

# Westfield Township Board of Zoning Appeals

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Public Hearing  
Haumschild and Kazmarek Joint Application  
Lot Split and Garage Variance  
October 26, 2015

Chairman Daugherty called the public hearing to order at 7:00 PM. Roll call: Simmerer- aye, Evans- aye, Daugherty- aye, Moore- aye and Mc Glashan- aye.

Daugherty states that the public hearing is being held with a full quorum and he explains the process to the applicants. Secretary Porter swears in Haumschild of 7007 Buffham road to hear his testimony.

Haumschild explains to the board that he is asking for a lot split and a variance, three foot off his driveway to build a garage. After living on the property for more than 15 years and having his property surveyed for the new garage, it is determined that he and his neighbor did not know the proper property lines. Mr. Haumschild also has a caboose that is presently on his neighbor's property. To rectify this problem Mr. Kazmarek sold the wedge of land that both parties thought was the other person's property. Mr. Haumschild is requesting a lot split and a variance of 18-19 feet to build his garage.

Daugherty asks why the lot split was not in the Trustees' power to approve.

ZI Sims explained that this was a unique situation since both Kazmarek's and Haumschild's lots were nonconforming since they are under 3 acres and 250 foot frontage (according to new zoning code). The lots were in compliance when the lots were originally created. ZI Sims would like the board to consider a condition to the lot split that the new property is to be recorded. The trustees are not able to grant a lot split without the BZA variance.

Evans asks how the BZA could grant something that's not recorded. ZI Sims explained that this was on the advice of the Prosecutor's office to proceed with the BZA.

Moore asked if the granting of the variance should be contingent to the Trustees' approval.

ZI Sims said that the trustees would be bound to follow the ruling of the BZA.

Daugherty told the board they would consider two separate agendas; start with the lot line then continue with the garage variance. He also explained that the lot line does not need any conditions. Evans debated the verbal explanation of ZI Sims.

ZI Sims told the board that they could ask for a continuance if they need clarification from the Prosecutor's Office. She also stated that only 1 person called her for clarification; Mr. Goldstein (owns property across from Haumschild but lives out of state) and after talking with ZI Sims appreciated the information that she provided him and had no additional concerns.

Evans asked how far from the property line was the caboose and was it a permeant structure because even with the new lot line it did not meet the 25 foot zoning regulation. Haumschild explained that the west side of the caboose is only 15 foot from the property line and it does not rest on a foundation.

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ZI Sims explained that since the caboose could be moved and didn't have footers then it was not considered a permanent structure.

Simmerer restated that the caboose was not permanently affixed to a pad.

Kazmarek 7003 Buffham Road (joint applicant) explained that he was present when the certificate for the caboose was given and inspected and even then they did not know the exact property lines.

Trustee Likley of Daniels Road was sworn in to offer testimony. He explained that the Board of Trustees traditionally will do lot splits but not when it was nonconforming. Legally this would be a judicial action and addressed through legal counsel. Approval should be from the BZA board and then come before the Trustees after the lot has been recorded with new lot lines and prior to the issue of a certificate for the variance.

Evans feels this is a dilemma and that the wedge of land is a reasonable fix but he would have wished to have the Prosecutor's recommendation in writing to make sure everyone was aware of what was said instead of taking ZI Sim's word. He also would have liked to have this in writing prior to the meeting.

ZI Sims explained to Evans that he could have called the Prosecutor prior to the meeting and talked with him personally and to ask any additional questions or to ask for advice. ZI Sims called the Prosecutor for guidance and how to make the application complete and how to accept the application. ZI Sims also explained that a continuance could be made if there were still questions for the Prosecutor.

Evans discussed once again that documentation should be acquired so there are no discrepancies down the road.

Moore explained that the lot needs to be recorded with the new lot lines.

Evans stated that the conditions are on the garage variance and not on the lot split.

Daugherty asked the board to review the Duncan Factors.

#1- Could the property yield a reasonable return and can it be a beneficial use of the property. Simmerer believes there is a practical difficulty and the property would yield a reasonable return and there is a beneficial use of the property. Evans stated that the property has a reasonable return but due to extenuating circumstances (caboose, driveway and lack of review by the previous zoning inspector) it can have a reasonable return without the lot split because Haumschild wouldn't have placed the caboose and the drive there. Moore, McGlashan and Daugherty all felt the same as with Evans.

#2- IS the lot split substantial. The board agreed that the lot split is not substantial.

#3- IS the neighborhood altered with the issuance of the lot split and all of the board agreed that the lot split would not alter the neighborhood.

#4- ARE the government services affected by the lot split. All of the board felt it would not affect the governmental services.

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#5- WAS the property purchased with the knowledge of this problem and due to the property lines all board members, except Daugherty felt there was no prior knowledge. Daugherty said the property owner has a responsibility to understand the zoning when they purchased property.

#6- Could the problem be solved in another manner without a lot split. All board members said yes the problem could be solved in another way.

#7- Does the lot split preserve the zoning intent and will justice be done with the granting of the lot split. All board members said yes the zoning intent would be preserved and yes justice would be done.

#8- The Board Members all said that practical difficulty does exist and that the lot split should be granted.

***Evans makes a motion to accept the lot line from exhibit "A" to 221 feet by 25 feet wide as per section 705.A.3; seconded by Simmerer. Roll call: Simmerer- aye, Evans- aye, Daugherty-aye, Moore- aye, McGlashan-aye. The motion passes. Lot must be recorded.***

The board discussed the variance for the building of a 24x 26 foot attached garage.

Daugherty clarified that the back is 17.35 feet and front is 18.6 feet for new off sets for new garage. There is a new 10 foot variance request.

Evans asked Haumschild where the difficulty was and Haumschild explained that geographically the land is not flat except at the end of the property by the creek. He would also like the house to have a mirror image of the other side of the house.

ZI Sims said that Section 703 A. 1 is to be addressed and Moore asked if the garage was to be on the existing concrete pad. Haumschild said the garage is 2 feet wider than the existing pad.

Evans was told the septic was behind the house.

Daugherty wanted a 10 foot variance considered so it would be 15 feet from the lot line.

Simmerer said that the existing configuration of a 10 foot variance is not substantial to the zoning resolution and is not detrimental to the character of the neighborhood.

Evans felt that the garage could be made smaller but it would not be realistic to make it only 16 feet wide.

Moore stated that the neighbors were in agreement and McGalashan thinks a 10 foot variance would be fine.

Daugherty stated that the additional garage would be a nice addition to the house and the neighborhood.

The board went through the Duncan Factors.

#1-All board members felt there was practical difficulty and a reasonable return could be without the variance.

#2- All board members stated that the variance was not substantial with the granting of the variance.

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#3- All board members said the neighborhood would not be altered with the granting of the variance.

#4- All board members stated that governmental services would not be impacted with the granting of the variance.

#5- All board members felt that the property was purchased with the knowledge of the zoning restrictions and that this is a self-imposed hardship.

#6- Board members Simmerer, Evans, McGlashan and Daugerty said that the problem could be solved by some other way without the variance. Moore felt it could not.

#7- all board members said the zoning spirit and intent was being upheld even with the granting of the variance.

#8- All board members voted to grant the 10 foot variance according to Section 303. D with the following condition: No building permit will be issued prior to survey pins and no zoning certificate will be issued until ZI Sims measures the corners of the building prior to the building of the garage unless the trustees sign and the nonconforming lot split is recorded and shown to be added to the original property.

***Discussion- ZI Sims would like the resident to bring proof back to the township that the lot was surveyed and a digital copy of the lot description with the new assigned PP# with the new lot configuration. Approval of trustees also is requested. ZI Sims did not agree to the measuring of the garage location but would accept the surveyor's authority.***

***Further discussion on the conditions:***

***Prior to any zoning certificate given the following conditions will be given: 1. Trustees approve lot split and recorded by Medina County and proof of attached property to the original property be brought back to the zoning inspector and 2. Distances approved by the Zoning Inspectors.***

**ZI Sims says it is atypical for an inspector to measure the spot for the building.**

***Evans makes a motion to grant a ten foot area variance to the side yard width according to Section 303. D with the following conditions: Prior to any zoning certificate given the following conditions will be given: 1. Trustees approve lot split and recorded by Medina County and proof of attached property to the original property be brought back to the zoning inspector and 2. Distances approved by the Zoning Inspectors.***

***Discussion regarding ZI Sims' responsibility to measure the property site and Daugherty explained that it is not up to the BZA Board to oversee the Zoning Inspector; that job is for the Trustees.***

**Evans' motion is withdrawn.**

***Moore makes a motion to grant a ten foot variance according to Section 303. D based on the Trustees lot split approval, recorded, attached to the original property and proof brought back to the Zoning Inspector as per exhibit "A" and prior to any certificates issued; seconded by Simmerer. Roll call: Simmerer- aye, Evans- aye, Daugherty- aye, Moore- aye, McGlashan- aye. The motion passes.***

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*Evans makes a motion to close the Public Hearing at 8:35 PM; seconded by McGlashan. Roll call: Simmerer- aye, Evans- aye, Daugherty- aye, Moore- aye, McGlashan- aye. The motion passes.*

Daugherty calls the regular BZA meeting to order.

### Minutes to be approved

*McGlashan makes a motion to accept the September 10, 2015 Public Hearing minutes as corrected; seconded by Simmerer. Roll call: Simmerer- aye, Evans- aye, Moore- aye, Daugherty- abstain, McGlashan- aye. The motion passes.*

*Evans makes a motion to accept the September 3, 2015 Public Hearing meeting minutes as submitted; seconded by McGlashan. Roll call: Simmerer- aye, Evans- aye, McGlashan- aye, Moore- abstain, Daugherty- abstain. The motion passes.*

Next Public Hearing is Thursday, November 5, 2015 at 6:00 PM (TA) and 7:00 PM (Allison Carol mini storage units).

ZI Sims presents the upcoming application for North Coast Premier Soccer. This application is for the back property lot.

Lewis Land Professionals has an application to modify a site plan review. This will be heard on October 5, 2015 at 7:00 PM after the TA signage variance at 6:00 PM.

ZI Sims suggested a workshop with Jim Likley or with Rob Henwood and board members should review Section 600 and 603 (pg. 94) Site Plan Review for the upcoming public hearing. Section 807 should also be reviewed which focusses on overview of procedures for Site Plan Reviews.

ZI Sims will request the Prosecutor's Office to attend the next public hearing on November 5<sup>th</sup>.

Further discussion by Evans having the Prosecutor put his recommendations in writing.

Evans makes a motion to adjourn; seconded by Simmerer at 9:05 PM. All said aye.

Respectfully submitted by:

Cheryl Porter, Zoning Secretary

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Date approved: 29 February 2016

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Kevin Daugherty, Chairman

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Wayne Moore, Vice-chairs

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Keith Simmerer

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Lee Evans

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Greg McGlashan