

Milton Township  
Zoning Board of Appeals  
Meeting Minutes  
March 11, 2009

Members present: Chairman Anderson, Atkinson, Kopkau, Jankowski, Lockett, and Burdo.

Members absent: Lewellyn

Also present: Weinzapfel and seven audience members, including Fred and Gloria Janke.

Anderson called the meeting to order at 7:05 pm and the Pledge of Allegiance was recited

Anderson acknowledged Skip Bryant's service and thanked him for his time spent on the ZBA. He then welcomed the new ZBA member, Richard Burdo

### **Approval of Agenda**

Motion by Kopkau to approve agenda as presented. Seconded by Jankowski. Motion carried.

### **Nomination and Election of Officers**

Kopkau nominated Anderson for Chairman, seconded by Atkinson. Motion carried.

Atkinson nominated Jankowski for Vice-Chair. Seconded by Kopkau. Motion carried.

Jankowski nominated Lockett for Secretary. Seconded by Atkinson. Motion carried.

### **Approval of Meeting Dates**

Motion by Kopkau to approve the meeting dates as presented. Seconded by Jankowski. Motion carried.

### **Approval of past minutes dated April 9, 2009**

Add: There was no audience and Weinzapfel was absent.

Motion by Jankowski to approve the minutes as amended. Seconded by Lockett. Motion carried.

### **Interpretation of Zoning Ordinance 117.401**

Weinzapfel said that past ZAs have interpreted 117.401 to read that adding volume to a nonconforming structure is not permissible. The board members discussed a prior applicant who wanted a pitched roof, and who was denied a variance. Gloria Janke said volume was added to the structure by raising the roof.

Fred Janke asked if any of the board members were on the board when Janke's structure was built. Lockett asked regarding the definition of volume and indicated that "volume" is not defined or used in the ordinance. Instead of the word volume when dealing with non-conforming structures, it should be degree and extent. Weinzapfel said volume is the word that is used now. The question is what is the definition of structure. Anything below the surface would be structure. Would you be increasing the structure. In Lockett's mind, degree versus extent, she doesn't want to get into volume. Just look at the existing

structure, does altering, changing, enlarging further degree of the nonconformity?

Jankowski said all of the restrictions in the ordinance refer to what is visible from outside the home. The setbacks are there for health, safety, and welfare. Nothing speaks to the foundation. What difference does it make if they have a crawlspace or a basement? It isn't visible. It doesn't affect anyone's scenic vista. People can change the interior anyway they want as it's not visible. Why not change the walls on the foundation?

Anderson said under section 117.401B, it says: No nonconforming use shall be changed to any other nonconforming use and any nonconforming use changed to a conforming use shall be thereafter revert to any nonconforming use.

Jankowski said if you can move interior walls, why not move the foundation. The definition of structure was given by Atkinson. They don't distinguish between above and below the ground, 117.103. Jankowski said that definition pertains to a building of new construction. If you go into the ground and you put a structure below the ground, it is a structure. Atkinson said if someone comes in and wants to put in an upstairs if we allow an increase in volume upstairs, versus down below. Jankowski said because it's visible. Atkinson said where is this written in the ordinance. Anderson said this would set a precedent where many homeowners would want to add basements to add living space. Jankowski said if this stays within the footprint, this is allowable because it is a modification of the wall. Anderson asked for proof of Jankowski's statement. Atkinson said with what we have to look at, she doesn't see that as being allowable. Lockett said as per the definition of structural change, which doesn't include anything about the foundation. Anderson said the foundation is a load bearing wall, which is included in the definition. 117.903 it speaks to height of a one story. 117.904 speaks to lot dimensions. Nothing speaks to the foundation or the crawlspace of a building. The height and sides are restricted, but the foundation is not. Anderson said this is new construction. Kopkau said under the definition of structural change, this includes the foundation. Jankowski said this is just a definition.

Weinzapfel discussed the interpretation process. The ZA can make the interpretation generally. If there is an issue, it should be brought before the ZBA. If there is something they can use to make a decision, they will do that, but this interpretation will affect the entire township.

Gloria Janke asked regarding other folks who have gotten variances. Weinzapfel said this was due to court hearings. Anderson said we only know about cases that come before the ZBA.

Fred Janke said looking at the ordinance and the word volume isn't in the ordinance, here is a man (referring to another member of the audience) who doubled the size of his house and he got a permit. There are some legalities here and you could be over the edge. Kopkau said Mr. Janke was talking about sheds and those that we don't know anything about. Kopkau said we have to stick with the facts at hand. Janke said the facts are that he got a permit to double the size of his house. Kopkau said we don't know the details of

that. Atkinson said that this board has been consistent in its application of the term. Jankowski explained that if the ZBA denies something a homeowner has the right to go to appeal to circuit court. Jankowski said other boards could have made different decisions. All we can deal with the ordinance at hand.

Gloria Janke said the old foundation is still across the road and is a foot and a half deep. We didn't figure that was a sound structure. Their builder said the foundation they had wasn't safe. Gloria said all of the structures are not the same.

Atkinson discussed the intent of 117.401. If you read the definition of structure. If we have court case or another variance, and we say no and they take us to court, where is a judge going to see the difference on the definition and intent. Jankowski said he's not concerned with the repercussion of court cases, we have to deal with this. Atkinson said we have to be consistent. If we do have these situations arise, we aren't being consistent. Where does it say that one is okay and the other is not. Jankowski said he can see this point. The only other thing he said he found under 117.802 F talks about the height restriction. There are restrictions on the height, front and side yards. Atkinson said this refers to compliant structures.

Burdo said the definition of structure is pretty clear, but what is a real structure. There are different kinds of structures. Anderson said what would you consider a bearing wall. Burdo said you could have a two foot foundational wall. Anderson said you have to stack. Are we allowing them to alter the manner in which the house doesn't conform, said Luckett. Jankowski asked whether expanding a basement foundation or crawlspace enlarging then on conformity?

Luckett discussed the extension and degree of a nonconforming structure. Does adding volume to that part of the nonconforming structure, further the manner in which it fails to conform?

Weinzapfel said when dealing within the footprint of the existing foundation, is there a difference between under the ground or going up and could impact a scenic vista?

Jankowski asked about adding volume to the basement. He compared it to moving an interior wall. Weinzapfel said this isn't different than going up.

Atkinson said if we are going to allow the expansion of going down, then we will need to allow it going up. With what we have to work with, it is up or down and then the only thing coming into play would be ruining someone's scenic vista.

Jankowski said would we look at this differently if someone had a one foot crawlspace and they are repairing a crawl space and adding a block foundation. He's sensing that people are looking at as far as increasing living space, but when you expand below, it's not necessarily living space. Does it matter if it's a crawlspace, a basement or living space?

Luckett again said the question is whether this furthers the manner in which the structure is non conforming?

Gloria Janke asked regarding the manner of use in R1. Luckett said this applies to all zones.

Luckett said looking at scenic vistas 117.215, if you are considering materials, as far as not going up for scenic vistas, this section doesn't apply.

Anderson said if we come to an agreement, we would make a motion and take a vote. We will need four to overturn the current interpretation.

Motion by Atkinson, based on 117.401, intent, that there shall be no extending, expanding, or enlarging of a nonconforming structure and according to the definition of structure 117.103, an increase in the volume furthers the manner in which it fails to conform whether installed on, above, or below, the surface of the land.

Seconded by Kopkau.

Discussion:

Jankowski said he doesn't support the motion based on 117.401D, a structure may be repaired altered or enlarged provided such changes do not further the manner in which it fails to conform. Removing dirt from the basement doesn't affect its closeness to the road. Atkinson said under the intent, the nonconformity shall not be extended, expanded or enlarged upon. Luckett said the ordinance says except as follows in D and E. Anderson said she is not willing to table her motion because this will allow people to expand up. Based on the definition, it doesn't distinguish of going up or down.

Janke said as long as we're not going up, this doesn't affect scenic vistas. Janke asked about repair of non conforming buildings. If you have a foundation that is 1 foot deep and one that is 8 foot deep, which is stronger. Anderson said that it depends on the structure.

Roll call vote:

Atkinson: yea based on 117.401 and definition in 117.802 of structure as she interprets the zoning ordinance the expansion of a nonconforming structure enlarges extends and expands the nonconformity.

Burdo: nay based 117.401 intent: he doesn't understand why you can stay within the foot print and 117.201.

Kopkau: Yea based on 117.401 intent, the intent is a two part question and it covers both parts.

Anderson: yea based on 117.401 and the definition of structure.

Jankowski: nay based on 117.401D that states that a nonconforming building may be altered as long it doesn't further the manner in which it fails to conform and the

conformity is the closeness to the road. The foundation does not further the manner in which it fails to conform.

Luckett: Nay based on 117.401 which sets forth the intent and states "that except as provided as follows" and provision D which states that a nonconforming building in a conforming use may be repaired, altered or enlarged provided such changes do not further the manner in which it fails to conform.

Motion tied 3-3.

Weinzapfel clarified that it must be a majority of the board. The motion goes down to defeat and goes back to the official decision that adding volume increases the nonconformity

The Jankes were given the option of proceeding with their request for variance.

Anderson asked why a permit wasn't requested. The builder made an assumption.

Anderson told the Jankes that if we go forward with the variance request, there could be another tie and then the request could be turned down. He stated that Jankes could wait until the next month's meeting when the full board may be available.

Variance Request #2010-01 was adjourned.

**Other Matters:**

A. Correspondence: None

B. ZBA Comment: Burdo went to zoning 101 class today

C. Old business: None

D. New business: Weinzapfel gave an update on the ordinance revisions.

Weinzapfel and Luckett discussed the nonconforming lots overlay zone that was approved by the Planning Commission. It was returned with comments from the county planning commission. The Township Board sent it back to the Planning Commission.

Motion to adjourn by Anderson, seconded by Kopkau.

Meeting adjourned at 9:50 pm.

Respectfully submitted,

Lori A. Luckett  
ZBA Secretary

NOTE: These minutes are UNAPPROVED until APPROVED by the ZBA at its next meeting. Corrections, additions or deletions will be noted in the minutes of that meeting.