Section 907 E. under letter (m), Mr. Evans stated he spoke to the Chair of the Zoning Commission and while they were reviewing certain section of the code, he asked the Commission to look at that Section as it only has to do with Administrative Appeals and not variances.

The Board briefly reviewed the proposed amendments by Mr. Evans to the Board's Rules of Procedure and incorporated some of those changes as well. (Again see attached Rules of Procedure). It was also suggested that the wording and signature of the applicant to confirm that he received the Rules of Procedure and Duncan Factors could be put on the revised variance application and that way the Board would also be aware that the applicant received that information.

It was also suggested that on the "Official Notice of Board Action" form that has been drafted; to include a space for any conditions that may apply. It was also explained to the Board that the reason to list all 7 members under the vote was due to the fact of not knowing what Board members (i.e. permanent or alternate) may make up the sitting Board for a hearing. By listing all the members, those who vote will sign and those who did not vote will not sign the document. That way the official action of the Board will be determined, signed and given to the applicant (who will also sign the document) and the issue of when the decision of the Board was final would be addressed and not have to wait for the Board to sign the minutes to become final. The Board stated that they would want the reason for the members who did not vote (i.e. absent, recuse, alternate) stated on the line where their signature would be.

It was also suggested by the Board that letter (n).of the Rules of Procedure be reviewed and wording by Kim Ferencz and Lee Evans be drafted for the Board's consideration.

It was suggested by Mr. Evans that a reference be made of the "Official Notice of Board Action" document in the Rules and Procedures. That way the applicant will be made aware that the signing of this document is when the timetable will begin regarding the appeal process instead of having to send a certified letter. The applicant would also be required to sign the "Official Notice of Board Action" the night the decision is made.

The letter from the Pros. Office dated March 12, 2009 was then addressed as to when a Board of Appeals decision is final for appeal purposes.

The letter states, "As the Ninth District Court of Appeals has now ruled, the Appeal time runs from the service of a Written Notice of the Board's Decision." (See letter attached to approved meeting minutes).

Mrs. LeMar asked the Board if they really wanted to have the Notice of Board Action start the time clock for appeal or did the Board want to have the ability to change their decision before the minutes are officially approved and signed? Chair Schmidt stated he felt that it was very risky to have the ability to change your vote after a vote was taken; and felt that would be more open to an appeal than signing the written notice of board action the night of the hearing if the decision is made. Mr. Daugherty agreed

Secretary Ferencz stated the applicant has a right to due process and believed that if a board member wanted to change their vote they would need to bring the applicant back in and reopen the hearing.

Mr. Evans stated the issue about the approval of minutes is that the BZA only meets as needed so the minutes sit until the Board meets again. The other option is to call a 5 min. meeting just to sign minutes which would cost the Township money for attendance of the Board members just to do that. This is the reason for the creation of the document "Official Board Action."

Trustee Sims stated that in the event that wrong information, changed information or incomplete information was presented at a hearing, waiting until the minutes were signed before the action of the Board became official would give the Board the possibility of potentially changing their vote. Secretary Ferencz stated that was the purpose behind the reconsideration of a request by the BZA. If the applicant feels that the Board was presented such information at the hearing that may have resulted in a different verdict of the Board, then the applicant can request such reconsideration.

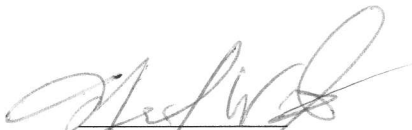
Mr. Evans also brought up the fact that anyone who wishes to speak on the application, including the applicant is sworn in. If anyone provides false statements that would be a legal issue that would need to be discussed with the Prosecutor's Office and or part of the appeal process.

The Board stated they would like to set another meeting to give Kim Ferencz and Lee Evans the opportunity to work on the revisions to the documents discussed this evening. Also, the Board would also like to wait to set another meeting until after the second half of the BZA training presented by Bill Thorne took place at York Township on March 25, 2009 @ 6:30 p.m. in case there were any other issues that should be addressed in the Rules of Procedure or any of the other proposed documents discussed this evening.

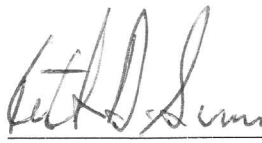
Mr. Evans stated he also handed out to the Board members copies of the Trustees Emergency Meeting Policy so an Emergency Meeting Policy pertinent to the BZA could be set by the Board in their Rules of Procedure

Having no further business before the Board, Mr. Micklas made a motion to adjourn the meeting. It was second by Mr. Oiler. All Board members were in favor. The meeting was officially adjourned at 9:28 p.m.


Respectfully Submitted,
Kim Ferencz
Zoning Secretary




Mike Schmidt



Keith Simmerer



Ron Oiler



Kevin Daugherty



Tom Micklas