



Wexford Joint Planning Commission

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Wexford Joint Zoning Board of Appeals

December 20, 2023 | Special Meeting
Case #ZBA-2023-03 | Bismack | Selma Township
Parcel #2210-20-1101

'draft' Minutes

Chair Monroe called to order the 7:00 pm, December 20, 2023 special meeting of the Wexford Joint Zoning Board of appeals (ZBA), asked the audience to join in the Pledge of Allegiance, then asked for roll call. In attendance were: Monroe, Prebay, Swank, Kowalski, and member Perrin representing Selma Township.

Motion by member Prebay to approve the June 28, 2023 ZBA minutes as presented; seconded by Kowalski. Kowalski pointed out that Item #1 in the minutes did not have a tally. The minutes were approved unanimously.

Chair Monroe offered an opportunity for public comment – none was offered.

Staff presented two possible resolutions considering this case to the ZBA.

Chair Monroe declared the public hearing open for Case #ZBA-2023-03 | Bismack, regarding parcel #2210-20-1101 located in Selma Township. Member Perrin was present representing Selma Township. The Chair asked Attorney Figliomeni to present their client's case.

Attorney Figliomeni presented a brief summary to the ZBA in order to establish the chain of title to the property resulting in ownership by his client. The historical use of the property was emphasized focusing on prior Wexford County approvals that purported to allow mini-storage use of a single 'pole barn' to be built upon the property, and asked that the use be deemed legal nonconforming. Additionally, Attorney Figliomeni asked the ZBA to postpone any decision to allow time for some type of consent effort to take place between his client and the legal counsel representing the Wexford Joint Planning Commission (WJPC) / Zoning Board of Appeals.

Chair Monroe asked the WJPC staff for their presentation regarding this case.



Assistant Zoning Administrator Townsend clarified for the ZBA that they would be reviewing an appeal of an administrative decision as permitted by Article 96 of the Wexford Joint Zoning Ordinance. Townsend further explained that staff, at the request of legal counsel representing the client, asked that the property / use be determined to be nonconforming.¹

Townsend prefaced the bulk of his presentation by explaining to the Zoning Board of Appeals that they would find no written standards in the zoning ordinance upon which to review the appeal of an administrative decision, unlike a familiar dimensional variance request. But rather, they would be required to place themselves in staff's position and review the applicant's request anew, as if 'they' were the decision-maker. Townsend further asked for the ZBA's patience as he walked them through the process from the perspective of a Zoning Administrator.

Townsend presented a series of questions to the ZBA representing that these were the types of preliminary questions customarily asked by staff of an applicant in order to determine the location and scope of any particular project:

Summary of questions:

1. Where is the property located? Townsend explained that this information allows staff to determine the specific zoning district ordinances that are applicable.
2. What is it that you (an applicant) are proposing to do? Townsend continued that this information allows staff to make a determination as to whether the 'use' is allowed either as a permitted or special use in the specific zoning district.

Continuing, Townsend noted that the Wexford Joint Zoning Ordinance, in Section 504 of Article 5, specifically references the North American Industry Classification System, and that it is used extensively throughout all of the zoning districts in the ordinance to denote specific uses. He went on to discuss how critical this was as it related to this case about whether mini-storage units were a use permitted in the Rural Residential zoning district.

Assistant Zoning Administrator Townsend directed the ZBA's attention to the Staff Report ZBA-2023-03 as he began a power point presentation so that they (the ZBA) could more easily visualize the internal administrative processes required in order for staff to make a factually supported decision.² Following this process an administrative decision was rendered that determined that the subject use(s) on the parcel were was not nonconforming.

Circling back, Townsend pointed out that this determination that the 'use' was not currently permitted, did not in any way verify that it was never permitted and that additional administrative research would be required. The next step would be to determine if the predecessor to the Wexford Joint Zoning Ordinance, Wexford County Zoning Ordinance No. 5 ever permitted such a use. The ZBA inquired as to clarification of this process and Townsend asserted that in order for staff to determine that the use was nonconforming, he would first have to determine that the use was previously lawful in the first place. Townsend said that staff correctly determined that under the Wexford County Zoning Ordinance No. 5, that the property

¹ See Exhibit C in ZBA-2023-03 Staff Report

² See Exhibit D in ZBA-2023-03 Staff Report



was located in the 'Forest Recreational' zoning district.³ Staff had reviewed the possible uses that were allowed in this zoning district and found none that were even similar in nature.

Throughout the presentation, Townsend conceded that it was very likely that the appellant had received 'zoning' approval for an 'accessory' building to a residential dwelling. However, research by staff nor evidence submitted by the applicant can produce an actual 'building' permit, and there are no documented approvals to use the structure(s) / building(s) on the subject parcel for a commercial use such as mini-warehousing and or storage.

After Assistant Zoning Administrator Townsend had completed his presentation, the ZBA was informed that he believes staff made the correct decision and asked the ZBA to uphold it in its entirety. He also reminded of two possible resolutions made available for their consideration. One would uphold, and another that would reverse the staff decision deeming that the use(s) taking place on the parcel were not nonconforming. Townsend added that the resolutions could be altered to suit the desires of the ZBA.

Attorney Figliomeni requested that the Chair allow an opportunity to briefly rebut portions of Townsends presentation to the ZBA. Chair Monroe granted this request. Attorney Figliomeni presented the ZBA with a voluminous amount of material that was not previously available for ZBA review prior to the public hearing. Attorney Figliomeni again argued in support of a declaration that would find the mini-storage use as 'nonconforming', and that it would support the spirit and intent of the ordinance.

Chair Monroe offered an opportunity for public comment – none was offered.

Chair Monroe closed the public hearing.

Chair Monroe open deliberations regarding the appeal of an administrative decision and asked about certification – Townsend responded that it was page #16 of the Staff Report.

The ZBA asked several questions of the Assistant Zoning Administrator for clarification. Townsend informed the ZBA that there were no written comments received in response to the public notice publication or the 300' notice that was mailed out to nearby property owners.

Attorney Figliomeni interjected to the ZBA stating that nonconforming issues are specific to the property.

The ZBA continued with inquiries and observations noting that the original lot had a house on it, the property had since been divided, noted current setbacks. Member Kowalski challenged the claims of the original owner⁴ representing it to the 'then' Zoning administrator as mini-storage only and pointed out the Zoning Certification date of April 3, 1996 versus a proposal date of April 26, 1996.

³ See Staff Report | Section 2.5(3)

⁴ See page #16 in ZBA-2023-03



The Zoning Board of Appeals, after brief discussion and considering the additional material provided by the applicant at the meeting this evening decided that additional time would be needed for review.

Motion by member Swank to reconvene deliberations of this case at their regularly scheduled January 24, 2024 ZBA meeting as new business; seconded by Monroe. The motion was approved unanimously.

The Chair offered an opportunity for public comment – none was offered.

The Chair solicited comments from the ZBA membership. After brief generic discussion, member Kowalski mentioned the importance of a ZBA Code of Conduct. The membership agreed by consensus that a Code of Conduct should be considered and adopted at the earliest opportunity.

Motion by Chair Monroe to adjourn; seconded by member Kowalski. The motion was approved unanimously at 7:25 pm.

Respectfully submitted on behalf of the Wexford Joint Zoning Board of Appeals,

Jack Prebay
Secretary-ZBA



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