

Lake Township

Joint Meeting of the Zoning Board of Appeals & Planning Commission

March 25, 2013

Approved Minutes

The joint meeting of the Lake Township Planning Commission and Zoning Board of Appeals was called to order at 1:00 P.M. by Township Attorney Brian Garner. Pledge of allegiance. The purpose of the joint meeting was for training purposes. Planning Commissioners present: Paul Golsch, Jerry Pobanz and Clay Kelterborn. Zoning Board of Appeal members present: Louis Bushey, Richard Ehrlich, Lou Colletta and Jeanne Henry. Also present Zoning Administrator Mark Treder and Supervisor Valerie McCallum.

Attorney Garner began the meeting by reviewing the notice requirements for public hearings. All hearings require a 15 day notification, including zoning ordinance amendments, zoning appeals and special land use requests. Due process must be applied in any proceeding involving property. An Affidavit attesting to notification is required for all notices published and mailed. Affidavits must be notarized.

Garner explained that the Planning Commission helps the Township Board set policy by preparing and making zoning recommendations and the Zoning Board of Appeals interprets the Zoning Ordinance.

Members to the ZBA are appointed by the Township Board and the Planning Commission members are appointed by the Supervisor's recommendation and approved by the Township Board.

The Zoning Board of Appeals specifically requires a majority of regular members to conduct business. If three regular members are not present, the ZBA cannot conduct business. Terms of office are staggered with three year terms. Only those members present at a first hearing can vote at a second hearing on the same matter. Garner explained that the statute is clear that if members A, B, C and two alternates were present for a variance hearing and there was a second meeting on the same matter and A, B, C, D and E were present, D and E could not vote on the matter. As far as approving minutes from a prior meeting, there is nothing in the Zoning Enabling Act that specifically addresses requiring the same members be present to approve prior minutes. If a township board convened with only

three regular members, and if at their next meeting, there were again only three regular members present, but only one who attended the previous meeting, the board could still approve the minutes from the prior meeting because in this case the approval of minutes is merely an administrative function and not specifically required by statute. Garner explained that a lack of specificity addressing certain administrative functions has created somewhat of a gray area concerning these administrative functions. This in part is due as he explained because unofficial minutes are available by law and if anyone has any objections to those, they can make those objections known at the subsequent meeting when the minutes are to be approved. Minutes cannot be denied, only approved with corrections, if necessary.

Conflict of interest was discussed and a question was asked whether a member who resides within 300' of the applicant can serve at a ZBA meeting. Garner explained that a conflict of interest has a legal meaning of "pecuniary interest". As long as a member will not receive any monetary benefit as a result of the hearing/decision, there is not a conflict of interest.

There are compatibility issues with members on the Zoning Board of Appeals which are different than the planning commission and depending on the size of a township. A member of the ZBA cannot be a hired employee or contractor of the township board.

Voting on the ZBA requires three in favor to pass any motion. The difference between non-use and use variances was discussed and a use variance requires a 2/3 (66%) vote of the total members present, or four (4) members voting in favor of the variance. Non-use variances are dimensional variances, setbacks, lot sizes, etc. Use variances are in reference to how the property is used; i.e. residential property requesting to be used as commercial. There are two different standards for these. A use variance can be granted only when there is an unnecessary hardship. A non-use variance can be granted when there are practical difficulties to justify the non-use; the shape of the property makes the property unique and therefore creates a practical difficulty, difficulty meeting the setbacks, etc. A use variance can have conditions but they have to be reasonable, such as the property's use would revert back to its original use if the property was sold.

Garner explained that there are four standards that must be met in order to justify a use variance; there are circumstances unique to the property which necessitate the variance; the character of the neighborhood will not be altered by granting the variance; the property cannot reasonably be put to a conforming use. They have to meet all of these provisions in order to be granted a variance by a majority. 2/3 of the members must approve a use variance, which would require four (4) members of the five (5) members

approving it. However, a use variance can only be approved if the township board has authorized the ZBA to address use variances. Unnecessary hardship is not a standard for a non-use variance. Both use and non-use variances require an applicant's problem not be self-created, something that the property owner did that caused the need for a variance from the ordinance. The fact that a property may increase in value by granting the variance cannot alone be used to be a determining factor in granting a variance.

Every variance is a unique situation and is not precedent setting. Each variance is supposed to be looked at in a vacuum and the ZBA should only be looking at what is presented in each case. Garner explained that's why findings of fact are so important to show the differentiation from other findings of fact. The ZBA should reference the facts and the ordinance to show the practical difficulty or whether the practical difficulty was self-created. Every decision should be linked to findings of fact and when making a decision, identify the grounds for the decision and give reasons. Findings of fact would be things presented at a ZBA hearing; i.e. the zoning ordinance, this provision applies; the property dimension is X; information from surveys, deeds, or other documents submitted by applicant. The ZBA needs to be specific and itemize the facts they find so if it goes to appeal the Judge can review the decision and determine that the ZBA used fact finding in forming their decision, since on appeal the judge rules solely on the law. Any conditions also need to be clearly identified on the ZBA decision form for future reference by the zoning administrator. Each member then puts his reason for voting and those reasons should be based on the findings of fact.

Garner gave an example of a use variance: Property owner has agricultural land and wants to have a restaurant. This would require either a rezoning by the planning commission or a variance by the ZBA. The owner may say that he is going to bring revenue to the township but it cannot be granted solely on this basis. He must show he can't use the land as agricultural land, creating an unnecessary hardship that is not self-created. He must provide evidence that it can't be used as farmland.

The planning commission could, in the alternative, rezone the property and alleviate the need for a use variance.

Garner mentioned that in most communities, a cell tower would fall under a special land use, whether by district or through an overlay. Property owners within 300' are notified just like with a zoning appeal. An adjacent property owner can give input at the public hearing.

Special land uses are under the jurisdiction of the planning commission and only involve special land uses which are specified in the zoning ordinance as uses permitted with special approval. These special land use permits are

often used to promote economic development. A special land use runs with the land as long as the use continues. A special land use can only provide approval to do certain things as identified in the zoning ordinance whereas a use variance allows permission to break the zoning ordinance because there is an unnecessary hardship which justifies a variance.

Variations can be granted with conditions; however the conditions have to relate to the request and must meet the standards of the ZBA and local ordinances. Conditions are acceptable as long as they can be rationally related to the ordinance.

Regarding the replacement of a nonconforming use; i.e. a deck that does not conform to the current zoning ordinance, Garner explained that repairs and maintenance would be acceptable, but if the deck is completely removed it should be rebuilt to meet the current zoning ordinance.

The ZBA or zoning side is the arbitrator; the judicial side of the zoning ordinance; whereas the planning commission is the policy side. The planning commission plays a major role in zoning by helping establish policies and aiding in the enforcement and administration of the zoning ordinance.

Regulatory ordinances were discussed which regulate the public health, safety and welfare; do not involve the zoning of land, such as blight, dangerous buildings, civil infractions or police protection. Regulatory ordinances are under the jurisdiction of the township board. The township board adopts regulatory ordinances on their own and they take effect 30 days after publication and there is no involvement of the planning commission.

The planning commission is in charge of helping regulate zoning. Zoning ordinance adoption and amendments are all initially reviewed by the planning commission. The township board can direct the planning commission to look at certain aspects of the ordinance and then the planning commission will hold the public hearing and make a recommendation. Procedures for adopting or amending a zoning ordinance were reviewed; 15 day notice, publication, public hearing during which time ordinance is explained by commission or attorney, public comments taken, questions, and motion to recommend approval as is, with revisions, denial or table until next meeting. The recommendation to adopt is then referred to the county planning commission for their recommendation. The county has 30 days to comment. If the county does not act within 30 days, it would then proceed to the township board without comment, or if the county acts within the 30 days, their comments are referred to the township board. A property owner can request the township board hold a public hearing and if that happens, after the public hearing the township board can adopt the

ordinance as recommended, with changes, refer it back to the planning commission or reject it.

Question was asked regarding whether amendment language adjustments can be made after a public hearing. Garner explained that changes can be made as long as those adjustments are related to the topic at issue. You couldn't have a public hearing on decks and include a change for setbacks on other structures. The township board also has the ability to make revisions but generally a good practice is to refer it back to the planning commission to hold a public hearing on the revised language.

Since the ZBA does not address revocation of an ordinance, Garner stated that when the planning commission finds the need to repeal a zoning ordinance, the language should be "amend to repeal" or "amended to repeal" or "amendment to remove provision A." Revocation requires the same procedures as enactment, therefore an ordinance can only be amended out of existence.

Site plan review and zoning applications were discussed. Garner explained that a zoning permit application would be necessary when a property owner is doing remodeling project that according to Section 307 would require a site plan. It is the duty of the planning commission to review the site plans to make sure they are in conformance with the zoning ordinance. Garner explained that everything begins with the zoning administrator and he has the job to determine what is needed as far as permits, site plan review before the planning commission and/or approval. Review of Sections 307.1, 307.2, 307.3 and 307.4.

Treder had a question as to Section 307.2(e). Garner explained that if a land use application comes in and it is not exempt from filing a site plan; if it meets 307.1 (a) or (b) they only need to file a land use application. If it doesn't meet one of those, they have to file a site plan. If they have to file a site plan there are certain circumstances where it has to go to the planning commission and certain circumstances where the Zoning Administrator can approve it without going to the planning commission. Treder asked if an application comes in for a nonconforming lot and it is going to require a variance, does it go to the planning commission first or straight to the ZBA? Garner explained that the planning commission can only approve something that is legal under the zoning ordinance; the ZBA is the only authority that can allow something that is not legally allowed in the ordinance. The way the zoning ordinance is currently written, any applications submitted for a nonconforming parcel that are legally permissible have to go to the planning commission for review.

Garner explained that when projects involve a site plan review by the planning commission, the zoning administrator wants to make sure that all

required documents are submitted prior to the planning commission review and the planning commission needs to review all required aspects listed in 307.3. If an applicant has met the requirements and submitted all the necessary documents and fees, the planning commission has to approve their plan. However, the planning commission can grant the approval with conditions as long as they are reasonable and related to some aspect of the zoning ordinance and they have to specifically identify those aspects. If it is denied, the planning commission, again, has to specifically indicate why it is denied, which can be something that the applicant failed to do as required by the zoning ordinance.

Review of special land use approval process. Each zoning district has its own uses that can be approved as a special land use. Garner explained that if it is a use that is allowed after special approval in the zoning district, then as long as the applicant meets the standards and complies with all required permits and/or requirements and completes the application properly, the planning commission has to approve the permit. It can only be denied if the applicant failed to do something and what they failed to do must be cited. If a special use is not allowed in a zoning district, an application for such use cannot be submitted.

In the R-1 District the only use allowed after special approval is a home occupation which are minor things which can be run out of your home, not a bed and breakfast.

In discussing the rental of properties, Garner explained that if a single family home is converted to a multiple family dwelling in a single family district that would be a problem, because the use has been changed from single family dwelling to something that may not be allowed in the district. Furthermore, when single family homes are rented and an excessive number of persons occupy the single family residence (i.e. 30 persons) in one weekend, Garner stated that the Township could establish requirements for a Certificate of Occupancy to make sure the properties are up to code.

Bushey questioned whether the planning commission should look at adjacent townships to see what they allow and take that into account. Garner said the planning commission could if they wanted to look at other townships, but it was not necessary because what other townships do is neither controlling nor elemental to the decision making process of the planning commission.

Meeting adjourned at 4:55 p.m.

Nell Jacniacki, Recording Secretary