

WESTFIELD TOWNSHIP BOARD OF ZONING APPEALS

December 11, 2006 @ 7:30 p.m.

Public Hearing to Review Talmon (8320 Westfield Road)
and Shetterly (7911 Westfield Landing) Variances

Chairman Michael Schmidt called the meeting to order at 7:30 p.m. Roll call indicated five members of the Board of Zoning Appeals were present: Michael Schmidt, Larry Bensinger, Kevin Daugherty, Robert Gecking and Ron Oiler. Others in attendance included Trustee Jeff Plumer, Zoning Inspector Gary Harris, newly sworn-in Fiscal Officer Martha Evans, Craig Shetterly (272 Redfern Road, Chippewa Lake) and Dean Porter (8236 Westfield Road, Seville).

MINUTES

Kevin Daugherty offered a correction to the minutes of 11/6/06 by adding the word “you” after the word “who” on page 2, 6th full paragraph, 4th line. Upon motion by Larry Bensinger, duly seconded by Ron Oiler, the November 6, 2006, meeting minutes was unanimously approved as corrected.

The following is a summary of tonight’s meeting, which was recorded on audiotape.

REVIEW OF SHETTERLY VARIANCE

Chairman Schmidt indicated that the Board granted Mr. Shetterly a variance at the 10/25/04 hearing. Shetterly’s application stated “Going to sell current house within two years and have lots of equipment that need storage (truck, camper, boat, etc.) Plan on building new house before 2006.” A variance was granted for the parcel located at 7911 Westfield Landing “to allow an accessory building to be built prior to the primary residence with the following conditions: 1) The building shall be as described in Exhibit A; 2) There shall be no electric and water; 3) There shall be indoor storage only; 4) It will not be used for commercial business. Chairman Schmidt asked for a response from Mr. Shetterly as to the status of this matter. Craig Shetterly was sworn in by the secretary.

Shetterly – We were going to try to build before 2006 but have been unable to do that. I didn’t know that I had to come back to you or that I had a time line when I was to start building. I felt that I was following the four stipulations under the variance and that I didn’t have to build the house right away. We would have liked to build sooner but things have not worked out – finances, etc. so we haven’t been able to build yet. I have renters in my other house that is up in April and we are hoping to sell that after they are out and have the money to put down for starting a house but we’re still in the process of looking at plans also. I wasn’t aware that when I got the variance that I had to build within a time frame.

Oiler – Have you pulled a permit to build the house?

Shetterly – No, not for the house.

Chairman Schmidt – You are putting us in a precarious situation here. We had asked for the advice of counsel relative to this issue because we granted you the variance based upon your application and your statements of what you said you would do but you have not kept up with statements about building the house. Your application specifically states that you plan to build before 2006.

Bensinger – Have any of your personal circumstances changed?

Shetterly – Unemployed. My wife works at Lodi Hospital.

Chairman Schmidt inquired whether Zoning Inspector Gary Harris had gone out to the property.

Harris – I went out to see the property but couldn't drive back because there is a locked gate across the drive. The building is approximately 900-1000' back from the road.

Shetterly – There is no electric or water at the building. I use a generator. The gate stays locked for safety reasons.

Gecking – Is there anything outside the building?

Shetterly – Outside the building? A couple pieces of farm equipment, brush plow, a two-bottom plow, a disc set and inside the building I keep the tractor, my boat, a camper, etc.

Chairman Schmidt – We granted you the variance with conditions and you are not adhering to the conditions that we stipulated and that's why you are here. The variance granted allows for indoor storage only.

Shetterly – What do I need to do?

Chairman Schmidt – By not having your house built before 2006 you are going against the statements you made earlier and you need to comply with the condition of indoor storage only. There's not supposed to be anything stored outside.

Shetterly – I can put that stuff inside. The pieces that are out you can't see from the road. If I put the plow and disc inside it could tear up the cement floor.

Bensinger – Do you still have intentions to build a house there?

Shetterly – We have some financial problems right now and I have an employment problem right now but as soon as things are resolved, our ultimate goal is to build a house there.

Oiler – Do you have a reasonable time frame when you think you will be able to build?

Shetterly – I can't anticipate a time frame and I can't guarantee any time frame at all.

Bensinger – Part of the concern about permitting structures to be built before the house is exactly what we have here because sometimes things change and the houses don't get built and then we have a structure that might be used in a manner inconsistent with the zoning code. We looked at your situation and we tried to determine if the odds favored that a house would be built. Technically we didn't state a completion date but we relied upon the statements in your variance application.

Daugherty – Things changed in the meantime.

Chairman Schmidt – You have a valid reason for not building your house but if we had to do this all over again we may not have granted the variance knowing what we know now.

Oiler – Do you believe a two-year extension would work?

Shetterly – I can't guarantee any time frame.

Daugherty – We may need you to come back in another two years. We need to also verify the conditions as stipulated.

Bensinger – He has already admitted here that he has equipment stored outside so he would be in violation of the condition that stated “indoor storage only.”

Daugherty – Is the outside equipment visible from the road or visible to a neighbor?

Harris – The building right now can be seen from the road but the equipment would probably be shielded by trees/shrubbery, etc., especially in the summertime. The neighbor could possibly see the building but probably not the equipment.

Shetterly – I planned to build the house but circumstances changed – my employment changed.

Chairman Schmidt – You said in your application that you plan to build a house by 2006 but it was not a condition. There are extenuating circumstances. Gary and Craig need to set up a time to look at the building regarding the conditions.

Bensinger – You could sell the property and if it gets sold as is without the house, we have the issue of what's going on in there. We relied upon your statements and your character. The position of the house, the fact that it is away from other places, is one aspect that does make it easier but the other aspect is that you are not living up to what you said; it also makes it difficult from our standpoint. This experience will impact how we deal with anything else in the future. It will affect how we look at these things going forward. All we can do is stress to you that you live up to what you represented to us as quickly as you can.

Shetterly – I don't see the problem with storing farm implements outside because a lot of other properties in the township that are agriculture have farm equipment stored outside.

Chairman Schmidt – We obviously need to stay on top of this – there are extenuating circumstances but we need to make sure the conditions are being adhered to. We granted you a variance and the use of the building was solely to keep things inside.

It was agreed between Gary Harris and Craig Shetterly that they would meet Tuesday morning (December 12) to review the property/building because there were stipulations that the Board needs to know have been adhered to. The zoning inspector will make a report back to the Board and the Board will then determine what further action, if any, should be taken.

REVIEW OF TALMON VARIANCE

Russell Talmon was not present at this public hearing even though the zoning secretary had personally talked with Mrs. Talmon on 11/16/06 advising of the hearing date and had sent letters dated November 15 and November 17, 2006, to Mr. Talmon. Zoning Inspector Gary Harris advised that Talmon had applied for a zoning permit in October 2006 and Talmon indicated he had all his subcontractors lined up and was ready to proceed. Gary Harris indicated he was out at the property and staking was done for the house; the permit is good for one year.

Upon review of the Talmon variance application, the site plan and the board's decision, the site plan had provided for underground electrical from the roadway and the decision stated that a variance was granted for the purpose of building a garage to store construction materials needed to build a home to be completed in 2006 subject to the following conditions: 1) no water or gas until house is built, 2) indoor storage only, and 3) no commercial activity.

After discussion, the consensus of the Board was that regardless of the reason that Mr. Talmon had not appeared this evening, his presence had been required for this show cause hearing and he needed to come before the Board to offer his explanation for the delay. It was decided to continue this hearing until the January 2007 meeting date. In the meantime the zoning secretary will write another letter to Talmon indicating to him that he can respond in writing as to the delay in building the house but he would still need to personally appear at the January 2007 hearing.

Dean Porter stated that he received notice of this hearing as an adjacent property owner. He further stated that he regularly sees Mr. Talmon at the property but hasn't seen him there in the past few weeks.

Further discussion took place relative to these two variances and the issue of possible non-compliance. The Board felt that in good faith variances had been granted but it appears that we have learned a lesson about the granting of variances for this particular purpose. It was suggested that perhaps the Board could require some type of financial guarantee/performance bond or a penalty for non-compliance.

OLD BUSINESS

Relative to the motion made last month regarding an independent third party review of the screening plan/landscaping pertaining to North Coast Premier Soccer's conditional use permit, the zoning secretary advised that NCPS provided her on 12/6/06 a written landscape installation proposal dated 12/2/06 from Environmental Enhancement Inc. A copy of the written review was distributed to all Board members for their consideration. The Board determined that the continued review meeting of the screening plan for North Coast Premier Soccer would be at their next meeting.

After discussion, it was decided that the next Board meeting would be held Monday, January 8, 2007, at 7:30 p.m. with the organizational meeting and the Talmon continued hearing scheduled for 7:30 p.m. and the North Coast Premier Soccer review scheduled for 8:00 p.m.

Adjournment

Upon motion by Kevin Daugherty and seconded by Robert Gecking, it was unanimous that the meeting be adjourned. Adjourned at 8:40 p.m.

Marlene L. Oiler, Certified PP, PLS
Westfield Township Board of Zoning Appeals Secretary

(Minutes approved 1/8/07)