

Township of Thetford
Minutes of the Board of Appeals
April 24, 2013
7:00 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 6:59 p.m.

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

MEMEBERS ABSENT: John Congdon unexcused.

STAFF PRESENT: Leanne Pennington recording minutes

APPROVAL OF MINUTES: Motion by Gregg Bryan, supported by Liz Helms to approve the March 27, 2013 Board of Appeals minutes as printed. All in favor. Motion carried

CHANGES TO THE AGENDA: None

PUBLIC COMMENTS: None

OLD BUSINESS:

1. Appeal of the approval on case 31513 we gave on February 27, 2013. The Stanislaw's have filed the appeal basically asking us to consider our decision the one we made on the 27th, that decision was to allow Mr. Case to add the nonconformance nonconformity of his property. He has residential property in the Commercial District which by definition is nonconforming. He has asked to complete a sun room on that house, which adds to the nonconforming one of the things we are allowed to consider with this board. And we approved that. So this is an appeal of that decision and that is entirely within their rights to appeal that decision and that's what they have done.

Chairmen Bloss ~ before we get into this discussion I would like to read a paragraph from the zoning board of appeals hand book. It's the handbook that the Stanislaw's refer to a couple of times in the materials that they presented to the board. In addition, the ZBA should not treat the appeal as a new decision. Rather, review of the decision should be limited to the information that was available to the body or person who made the decision initially. Allowing testimony or evidence in addition to that previously submitted is inappropriate, unless the zoning ordinance directs otherwise.

Chairmen Bloss ~ but in this case we are going to allow any testimony that the Stanislaw's would like to provide. They did provide a three (3) page serious allegations when put the appeal forward and we are going to go through that because I feel that there are certain allegations this board needs to address. So with that Joseph and Larraine you have any comment relative to the appeal, have anything to the relative to the processes that we undertook. Basically appeal is that you are saying we missed something in the process, there was a defect on how we went about our business. You covered a lot in the public hearing but if you have anything addition that you would like to bring up you can at this time.

Larraine Stanislaw ~ I would like to reaffirm what we stated here tonight. We believe the intent of the Zoning Ordinance was not upheld during that public hearing. The proper standards were used in making that decision.

Chairmen Bloss ~ I mention when that the appeal requested or brought forward, the appellant provided three (3) pages of information. Some on it much like they discussed earlier today, and as I said before there are some serious allegations in here I think it's important that this board to address each of these items one at a time. So bear with me because this may take a little bit of time but serious allegations and I want to go over them. It is addressed to The Board of Trustees: On Wednesday, February 27, the Zoning Board of Appeals granted a variance to fellow board member, Daniel Case, to allow completion of an "enclosed Michigan room" after a stop work order had been issued. This structure was built on a nonconforming use resident in the General Commercial District. The decision was made after several residents and business owners spoke; none in favor of the variance being granted. Besides the fact that the ZBA granted a variance that goes against both the Zoning Ordinance and Master Plan, several other serious issues exist:

1. Building Inspector, Marc Angus failed to comply with Thetford Township Zoning Ordinances that disallow building on a nonconforming structure in the General Commercial District. According to Section 20.01 of the Zoning Ordinance – Duties of Building Official, it was unlawful for Mr. Angus to issue a permit for any construction until he had inspected the plans in detail and found them to conform to Ordinance.

The ZBA is not completely aware of exactly what was approved by the Building Inspector. The Building Inspector is requiring all building codes be met, and further required the construction be evaluated by a licensed structural engineer. As stated previously, the applicant continues construction at his own risk, while the ZBA considers this appeal.

2. Mr. Angus made false statement or material omissions in his duties as Thetford Township Building Inspector in issuing a permit for a "roof over existing deck" while, according to Mr. Case, he was knowledgeable that an entire enclosure would be built. He also failed to insure compliance with building codes since a permit was issued without any safety inspection of the base structure. Chairmen Bloss ~ that really goes with 1 again this board is the Board of Zoning not the board of building permits and building codes that's being handled that's being handled in that department under this township.
3. It appears from the legal notice and the agenda for the public hearing that the property in question was given a special zoning designation of Commercial Resident without due process or notice being given.

The "special zoning" designation of Commercial Residential does not exist. The ZBA is not authorized to create special zoning. The term Commercial Residential was a typographical error in the published notice for a public hearing. The ongoing confusion over this error was reason to call a second public hearing, with a correctly worded published notice. Chairmen Bloss – once again that term doesn't exist and we are not authorized to create such a term.

4. Due to Mr. Angus' unresponsiveness to Supervisor Kerr's attempts to contact, hearsay testimony was taken and even asked for by board members in making their decision.

The ZBA considered the requested variance, independent of the status of Building Inspector activities. The board declared that it would consider the application as if no construction had been started, feeling no obligation to approve because of money spent by the applicant. Chairmen Bloss ~ this is important point the board discussed this as though the building had not been started because if we denied it. We wanted no quilt over the applicant spent. That is why it was stated that way; we did this without regard of time.

5. The special designation given to this property, and the granting of a variance was essentially spot zoning. The action by the ZBA had the effect of amending the township's Zoning Ordinance, which specifies that its intent is that nonconformities are not to be encouraged. Also ignored was that Master Plan which recommends that the Township should attempt to eliminate nonconforming uses in the GC District. ***Again, this was a publishing error, not a special designation, and not spot zoning. The ZBA is aware of Township Ordinances and Master Plan. The ZBA is authorized to act in accordance with Township Ordinance section 19.03, Powers and Duties, Zoning Board of Appeals. Chairmen Bloss ~ Alan do you have some of the information in relative to that. Alan Levijoki ~ the previous page of you exhibit 5 that was not included in the packet. Talks about the responsibilities of the ZBA to consider variations as propose in saying its abstracted appearance of what our Ordinance is. That first sentence says the enlargement or alteration of nonconforming buildings and structures and expansion of a non-conforming use is the responsibility of the ZBA when they are addressing variances and it continues I know that you included Exhibit 5 for the incorrect reasons but interns of the authority it is listed on the previous page in you exhibit 5 which wasn't included but it is in the Michigan Association of Planning handbook. Chairmen Bloss ~ that is a very good handbook, the exhibit you provided lead us to find the entire hand book. We find it very handy and all board members will get a copy.***
6. Part of the decision to grant the variance was based on the "feeling" that it would cause little harm. This faulty criterion circumvented the standards of review on which their decision should have been based.
The ZBA is expected to use judgment in considering any variance to Township Ordinances. That's why we are here we are expected to use judgment.
7. The decision to grant the request to allow completion of the structure in question still did not address its illegality.

The supplicant was allowed to continue construction through the application process, at his own risk. If the board decided to deny application, demolition would be at his expense and his loss. That's was clear to the applicant. All building codes must be satisfied for any construction.

Chairman Bloss the next paragraph is not numbered but I gave it a number "number 8"

8. Despite the special designation, the property is still surrounded by the General Commercial District. The Board of Appeals in deciding this matter was responsible for setting reasonable requirements to protect abutting properties and the adjacent district. They failed to do so, as the Master Plan specifically addresses the fact that the presence of incompatible single family homes in the General Commercial District causes land use conflicts, safety issues from interruptions in traffic flow, and a hardship on the commercial enterprises the district is zoned for.

No special designation was given. The ZBA understands the Master Plan. Residents in General Commercial District are grandfathered, with the right to live there as long as desired, with the right to sell said grandfathered property, and the right to apply to add to the non-conformance (make an improvement to the property). The collective judgment of ZBA members was that enclosing the porch on this residential property would not adversely affect the Commercial Properties in the neighborhood.

9. According to the Ordinance, no exciting structure devoted to a use not permitted by the Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, or moved or structurally altered in changing the use of the structure to a use permitted in the district in which it is located. That is non-negotiable. The ZBA showed a complete disregard for the Ordinance and Master Plan, the welfare and purpose of the district in which this structure lies, and the existing commercial enterprises that lawfully exist there.

The ZBA is authorized to consider variances to zoning ordinances. The statement "That is non-negotiable" is an opinion, and is in contrast to the authority assigned to the ZBA.

10. The standards that should have been the determining factors in their decision were not properly applied. Board Member Congdon voiced concern for the residential properties above those legally entitled to exist in the district. His unsubstantiated fear was that homeowners would abandon their properties should they not be allowed to make improvements on them. Chairmen Bloss stated that he approached the issue from the standpoint that the structure had not yet been built, while voting to grant the request to complete it. This defies logic, and is evidence that his decision was not fact. Both Mr. Congdon and Chairmen Bloss voiced the opinion that the variance would not significantly impact the area or the Township, in direct contrast to what the Master Plan says.

All residents in the General Commercial District are grandfathered, thus can live there, maintain their properties, and sell their properties, with the grandfathered status. They also have the right to make application to add to the non-conformance of their properties (make improvements to their properties). They have the rights to ask to make improvement those request would have to be approved by this board.

11. The hearsay testimony that was requested, implicated Mr. Angus in issuing a fraudulent permit. Instead it was seen by the ZBA as an endorsement of this illegal construction. Mr. Case applied for a permit he was not entitled to, and then proceeded to build based on a permit he knew, or should have known was wrong. In

granting the request, the ZBA became a party to the unlawful acts of Mr. Case and Mr. Angus. Due to these actions by Township officials, complaints have been filed both with the State of Michigan Bureau of Construction Codes, and the Township.

The ZBA will not address opinions offered in this paragraph. The porch construction is under the ongoing scrutiny of the Township Building Inspector, and must meet all code requirements, regardless of cost to the applicant.

12. This decision arbitrarily benefits a nonconforming use resident to the detriment of adjacent property owners who have not been allowed to operate their business for several years, and the community at large without as acceptable public advantage or justification. Because the Zoning Ordinance and the Township's Master Plan were not used in making this decision, the ZBA went down a path of weighing the benefit versus the harm a variance will cause to make their decision. This opens the door to arbitrary decisions and serious questions. What standard was used in this decision to determine the effects of the increased nonconformity of this structure? What degree of harm to adjacent property owners and an entire district then is acceptable in favor of one property owner? And what standard will then be used in the future to determine how harmful the effects a nonconformity would need to be to be allowed? ***The ZBA does not recognize ant detriment to the neighboring properties, caused by the approval of this variance. The ZBA is obligated to follow Thetford Township Ordinances and Master Plan, with the added authority to grant or deny applications for variance to the same. The Petitioners opinion about the board's previous decision in this case is simply that, their opinion. The board has the power and duty to look at all the facts and apply those facts in accordance with the Ordinances and Master Plan. There is no set standard of application that can apply to all cases as all cases are unique. That is exactly why the board was formed; to look at the issues on a case basis and obtain the facts in each case to then determine if a variance is warranted. If the board was forced to comply with one firm set of standards for all cases, there would be no room for exceptions and no one could ever receive a variance. Generally speaking, the system is designed to rely on the collective wisdom of the board as they obtain the facts and rule in each case. All factors are considered in doing so. Again that's our job.***

Chairmen Bloss the next three (3) paragraphs I identified as number thirteen (13) because they are all connected.

13. The ZBA Handbook from the Michigan Municipal League Chairmen Bloss held up the book, and said "we are finding very useful that the Stanislaw's have pointed out to us." states, "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 ordinance." That is exactly what the ZBA did. The ZBA does not have right to grant discriminatory benefit to one individual without an acceptable public advantage, while

causing even a little harm, not just to adjacent property owners who are aggrieved with the ongoing nonconforming use next to them, but to the surrounding district because nonconforming use interferes with its development and economic wellbeing. And as entire community is harmed when the wrong standards are applied to decisions involving variances. Clearly, the ZBA was derelict in its duty... Chairmen Bloss ~ wow that's pretty harsh. Clearly, the ZBA was derelict in its duty to follow a mandate for health, safety, and welfare of the community. Instead, Mr. Case's longstanding homeownership, and the opinion that the effect of expansion of nonconforming use would be minimal were used to justify the decision in favor of a variance that is disallowed by the Zoning Ordinance. The ZBA did not comply with the standards that upheld the integrity of the Zoning Ordinance, and it did not take into consideration the desire of the community it is here to serve.

Petitioner's conclusions and understanding of the process is again, simply their opinion. The board has followed certain standards as they do in all cases and all Petitioners are treated the same. Simply because the Petitioners do not like the decision of the board, does not arbitrarily mean that one is treated more favorably than the other. Each case stands on its own merits. In addition, Petitioners have failed to state exactly what harm to the surrounding community was alleged caused in this particular case. Why one home owner could's closing in his porch without expanding the footprint of his nonconforming property hurt his neighbors in any way? Petitioners fail to realize that the adjacent homeowners have the right to live comfortably and do home repairs as long as they get the proper approval and variances and ultimately, that is what happened in this case. The board has determined that in doing so, there is no negative infringement of other properties in the area. It is a matter of balancing the issues to protect the rights of all citizens in the area and that is what the board did in this decision.

14. We believe the Board of Trustees should not condone ZBA members who violate the Ordinance and then ask for a variance after the fact, and who build based on an improper permit. The unanimous decision by the ZBA to grant a discriminatory benefit to this fellow board member showed a biased favoritism at the expense of other residents of the Township. The Board of Trustees has a responsibility to the community to insure the highest standard of conduct of its Board members, and to expect them to adhere to the Ordinance they are charged to uphold.
15. Therefore, Pursuant to Section 19 of the Zoning Ordinance, we respectfully request that the Board of Trustees take the appropriate steps to replace the entire Zoning Board of Appeals and appoint new members who will be dedicated to serving with integrity adhering to the same standards they are there to uphold, and using the correct standards on which to make their decisions for the good of the whole community, not just for one individual. This action should not rely on the terms ending for these members, but on the termination of their position due to their failure to do their duty and the condoning of illegal activity by township officials.

Chairmen Bloss ~ as chairmen of this board, I certify that we have upheld the highest standards required of this office and just because the Petitioners are unhappy with the decision of the board does not justify personal unsubstantiated attacks on the board. Further, because of Petitioner's concern, this board has agreed to redo the entire process to further assure that they have been able to totally present their case and be given every benefit of the doubt. Every effort has been made to address the Petitioner's concerns but there becomes a point when a decision must be final and the matter is disposed of properly. We are now at that point; let me emphasize one more thing when you're asking the Township Board to relieve this entire board of its duties they can do that. We serve at the pleasure of the Board of Trustees they can say thanks and don't come back tomorrow and some of us would probably be happier. When you look at the amount of work that we have put into activities like this. I can tell you for myself it's out of a sense of public duty, I have lived in this township all of but 3 of my 65 years it's a nice place to live and I think I should give back and probably the opinion of most of the board members here. Trust me this is nothing a levy for, we didn't ask votes for, you only need two things you have to volunteer and the board would have like you to be a member. We serve at their pleasure and we can be gone at anytime. That was long and I apologize for the length but it was such a serious three (3) pages of allegations as chairmen of this board I could not let it go without going through them addressing them one at a time. With that I ask any of the board members for their comments.

Alan Levijoki ~ we are agreement with that chairmen

Chairmen Bloss ~ so with that I entertain a motion

Motion by Chairmen Bloss, supported by Liz Helms that we deny the appeal as present by the Stanislaw's and retained that was made on February 27th. Any questions on the motion Roll call: Alan yes, Gregg yes, Liz yes, Clyde yes and Denny yes. All yeas motion carries.

NEW BUSINESS: none

OTHER BUSINESS: none

BOARD COMMENTS: none

Motion by Clyde Howd, supported by Liz Helms to adjourn. Motion carried at 7:25 p.m

