



## Town of Summerfield – Board of Adjustment Minutes

Summerfield Community Center

May 24, 2012 | 6:30PM | 5404 Centerfield Road

*Chair James Brady*

*Lewis Nash*

*William North*

*Michael Stewart*

*Ron Willis*

*Rob Lovell - Alternates*

*Don Wendelken - Alternates*

The meeting was called to order at 6:33 pm by Chair James Brady, with the following in attendance:

**Board Members:** James Brady, Lewis Nash, William North, Michael Stewart, and Ron Willis

Also in attendance: William Hill, Town Attorney; Carrie Spencer, Interim Town Planner; John Ganus, Code Administrator

### CONSENT AGENDA

Mr. Stewart made a motion to approve the agenda, Mr. North seconded, and the motion passed unanimously. Mr. Willis made a motion to approve the minutes from the August 25, 2011 meeting with clarification of the date, Mr. Stewart seconded, and the motion passed unanimously.

### NEW BUSINESS Appeal of Notice of Violation Case Z-12-03

Town Attorney William Hill introduced himself and reviewed some matters of procedure. He stated that pursuant to our zoning ordinance we have a Zoning Enforcement Officer, John Ganus, who issued a Notice of Violation to Mr. Lipinski. He informed the Board that their role is to hear the evidence and they can reverse, affirm, or modify the Notice in whole or in part based on substantial evidence. They are to review the decision of the Enforcement Officer and determine if his decision should be reversed as requested by Mr. Lipinski.

In answer to the question: "Are we restricted to the ordinance sections referenced in the violation?" Mr. Hill stated that the violation is for a specific section of the ordinance, but if the Board feels another section applies Lipinski should be given an opportunity to reply.

Mr. Hill asked if any member of the board knows Mr. Lipinski to the extent that their opinion could be affected and they responded "No". Mr. Hill asked if anyone has knowledge of the case such that their opinion could be affected and all responded "No".

John Ganus introduced himself as Code Administrator and stated that this case is his first and he did the investigation for it his first day. He read from the attached memo.

Mr. Lipinski raised an objection during Mr. Ganus' presentation to say that he has been cited for the type of fence and a determination if the tarp is part of the fence, not if he is maintaining it. A question was asked if the fence had been determined to be flammable, and Mr. Hill stated that he, Mr. Ganus, and Mr. Lipinski had met and decided to withdraw the issue of flammability.

Mr. Brady asked about section 6-5.1 and if there is a question of encroachment or setback and Mr. Ganus responded that there was not.

Mr. Lipinski cross examined Mr. Ganus by asking if he were here at the writing of the ordinance and if he had special knowledge of fences and Mr. Ganus stated that he was not and did not. He added that during the meeting between the two of them and Mr. Hill, it was agreed that the general rule is that unless the ordinance states you can't do something you can. Ganus responded that if the ordinance doesn't say that you can do something, then you cannot.

Mr. Lipinski passed out a picture of his fence with signs on it to say that it is his fence and it is not in violation. He asked if the definition of a fence has anything to do with being permanent. He pointed out that the tarps blow away and are not permanent and therefore does not see how they can be part of the fence. Ganus stated that the tarps were attached to the fence and that is why they are considered part of the fence. Mr. Lipinski passed out a picture of a bookcase attached to a fence that Mr. Hill determined is not germane to the case.

Mr. Lipinski objected to the fact that he could not cross examine the witness (Ganus). He stated that the antagonism shown to him by Town's Council is inappropriate and part of why there is a problem today. Mr. Hill stated that he and Ganus met with Mr. Lipinski for about 2 hours at town hall at Lipinski's request, and had a cordial meeting before tonight's hearing to discuss what could and could not be used as evidence. Mr. Lipinski claimed that he was not afforded the opportunity to discuss the complaint as his neighbor was, until he wrote a number of emails and was then granted the opportunity to discuss it.

Mr. Lipinski stated that in March 2011, he put up a fence (he demonstrated the fence with a photo taken around February of this year.) He added that the tarps did not cover 100% of the fence. He continued that he had put up the fence and it wasn't until Sept 2011 that he covered part of it with a tarp. He stated that the tarp is only partially attached and can fall away from the fence and is therefore not a permanent part of the fence. He added that he did not understand why (Development Ordinance section) 6-5.2 talks about permitted fences but then 6-5.3 talks about prohibited fences and does not know why it is in there. He stated that, in his opinion, his fence is in compliance. He attached tarp to some parts of the fence, and in the period of a few months some of the tarp has ripped and blown away. He claimed that there is nothing in the ordinance that talks about what you can attach to a fence and asked if you can attach signs to fences. Mr. Brady responded that the violation is not about signs. Mr. Lipinski stated again that the tarps are not part of the fence and were never intended to be part of the fence and that the ordinance does not say that he cannot attach things to the fence.

Mr. Willis asked how the neighbors feel about the issue and wondered if a neighbor complained about having to see the fence and Mr. Hill stated there has already been evidence that there was a complaint. Hill reminded the Board to find if, by attaching tarp to the fence, the fence is taken out of compliance.

Chip Person, 5876 Stanley Huff Rd, was sworn in and stated that the fence is very offensive and most unusual. Mr. Hill stated that the Board should disregard Mr. Person's testimony.

Mr. Stewart offered that since the witness stated that the tarp was attached to the fence and is therefore part of the fence, it is considered just as other screening is. Mr. Willis stated that in reading the ordinance, he has to ask what the writers were trying to accomplish and that the purpose of zoning and zoning ordinances is to have some continuity throughout the

community. He added that he has a hard time reading 6-5.2 and thinking that the Zoning Board intended for something like the tarp on the fence to exist in the town. Mr. Nash stated that there is no evidence that the fence meets fire code and Mr. Hill reminded him that we are not considering flammability, but only if by attaching the tarp it becomes part of the fence. Mr. Nash stated that it doesn't matter if the tarp is draped, stapled, or wired it becomes part of the fence. Mr. North stated that in listening to evidence and considering allowed fences, the fence types appear to be permanent in nature and the fact that testimony reveals that a semi-permanent material is attached to the fence it makes it part of the fence. He added that the violation needs to be supported in terms of what the Town (staff) decided upon. Mr. Hill reminded the Board that they must make a motion to affirm, reverse, or modify the Notice of Violation.

Mr. North made a motion that the attachment of the tarps does present a violation to the town's ordinance and they should affirm the finding of the Town. Mr. Stewart seconded the motion. Mr. Hill asked if the motion is based on the fact that the tarp is part of the fence and Mr. North offered to modify the motion to include that fact. Stewart accepted the modification. The Board passed the motion unanimously.

#### OTHER BUSINESS

Ms. Spencer announced the hiring of a new Town Manager Scott Whitaker who will start work June 11.

With no further business, Mr. Nash made a motion to adjourn at 7:21 pm, Mr. North seconded and the motion passed unanimously.

  
James Brady, Chair

  
Valarie R. Halvorsen, Town Clerk  
for Carrie Spencer, Clerk to the Board