

**Westfield Township
Board of Zoning Appeals
Organizational Meeting
January 11, 2012**

Organizational Meeting

Secretary Clarkson called the organizational meeting of the Westfield Township Board of Zoning Appeals to order at 7:30 p.m. Board members present were: Michael Schmidt, Lee Evans, Kevin Daugherty, Wayne Moore, Kathleen LeMar. Alternate Board member Patricia Kwas was in attendance, as well as Heather Sturdevant, Ron Oiler, Gary Harris Jim Likely and Matthew Witmer. Guests in attendance: Ronald Morrow, Dana Morrow. All stood for the Pledge of Allegiance.

Election of Officers

Secretary Clarkson asked if there were any nominations to be brought before the Board for Chairman.

A nomination was made by Kevin Daugherty to nominate Michael Schmidt as Chairman for the BZA for the calendar year 2012. A second to the motion was made by Lee Evans. The nominations were closed and a roll call made: Kathleen LeMar-yes, Wayne Moore-yes, Kevin Daugherty-yes, Lee Evans-yes, Michael Schmidt abstain. The motion carried.

Chairman Schmidt called for nominations for Co-Chairman. Mr. Evans made a motion to nominate Kevin Daugherty as Co-Chairman for the BZA for the calendar year 2012. A second to the motion was made by Wayne Moore. The nominations were closed and a roll call made: Kathleen LeMar-yes, Wayne Moore-yes, Lee Evans-yes, and Michael Schmidt-yes, Kevin Daugherty-abstain. The motion was carried.

Approval of the BZA Minutes of October 25, 2011

Chairman Schmidt advised the first order of business is to approve the minutes of the previous meeting held on October 25, 2011 to which only three members were in attendance, which is a quorum. Chairman Schmidt asked if there were any changes or corrections. There being none, he asked for a motion to approve the minutes as presented. A motion was made by Lee Evans to approve the minutes of October 25, as presented. A second to the motion was made by Kevin Daugherty. A roll call was made: Kevin Daugherty-yes, Lee Evans-yes, Michael Schmidt-yes, Wayne Moore & Kathleen LeMar abstained since they were not at the meeting.

Public Hearing Application for Area Variance Dana G. Morrow of Section 303D Rural Residential District Minimum Dimensions for Lots and yards-Minimum Lot area and Lot Width for a Two-Family dwelling for the property located at 6534 Seville Road (PP#041-15D-04-017) consisting of 8.8409 total acres to create a 3 acre lot with 175ft of frontage for the existing duplex on this property located in Westfield Township. The

remainder of the parcel to be added to the adjacent lot at 6510 Seville Road (PP#041-15D-14-016). Property size in acres: 17.66 acres. Please refer to Exhibit 1 as per attached and Exhibit 2, providing adjacent property owners to the property requesting a variance change. The existing use is: 2/3 of property is in woods and 1/4 of the property is hay field and yard with a duplex located on it. The application is requesting the following: "We want to take the house and three acres of ground to form a new parcel #1 and form Parcel #2 by adding the remainder acreage together to form 14.6 acres. On parcel one requesting a 175ft frontage, Section 303D.

Chairman Schmidt Reviewed the Duncan factors as follows:

1. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance;
2. Whether the variance is substantial (not required to provide owner with the greater possible benefit from use of his/her property).
3. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment"; cannot be used as a re-zoning tool.
4. Whether the variance would adversely affect the delivery of governmental services (e.g. fire and ambulance services)
5. Whether the property owner purchased the property with knowledge of the zoning restrictions; Use Variance: self imposed hardship is fatal Area Variance: Self Imposed hardship is NOT fatal, rather the hardship should be balanced with the other Duncan Factors. Kandell v. Kent, Neforos v. Richfield Village.
6. Whether the problem can be solved by some manner other than the granting of a variance; Area Variance: practical difficulties might exist whenever an area zoning requirement unreasonably deprives an owner of a permitted use of the property.
7. Whether the variance preserves the "spirit and intent" of the zoning requirement and whether "substantial justice" would be done by granting the variance.

Cannot apply one factor, must consider all factors, plus any other factor you might determine.

Mr. Dana Morrow was present and stated his name and address for the record and was sworn in by the zoning secretary as follows: "Do you affirm that the statements, evidence and/or testimony you are about to give this evening is the truth to the best of your ability?" "I Do" he stated.

Mr. Morrow advised that his mother passed away in September and she had 2 lots amounting to 17.5 acres. One lot has a twinplex on it, which he advised he is not interested in. He just wants the land for timber. He advised his brother wants the twinplex plus 3 acres, which is a lot of land. He would take the rest of the land and this is how they would settle up, if the variance would be granted.

Chairman Schmidt advised that Mr. Morrow was provided with 7 items and Mr. Morrow has not met the criteria; he asked if Mr. Morrow understood this. Mr. Morrow stated his request before the board, although not meeting the criteria. Chairman Schmidt asked if Mr. Morrow knows the zoning requirements presently, as you need 350 ft. of frontage

and if granted, you would be making a non conforming lot not to mention that you need 5 acres with a house. It was noted at the lots presently standing meet zoning requirements and are buildable.

It was questioned (Lee Evans) if the acreage would be sold, does the sale need to conform to code? With questions, the board asked if the zoning inspector could lend some guidance. Mr. Matthew Witmer, zoning inspector was sworn in as follows "Do you affirm that the statements and evidence and/or testimony you are about to give this evening is the truth to the best of your ability?" Mr. Witmer acknowledge with a "yes". He advised that the lot is grandfathered. If you sell the property by splitting off 3 acres you would be creating a new lot which would be a non-conforming lot. This is not grandfathered.

The board (Mr. Daugherty) asked if the owner could allow the brother to use the lot, to obtain wood, otherwise you would need 4 variances in order to allow this to happen. This seems like a lot of paperwork which would be needed to make this happen.

Mr. Ronald Morrow asked if he could speak to the board, which he was then sworn in by the zoning secretary "Do you affirm that the statements, evidence and/or testimony you are about to give this evening is the truth to the best of your ability?" Mr. Morrow acknowledged with a yes. Mr. Morrow advised his brother has worked on the trees and harvested the trees once. His brother has pruned, cut vines and cleared up the wooded area. The area has Walnut, Cherry, and American chestnut planted. American chestnut is crossed with the Chinese Chestnut and these trees are resistant to disease; not like the old chestnut. If we create a new parcel, we would lose the CAUV and we would have to pay back \$4,000; financially this is not beneficial to us to do. (CAUV needs 10 acres; and only has 8)

Mr. Schmidt advised that variances cannot be granted for monetary reasons.

Mr. Morrow advised "If he can't add land (10 acres needed for CAUV) he has only 8 acres, otherwise a payback would be enforced; advising the frontage on both lots will not change, just the rear would change."

It was noted by the board that we would need 4 variances, three on the duplex and one on the empty lot. If variances would be granted on acreage, frontage would not be met per zoning code. By keeping the property as is, if you jointly own, you can keep it in CAUV.

The board advised that this is quite a substantial amount of variances we would have to grant you and in the future, someone else can come back and request. If the house is kept with 5 acres this would still cause a problem. You would still need three variances for house and one on the empty lot; this is still a problem. Unfortunately the variances would need to be granted for convenience and unfortunately this is not a reason.

Mr. Daugherty advised we sympathize with the applicants but this cannot be done.

Mr. Schmidt asked for any comments from those in the audience; there being none, Mr. Schmidt advised the duplex needs 350 ft. of frontage according to regulations. Mrs.

LeMar asked if the property could be placed in a trust, so there would not be a problem in the future.

Mr. Lee Evans advised per the Duncan Factors presented #1 is in place and is buildable and grandfathered; #2 is very substantial to create enough variances to mis-match lots as proposed; #5 Property has been that way; #6 can it be solved by any other manner, simple thing.....have both names placed on the deed and if CAUV is a true reason, this answers the problem; creating a variance does not make any sense. Mr. Kevin Daugherty advised that he “echoed” Mr. Evans’ #6 of the Duncan Factors, as he felt that we established “Yes”...whether spirit intent, this would have been one of the bigger ones which the board has done. Mr. Moore advised the property should be kept in both names. Mrs. LeMar advised that she felt the same. Mr. Schmidt advised he also felt the same and these are the factors we need to adhere to and what we have to look at in the criteria does not fit and there are other alternatives that you have to do this by. The board advised that they would submit to the applicant a letter with reference to the discussion held within the minutes.

In looking at our zoning regulations Section 704 Certificate of Nonconforming use, the board asked if the zoning inspector has notified/issued certificates of nonconforming use to all owners of legal nonconforming use property, the use which does not conform to the provisions of the district in which the property is located. (P. 80 dated 10/26/2004) it was noted that the board may ask the Zoning Commission to look at this. It was noted after reading Section 704, the Board of Appeals stands corrected. The nonconforming use, section would refer to an example given of having a horse barn “agricultural barn” suddenly being turned into an auto shop which is a nonconforming use.

With no further discussion a motion was made by Mr. Kevin Daugherty to deny the request to grant a variance to Mr. Dana Morrow for the property located at 6510-6524 Seville Road as per the Duncan Factors presented, specifically Items #1, 2, 5, 6 & 7. A second to the motion was made by Mr. Lee Evans. A roll call was made as follows: Daugherty-yes; Moore-yes, LeMar-yes, Evans-yes, Schmidt-yes. All were in favor of NOT granting the variance request. The board thanked the applicants for attending the meeting.

New Business

Mr. Schmidt advised the members received a letter from the Medina County Soil & Water Conservation District (MCSWCD) in which members are invited to attend a symposium on Tuesday, January 31st at 6:30 pm in room 309 & 311 at the Medina University Center in Lafayette Township. This event is the first of the training series for 2012 normally conducted by the Planning Services Department.

Questions were brought before the Trustees regarding continuing education for all board members. Trustee Oiler advised that everyone needs 2 continuing education hours and new appointees need 8 hours, with subsequent 2 hours each year, when provided. The item “*when provided*” being of importance. It was noted that the Planning Commission has lost several employees and due to cuts it is not known if employees will be replaced in the future as well as educational training.

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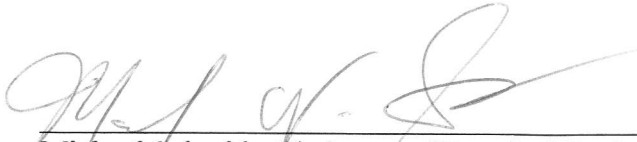
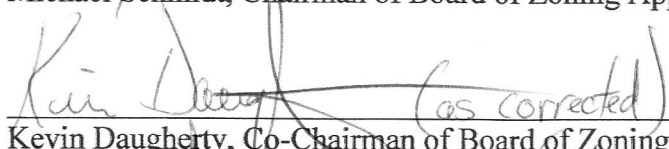
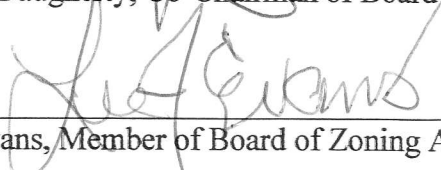
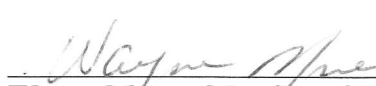
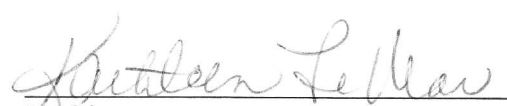
Mr. Schmidt advised the board members had several forms before them along with the Rules of Procedure for the Board of Zoning Appeals. It was noted due to the materials being handed out at the meeting and not mailed as per requested, in order for everyone to be allowed to review them, a work session should be schedule for February. Mr. Schmidt advised he would email the zoning secretary with some dates to check on the calendar. At our next work session meeting members can then review forms and procedures.

Adjournment

With no other discussion to be brought before the board a motion was made by Mr. Kevin Daugherty to adjourn the meeting and a second to the motion was made by Mr. Lee Evans. All were in favor. The meeting ended at 8:25 pm.

Respectfully Submitted

Sherry Clarkson
BZA Secretary

 _____	2/9/12 _____
Michael Schmidt, Chairman of Board of Zoning Appeals	Date
 _____	2/9/12 _____
Kevin Daugherty, Co-Chairman of Board of Zoning Appeals	Date
 _____	2/9/12 _____
Lee Evans, Member of Board of Zoning Appeals	Date
 _____	2/9/12 _____
Wayne Moore, Member of Board of Zoning Appeals	Date
 _____	2/9/12 _____
Kathleen LeMar, Member of Board of Zoning Appeals	Date