

Town of La Pointe
Zoning Board of Appeals Meeting Minutes
Thursday, April 15, 2010
3:30 PM

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: Town's Attorney Mike Fauerbach (leaves at 5:30), Larry Whalen, Jen Croonborg (3).

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

I. Call to Order/Roll Call

Chair Starck calls the meeting to order at 3:35 pm at the Town Hall. Roll call reflected members present or absent as recorded above.

II Public Comment

L. Whalen asks why this meeting is being held.

M. Starck responds that it is being held so that the Findings of Facts can be created.

T. Nelson notes that there should not be public comment placed on the agenda at decision-making meetings such as this one.

Agreement that public comment will be left off of future agendas.

M. Starck makes a motion to move to Item V: New Business at this time. W. Tibble seconds. All in favor, 5 aye. Motion Carries.

III. Approval of Previous Meeting Minutes:

1. Zoning Board of Appeals Meeting, March 11, 2010

- On page 3, fourth paragraph, insert the word "*not*" so that phrase reads "*His opinion is that the fireplace is not outside the footprint.*"
- On page 4, first paragraph, replace "*they*" with "*the Woods.*"
- On page 5, second bullet point, replace "*Town of La Pointe Zoning Ordinance*" with "*Zoning Board Handbook.*"

W. Tibble moves to approve as amended the Zoning Board of Appeals Meeting minutes of March 11, 2010. T. Nelson seconds. All in favor, 5 aye. Motion Carries.

IV. Old Business

- 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.

M. Starck states a Findings of Fact document will be created using W. Tibble's motion from the previous meeting of 3/11/10 as the basis for the decision. That motion reads:

"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."

T. Nelson points out that the "new information" referenced in that motion needs to be explicitly spelled out.

M. Starck will put this document together and the secretary will type and distribute it.

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.

Discussed in Item V: New Business.

V. New Business

1. Discuss and approve Findings of Facts documents

Attorney Fauerbach is present at this meeting to advise the Board in the creation of this document (Nelson variance). He begins by answering questions from Board members and then gives a number of comments on the procedure to the Board.

- The Chair asks Mr. Fauerbach whether State law requires a written statement of decisions, and also if it is permissible and/or necessary for the Board to re-visit their decisions of the last meeting.
- Mr. Fauerbach responds that State law doesn't require a written statement of decisions, although the Town does. In addition, it is permissible but not necessary for the Board to re-visit their decisions, although he has suggested that the Board may want to re-visit their previous decision regarding the Greg Nelson variance.
- He further states that it is not uncommon for Boards of Appeal/Adjustment to have their attorneys present at meetings, but that it's not their job to make decisions, only to help Boards avoid litigation.
- Mr. Fauerbach points out that it's not the job of the Board to research and bring in facts not presented, it's the job of the Board to make a decision based facts presented to them by appellants.
- It is the best practice to only state and base decision on facts that are known incontrovertibly. It would be very hard to get a judge to reverse a decision made by a Board of Appeals, as the Board decides what the facts are, and once facts are put down, they're almost impossible to overturn. The easiest way to get sued successfully

is if the Board applies wrong legal standards or appears to be considering an improper fact or giving a legally illegitimate reason for decision.

- Regarding the Nelson variance, there is a difference between the terms “unnecessary hardship” and “no reasonable use.” These two terms were often used interchangeably before State laws changed in 2004. It used to be much more difficult to get a variance. Unnecessary hardship can’t be self-created, are not decided based on physical disability, and are not generally related to economic issues.
- Mr. Fauerbach reiterates that although it is not legally necessary for the Board to revisit their decision, he would advise doing so. However, if the Board doesn’t reconsider, he advises basing decision only of the facts that were presented by the applicant and the Zoning Administrator, and not making any inferences.

T. Nelson restates his reasons for not granting the variance, demonstrating what he sees as a different way of legally dividing the lot without need for variance, by changing the location of the front of the lot.

W. Anderson disagrees with T. Nelson. Firstly he believes the front of a lot can only be either facing the road or the lake. Secondly, he doesn’t believe that it is the role of the Board to find solutions for appellants.

Mr. Fauerbach responds that he does believe that the Town’s Ordinance is vague enough to choose where a given front is located. He does have a problem with what he perceives of as the making of assumptions based on facts that aren’t proven.

M. Starck asks if the Board could be successfully sued based on misinterpretation of the Ordinance.

Mr. Fauerbach answers yes, potentially. But because final, official decision hasn’t been made yet, so the reasons for decisions can be revised without the need for another Public Hearing. The Board needs to consider whether or not a variance is required, because the reasoning that it can be divided without a variance isn’t necessarily shown in the evidence shown, and so isn’t a fact to be considered.

W. Tibble reiterates that the role of the Board in this matter is not to find a solution for the property owner, but to decide if the Town Plan Commission acted correctly in denying the variance.

[Batteries changed in audio recorder at this time. Meeting put on hold between 4:42 pm and 4:46 pm while batteries were changed]

M. Starck reiterates that the Board was basing its decision on an old definition of hardship.

W. Tibble asks if Mr. Fauerbach is suggesting a do-over because he thinks some of the reasons given wouldn’t stand up in court.

Mr. Fauerbach answers that he thinks that the Board have to restate their reasons for decisions based only on the facts they had. As long as the decision just says that Mr. Nelson didn’t show up or demonstrate unnecessary hardship, that’s fine. But if the reason that’s used is that there’s no unnecessary hardship because he could divide the property three ways legally, then another Public Hearing would have to be held.

W. Anderson moves to grant him the variance as requested. M. Starck seconds. All in favor, 2 aye (MS, WA), 3 nay (PB, WT, TN). Motion fails.

W. Tibble asks why two of his fellow Board members reversed their decisions from the last meeting.

M. Starck responds that he changed his vote because he misinterpreted the Ordinance at the last meeting, and didn't understand the Board of Appeals has a right to create a non-conforming lot, and also because this variance would keep density down in the zone and the Town would benefit from lower density.

W. Tibble agrees that it would be density negative, and setbacks would be met, but sees no hardship presented.

P. Brummer agrees with W. Tibble and doesn't see any hardship presented.

P. Brummer moves to deny the request for a variance. W. Tibble seconds. All in favor, 3 aye (PB, WT, TN), 2 nay (MS, WA). Motion Carries.

The Board restates their reasons for votes:

P. Brummer: doesn't see where there is unnecessary hardship listed anywhere. No one showed up, nothing was listed as a hardship; letters from neighbors were received that were opposed to the variance.

T. Nelson: reasons stated in draft minutes of last meeting.

W. Tibble: no evidence was given to the Board showing hardship. No unnecessary hardship was proven to me.

M. Starck: we should be able to give a variance based on leeway we have in our Ordinance.

W. Anderson: I feel hardship qualification has been relaxed in recent years, and it's in our Zoning Regulations.

Mr. Fauerbach states that he could come up with a Findings of Fact document, as he's sat through this meeting. [Mr. Fauerbach's Findings of Fact document attached to these minutes].

M. Starck makes a motion to move back to Item III, Approval of Previous Meeting Minutes. P. Brummer seconds. All in favor, 5 aye. Motion Carries.

2. **Prepare statements for reasons for votes**
Discussed in 1. of Item V: New Business .

VI. Administrative

1. **Discuss Board of Appeals pay**

P. Brummer feels that Board members should be paid for one meeting per day, not paid for two meetings should the Board hold a Public Hearing and then a meeting immediately following.

M. Starck says that the Town Board determines pay.
P. Brummer says he will write a personal letter to Barb Nelson regarding the matter.
T. Nelson suggests Paul donate his pay to the Town if he feels he is being overpaid.

VII. Future Agenda Items

- Approve minutes of Thursday, April 15, 2010
- Discuss Bayfield County Board of Adjustment Rules and Procedure document.
- Discuss and approve Mr. Fauerbach's Findings of Facts document RE: Nelson Variance, and discuss and approve Findings of Fact document for Woods Appeal.

VIII. Schedule Next Meeting

Next meeting will be held at 5:00 pm on Thursday, May 13, 2010.

IX. Adjourn.

W. Tibble moves to adjourn. M. Starck seconds. All in favor, 5 aye. Motion Carries. Meeting ends at 5:50 pm.

Draft Zoning Board of Appeals Minutes respectfully submitted by ZBOA Secretary, Margaretta Kusch, on Tuesday, April 20, 2010.

Zoning Board of Appeals Minutes are approved as amended by ZBOA Secretary, Margaretta Kusch, on Thursday, May 13, 2010.