

YATES TOWNSHIP ZONING BOARD OF APPEALS  
SPECIAL MEETING FINAL MINUTES  
September 7, 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 Iris Hill.

Motion carried by unanimous voice vote.

4) Information from the public for items on the agenda.

No comments were offered.

5) Deliberation and decision on variance request from Tonderleariew White and Audrey Young-Miller for Parcel No. 15-410-018-00

Members reviewed information received since the variance was tabled, but the record was open.

Secretary Evans reviewed the origin of the review standards being used.

Information was reviewed on additional timeline and communications by the Clerk around the time the permit was rescinded (attached).

Secretary Evans gave an overview of the Aug 30 memo from Clerk McGregory.

A contractor on-site across the street testified to a contractor of the petitioners continuing work after a stop work had been placed and conveyed that the contractor was told by the owner to remove the stop work order and continue his work. The stop order was gone when the contractor left.

Zoning Administrator Jacobs reiterated 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. He reversed that decision.

Attorney Nick Ward indicated that self-creation seemed to be the key issue but, reviewed his interpretation of all of the criteria and that all were met. On the fourth standard, self-created, it was argued that it was not self-created as the person who had the authority to make the decision made the decision that it did fit the ordinance on August 25<sup>th</sup> and the permit was not rescinded until May 3<sup>rd</sup>. They didn't start action until January 16 and during that time heard nothing from Yates Township on the issue. Other conversations that happened with other officials didn't matter as the Zoning Administrator is the one that the public believes has the authority to make those decisions. The petitioners reasonably and detrimentally relied on that decision. The well and septic were installed prior to the stop work orders.

Attorney Bloom pointed out that there is no understanding of what portion of the purchase price of the mobile home may be recoverable and also that it is possible that the general site prep work could be applied to another larger home. So it wouldn't be a total loss.

Clerk McGregory clarified that a trench was dug after the stop work order.

Clerk McGregory indicated that the delay from late August to May was because Clerk McGregory didn't know that the permit had been issued until observing the site. Ms. White never returned to the Clerk's office to indicate the permit status.

Chair Myers asked for any other comments.

Chris Grier welcomed the petitioners to the community. He noted that people in positions of authority make mistakes every day so we rely on the ZBA to take into consideration the full situation. Another point is that people need to be responsible for knowing and finding out information related to land use. It is the landowners responsibility to research further knowing that Clerk McGregory is an authorities source.

Attorney Ward responded that his clients emailed Secretary Evans and Clerk McGregory for the ordinances and never received a reply from the township before May 3<sup>rd</sup>. They also couldn't access it online, they are still not online. Clerk McGregory and Secretary Evans expressed no recall of the request for the ordinance. When asked by Secretary Evans after he searched his email and found no such request Attorney Ward changed his statement to refer to an text message to a personal phone number with the request. Evans indicated that he doesn't do business via text message and doesn't have a record of that text on his phone. Also it was corrected that the request to Clerk McGregory was in conversation, not email, and Clerk McGregory has no recall of that request.

Oscar Barnes, a community member, commented that he has had a community conversation, and they feel that the board should approve it as it is a nice new trailer and they know the applicant. He also described the 15-minute conversation (arguing) when Clerk McGregory was clear that she couldn't build a singlewide.

Ms. White spoke to clarify Mr. Barnes comments. The conversation that occurred also involved Clerk McGregory calling Blair Evans to clarify the ordinance. She stated that she understood that there were two sets of ordinances that were being resolved and the Mr. Evans was involved in that. At that point during the conversation she asked Clerk McGregory for a copy of the ordinance. She stated that she does have a copy of the ordinance that Zoning Administrator Hurst gave her.

Secretary Evans thanked Ms. White for the helpful comment. The complete reconciliation of the old ordinance didn't complete until August of this year, however the ordinance on dwelling width was just passed the prior year and was unambiguous. If the request for the complete ordinance set then that was not available. He stated that he appreciated the community input, but the ZBA has a very specific charge, which may be different.

Secretary Evans suggested that deliberation begin.

Chair Myers stated that something that stood out to her was that the petitioners had done their due diligence by requesting the necessary information to resolve the ambiguity, but it was not available.

Chair Evans suggested that one scenario would be to ask the two officials who were 20 feet apart to come together and give one answer. Overall, there was not a high degree of transparency as to what the township's records were and there was a misrepresentation of what the township ordinance was. He referred to a prior comment by Chris Grier which essentially stated that even if the someone tells you the wrong thing in giving you a permit, the permit isn't valid if it doesn't follow the ordinance in effect. There is also the issue of one reasonably following an authority who should know and then making decisions that have significant financial, and other, impact and as a result, whose responsibility is it to rectify that from an equity perspective. There is a level of clarity that if you give a permit that doesn't follow the ordinance then it isn't a valid permit. You may not know that, and you may act upon it, but then you are talking about a different set of equities. Within the self-created piece, my view is that there was a degree of self-creation in this. But it is a small degree. I am looking at a combination of these standards and one and four are the ones that I am zeroing in on. I think that there was a degree of understanding that there was

some consideration of whether that was valid or not, due to the Clerk's representation and the attempt to investigate what the ordinance says. I also understand that if no one tells you anything different over an extended period of time that you would resume to go ahead.

Chair Myers stated that it would be a very different conversation if this had been decided in August and the started building in October and then faced a stop building in December. But the 9 months makes it different.

Secretary Evans stated that the Clerk didn't know that a permit had been issued until seeing some work on the ground which was 9 months later. This was an internal breakdown in Yates Township that the Clerk didn't know, and the applicant wouldn't know that. I do see the Township's impact on the self-created aspect.

Secretary Evans stated: I had asked some questions about number one which applicant's attorney refused to respond to because he thought that they were irrelevant, and I don't think that they are irrelevant. That would have been very helpful to be able to make a decision around number one. I think that everyone would like to see the project move forward. I also know, having sworn an oath of office on the Planning Commission and the ZBA, that the Township adopted an ordinance, and the ordinance says something and there was an intent behind that ordinance. The Township spent a considerable amount of time putting that ordinance into place to direct development in the area. Something that is better than what was previously there, but is not compliant with what the ordinance requires, is still not sufficient. A desired outcome, if feasible, would be to move forward in a manner compliant with the ordinance and I asked some questions related to how feasible that is. My request for information was related to how the location of well and septic along with lot size and contract terms would preclude moving ahead in a way that is compliant with the ordinance. It appears from a simple analysis that the well, septic and lot size are sufficient although there may be something that I missed, and it would be useful if the questions had been answered. The other aspect is I have no idea on the house. For example, is there a 5% penalty for not taking delivery on a singlewide and applying that to a doublewide? That would be more expensive than the original project but in line with the cost of following the ordinance from the beginning. Or if there is a \$50,000 sunk cost then that is a different scenario.

The question is if it is unnecessarily burdensome, and I have asked for information and have not received information on what that burden is in order to make a determination if it is unnecessary or not. There is an interrelationship between four and one. Secretary Evans then reiterated the analysis. Well, septic and lot may be used for compliant structure so a lot of whether this is unnecessarily burdensome comes down to if there is a significant sunk cost related to the structure.

Chair Myers asked the petitioners for a response.

Ms. White indicated that they approached the vendor of the mobile home when the problem arose and was told that she would have to be responsible for selling the purchased home at whatever price she could get. They don't do any type of trade-in or application of payments toward other models.

Attorney Wade indicated that he received the request on Wednesday and read the request. He stated that he didn't respond because it confuses the issue. What the element actually reads isn't whether strict compliance can occur, its whether it should occur given the situation. The lot and infrastructure would probably permit a doublewide, but that is not the issue. The issue is that they were permitted for a singlewide. They didn't provide the information because it isn't about whether or not it could fit or strict compliance could occur, it is whether it should occur. He indicated that he could have formally verified Ms. White's statement with the manufacturer but that wasn't the issue and he didn't want it to confuse or mislead the board into thinking that was the problem.

Secretary Evans stated that he appreciated Attorney Ward trying to shield the ZBA from the complexities of our jobs but in order to determine whether it should we have to determine whether

it is unnecessary burdensome and to understand if it is unnecessarily burdensome we have to understand what the level of burden is. It is not a could/should issue it should be based on whether it is unnecessarily burdensome based on the level of burden.

Secretary Evans indicated that he knows the data that he needs, and it is the data that he asked for. I asked for it for a purpose, again I see you trying to shield us from what you don't think our job is, but that actually is part of our job – to make a determination of what unnecessarily burdensome is and that includes the information that I asked for. If you had just sent what I just heard, I heard enough, I know now, that is what I asked for – what are the circumstances related to precluding compliance. Well, septic and lot don't seem to be the issue. If there is a huge financial impact that is directly driven by relying on information that you got from the township that misled you then that is an equity issue that could lead one to determine that there is an unnecessary burden, but the only way to determine that is to know the level of burden. That is the reason for the question. Thank you for filling us in on that.

Attorney Wade stated that he understands, offered apology and didn't mean to offend, he was just trying to keep this...

Secretary Evans interrupted – overly simplified and we are trying to not make it overly simplified. I understand that you want to have us focus on a few things that are in your client's best interests, but our responsibility is to focus on the totality of the situation and make a comprehensive decision.

Attorney Wade indicated that he had no further input.

Attorney Bloom was asked for input. He agreed with the statements by Secretary Evans.

Ms. Miller spoke to the cost of doublewide would be a financial burden.

Secretary Evans indicated that he understood, but noted as a ZBA official that there are two separate issues, and the difference may be useful in the future. The ordinance would require a doublewide so that whatever the cost of a doublewide would be a normal part of building something that is compliant with the ordinance. That part, in and of itself, I understand personally, but from the perspective of the township that is the cost of being compliant with the township ordinances. However, being misled into buying something that you can't use and have to sell for much less than what you paid is an issue that goes toward the burden. What is impactful is making an investment that you have to take a significant loss on based on a misrepresentation from the township, whether it was legal or not it is still impactful. The reason that I asked for a picture was to get an indication as to whether it was in keeping with the community as is being represented. So I will ask you to give brief testimony as to the look and why it would be an asset in terms of look and feel.

Ms. White offered a video of the interior and described the layout of the home. No picture of the exterior was available. She discussed general exterior features with the board.

Member Paula Vollmer offered a position. A promise was made by the Zoning Administrator Hurst in the form of a land use permit. She believes that it was made in good faith. If the promise is not enforced the result will be injustice. She has had difficulty getting accurate ordinance in trying to research the ZBA variance requests. In her opinion we need to use the permit that was granted by Mr. Hurst. She believes that ZA Jacobs did the correct thing by rescinding that permit because he was going on the ordinance that was made available to him which were different than the ordinances that Mr. Hurst had.

Member Terry King stated that she has a hard time with this. She agrees with what Member Vollmer said, but with what was said earlier with Clerk McGregor and Oscar Barnes about the conversation in the office and is against granting the variance due to their prior knowledge of a problem.

Vice-chair Hill stated a couple of issues. One, given the amount of money being spent they should have looked into it further since a township official told them that it couldn't be done. Two, the Township should take some responsibility because they had an untrained person doing a job that they should have been trained for. She stated that we worked very hard to adopt this ordinance to enhance the character of the area. Both the landowner and the Township should take some responsibility.

Chair Myer questioned what more Ms. White should have done since several members mentioned that she could have done more. Vice-chair Hill indicated that the Clerk is on the Township Board and the Zoning Administrator works for the Township board so she should have taken the Clerk's directive seriously.

Chair Myers asked Clerk McGregory if she had shown the ordinance to Ms. White during their conversation, Clerk McGregory indicated that it was just verbal.

Secretary Evans reiterated his position.

Attorney Bloom indicated there didn't see legal fault with Secretary Evans' analysis.

Motion by Secretary Evans to grant the variance as a very extraordinary circumstance due to an unnecessary burden associated with rescinding the permit while the project was in process and based on the standards. Seconded by Vice-chair Hill.

Roll call vote:

Yes: Blair Evans, Iris Hill, Nicole Myers, Paula Vollmer  
No: Terri King

Motion carried by 4 to 1 roll call vote.

- 6) Schedule special meeting for approval of minutes from Aug 29 and September 7 meetings.

Secretary Evans pointed out that our ordinance creating the ZBA requires that the minutes from any meeting including a decision be approved within 30 days.

Motion by Secretary Evans to have a special meeting to approve the minutes on September 26 at 6:30 pm. Seconded by member Paula Vollmer.

Motion carried by unanimous voice vote.

- 7) Public Comment.

Clerk McGregory commented great job.

Ms. Young-Miller thanked the board.

- 8) Adjournment.

Motion by Secretary Evans to adjourn, second by Vice-chair Hill.

Motion carried by unanimous roll call vote.

Meeting adjourned at 7:55 pm.

Respectfully Submitted



Secretary Blair Evans