

**WESTFIELD TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
October 29, 2009**

PUBLIC HEARING

Chair Schmidt called the public hearing of the Westfield Township Board of Zoning Appeals to order at 7:34 p.m. Permanent Board members Micklas, Daugherty, Oiler, Simmerer and Schmidt were present. Alternate Board member LeMar was also in attendance as well as Tim Kratzer, Heather Sturdevant, Jack Jackson, Tammy Jackson and Carolyn Sims.

VARIANCE REQUEST

Jackson use variance request to build a 30'x 40' pole building on vacant land-5856 Stuckey Rd.

The applicant, Mr. Jackson was sworn in. Mr. Jackson began by stating he wanted to build a 30'x40' pole building on the vacant lot he owned next door to the lot his residence was located on. Both lots were approximately 2.5 acres but were separate parcels. Per the zoning resolution there would not be enough room to build the pole building on the lot with the residence and meet the setback requirements with the existing location of the septic system. Chair Schmidt asked if Mr. Jackson received the standards for consideration of a use variance? Mr. Jackson stated yes, he received them from the zoning secretary Kim Ferencz.

Mr. Oiler stated he visited the property and then asked Mr. Jackson if he thought there would be enough room to erect the pole building if in the future Mr. Jackson chose to build a home on the vacant lot? Mr. Jackson responded yes he already looked into that. Mr. Oiler asked what was the reasoning not to combine the two lots? Mr. Jackson stated that the two lots were in two different tax zones (School Districts). The County won't recognize the lots as one and added he would still get two tax bills. If the lots were combined he could not then split them at a later date to build a house on because of the 250-ft. frontage. Right now the vacant lot was grandfathered to build a home.

Mr. Daugherty stated he too went out to view the property, and asked Mr. Jackson what he wanted to store in the pole building. He would like Mr. Jackson to state for the record what would be stored in the building. Mr. Jackson replied an antique car he was restoring, a four-wheel drive tractor, a couple of motorcycles and other miscellaneous items. He added they were a one-car family so if there was ever another vehicle he could park his pick up in the building. The existing garage is 20x26 so it could be used to house one vehicle.

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Mr. Oiler asked if the variance was granted and the pole building built, would a drive be put off of the lot with the residence? Mr. Jackson stated he has not decided on that yet. He was not sure if he wanted to put the drive off the road. He stated when he originally wanted to build the pole building it was the week of the Wayne County Fair and he was not even planning to put a drive in. He did not know if he wanted to hook a new drive to the existing driveway or put a drive in off the road or maybe even both and make the drive U-shaped for easier access.

Chair Schmidt stated when he went out to the property, Mr. Jackson told him he might want to build a house on the vacant lot in the future. He asked Mr. Jackson if the proposed pole building would still be built to the back of a future residence? Mr. Jackson stated the front of the pole building would be to the center of the peak of the proposed house if built. He added if he built a house on the vacant lot the pole building would be next to it or farther back. The house would be small in size but did realize there were minimum size requirements for a residence in Westfield Township.

Mr. Daugherty asked about the property in question being in two different school districts. Can they be joined together in Medina County? Mr. Jackson stated he could not answer that question. Tax Map Office just said it was in two different school districts. Mr. Micklas asked if the school districts would be willing to redraw the property lines for school tax issues? Chair Schmidt interjected that he did not believe it would be up to the school districts to accommodate that.

Mr. Oiler asked how soon Mr. Jackson would build a house on the vacant land? Mr. Jackson responded he was almost 50 yrs. old now so maybe in ten years but he could not say for sure. Mr. Micklas asked if Mr. Jackson was to build the pole building and then the house, would Mr. Jackson encounter the same issues i.e. no room for the septic? Mr. Jackson stated no, there was more room on the vacant lot because the drop off was not as bad as it is on the lot with his house on it. The land which the house sits on, has a swamp in the back. The land is flatter on the east side. It appears new septic systems can go just about anywhere.

Mr. Daugherty stated when he was out at the property it did appear that there may be some other locations that the pole building could be built between the leach bed and the side of the property. Mr. Jackson stated no because if you went 25 ft. off the property line with the leach bed...the property on the west side is really wet all year round. Mr. Daugherty asked if the pole building could be built behind the leach bed? Mr. Jackson stated no, the property drops off too much. Mr. Daugherty stated the property slopes but nothing that would prevent Mr. Jackson constructing the pole building there. Mr. Jackson stated that area is a swamp back there. He would not build a barn back there. Mr. Jackson stated that swamp was not supposed to be there but he was told that it was a County issue. Apparently somebody messed up the drain tile back there. Mr. Micklas asked if the swamp was there when Mr. Jackson built his home? Mr. Jackson replied yes but not as

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big as it is now. He added there were big trees back there and now they are all dead. There was a catch basin back there that sticks up out of the swamp

Ass't Zoning Inspector Evans was sworn in. He stated the swamp behind Mr. Jackson's house was all part of the drainage that goes down to Creston. The Township has tried to work with the County and the State but since it was on private property nobody seems to want to take responsibility. It is peat out there and that area caught on fire about 25 yrs. ago. The only way to put it out was to bring in large earth moving equipment and tear the ground out and in the process a bunch of field tile was tore up. As a result everything continues to back up. Ass't Zoning Inspector Evans stated he told Mr. Jackson if enough surrounding property owners could get together they could petition the County to replace the line that goes across Rt. 3 and down Stuckey Rd. However, the County would then assess all the property owners and nobody wants to incur the cost. Mr. Jackson stated in the summertime the smell was unbelievable. In the spring the swamp gets about 5-ft. deep. Mr. Micklas stated it appeared about ¼ of the property was swamp.

Carolyn Sims Township Trustee was sworn in. She stated that "swamp area" is referred to Bruce and Rosemary Broadbridge drainage issue from Rt. 3. From research done it was found that this drainage was created as a WPA program which was a post WWII put workers back to work drainage program. Right next to Rt. 3 there is a cleanout. The Medina County Engineer's Office has drawings of the improvements made and the ditch profile along Rt.3. This was before the Highway Engineer's Dept. existed. Creston also did some additional water line installation in that area and during that process some of the clay tiles were disturbed. The Township worked with Creston and they did clean out that line but by doing so they felt that possibly they were damaging it more. Because of the expense of the repair no residents have come forward to address the issue further. Mrs. Sims stated that there were several meetings with Bill Thorne, representatives from ODOT and the Highway Dept. but at this time nobody is claiming ownership. She then asked, has the swamp grown? Yes, and there are aerial photographs that reflect that. The parcel that controls the main just sold at auction (Winkler property). It is hopeful under new ownership that the property owners could work together. Mrs. Sims asked the Board to take this information into consideration for the property owner as this issue still remains unresolved at this time.

Mr. Micklas asked if anyone was keeping track of the rate of growth of the swamp? Mrs. Sims stated per her recollection there were areas that seem to be growing but she has not pulled up the aerials in the last year. Since it could not be found who took ownership of the drainage line once WPA installed it, it was unknown who was responsible for its maintenance as the Highway Engineer's Office was not even in existence when it was built.

Mr. Simmerer stated he did call Bill Thorne from the Prosecutor's Office and discussed with him the split that predated the current zoning and if that would have any bearing on the request this evening, but Mr. Thorne did not find anything that would be of benefit for

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this particular situation. Mr. Simmerer stated the Duncan Factors are what the Board needs to consider in making a decision. It was only speculation as to why the writers of the current zoning decided on the regulations that are in effect. The issue is you build a pole building on the vacant lot but what happens when you are no longer here? That property would continue to survive and move forward. The next person buys the property with the pole building on it so what could they use the building for? If we allow Mr. Jackson to build the pole building the Board would have to allow the new owner a use. The only uses are going to be non-conforming. The Township would almost have to put up with a non-conforming use. Typically you would see an individual come in and try to run a business out of the building like a landscaping company or storage or something like that. The building could also become vacant which would become a nuisance.

Mr. Simmerer continued that the Board usually sees that a property owner wants to build an accessory building first before they build their home. In Mr. Jackson's case there is no definitive timeframe as to if or when a house would be built. The track record for the Township of a house being built after the accessory building is built has not been good. Mr. Jackson commented he did not know what the future would hold. Mr. Simmerer stated that was why the code was written for a principal use to be built before an accessory use. At this point we should consider the Duncan Factors and see what the Board decides.

Mr. Daugherty stated two items for consideration gave him some issues. Under Use Variances in the Zoning Resolution it states, "Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance", He stated the property the Board is looking at is the property where Mr. Jackson's residence is located but the variance would actually go with the other property. There is nothing unique about the vacant property that would warrant the pole building to be built before a principal residence is established because a house could be built on the vacant land and then an accessory building built. Chair Schmidt agreed and added that is why the Board has been discussing if the pole building could be built on the property with the residence. The request is to place the pole building on the property where there is no residence. Mr. Daugherty interjected that is what makes this a use variance which the hardest one to grant.

The second issue is, "Whether the variance is substantial." Mr. Daugherty stated he personally would rather grant Mr. Jackson a side yard variance on the property with the residence, which would be much smaller in scale than a use variance for the vacant property. There is more uniqueness in the property with the house than the vacant property. The other Duncan Factor's really do not affect his reasoning but the first two Factors do.

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Mr. Daugherty continued that there was 45 ft. from the house to the property line and the leach bed is off the house corner 10 ft. so that would put the proposed building close to the leach bed so a variance could be granted...Mr. Jackson stated he was not going to build anything on the westside of his lot as it was too wet. He added if he had to build on his property it would be to the east. Mr. Daugherty asked if the pole building could be built where the dog coop was? Mr. Jackson stated if he did not have to meet the 25 ft. side yard requirement possibly it could.

Chair Schmidt stated that made more sense to him for the pole building to be built on the lot with the residence because it would be straight in line and easier access from Mr. Jackson's driveway to get back there. The area variance request could be 5 ft. or 10 ft. but at least the Board would then not have to consider a use variance. Mr. Daugherty interjected if the Board granted a side yard variance on the east side Mr. Jackson owned the lot next to it so he would not have an issue with it. If and when Mr. Jackson goes to sell the property the new buyer would see that the pole building was 5 or 10 ft. off the side property line. Chair Schmidt added there were trees there that almost form a natural boundary.

Mr. Micklas asked if Mr. Jackson considered modifying the size of the proposed pole building? Mr. Jackson stated he did not want to build a smaller building. Mr. Micklas stated Mr. Jackson could resubmit and ask for an area variance and ask the Trustees to waive the application fee.

Mrs. Sims stated after the conclusion of this public hearing she was going to request a meeting date for another applicant and also a training session with Mr. Thorne. One of the dates Mr. Thorne was available was November 16, 2009. She suggested the Board continue this public hearing on the modification of Mr. Jackson's application...Secretary Ferencz apologized for the interruption but stated before the BZA this evening is an application for a use variance request. The standards are different for a use variance as opposed to an area variance. The standards are very high for a use variance to be considered and granted. The Board has stated that if modifications could be made to Mr. Jackson's property with his residence on it then the Board could consider an area variance request and the Board would not have to be concerned with a use variance and its higher standards. She asked that all of this information be explained to the applicant so that he understands all the circumstances and could make a rationale decision if he wants to withdraw his request before the Board this evening and apply for an area variance. If Mr. Jackson decides to go ahead with an area variance and wants the application fee waived he would need to go before the Township Trustees to request that waiver.

Mr. Daugherty asked how the variance was advertised? Secretary Ferencz stated as a use variance. She added she did explain to the applicants what they were applying for and gave them the standards. Mr. Jackson responded that was correct. Mr. Daugherty stated the applicant has a few choices. The applicant could withdraw their use variance request and resubmit and possibly it could be heard on November 16, 2009. He added he would

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be willing to rehear the variance request or the Board could vote on the use variance request this evening and whatever happens happens.

Mrs. Sims stated she suggested that the Board continue this hearing and let the applicant amend his application. She added as trustee liaison for zoning she would recommend to the Board of Trustees at the next regular Trustees meeting to waive Mr. Jackson's zoning application fee since the hearing would be continued to a date the Board was already assembled to meet i.e. the joint board training session with Mr. Thorne. Secretary Ferencz interjected that it would not be a continuation of this public hearing because this application was for a use variance. If the Board votes tonight and the applicant felt he was adversely affected by the Board's decision the only recourse was the Court of Common Pleas.

Mrs. Sims stated the Board could table their decision until the Prosecutor's Office rules whether a continuance is appropriate for Mr. Jackson to do an amendment to his application. Mr. Daugherty stated it might be easier and cleaner for the Board just to vote on the use variance before them and then if the applicant wants to resubmit for an area variance as that was the way he personally felt the request should go and would be more in favor of granting...Chair Schmidt interjected that the Board members could give their opinions as to how each is considering the application request before them this evening. Then the BZA would not have to vote on the application and that would give the applicant a pretty good idea of what is going on. If the Trustees so choose to waive the fee...Mrs. Sims stated since additional information is needed i.e. Pros. opinion which is not the fault of the applicant then the fee could be waived.

Secretary Ferencz asked why a Prosecutor's opinion was needed? Mr. Daugherty responded so the applicant knows if he should withdraw his request. Secretary Ferencz stated that was a decision of the applicant. The difference between a use variance and an area variance has been explained to the applicant and he could either withdraw his application or move forward with a vote of the Board. Chair Schmidt stated he would like to have the Board members give their opinion as to how each member is looking at the application before them and then let the applicant make the decision.

Mr. Micklas stated he agreed with Mr. Daugherty's statements that the standards for granting a use variance were very very high. There are opportunities with modifications of the barn or applying for an area variance instead of the use variance. There are lots in the Township that have a barn on them for years with the promise to build a house on the lot that have not been completed. He concluded that he would not be in favor of granting the use variance.

Mr. Daugherty stated he thought he was pretty clear on which way he was heading. Mr. Jackson interjected that the Board did not even need to be polled he could see the way the vote was going. Mr. Daugherty stated we did not know that as there were three other members that could have a totally different opinion.

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Mr. Oiler stated he agreed with Mr. Daugherty and Mr. Micklas that it was very hard to grant a use variance given the standards that have to be considered. It would be easier to work out the situation for an area variance.

Mr. Simmerer stated the hardship seems to run with the lot that the house is on and there are virtually no issues with the vacant lot. It would therefore be easier to justify an area variance on the lot with the residence than the vacant lot.

Chair Schmidt stated he was in agreement with the statements made by the other Board members but added the uniqueness is that Mr. Jackson owns both lots in two different school districts and does not want to combine them into one lot to reserve the flexibility to build a house on the vacant lot. He continued that the BZA has gotten stung in the past with granting variances for accessory uses without a principal building being established first. Regarding granting the use variance it would be hard to grant given that option Mr. Jackson wants to retain to build a home on the vacant lot. An area variance would make more sense and be more palatable.

Secretary Ferencz asked Chair Schmidt to explain to the applicant that if the Board votes on the use variance application before them this evening, if the result is unfavorable to the applicant the only recourse the applicant would have is to go to the Court of Common Pleas.

Mr. Micklas stated Mr. Jackson would have the ability to apply for an area variance on the other lot. Secretary Ferencz stated if the Board votes on the use variance and it is denied and then the applicant applies for an area variance it pollutes the process. Mr. Daugherty stated he disagreed. He added it was a different piece of property.

Secretary Ferencz reiterated the higher standards that have to be considered for a use variance. She added that it appeared the difficulties were on the property that the house was located on to put a pole building. The standards are easier for an area variance. She stated she wanted the applicant to realize all this information to make an informed decision.

Mr. Jackson stated he understood what Secretary Ferencz was saying. He then asked how much an area variance was the Board willing to give him? Secretary Ferencz stated if Mr. Jackson applied for an area variance the Board is to technically give the minimum amount that would be required per the zoning requirements for the construction of the pole building. The Board and applicant can negotiate but the minimal variance for Mr. Jackson to be able to build his pole building is what is to be granted if the Board decides to grant the area variance. Mr. Jackson continued he had 25 ft. from the property line and the pole building he believed there needed to be 15 ft. from the septic system.

Mr. Micklas asked if there was a standard as to how big a leach bed had to be? Chair Schmidt stated the proposed building would have to be where the old barn is. Mr.

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Jackson stated it would have to be located there because...you can't drive across your septic can you? He added he was not going to put two drives in on 150 ft. wide property and located the pole building back in the swamp. It is too wet back there. Mr. Jackson stated he did measurements and the pole building would end up being right next to the septic system. The septic system is right in the middle of the property. Mr. Jackson stated he thought he read that a building could be placed 10 ft. from the septic but he did not know for sure.

Mr. Daugherty asked Mr. Jackson to take real measurements from the septic tank. Mr. Jackson stated he did not want to build a smaller pole building. Chair Schmidt stated the Board needed to know how Mr. Jackson wanted to proceed. Mr. Jackson stated he wanted to withdraw his use variance application and apply for an area variance because he could see the direction the Board was headed regarding the current request before them.

Chair Schmidt stated Mr. Jackson would have to get together with the Zoning Inspector and accurate measurements would need to be taken and a scale drawing of where the proposed building is to be located would need to be produced and submitted. Mr. Micklas stated in doing so Mr. Jackson may find out there may only need to be minor adjustments. Chair Schmidt stated when the Board considers an area variance we look at the uniqueness of the property.

Mr. Daugherty told Mr. Jackson to come back to the Board with the minimum variance to be requested and the Board would work with him. Chair Schmidt stated Mr. Jackson should work the figure back from the location of the septic tank...Mr. Jackson asked if the building had to be 10 or 15 ft. away? The Board told Mr. Jackson to call the County for those specifics. Mr. Micklas asked if there would be an issue as to how far the proposed pole building would be from the house? Mr. Jackson said no there would be enough room.

Secretary Ferencz stated if the applicant per his statement wants to withdraw his use variance application then the Board should officially acknowledge the withdrawal. If the applicant wants to then submit for an area variance and wants the fee to be waived he would need to bring that before the Trustees for the waiving of the fee. The next Trustees meeting is November 5, 2009 at 7:00 p.m. It is up to the Board of Trustees to waive the application fee. Chair Schmidt agreed that it is not up to the Board of Zoning Appeals to consider the waiving of an application fee that was a decision of the Board of Trustees.

Mr. Oiler made a motion to accept the applicant's withdrawal of the use variance for Mr. Jackson as presented. It was seconded by Mr. Daugherty.

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

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Mrs. Sims stated it would be helpful to her as a Trustee liaison for the Board to vote on a recommendation to waive the variance application fee for Mr. Jackson so she could forward that information to the other two Trustees.

Mr. Daugherty made a motion to request the Trustees waive the zoning application fee for Mr. Jackson. Mr. Micklas seconded the motion.
ROLL CALL-Daugherty-yes, Micklas-yes, Oiler-yes, Simmerer-yes, Schmidt-yes.

Mr. Daugherty asked if the Board could hold another hearing for Mr. Jackson on November 16, 2009? Secretary Ferencz stated that would depend if and when she receives a new application. Mr. Daugherty stated if Mr. Jackson gets his application in tomorrow the hearing could be held on November 16, 2009. Secretary Ferencz stated she would need the Township Trustees to decide whether the fee is to be waived otherwise a fee must accompany the application.

Mrs. Sims stated the Zoning Inspector could contact the Trustees to see their level of support in ratifying that action at the next regular meeting of the Trustees. Mr. Daugherty interjected if push came to shove you could take Mr. Jackson's check and hold it pending approval by the Trustees. Secretary Ferencz stated she did not know if that was the way to proceed. Mr. Daugherty stated that should not hold up the process. The goal is to have this hearing on the same night as the scheduled meeting with the Prosecutor's Office.

Approval of Meeting Minutes

The Board signed off on previously approved meeting minutes for May 27, 2009 and June 3, 2009.

Mr. Oiler made a motion to approve the July 27, 2009 meeting minutes as amended. It was seconded by Mr. Simmerer.
ROLL CALL-Oiler-yes, Simmerer-yes, Daugherty-abstained (not in attendance at the hearing) Micklas-yes, Schmidt-yes.

Approval of September 8, 2009 Meeting Minutes

Chair Schmidt stated it was brought to the attention that the Board may not have had the standards it needed to consider for the Cloverleaf School District variances. There has been correspondence back and forth that Mr. Thorne has agreed to have a...Mrs. Sims interjected that the zoning secretary has been fully informed and briefed of the situation and was to bring the Board up to speed. Mrs. Sims added she had hoped Secretary Ferencz had spoken with Bill Thorne. Secretary Ferencz stated she had placed two phone calls into Mr. Thorne; one call to his office and one call to his cell phone. She added she received a phone call from BZA member Simmerer that he contacted Bill Thorne on his cell phone and wanted to reconsider his vote on the school sign variance request. Secretary Ferencz stated she has not heard back from Mr. Thorne. She added the Board has correspondence in front of them this evening from the Architect representing the School District that they would like to delay a hearing on the School Districts sign as they want to study more options for the new schools signage.

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Mr. Daugherty stated the Architect has filed for a motion for reconsideration. Secretary Ferencz responded no, there was a faxed letter that was distributed to the Board members... Ass't ZI Evans interjected that the Architect sent via a fax that they did not want to have a hearing at this time as they may consider coming back and asking for a larger sign for the school.

Mr. Simmerer stated he had a conversation with Bill Thorne that if a written determination had not been submitted to the applicant on the Board's vote on the variance for the signage, then he could move to reopen the vote. Mr. Simmerer continued that the site plan the school presented with the variances was stamped and signed by the Chairman but did that constitute a written determination? That was the reason Secretary Ferencz put a call into Mr. Thorne, which he has not returned to determine if that stamp and signature would constitute as written determination of the Board's vote.

Mr. Daugherty then asked to see the plan that was stamped and signed by the Chair of the BZA. Secretary Ferencz produced the plans. Ass't Zoning Inspector Evans stated in the comment section of the stamp it stated sign variance denied and access drive width variance withdrawn. Secretary Ferencz stated that same language was also written and signed by the Chair on the applicant's copy they left with the night of the hearing.

Mr. Daugherty stated nothing was final until the Board approved the minutes. Ass't Zoning Inspector Evans stated he had a letter from the Prosecutor's Office that was the opinion of the 11th District Court but the Township is under the Ninth District. The Ninth has not completely agreed with that determination.

Chair Schmidt stated that with all the different meetings held with Mr. Thorne... there has been new evidence brought forward by the applicant that the Board was to consider different standards for a variance request when it pertains to two governmental entities. Ass't Zoning Inspector Evans stated he did ask Mr. Shearson from TDA Architects per his letter to provide new evidence for the motion for reconsideration and that is when Mr. Shearson stated that the School may want to change the size of the signs. Ass't Zoning Inspector Evans stated he told Mr. Shearson that if the school changes the size of the signs then they would need to go back through the process again before the BZA for a new variance if required, and also before the Zoning Commission. Mr. Shearson did attached examples of other sign sizes for the different schools in the area.

Secretary Ferencz asked if she could ask a question... (At this time Board member Simmerer took out his cell phone and proceeded to call Bill Thorne). Secretary Ferencz stated she tried to get a hold of Mr. Thorne three times today and stated she felt that it was inappropriate for Board member Simmerer to call Bill Thorne during the public meeting.

Mr. Simmerer asked Mr. Thorne if the stamped and signed copy of the plan was sufficient to be considered a written determination? Secretary Ferencz stated that Mr.

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Simmerer might want to put Mr. Thorne on speaker so the rest of the Board members could hear Mr. Thorne's response. She added she also had several questions she would like to then ask Mr. Thorne. Mr. Simmerer stated Mr. Thorne said he would be talking off the top of his head...Mr. Simmerer than asked Mr. Thorne if the Board should table the September 8, 2009 meeting minutes? Secretary Ferencz interjected that she thought that would be a good idea.

Secretary Ferencz asked Mr. Simmerer to then ask Mr. Thorne if Chairman Mike Schmidt needed to recuse himself from this discussion about the school? Mr. Simmerer asked Mr. Thorne the question. Mr. Simmerer stated Mr. Thorne responded it was probably a good idea. Secretary Ferencz thanked Mr. Simmerer and added that messages were left for Mr. Thorne at his office, cell phone and from her personal cell for him to contact her regarding the school issue so she could give the Board some direction this evening. This seemed convenient...that was all she had to say.

Mr. Daugherty asked if Secretary Ferencz would like to explain her statements or did she just want to make innuendos. Secretary Ferencz stated she had nothing more to say. Chair Schmidt suggested the September 8, 2009 meeting minutes be tabled at this time. Since the Board would be having a training session with Mr. Thorne these items could be addressed at that time. Mr. Daugherty stated the Board had correspondence before them from the Architect on behalf of the School District asking for a motion of reconsideration and now a letter asking that the issue of the sign variance be tabled so they could review other options. Secretary Ferencz stated all those documents were sent via e-mail to Mr. Thorne.

Mr. Daugherty made a motion to table the approval of the Board's September 8, 2009 meeting minutes. It was seconded by Mr. Oiler.

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

Mrs. Sims stated regarding this discussion on the School District's variance application, she stated she spoke with Mr. Thorne earlier today, and he wanted to schedule a training session with the zoning boards. The most favorable date for the meeting for Mr. Thorne was November 16, 2009. During this time there seems to have been a breakdown in communication between the staff and the board as to what the proper procedure was regarding the variance requests as there are two governmental entities involved i.e. the School District and the Township. The standard that was used by the BZA were the Duncan Factors and that was not the standard that legal counsel has said is the proper standard to use. This is what the training session by Mr. Thorne would be on i.e. the standard of consideration of one governmental entities request to another governmental entity. This is a unique project and it warrants this additional training by the Board. This would then be a joint meeting between the Prosecutor's Office and the BZA and the Zoning Commission as whatever the BZA grants in terms of variances would affect the site plan approved by the Commission. Any questions on recusal, past recusal, and contiguous

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property owner recusal because the school campus consists of multiple parcels would be excellent questions to ask Mr. Thorne.

Chair Schmidt stated if the Board was going to meet with Mr. Thorne on November 16, 2009 and based on what the Trustees decide about Mr. Jackson would the Board be able to hold a public hearing for Mr. Jackson that evening as well? Mrs. Sims stated the Township would probably be at Mr. Jackson's convenience. If Mr. Jackson gets an application in that can be processed and legally advertised within the designated time of 10 days and then 3 day notice to the Gazette, it may be able to be done on the same night. Mrs. Sims suggested holding a hearing for Mr. Jackson after the training session with Mr. Thorne. The Board members stated it should be a short hearing for Mr. Jackson. She added if Mr. Jackson does not submit in the time required or chooses to go a different route the Township requires a 48- hour notice in the newspaper if it is printed. Chair Schmidt suggested that the meeting start at 7:00 p.m. instead of 7:30 p.m. Mrs. Sims stated legally the Township is required to give a 24 hr. notice but a grace period for advertising is appreciated.

Mr. Daugherty asked the Board if they wanted to go ahead and schedule that meeting hoping everyone can be available that evening. Mrs. Sims suggested Secretary Ferencz announce that meeting date if the majority of the zoning board members were available. The BZA discussed moving forward with their public hearing at 7:00 p.m. on November 16, 2009 and then the joint meeting of the boards with legal counsel could take place at 7:30 p.m. Mrs. Sims stated the Board may also want to consider the applicant and if he too was available for that evening.

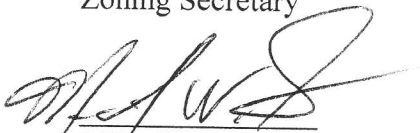
Chair Schmidt asked ZI Harris if and when he talked to Mr. Jackson so see if 6:30 p.m. November 16, 2009 would work for him and then the BZA would proceed with a joint meeting of the zoning commission and legal counsel at 7:00 p.m. Mrs. Sims interjected that ZI Harris should also inform Mr. Jackson of the time frame for a legal notice to be published for a hearing. Ms. Sturdevant Chair of the Zoning Commission stated she would let the Zoning Commission members know about the joint training session meeting with Mr. Thorne accordingly. Secretary Ferencz stated she personally did not speak to Mr. Thorne to know if November 16, 2009 was a confirmed date. Mrs. Sims stated she did and it is. She then asked Secretary Ferencz if she was feeling slighted? Secretary Ferencz responded absolutely not. She just did not like hearsay. That is why she liked to confirm meetings and have things in writing.

Mr. Daugherty asked for a copy of the Rules and Procedures for the BZA. Secretary Ferencz stated she would get that document out to the members accordingly.

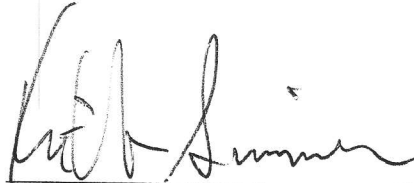
Having no further business before the Board, Mr. Oiler made a motion to adjourn the meeting. It was second by Mr. Daugherty. All Board members were in favor. The meeting was officially adjourned at 9:10 p.m.

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Respectfully Submitted,
Kim Ferencz
Zoning Secretary




Mike Schmidt



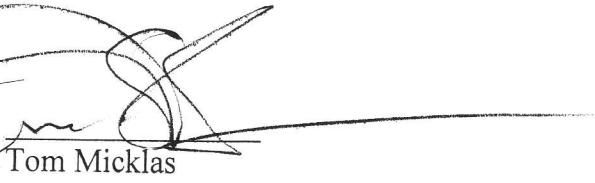
Keith Simmerer



Ron Oiler



Kevin Daugherty



Tom Micklas