

Township of Thetford  
Minutes of the Board of Appeals  
Public Meeting  
April 24, 2013  
6:30 P.M  
APPROVED

The Pledge of Allegiance was led by the Board of Appeals.  
The meeting was called to order by Chairman Dennis Bloss at 6:33 p.m.

**MEMBERS PRESENT:** Chairman Bloss, Liz Helms, Clyde Howd, Alan Levijoki, Gregg Bryan

**MEMEBERS ABSENT:** John Congdon excused.

**STAFF PRESENT:** Leanne Pennington recording minutes

Motion by Gregg Bryan, supported by Alan Levijoki to open the public meeting. Any questions on the motion, Motion carried.

Chairman Dennis Bloss opened the meeting explaining why we are having it. We heard on this case in February 27, 2013 for case number 31513. At that time, the public hearing was advertised in the local papers that we are required to do and there was an error made. The error was with the zone in which the case would of applied was described as Residential Commercial there is no such designation. It properly should have been called General Commercial, but a mistake was made. There were other folks in the township saw that as a spot zoning or a special zoning that was done. So we created some confusion for this mistake and the only way I could figure to remedy the mistake is to repeat the public hearing and properly advertise a public hearing with no errors in the description. With that end we are having the public hearing the repeat of the one we had on February 27, 2013. The public hearing relative to case 31513 ~ for resident Dan Case asking to add non conformance to his home is a resident in a General Commercial District and he wants to enclose the porch on the property which adds to the Non Conforming. That is the application that was made and this public hearing is about that application. With that the podium is open for residents to make comments, brief comments. Please at the podium address the boards don't address anyone in the audience. The podium is open.

**BRIEF COMMENTS:**

Resident ~ Joseph and Lorraine Stanislaw ~ 9336 N. Saginaw Road, Mt Morris, MI 48458 ~Joseph Stanislaw asking to hand out a page out of the zoning book.

Chairman Bloss allowed him to. The page was number 135 in Thetford Township Zoning Ordinance book.

Larraine Stanislaw 9936 N Saginaw Road, Mt. Morris, MI 48458, I would like to say again for the record we are strongly opposed to the ZBA granting Mr. Case is request to allow him to finish enclosing the Michigan Room or granting him any variance to allow him to complete it. We believe it's illegal work and should be removed. The definition of nonconforming is the use of land or a structure for purposes which reflect the premises of this ordinance. The paper passes out was General Commercial District and what is permitted in that such as uses. We also submitted excerpts from zoning ordinance, I am sure you are familiar with General Commercial District what is allowed there and we should cover the base as far as clarifying what should be in that district. The excerpt from the zoning ordinance that we like to refer to, exhibit 1 of the zoning ordinance exclusively states at the bottom that I fragment it's the intent of this Ordinance "that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district". Also on page 57 it says "a nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarge after passage of this Ordinance by attachment on a building or premises." And it's clear that the Zoning Ordinance states. The page that I missed one paragraph that was pertinent (passing out page 58 in the old Zoning Ordinance Book) of the Zoning Ordinance and that also says "where for the effected date of adoption or amendment of this Ordinance lawfully use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or emended, such use may be continues, so long as it remains otherwise lawful, subject to the following: No such nonconforming use shall be enlarged or increase, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance". So there several things there that nonconforming shall not be enlarged or increased. That neither is actually separate the next phrase nor extended to operate a greater area of land. So there are three things that are not allowed. Also page 59 "No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended except in changing the use of the structure to a use permitted in the district in which it is located". So this is very clear what is allowed and isn't allowed in this district and nonconforming use structures. The copies of pictures we got of the structure and process from Mr. Oliver, the township building inspector, says the structure enlarged was the stop work order was based on structure was enlarged an exciting nonconforming structure. Now as neighbors as neighboring land owners purchased our property to operate a business we are agreed with the continuing nonconforming residential use next to us and the improper issue of a permit issued by Mr. Angus to allow the expansion of that nonconforming use. We believe the decision to allow completion structure on the February 27, 2013 hearing was also improper. The permit that was issued was improper and should be considered invalid because of several reasons: one, Mr. Angus failed to comply with the Thetford Township Zoning

Ordinance. One of the problems with numbering exhibits they are not always on the order that you would like to be in. Exhibit 3 states that no building permit shall be issued for the erection, alteration, or use of any building or structure, or part thereof, or for the use of any land which is not in accordance with all provisions of this Ordinance. Also exhibit 4 states the building official shall have the power to grant zoning compliance and occupancy permits, and to make inspections of buildings or premises necessary to carry out his duties in the enforcement of this Ordinance. It shall be unlawful for the Building Official to approve any plans or issue any permits or certificates of occupancy for any excavation or construction until he has inspected such plans in detail and found them to conform to this Ordinance. Obviously that was not done. Also the hearsay testimony of Mr. Case that was requested by the board February 27 hearing indicated that Mr. Angus issued a frugality permit and making false statements or material admissions in the issuing of it. Mr. Angus also failed to insure compliance in a building code since the permit was issued and safety inspection of the existing structure which has been found to have structural safety issues. As a long term resident and a member of the ZBA Mr. Case knew full well that the building was not allowed in a nonconforming use property. Not only did this construction violate the Zoning Ordinance but violated the permit that was issued as well. His testimony in the February 27<sup>th</sup> meeting also indicated that the base structure of this building was also built unlawfully as it was constructed after the 1989 Ordinance was in effect disallowing any building on nonconforming use structures. The violation committed by both of these individuals seems to be irrelevant to this board as of the February 27<sup>th</sup> hearing. In granting this request to completion of this structure this board endorses this illegal activity and became a party to it. This sends a terrible message to the people of this community. The board ignoring the desire of all the residents that spoke on the stand. My question is what's the purpose of holding a public hearing if the will of the people is ignored? During the board discussion and I know that Mr. Congdon is not here so I am not going to reference what he said but there are several standards of review for variances, which were covered and then the process of using them with certain methods by ignoring the Zoning Ordinance and Master Plan. Exhibit 2 has to do with the land use conflicts and the problems that the Master Plan talks about in regards to nonconforming use in the General Commercial District. The granting of one of the things mentioned was the granting of the variance will be in harmony in the general purpose and intent of this Ordinance. It does not as the Zoning Ordinance specifically states that the intent was not to encourage the survival of nonconforming use. The use would not alter the character of the area. This contradicts the Master Plan in nonconforming use incompatible in General Commercial District and that is on page 82 land use conflicts are readily apparent along Dort Road in Section 31 where single-family homes are intermixed with industrial and commercial development, without benefit of suitable setbacks or screening. Long range planning should attempt to

eliminate incompatible uses. Also, it was mentioned that the variance will not be injurious in the neighborhood or other words judgment to the general welfare. This also contradicts the Master Plan which we feel caused nonconforming use in the General Commercial District and talks about the problem that nonconforming residential uses poses commercial enterprises in General Commercial District and then on page 118 and page 119 of the Master Plan it mentions rezoning problems of nonconforming use puts that area Dort Hwy and Saginaw Road. So those are things that are included in the Master Plan. Also referenced to the standard are other general requirements are meant the applicant must show the variance meets all state requirements that the spirit of the Ordinance shall be observed, public safely secure, and substantial justice done . This structure does just the opposite of all these and granting his request ignores the spirit of the Ordinance, violates the purpose and every facet about it. Also it was mentioned to us after the hearing that the thinking was of Mr. Case request would not cause any harm. The minutes reflecting Chairman Bloss that granting the request not negatively impacted the General Commercial District. These comments indicate the board that didn't recognize the ratification of your decision and faulty criteria was used which certain amenity standard of review on which a decision should have been made. The Michigan Association of Planning this is exhibit 5 list incorrect reasons used to grant a variance and among them it's already built. It's only a small variance that's exhibit 5.

Joe Stanislaw ~ there are many points in that just naming of some page 90 of the Michigan Association of Planning.

Lorraine Stanislaw ~ the same in the Michigan Municipal League Hand Book that was referenced in regards to the different criteria that should have been used to make decision, specifically addresses the improper thinking that it won't cause any harm being the reason to grant the variance. It says exhibit 6 ~ if the standards used by the ZBA are carefully considered and followed, the integrity of the ordinance should be maintained. However, not following such standards leads to problems. Too often variances are granted simply because no one sees any harm. The ZBA soon gains a reputation for not following its ordinances. One merely has to go to the zoning board of appeals to obtain relief from the ordinance – getting a variance is no problem. That's address as an incorrect reason to grant a variance. Also this board refused to consider the facts. It was mentioned that this structure was not illegal, it obviously is illegal. Also to approach the structure that it is not even built was going to complete it is illogical that's contradictory and doesn't make any sense. The motion that was passed still doesn't address the legality of the structure. There are only two types of variances and that's exhibit 7 in the Michigan Association of Planning dimensional variance and use variance. The stop work order is being appealed by Mr. Case is to build on a nonconforming use structure it is considered a use variance. According to the 2006

Michigan Zoning Enabling Act the ZBA doesn't have the authority to grant use variance in since the Zoning Ordinance doesn't contain all the provisions by law to do so that is exhibit 8. In the Zoning Ordinance for the ZBA to grant use variance it must have in the Michigan Compile Law 125.3502 I put into bracelets its these three things in this section must be included into the Zoning Ordinance. First, the special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval. Second the requirements and standards for approving a request for a special land use. Third, the procedures and supporting material required for the application, review and the approval of a special land use. Then under section 125.3604 number 10 in the Michigan Zoning Enabling Act states the authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance. The Thetford Township Zoning Ordinances doesn't have it but should get it. The application for the township land use does not even have special land use under Zoning Board of Appeals. It is not even something you can grant, so it is our understanding that the lifting of the stop work order also pending Mr. Case's meeting of current building code requirements and having mandate has already been violated as of a month ago. Mr. Case has had Siding World installed eaves trough on the structure. Due to the numerous violations in this matter, the illegal structure that has been built, and the failure of Mr. Case to respect this decision of this board to comply with the mandate. We respectfully request that this board invalidate the permit that was issued, resend its decision to allow completion to the structure and order to removal with a specified time.

Joe Stanislaw ~ is there any questions?

Chairman Bloss ~ asked if the board had any questions. No questions Chairman Bloss thanked the Stanislaws.

Joe Stanislaw ~ I also want to make a statement besides this most recent current structure is built on his house and his property for the time without getting a permit. So you know he is the one that built stuff that he is enjoying and not even paying taxes on because unless a building permit is issued no need for the assessor to even take a look at a piece of property once it is on the tax bills.

Chairmen Bloss ~ ok thank you, any other members of the audience that would like to make a comment.

Chairmen Bloss ~ hello, please state your name and where you live.

Lillian Sheppard ~ I live at 9352 N Saginaw Road on the north side of the Stanislaws. To me this is a waste of time I have been in that district since 1940's. We have had no troubles with anybody building things, doing things it was a community. I have two

houses there; we have never had this kind of trouble. We have never had to come with all this papers and everything. We built a barn, we had a horse stated what you wanted. The neighbors got along fine. They should come up here and complain about his sunroom when I have lived next to the junk yard. We have been fighting with them since 1983 I have been through so many boards. You ask Eileen is she been with me all the way its just been an ongoing thing Nobody else is complaining in the neighborhood we get along fine. Dan, I cannot see the reason why building a sunroom on the back of your house, does that mean I two houses and every time I want to do one little thing I have to come to the board and ask them. It just doesn't make sense to me, just doesn't make sense to me. Especially the junk yard is there and not being cleaned up, it's getting worst and worst. I got 83 minutes from 1983 that says he is so many violations that are pathetic. And he is still there.

Chairmen Bloss ~ let's keep out comments relative to the Dan Case.

Lillian Sheppard ~ Thank you

Chairmen Bloss ~ thank you very much. Anyone else? Any more comments from the audience?

Chairmen Bloss ~ I'll entertain to close the public hearing

Motion by Clyde Howd, supported by Liz Helms to close the public hearing at 6:58 p.m. No other discussion, call for vote, all yeas motion carried.

### **BOARD COMMENTS:**

No comments