

YATES TOWNSHIP ZONING BOARD OF APPEALS  
SPECIAL MEETING FINAL MINUTES  
August 29, 2023 6:30 P.M. ET

1) The meeting was called to order by Nicole Myers at 6:30 pm.

2) Roll Call attendance vote was as follows:

Present: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer

Absent: -none-

A quorum was established.

3) Approval of the Agenda.

Motion by Blair Evans to approve the agenda as written, seconded by Nicole Myers.

Roll call vote:

Yes: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer

No: -none-

Motion carried by unanimous roll call vote.

4) Chair Myers gave a statement on the hearing procedures and rules.

5) Chair Myers called to open the hearing for Steven A. Shirah.

Mr Shirah was not present and did not have a representative present.

Secretary Evans indicated that he was notified by Zoning Administrator Jacobs that Mr. Shirah verbally requested to withdraw his application for a variance, but no written request was submitted.

Township Attorney Cliff Bloom offered that under the circumstances the board could entertain a motion to withdraw the application from the agenda.

Secretary Evans moved to withdraw the application based on Mr. Shirah's oral request, seconded by Chair Myers.

Roll call vote:

Yes: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer

No: -none-

Motion carried by unanimous roll call vote.

Resident Derrick Campbell, who was noticed on this matter offered a public comment. He stated his history and attraction to the area and the investment made for the purpose of the culture of the community. He indicated that his investment would be devalued in both cultural and financial terms by having camping in the area. Revitalization is opposed by community wide campsites.

Attorney Bloom commented that it is probable that a reason that the application was withdrawn was due to the not being able to camp on the property even if a variance was granted due to the township's more recent camping ordinance that does not provide for variances.

6) Motion by Secretary Evans to open the hearing on the administrative appeal by Tonderleariew White and Audrey Young-Miller, seconded by Vice-chair Iris Hill.

Motion carried by unanimous voice vote.

Attorney Bloom offered comments to provide context. He outlined the uniqueness of the case and recommended handling the administrative appeal first as that may eliminate the need for the variance request.

Zoning Administrator Jacobs provided an overview of the case. The previous Zoning Administrator provided a permit that was not in compliance with the ordinance in effect at the time, due to width of single wide home. ZA Jacobs reversed that decision.

Attorney Nick Ward presented the request of the petitioners. It was consistent with the correspondence submitted which is attached to the minutes. He pointed out the financial outlay of the petitioners based on the initial approval. He questioned the validity of the adoption of the newer ordinance due to clerical errors in publication rendering it faulty and therefore not valid. If it were valid it didn't include mobile homes in the change in width requirements. He further indicated that they are in the process of completion and therefore the permit can't be rescinded. They request that the permit be reinstated and that they be allowed the complete time period initially allowed. They would like to complete the project before winter.

Chair Myers asked for the figures for the outlay. Attorney Ward indicated that he doesn't have the totals, but has a number of receipts which he showed the Chair.

Attorney Ward indicate that he had no further comment on this matter when asked by the Chair.

Chair Myers asked for comment from those who wish to speak in favor of the application. None came forward.

Chair Myers asked for those who wished to bring comments of opposition or have background information on the request. None were offered. Secretary Evans indicated that there was no additional correspondence received per the Township Clerk.

Attorney Bloom offered clarifying comments. The issues related to the costs are probably relevant to a variance request later, but not to an interpretation. There are cases that indicate that clerical errors are not fatal to an amendment, unless it creates a real ambiguity in what is being amended. He suggested that it was clear what was being amended. The old ordinance (Section 'b') had mobile home floor area requirements, but no width requirements. The new ordinance has width requirements for every dwelling in Section 'a', and it is not limited to type, it applies to everything.

Secretary Evans asks to confirm that the language of "every dwelling" applies to both stick built and mobile homes. Attorney Bloom spoke to the logic pointing in that direction.

Attorney Bloom pointed out the Michigan rule of non-estoppel and how it differs from legal non-conforming use. He indicated that the issue here is whether the new ordinance applies or there are enough ambiguities, conflicts and so on that the old ordinance should govern and the only limitation is the size.

Attorney Ward pointed out the concept of detrimental reliance relative to his clients.

Motion by Secretary Evans to close the hearing, seconded by Vice-chair Iris Hill.

Roll call vote:

Yes: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer

No: -none-

Motion carried by unanimous roll call vote.

7) Chair Myers provided instructions for deliberation.

Secretary Evans indicated that the equity discussion would be relevant to a variance discussion. He recognized the clerical errors in the ordinance publication, but feels that they are not significant. He indicates that the language in the new ordinance in Section 'a' which indicates "every dwelling" is clear and is a reasonable interpretation by the Zoning Administrator. Therefore the new zoning administrator made a correct decision in rescinding the permit following the ordinance.

Chair Myers agreed with the position and indicated that "every" is the key word in the ordinance.

Ms. Vollmer stated agreement with the position stated by Secretary Evans.

Ms. King stated agreement with the position stated by Secretary Evans.

Vice-chair Hill stated agreement with the position stated by Secretary Evans and comment that "every" applies to all dwellings.

Motion by Secretary Evans to deny the administrative appeal and uphold the Zoning Administrator's decision to rescind for this specific issue in this request which doesn't speak to the second request for a variance. Seconded by Chair Myers.

Roll call vote:

Yes: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer  
No: -none-

Motion carried by unanimous roll call vote.

8) Motion by Vice-chair Iris Hill to open the hearing on the variance request by Tonderleariew White and Audrey Young-Miller, seconded by Secretary Evans.

Roll call vote:

Yes: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer  
No: -none-

Motion carried by unanimous roll call vote.

Attorney Bloom provided comments. He indicated that the current ordinances do not provide review standards. So he utilized Michigan case law and provided the ZBA with 4 standard ones present in multiple court cases to use. A copy was also given to Attorney Ward. Attorney Bloom indicated that these are what must be "focused on like a laser" and all of the standards must be met. He indicated that this is a very unusual case and that there is case law that indicates that you can grant a variance even if the standards aren't met to prevent a "taking. If all of the standards are met then the variance can be granted. If all of the standards are not met but the ZBA feels that there would be a taking then the standards can be bypassed and the variance can be granted. Things that are relevant include: all 4 standards; how much money has been spent; non-hearsay evidence of what the applicant was told at the time.

Zoning Administrator Jacobs indicated that the overview is the same.

Attorney Ward confirmed that it is difficult with set standards, but that most variances have the simple requirement that it is within the spirit of the ordinance, that public safety won't be impacted, and that substantial justice will be done, and that the issue was not self created. He described that zoning is about conformity, not uniformity and how that applied to his client's project and the community. He stated that it is in line with the community's master plan for

housing. He stated that it is in the spirit of the ordinance, even if it not completely compliant. It is not a public safety concern. So the issue is substantial justice, as the problem was created by the township. A new quality house is an asset to the community. It doesn't meet the strict letter of the ordinance, it is 6 feet to narrow, but that is what variances are for.

Chair Myers asked for comment from those who wish to speak in favor of the application. None came forward.

Chair Myers asked for those who wished to bring comments of opposition or have background information on the request.

Clerk McGregory indicated that she notified the petitioners through conversation in her office prior to the issuance of the original permit that singlewides are not allowed by ordinance. She suggested that she notify Zoning Administrator in the next office. She indicated that the petitioner never came back to her office then. Later she was monitoring activity in the community and was taken to a building site that was the dimensions of a singlewide. She researched that it was the same site that she had discussed earlier and called Ms. White to give her a "heads up" to not continue. Ms. White told her that she had a permit and would continue forward. Clerk McGregory contacted Attorney Bloom on appropriate next steps. When Clerk McGregory asked Ms. White when she got the permit she indicated the same day, the Zoning Administrator Hurst told her the Clerk McGregory didn't know what she was talking about and granted the permit.

Chair Myer noted that there was no correspondence received.

Chair Myers asked Attorney Ward for any rebuttal.

Attorney Ward indicated that no one was there for those conversations and no one knows what happened. What we know is that the permit was issued and his clients expended over six figures in detrimental reliance on that permit, the permit was subsequently rescinded and they are now just trying to right that problem.

Clerk McGregory indicated that she has two witnesses that were in the room when the conversation took place to confirm that it wasn't made up.

Motion by Secretary Evans to close the hearing, seconded by Vice-chair Iris Hill.

Roll call vote:

Yes: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer

No: -none-

Motion carried by unanimous roll call vote.

- 9) Chair Myers passed the receipts received from Attorney Ward to the ZBA members for review.

Chair Myers opened deliberation.

Secretary Evans indicated that he is processing this. The township was extremely clear on the desire and rule to not have anything less than 22' in width for houses in the ordinance. So the arguments about the quality of the house are not compelling to me. The equity argument is compelling, but he stated that what he is trying to process is what the Clerk informed the board of this evening. He recounted that he remembers the Clerk speaking to that conversation at the time (a little before Labor Day) in the context of verifying the specific ordinance, so he is sure that the conversation happened. He indicated that he is trying to process whether it make any difference. He stated that he understood the detrimental reliance and the substantial justice equity logic and it is compelling. However, there is also the issue of it not being self-created and where there was genuine reasonable reliance if there was an understanding that there was an ambiguity there. If it was known that there was a yes and a no, the Township Clerk is the official keeper of the records

for the township and there would be a reasonable expectation that she would know what the township ordinance is. You also have the Zoning Administrator who should know what the ordinance is, so you have a no and a yes. Is it reasonable to expect one to resolve the conflict before investing a lot of money in a project. Is this partially self created?

Vice-chair Hill stated that it doesn't meet the criteria if the applicant was aware of a conflict with the ordinance ahead of time. The township clerk is a member of the board which passed the ordinance and is responsible for publishing the ordinance. The past Zoning Administrator had questionable skills.

Secretary Evans questioned how the applicant would know that. If the township board appointed a Zoning Administrator, it would be reasonable to assume that they were competent. If they weren't it is the township's problem not the applicant's.

Secretary Evans asked Attorney Bloom to verify that it is permissible to delay decision to further investigate the issues. Attorney Bloom indicated that it is permissible to table the decision on the variance. Secretary Evans indicated that if we table it should be for a short time to research the new information. Terri King supported tabling it for more research. Attorney Bloom suggested that if the variance is to be tabled that we keep the record open so that the Zoning Administrator, the applicant, and other can submit documentation.

Motion by Secretary Evans to table it on the order of two weeks, but keep the record open to allow for submission of information during that time period. Seconded by Terri King.

Chair Myers asked to set the date. Secretary Evans proposed September 7 as a potential date. Chair Myers proposed 6:30 pm as a time. Secretary Evans amended his motion to include a September 7 at 6:30 pm meeting date. Chair Myers seconded the amendment.

Attorney Ward confirmed that September 7 at 6:30 pm is compatible with his schedule. He indicated that he would be sending follow on information and verified that sending it to Secretary Evans for distribution is appropriate.

Roll call vote:

Yes: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer  
No: -none-

Motion carried by unanimous roll call vote.

10) Public Comment.

No comments offered.

11) Adjournment.

Motion by Secretary Evans to adjourn, second by Chair Myers.

Roll call vote:

Yes: Blair Evans, Iris Hill, Terri King, Nicole Myers, Paula Vollmer  
No: -none-

Motion carried by unanimous roll call vote.

Meeting adjourned at 7:40 pm.

Respectfully Submitted



Secretary Blair Evans