

ACME TOWNSHIP
Zoning Board of Appeals
May 13,2004

Thursday, 7:30 p.m.
Acme Township Hall
Acme, Michigan

Meeting called to Order at 7:30 p.m.

Members present: J. Kuncaitis (Chair), L. Belcher, P. Collins, H. Smith

Members excused: N. Knopf

Staff present: J. Hull, Zoning Administrator
S. Corpe, Recording Secretary

1. **Review and approval of the agenda, inquiry as to conflicts of interest:** approved with none noted.
2. **Correspondence:** None
3. **Reports:** None
4. **Hearings:**
 - a) **Hearing for James Nowland, 3766 Pearl St., Williamsburg MI 49690 for a non-use variance of Section 6.11.1, Schedule of Regulations which requires a side-yard setback of ten (10) feet in the R-3, Urban Residential District:** Mr Nowland was present in support of his application. Hull read the published hearing notice into the record. Mr. Nowland stated that in 1991 Ralph Clarke built a carport on the subject property pursuant to a variance granted in respect of a disability hardship. He is the second owner since Mr. Clark died, and never knew through title searches that the carport should not have existed. The carport was destroyed by the weather this winter, and Mr. Nowland was seeking to replace it. He has already accepted money from the insurance company to do so, which would have to be returned if the situation cannot be resolved. The Nowland's carport was damaged over the winter, so he approached the township for a permit to rebuild it. In May 2002, Corpe wrote a letter to the Nowlands about the carport, as she had received a complaint that it was a non-conforming structure. After looking at the file, she determined that a variance to build the carport had previously been requested but was denied. Reapplication was made, but there is no evidence in township or legal counsel's files.

Kuncaitis stated that while the first request was denied, once information demonstrating the hardship was presented, the ZBA would likely have granted a conditional permit of some sort to allow the structure as long as the individual with the difficulty occupied the property. Belcher recalls some, but not all of the circumstances. He agrees that only a temporary permit would have been granted.

Belcher asked about a statement that a fence between the Nowland's property and the property to the east is misplaced. Hull reported that in 2002 Corpe received a complaint from the eastern neighbors that the fence was

several feet on their property and couldn't be moved because the carport came right to it. Belcher is concerned because if reconstruction of the carport is permitted, the carport itself could therefore extend over the lot line.

Public hearing opened at 7:40 p.m.

Mr. VanVynckt, 3804 Pearl Street, stated that he knew about the question about the fence line but has not had a formal survey performed to verify the location of the lot line in relation to the fence.

Public hearing closed at 7:45 p.m.

Motion by Smith, support by Belcher to continue the hearing until a survey is presented determining the location of the lot line in relation to the fence that is acceptable to the Zoning Administrator and Office & Planning Coordinator.

Mr. VanVynckt stated that there is space behind the home to place a garage, and that other individuals have done so.

Mr. Nowland found a copy of a mortgage survey with his documents. The ZBA reviewed it, and Belcher noted that the fence is depicted as being on the property line. Hull noted that the survey is labeled that it should not be considered accurate for boundary determination purposes. Kuncaitis noted that the survey appears to show a 14' wide concrete pad with carport between the house and fence line.

Kuncaitis asked Mr. VanVynckt why he felt that the fence was in his property. He replied that he and his wife were informed this was the case when they purchased their home, and that he felt it would be indicated by the configuration of the concrete.

The ZBA generally felt that the mortgage survey is not adequate to make a final determination and that a final survey should be performed.

Motion carried unanimously.

Mr. VanVynckt stated some concern because the Nowlands are divorcing and he believes Mr. Nowland is not living in the home at the current time. Kuncaitis stated that this is not information that would impact the final decision.

5. Other Business:

- a) **Appeal of Zoning Administrator's Determination regarding former Traverse Bay Woolen Company/Section 9.4 of the Zoning Ordinance:**
Hull reported that Robert and Tim Ewing and Bill Peyton would like to acquire the former Traverse Bay Woolen Company building for redevelopment as a restaurant. The structure is grandfathered non-conforming; it sits too close to the US 31 right-of-way. The proposed changes to accommodate the new use would be internal only; however, Section 9.4 does not permit modifications related to a change of use. The former and proposed uses are both in conformance with the B-2 zoning classification of the property.

Kuncaitis read aloud the intent and purpose section of the Nonconformance ordinance, which states that non-conformances can be permitted to continue for a “natural” period but that the goal is not to extend them unnaturally. He asked if the ZBA should be making a determination in this case. Hull responded with information from e-mail correspondence between himself and Christopherson indicating that the ZBA would need to grant a variance should the new use be instituted. Hull noted also that the township has previously granted approval for several expansions to this building.

Kuncaitis asked the applicants whether they would be using the storage building portion as part of their plans. Mr. Peyton stated that they are unsure, but they would be leasing the entire property. He also said that he has checked with other zoning administrators in nearby areas, and that they said they would generally permit remodeling to non-conforming structures for uses that would conform to the district.

Belcher believes the buildings were constructed before US 31 was widened. Smith feels that as long as the footprint of the structure is not changed, there would be no difficulties. Collins would not be averse to the building being remodeled for a restaurant. Smith asked what the hours of service would be; they would be open for lunch and dinner purposes. Collins asked if there might be live entertainment; Mr. Ewing says there might be, indoors.

Corpe asked about the billboard. When Traverse Bay Woolen Company called after the store had closed to ask if the billboard, previously always used as signage for their business, could be rented out to off-site businesses. Corpe told them it could be, but was later informed by several individuals that the township had required that the use of the sign be limited to the on-site business only. She has been unable to find any written reference to this requirement so far, and wanted to know if other long-term officials have recollections of the situation. Belcher and Kuncaitis recall that the billboard was only to be allowed for a limited period of time and for the on-site business. Belcher further believes that the billboard is on East Bay Township property, and may not be subject to Acme Township regulation at all.

Floor opened and closed to public comment at 8: 15 p.m.; there being no public comment.

Motion by Belcher, support by Smith, to recognize that the former Traverse Bay Woolen Company structure constitutes a non-conforming use that may be extended as long as the use conforms to zoning district requirements.

Belcher asked if a public hearing regarding this question should have been published. There was some uncertainty, as the question was one of how to interpret the ordinance rather than a request for a variance. Corpe noted that she has discussed the question of state law regarding ZBA hearings with Christopherson in the past. It appears that publication of hearing notices may not be strictly required, although it has been the township’s custom to do so in the past.

Motion carried unanimously.

6. Approval of minutes from the March 18, 2004 regular meeting:

Motion by Collins, support by Smith to approve the minutes of the March 18, 2004 meeting as presented. Motion carried unanimously.

- 7. Other Business:** Hull has received an application for which the applicant has requested a special hearing so that a construction schedule can be met. The Board agreed to meet on May 26 at the property that is the subject of the application for a site visit at 7:00 p.m., and to return to the Township Hall for deliberations directly afterwards.

Meeting adjourned at 8:42 p.m.