

SWANCREEK TOWNSHIP ZONING BOARD OF APPEALS

September 20, 2007

Record of Proceedings

Board members present: Earl Rowland, Chairman, Bill Grimsley, Ron Rouleau, Tom Baker, & Alternate, Chuck McPhearson

Elected Officials: None

Employees: Walt Hallett, III, Zoning Inspector
& Christine Lauch, Administrative Assistant

Visitors: Mr. Thomas Wylie & Mr. Clayton Gerbitz, Attorney at Law
See sign in sheet

Meeting was called to order at 7:00 p.m. by Earl Rowland

Bill Grimsley led the Pledge of allegiance

Mr. Gerbitz stated that Mr. Wylie is running a little late

Earl Rowland stated the Board would move forward with Old Business first. The board reviewed the Minutes of May 17, 2007. Mr. Rowland said due to the fact that Darrin Gramling and David Smith are not present and the fact that Tom Baker recused himself at the May 17, 2007 meeting, there is no quorum to approve these Minutes. He told Chris Lauch, Administrative Assistant, to put it on the next agenda.

New Business:

Thomas Wylie appeal of Non-Conforming Use Certificate denial

Bill Grimsley motioned to accept Agenda, Ron Rouleau 2nd.

~ Roll call: Earl Rowland – yes, Tom Baker – yes, Ron Rouleau – yes,

Bill Grimsley – yes, Chuck McPhearson - yes

Ron Rouleau requested to recused himself. Bill Grimsley made Motion to accept recusal, Chuck McPhearson, 2nd.

~ Roll call: Earl Rowland – yes, Tom Baker – yes, Bill Grimsley – yes,

Chuck McPhearson - yes

Four Board members present with alternate – Earl Rowland requested Chuck McPhearson to step down. Chuck McPhearson, Alternate, left the table.

~Thomas Wylie Appeal:

Earl Rowland, Chairman, asked Mr. Gerbitz, Mr. Wylie's Attorney, who will be testifying for this appeal. Mr. Gerbitz said Mr. Wylie will.

Earl Rowland asked Mr. Gerbitz to state and clarify what he wants the Board of Zoning Appeals to determine and rule on, in regards to this appeal.

Mr. Gerbitz said he wants the Board of Zoning Appeals to review the actions taken by the Zoning Inspector, Walter Hallett, and determine if his decisions are correct or incorrect.

Earl Rowland read Article 100-21.4 "Authority"

The Board of Zoning Appeal shall have the following powers:

#1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Resolution or of any resolution adopted pursuant thereto.

Mr. Thomas Wylie was sworn in to testify.

Mr. Wylie alludes to Walt Hallett's July 13, 2007 letter (attachment) sent to him. Mr. Wylie explains that he was forced to move his trucks to the County Road 5 property when he was found in violation on his County Road B property. He stated he had no other choice but to move the trucks to County Road 5, because he had nowhere else to

put them. Mr. Wylie stated he has moved all of the trucks off of the County Road 5 property and has complied with everything that Walt Hallett mentions in the July 13, 2007 letter.

Earl Rowland told Mr. Wylie that as per his and his counsel's request, the Board of Zoning Appeals is to decide on whether or not Mr. Hallett was in error in denying the Non Conforming Use Certificate. Mr. Rowland read 100-6 #3 which states:

If the Zoning Inspector shall find, upon reviewing the application for a Validation Certificate, that the existing use is illegal or in violation of any other ordinance of law or if he finds that the building for which the Certificate is requested has been constructed or altered for the existing use of any other use without full compliance with the Building Code or the Zoning Resolution in effect at the time of construction or alteration, he shall not issue the Validation Certificate but shall declare such use in violation of this resolution.

Earl Rowland informed Mr. Wylie that he changed his use and it was a different operation once he moved all the trucks to the property.

Mr. Wylie asked why he was denied after his check was received and that he can prove the date the Township cashed his check. He stated that the trucks were gone when his application was denied. Mr. Wylie stated that he was denied his certificate before he received Walt Hallett's letter.

Earl Rowland interjected and instructed Mr. Wylie to talk only about whether Mr. Hallett was in fault of being incorrect in his decision to deny the Validation Certificate, per Mr. Gerbitz's initial request.

Mr. Gerbitz asked Mr. Rowland to stop cross examining Mr. Wylie and let him talk. He wants his Validation certificate reinstated, because he has complied with everything in the letter.

Mr. Wylie said he had also removed all asphalt and concrete that Walt can come see he has resolved all three issues that are listed in the letter and he paid for his sign permit and got issued his permit.

Earl Rowland stated that Walt Hallett cannot validate the certificate when the use has changed.

Tom Baker asked Mr. Wylie if Walt Hallett went out to inspect the property at the time of the application was submitted. Tom Wylie didn't remember meeting with Walt Hallett at that time. Chris Lauch said she thinks the application was faxed by Mr. Wylie's secretary.

Earl Rowland told Mr. Wylie that he is asking that the Board overrule Mr. Hallett's decision when in fact, he has openly admitted in his testimony that he was in direct violation. Earl Rowland said Due to the facts that have been presented to the Board Mr. Hallett was not incorrect by denying this application.

Mr. Wylie said Mr. Walt was in his office and talked to Brenda, Mr. Wylie's secretary, and told her that as soon as all the trucks were moved and after the 10-13-07 court order date, he will issue the Non Conforming Validation Certificate. Earl Rowland said that is hearsay and told Mr. Wylie that he can call Walt Hallett as a witness to testify to confirm, if he wishes to.

Mr. Gerbitz stated that it was clear how the Board is going to rule, already.

Mr. Gerbitz testified again. He said that the Board will probably call this a technicality, however, he calls it following your own code: Mr. Gerbitz cited 100-6.7 #4

The Validation Certificate issued by the Zoning Inspector for nonconforming use shall state the use may be continued for a period of twelve (12) months. The Validation Certificate shall be renewed.

Mr. Gerbitz stated that the word “SHALL” does not mean Mr. Wylie has to reapply every twelve months. The resolution does not state anywhere, the word REAPPLY for the certificate and that Mr. Wylie has done it out of courtesy in the past.

Earl Rowland reiterated 100-6 #3 which states:

If the Zoning Inspector shall find, upon reviewing the application for a Validation Certificate, that the existing use is illegal or in violation of any other ordinance of law or if he finds that the building for which the Certificate is requested has been constructed or altered for the existing use of any other use without full compliance with the Building Code or the Zoning Resolution in effect at the time of construction or alteration, he shall not issue the Validation Certificate but shall declare such use in violation of this resolution

Mr. Rowland said that if the Zoning Inspector finds that the existing use is illegal or in violation he shall not issue the Validation Certificate.

Tom Baker cited 100-6.7 #4 and pointed out that the use may be continued for a period of 12 months. Mr. Gerbitz said that was exactly what he is saying; Walt shall renew the certificate in twelve months!

Earl Rowland showed Mr. Wylie his application with the 6/07 date. Mr. Rowland told him that according last year’s certificate his application was actually due May 07. Mr. Rowland pointed out that the application was not signed by Mr. Wylie either.

Mr. Gerbitz asked Mr. Rowland to show him where the code states that an application has to be signed.

Earl Rowland stated that the certificate is null and void because Mr. Wylie failed to apply for the certificate with in the time period allowed, under resolution 100-6.7 #2 which states:

If the owner of a nonconforming use fails to apply for a Validation Certificate within thirty (30) days after receipt of the foregoing notice, the use ceases to be nonconforming and is hereby declared to be in violation of the resolution. The Zoning Inspector shall take appropriate action to enjoin such violation.

And the fact that he expanded the operation, he is in violation.

Mr. Gerbitz restated the word SHALL in Resolution 100-6.7 #4 again

Earl Rowland reiterated 100-6.7 #3 again and stated Mr. Wylie admitted his illegal activity under oath.

Mr. Gerbitz told Mr. Rowland to “calm down” and asked to “let the record show you’re about to come across the table”.

Tom Baker asked Mr. Gerbitz his definition of “renewal” Mr. Gerbitz said “issuance of validation certificate.” Tom Baker gave example of acquiring a driver’s license and asked Mr. Gerbitz that if he feels it was unnecessary to get his driver’s license when it expires nor sign it. Mr. Gerbitz said: The Ohio law specifically states requirements to acquire your license, that there is no provision to have to reapply in the Township’s code. Earl Rowland sited Resolution # 100-6.4 #3, page 14.

*If no structural alterations are made, any nonconforming use of a structure, or structure and premises, can be changed to another nonconforming use provided that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. Whenever a nonconforming use has been changed to conforming use, or to a use permitted in a district of greater restriction, it shall **NOT** thereafter be changed to a nonconforming use.*

Mr. Gerbitz stated that section of the code is referring to an initial application.

Mr. Rowland asked Mr. Gerbitz to state the alleged error of the Zoning Inspector that the Board was asked to act on.

Mr. Gerbitz confirmed that he and his client, Mr. Wylie are in agreement that an error was made by Walt Hallett, Swancreek Zoning Inspector. Mr. Gerbitz restated the word "SHALL" in Resolution 100-6.7 #4 again

Bill Grimsley asked if Mr. Wylie has ever read his Certificate. Mr. Wylie said he has, but cannot recall at this time what it says. Mr. Grimsley read it to him.

The application for a Non-Conforming Use Validation Certificate, having been submitted to and approved by Swancreek Township Zoning Inspector according to the Resolution, warrants the issuance of this permit. The permit holder shall abide by the provisions of said resolution and agrees not to enlarge, extend, construct, reconstruct, move or structurally alter any building, or increase, enlarge or extend to further occupy a greater area of land that was occupied at the effective date of adoption of the Zoning Resolution. Mr. Gerbitz questioned Mr. Grimsley as to where to find this in the code.

Earl Rowland cited 100-6.1 "Statement of Purpose" , which states:

It is the intent of this resolution to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this resolution that nonconformities shall not be enlarged upon, expanded on or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Mr. Gerbitz stated that it is clear how this board will be voting and called Walt Hallett to testify. Walt Hallett was sworn in.

Mr. Gerbitz asked Mr. Hallett if he inspect the property on the date of the application. Walt Hallett testified that when he receives an application he responds to it within 30 days.

Mr. Gerbitz "So you don't know the date you inspected the property?"

Walt Hallett said:

"I inspected if for other issues I had with the property.

Mr. Hallett was referring to his Employee Report, which states dates and the Zoning Inspectors fees.

Mr. Gerbitz asked Walt Hallett to account for dates without going through his paper work.

Walt Hallett stated he reviewed the application on the June 13, 2007.

Mr. Hallett said he has pictures of the violations dated 6-12-07. The pictures were admitted into evidence. Mr. Gerbitz asked Walt Hallett to recall how many trucks were there at the time of his inspection of the property? Mr. Hallett said a dozen to 24. He didn't know about the rear of the property and stated that there was no trucks in the previously years.

Mr. Gerbitz: "No further questions".

Walt Hallett stated the word *Shall* is defined in Resolution Article "Construction of Language" 100-3 #3, which states: *The word "shall" is always mandatory and not discretionary.*

Earl asked the Board if they had and further discussion or needed any more clarification from Walt Hallett. Tom Baker stated No, Bill Grimsley stated No.

Mr. Rowland sited the Duties of the BZA per the resolution 100-21.4 #1, again.

Earl asked the Board for their opinions.

Tom Baker stated the Certificate is expired, in violation and that the denial letter send to Mr. Wylie is in accordance with the Swancreek Township Resolution.

Bill Grimsley said he is in total agreement and stated "We support our Zoning Inspector".

Mr. Wylie said: “There us no reason for me to be here, I have complied with everything you have asked of me, I’ve moved out of Swanton to Perrysburg, I’ve done everything you’ve wanted and you are still not happy.”

Mr. Wylie left the meeting.

Earl asked if there was a motion on the table for the board to be in agreement with and approve Mr. Walt Hallett’s, decision.

Bill Grimsley made motion, Tom Baker 2nd.

~ Roll call: Earl Rowland – yes, Tom Baker – yes, Bill Grimsley – yes

Earl Rowland made motion to adjourn, Tom Baker, 2nd

~ Roll call: Earl Rowland – yes, Tom Baker – yes, Bill Grimsley – yes

Board of Zoning Appeals Meeting Adjourned 8:22 p.m.
