

MEETING
GLEN ARBOR TOWNSHIP BOARD OF APPEALS
Thursday, June 9, 2022 at 1 pm
Glen Arbor Township Hall

PRESENT: Bill Freeman, Harvey Warburton, Denny Becker, Don Lewis, Andrew Dotterweich, Alternate Dan Semple, Zoning Administrator Tim Cypher, Recording Secretary Dana Boomer

ABSENT: None

GUESTS: 1

CALL TO ORDER: Denny Becker, as Chair, called the meeting to order at 1:00 p.m with the Pledge of Allegiance.

APPROVAL OF AGENDA: Dotterweich moved, Lewis seconded to approve the agenda as presented. All in favor, motion carried.

CONFLICT OF INTEREST: None

APPROVAL OF MINUTES:

Marc McKellar asked for an amendment to the minutes to change the motion language – the draft language he had submitted via email was: “Dotterweich moved to approve the Connell dimensional variance request #2022-01 as presented in the application due to the findings of fact as discussed during this Public Hearing, **which findings shall include the entirety of the board’s discussion and deliberations after the public comment during the public hearing, and any recording or transcript of same shall be incorporated as part of the motion and minutes by reference as the findings of fact.**” (bold is added language).

The board discussed the draft minutes from the May 19, 2022. Warburton asked to add him as an absent member, to specify that Dan Semple was the alternate, and to correct the meeting location at the top of the minutes from “Via Zoom” to “Glen Arbor Township Hall”. The ZBA requested to add “There was consensus that there was no conflict of interest on Mr. Lewis’ part.” to the Conflict of Interest section. A typo was fixed on page 3. In item f.1.b, Dotterweich noted his statement should say “and so *it was not grandfathered*”.

Dotterweich moved, Lewis seconded to approve the minutes as amended. All in favor, motion carried.

Marc McKellar stated that he had just read the opinion of the township attorney Tim Figura, previously emailed to members, which stated: “A change to the minutes is appropriate where the minutes are not accurate. The language of a motion reported in the minutes should match the language used at the meeting, and I do not see any basis to change the motion in the way suggested below.[referring to Marc McKellar’s proposed language]” McKellar stated the opinion of Figura is not the law, and that the motion language does not match the language of the motion made or the agreement made in the previous meeting. The group agreed that the deliberations would be included as part of the findings of

fact, and were incorporated as part of the motion by reference. He would like clarification of the motion to include this agreement. This decision will be appealed, and he wants the motion to be clear and correct, and inclusive of the deliberations. He feels his proposal for the motion was appropriate.

Becker asked Cypher if the motion in the minutes reflected the language used in the recording. Cypher stated that he had the motion section of the recording ready to be listened to, but reminded the ZBA that they had already voted on the motion to approve the minutes. The ZBA briefly discussed the motion that was made. The ZBA has not previously been able to listen to the recording of the meeting; McKellar has a copy of the recording and has listened to it. Lewis asked Dotterweich if Dotterweich believed the motion in the minutes accurately reflected his verbal motion. Dotterweich said he could not say whether it was word-for-word, but it did reflect his intent, and he was certain he had not included language referencing the recording of the meeting, given that it is the policy of the ZBA to only maintain recordings of meetings until after the minutes are approved. The ZBA then continued the discussion of whether to listen to the recording – Lewis stated that the minutes have already been approved. There was consensus to not listen to the recording and move on to the next agenda item.

PUBLIC COMMENT: Marc McKellar commented that this is an extraordinary amount of obstructionism to get a clear record. He is extremely unhappy about the language that was approved with the minutes, and feels it would be far easier for both the township and his client if the language he had proposed was included in the minutes. He believes the language he proposed was accurate. He asked that the deliberation be part of the findings of fact and the ZBA agreed. He does not want the full public hearing to be considered part of the findings of fact.

Harvey Warburton commented that this is the reason for the recording in the first place, and he is not sure how his original motion for meetings to be recorded and the recordings kept until after the minutes were approved has been interpreted as the recordings being destroyed after the minutes are approved. He does not think the ZBA should be afraid of any facts, and the recording is a set of facts, and the ZBA should be proud of these.

Andy Dotterweich – He does not remember the exact words of his motion at the May meeting, but he knows that the proposal from McKellar would have put words in his mouth that he did not say.

NEW BUSINESS:

Length of Time Meeting Recordings Should be Retained – Warburton asked to add this to the agenda. He does not know what the appropriate length of time for retention should be, but the State of Michigan recently determined to keep their recordings for a year, and he also isn't sure what the appeal timeline is for ZBA decisions, but that may factor in. Cypher said appeals must be made within 60 days. As he said previously, the recordings are facts, and the ZBA should not be in a hurry to get rid of facts.

Cypher stated that the State of Michigan retention schedule for township clerks states that audio and visual recordings of meetings may be destroyed one day after the minutes are approved for the recorded meeting. The Township Board policy since November 2021 has been to follow the retention schedule. Mr. McKellar already filed a FOIA request and received a copy of the recording. Dotterweich has stated that he feels the motion is correct as written and he did not state the extra verbiage. If there

was an error as McKellar claims, it can be corrected in court. Cypher read the discussion and motion regarding recordings from the April 2021 ZBA minutes.

Warburton continued the discussion on the appropriate retention length for recordings, and stated that the township should not be in a hurry to destroy these. **Warburton moved that recordings of the ZBA be retained for a year. Dotterweich seconded.**

Discussion was opened. Lewis stated that he agrees with the retention of recordings on a philosophical level. However, the Township Board has been working extremely hard to bring everything up to a correct standard and remove sloppiness and create definition. As part of this, they want to follow both the laws and guidelines as promulgated by the State of Michigan, and recommendations from the MTA and legal counsel. The recording is already distributed to interested parties, and this can be the case at every meeting. Warburton argued that not all meetings have people present who know to file a FOIA to get a copy before it's destroyed, and he feels the State of Michigan decision to have state bodies recordings kept for a year should be best practice. The ZBA continued the discussion regarding the length of time to keep recordings. Freeman stated that once the minutes are approved, that is the official record, and if the Township Board has asked to follow the State retention schedules, that should be what the ZBA does. Semple agreed with Freeman, and he is comfortable with the minutes as the official record. The discussion continued regarding the recordings. Semple said that the ZBA does not want to have multiple standards – once the minutes are approved, they are the official standard, and the recording is no longer the official standard.

Warburton amended his motion to state that recordings be retained for the 60 day time period in which appeals can be filed. The amendment died for lack of a second.

The vote was called on the original motion of retaining motions for one year. Freeman (no), Warburton (yes), Dotterweich (no), Lewis (no), Becker (no). Motion failed.

Evaluation Form for Hearings – Dotterweich stated that the ZBA was previously working from a form which took some Zoning Ordinance language and moved it into a form for discussion. The Ordinance itself has six major points and one has three sub-points. He distributed an amended evaluation form with the Zoning Ordinance language in a different form, which he feels would be better for ZBA deliberation. He believes the new form makes it more clear that all six points should be considered met before a variance was granted. **Dotterweich moved to approve the draft template as the deliberation form for future ZBA hearings. Warburton seconded.** The ZBA discussed whether the language should make it even more clear that all six points must be met – Warburton stated that he used the exact language from the Ordinance for the form, which states that the ZBA “shall find” all six points true before granting a variance. **All in favor, motion carried.**

Warburton asked if the specifics regarding the Zoning Ordinance language on minimum lot size per dwelling were discussed at the May meeting. Dotterweich doesn't specifically remember this being discussed, but doesn't want to reopen the discussion from the previous meeting. The ZBA briefly discussed properties agricultural and adjacent properties.

PUBLIC COMMENT: Marc McKellar reiterated his objection to the lack of amendment to the May meeting minutes. From the outside, it appears that the board is attempting to destroy a meeting record.

While the minutes are the ZBA's official record, the recording is also part of the legal record. Most people would not know that they need to put in a FOIA request for a recording before it is destroyed, and it looks like the township is trying to hide something. The minutes are not actually the true recording, because they are the recording secretary's opinion of what is important. A true transcription of the May meeting is substantially longer than the meeting minutes, so the minutes are a summary, not a true record of the facts of the discussion. Destroying the recording appears to be an evasion of the facts by the Township, and the recordings should at least be kept for the appeal period.

Becker asked if there was any other ZBA cases in the works – Cypher stated there was not.

ZBA COMMENT: None

ADJOURNMENT: Warburton moved to adjourn the meeting, Dotterweich seconded. All in favor, motion carried. With no further business, Dennis Becker declared the meeting was adjourned at 1:55 p.m.

Respectfully submitted,

Dana Boomer

Recording Secretary

DRAFT