

Town of La Pointe
Zoning Board of Appeals Meeting Minutes
Thursday, March 11, 2010

Board of Appeals Members Present: Mike Starck; Chair, William Tibble, Paul Brummer, Thomas Nelson, Warren Anderson (5).

Board of Appeals Members Absent: none.

Public Present: Larry Whalen, David Bolton, Ham Ross, Jen Croonborg (4).

Town Staff Members Present: Margaretta Kusch; ZBOA Secretary (1).

I. Call to Order/Roll Call

Chair Starck calls the meeting to order at 5:35 pm at the Town Hall. Roll call reflected members present or absent as recorded above.

II Public Comment

None. T. Nelson notes that there should be no public comment at this decision making meeting in any case.

III. Approval of Previous Meeting Minutes:

a. Zoning Board of Appeals Public Hearing, February 17, 2010

- Add the following sentence to agenda item I, Call to Order/Roll Call: *“Mr. Starck stated that since all of the Board of Appeals members are present, Board of Appeals.”*
- On page five, delete “why” and replace with “if,” so sentence reads: *“He asks what precedent these historical permits might set and if a fireplace requires a permit but not an air conditioning unit.”*
- On page two, insert the word “good,” so sentence reads: *“If we only had four inches of roof past the fireplace, it wouldn’t look good so it was more of a statement.”*

P. Brummer moves to approve the minutes as amended. W. Tibble seconds. All in favor, 5 aye. Motion Carries.

b. Zoning Board of Appeals Meeting, February 17, 2010

- Delete “and correspondence in agenda item II, Discuss Public Hearing, so sentence reads: *“New information presented at Public Hearing regarding the two appeals.”*
- Change P. Brummer’s motion from *“P. Brummer moves to postpone the decision for both applications, Tom Woods is number one and Greg Nelson is number two, until Thursday, March 11, 2010 Board of Appeals Meeting at 5:30 in the Town Hall”* to read *“P. Brummer moves to postpone the decision for both applications, Tom Woods is number one and Greg Nelson is number two, until next Board of Appeals Meeting.”*

P. Brummer moves to approve as corrected. W. Tibble seconds. All in favor, 5 aye.
Motion Carries.

IV. Old Business

M. Starck outlines the process in which the meeting will be carried out. The Board will first discuss the two appeals, with each Board member having a turn at the floor. A motion will then be made to approve the appeals. There will be a simultaneous written vote, so that each member can vote aye or nay to his opinion without influence, after which the vote will be read into the record and each Board member will state his reasons for voting as he did.

1. **Discuss and possibly make decision regarding Woods, Thomas and Marcy. Tom Woods is appealing the Town Plan Commission decision to deny a Land Use Permit Application for Addition/Alteration due to the additions/alterations not meeting 10 ft sideyard setback requirements for the R-2 Zoning District.**

T. Nelson presents his opinions on the Woods appeal. He has found various tiny ambiguities throughout the paperwork of this appeal and has the following issues to point out:

- The Woods' contractor, Chip Pattermann, stated at the Public Hearing that he cut back the eaves before adding the fireplace, thereby staying within the footprint of the building. T. Nelson states that he thinks an overhang a few inches is within the margin of error in any case and should not be an issue. He hopes to hear his fellow board members' opinions on this matter.
At the Public Hearing, T. Nelson had asked Mr. Pattermann if he had photos of the building prior to this construction, specifically showing the eaves. Mr. Pattermann had stated that he did not, but that there was a picture of the building in the "local history book" [*On the Rock*]. This picture was found, and, per P. Brummer's request, M. Starck asked the Town's attorney if it would be legally admissible as evidence at this meeting, despite the fact that it wasn't presented at the Public Hearing. The attorney replied that it was. T. Nelson responds that the picture in question is decades old and still shows the building with a hip roof; it doesn't do much good as evidence as the roof has been replaced and/or substantially changed.
- T. Nelson thinks that the issue of the deck protruding into the property's setbacks will need to be addressed, and that those extra few feet [of the deck] will have to be removed and that this is the main thing that they did wrong. He wonders if it is possible to approve this appeal with conditions.
- M. Starck states that the Woods did submit a survey, and they're not arguing that the survey is wrong, they are just saying they didn't increase the footprint. T. Nelson states that the attorney general requires equal protection under the law. The Board is looking at a lot that is supposed to be 80 feet wide and is not, it's only 49 feet at its narrowest point, so they should get special treatment, especially as what undue expansion is hasn't been laid out in the Ordinance yet.
- Do any of these changes substantially alter the building? They have every right to build the fence to the property line, and it doesn't seem like they're trying to get away with anything.

- There is a concrete slab on the Woods' property with an immobile air conditioning unit on it that substantially protrudes, more so than the fireplace. If that air conditioning unit is not a structure, not in violation, why should this fireplace be? Piles of firewood, LP tanks, all these things wouldn't count. The fireplace doesn't increase square footage inside.

W. Anderson states that if mistakes are made in zoning or any other governance ruling, you don't expand on them. Either change the Ordinance or don't allow mistakes to continue as policy. Laws that are in place have to be followed or changed if necessary, not disregarded. They [the Woods'] did not follow the permit process.

W. Tibble states that he agrees with many of the points that T. Nelson made, but that he thinks that this Board is looking at whether the Town Plan Commission made the correct decision in interpreting the Ordinance the right way and thus denying the appeal. The fact is that they could have applied two and a half months earlier. W. Tibble believes that the appeal should be denied and the Woods should go back and re-apply to the Town Plan Commission.

M. Starck states that it is pretty obvious that the Town Plan Commission didn't get all the information upfront from the Woods. The Woods should be able to get their permit, but they should have to go back to the Town Plan Commission and re-apply in order to do so. He doesn't think that they should be able to get any special treatment or to be an inch outside their footprint, and that the law needs to be followed. His opinion is that the fireplace is not outside the footprint, but they need to give evidence to the Town Plan Commission to prove that.

P. Brummer reads a written statement, which is attached to these minutes. His main points are as follows:

- Neither the Woods or Mr. Pattermann provided the Town Plan Commission with the information that the eaves were cut back, which caused the fireplace not to exceed the building footprint. He wonders if this information would have altered the decision of the Town Plan Commission to deny the permit at the time.
- The problem seems to be whether or not the original overhang was 24" from the edge of the exterior wall, which was cut back to accommodate the new chimney which replaced the original wall. Mr. Pattermann said this was the case, but didn't provide any photographic documentation. If the Zoning Administrator had inspected the property this could have been documented, but they didn't apply for any permits before construction began.
- It is up to the owner to notify the Zoning Administrator before work begins. It is not the responsibility of the Zoning Administrator to proactively inspect sites.
- The Town Plan Commission made a decision based on limited information. Is there some way to justify the structural alteration without violating the Ordinance and overturning the Town Plan Commission's decision?

A discussion ensues regarding the role of the Board of Appeals in this appeal. Is it the responsibility of the Board to advise the Town Plan Commission in interpretation, or only to decide if the Town Plan Commission ruled erroneously on the permit application.

M. Starck points out that there is a process already ongoing to remove ambiguities from the Zoning Ordinance (the Town Plan Commission's Zoning Ordinance Revision Project). However, he is not in favor of giving this situation back to the Town Plan Commission without any guidance.

W. Tibble feels that if the Woods reapplied, the Town Plan Commission would review it again and take any new information into account.

T. Nelson feels that the Town Plan Commission has members in disagreement about this situation and that it is the role of the Board of Appeals to make a decision regarding the building's footprint and direct the Town Plan Commission: the Board has to solve the problem.

W. Anderson disagrees, feeling that this is not the duty of the Board of Appeals.

T. Nelson moves that the Board approve the appeal subject to them cutting off the section of that fence/wall that sticks out too far towards the La Pointe School. Motion fails for lack of a second.

W. Tibble moves that the Board deny this appeal on the grounds that the Town Plan Commission followed the guidelines and correctly interpreted the Ordinance, but remand back to the Town Plan Commission for review with a new application explaining the new information that has come to light in these deliberations. W. Anderson seconds. All in favor, 3 aye, 1 nay (T. Nelson), 1 abstain (P. Brummer). Motion Carries.

Each Board member states his reasons for his vote, as follows:

T. Nelson, nay:

- The surveys in this area have a greater margin of error than most measurements in this case.
- This lot is 49' at one point and should legally be 80'. Attorney General opinion states, "...a legal non-conforming status reasonably supports "different treatment" from new uses or structures...."
- Ambiguity in Ordinance should be interpreted in favor of the Land Owner and against the drafting party.
- General policy-"While a legal non-conforming status reasonably supports different treatment from new uses or structures, that status does not reasonably support no regulation or limitation." A better solution is to lower side yards in this zone.
- These changes to this building do not rise to the standard of "substantially altered."
- If the wall was called a fence, it could be built without a permit right up to the property line. The subject wall could easily be called a fence without any permit required.
- If the rain gutters, air-conditioning unit, fuel tanks, firewood piles do not violate side yard setbacks, neither does a fireplace.

P. Brummer, abstain:

Abstained because his brother worked at for the Woods' at this property.

W. Tibble, aye:

Voted yes for the same reasons as were given in the motion: that the Town Plan Commission properly interpreted and enforced the Ordinance with the information they had before them.

M. Starck, aye:

Voted yes for the same reasons as W. Tibble and fully believes that with the new application and new information it will be equitably resolved. He doesn't believe that the Board can bend any rules, but thinks that the Town Plan Commission take the new information and will do a good job.

W. Anderson, aye:

Voted yes because he thinks the Town Plan Commission acted correctly with the information they had. He also thinks that with all the work that various people on the island have put into zoning over the years, that the applicants should respect the laws in place.

**2. Discuss and possibly make decision regarding Nelson, Greg.
Greg Nelson is seeking a variance for a relaxation of the frontage requirement to create two 8 acre lots in the W-2 Zone out of one 16 acre parcel.**

P. Brummer reads prepared comments into the record (attached to these minutes). His main points are as follows:

- Section 10.12 of the Town of La Pointe Zoning Ordinance states that "...variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden. They are not intended as an accommodation for a property owner's convenience."
- Section 15 of the Zoning Board Handbook states that "Unnecessary hardship must be established in order to qualify for a variance. This means that without the variance, none of the uses allowed as permitted or conditional uses in the current zoning district are feasible for the property. This circumstance is highly unlikely."
- The previous property owner, Charles A. Nelson, applied for and received building permits for a single-family dwelling and a storage building, in addition to the existing mobile home and two pole buildings already on the property. This demonstrates that the property doesn't have any hardships.
- The lot doesn't have the required frontage to be split into two separate lots and the owner has a reasonable use of the property as it stands. There isn't a valid reason to grant the variance request.

W. Anderson states that he feels a situation like that should be a zoning change, as he feels that there's enough land there for two lots. But the laws are what they are currently and should be followed.

T. Nelson states that he cannot see any valid hardship on the part of the property owner. He further states, and demonstrates to the Board, how the property could be divided into

three 5 acre lots with no problem. The solution that T. Nelson presents is creating three lots with frontages along a created easement or access road, rather than County H. The property could be legally divided tomorrow.

W. Tibble states that he agrees with his fellow Board members that there isn't any real hardship presented.

P. Brummer moves to deny the request for a variance. T. Nelson seconds. All in favor, 5 aye. Motion Carries.

Each Board member states their reasons for voting as they did:

T. Nelson states two reasons for agreeing with the motion:

- Section 10.2 reads "A landowner may not obtain an area variance unless they can demonstrate that an unnecessary hardship exists. "Unnecessary hardship" is best explained as whether compliance with the strict letter of restrictions governing area, setbacks, frontage, height, or density would unreasonably prevent the owner from using the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome.
- The property can be legally divided, so the Board is not allowed to grant this variance.

W. Tibble agreed with the motion because he doesn't believe the owner demonstrated a unnecessary hardship that prevented use of the property.

W. Anderson agreed with the motion for the same reasons as W. Tibble.

P. Brummer agreed with the motion because of the points made in his prepared statement and because hardship was not demonstrated.

M. Starck agreed with the motion because no hardship was presented and because the property can be divided equitably without a variance.

V. Future Agenda Items

- Approve minutes of Thursday, March 11, 2010
- Discuss Board of Appeals pay
- Prepare statements of reasons for votes
- Discuss and approve Findings of Facts documents

VI. Schedule Next Meeting

Next meeting will be held at 5:00 pm on Thursday, March 25, 2010.

VII. Adjourn.

P. Brummer moves to adjourn. T. Nelson seconds. All in favor, 5 aye. Motion Carries. Meeting ends at 7:40 pm.

Draft Zoning Board of Appeals Minutes respectfully submitted by ZBOA Secretary, Margaretta Kusch, on Monday, March 15, 2010.

Zoning Board of Appeals minutes are approved as amended by ZBOA Secretary, Margaretta Kusch, on Thursday, April 15, 2010.