

**JAMESTOWN CHARTER TOWNSHIP**

**Zoning Board of Appeals**

Meeting Minutes

May 3, 2023 at 6:00 p.m.

**CALL TO ORDER:** Chairperson VandenHeuvel called the meeting to order at 6:00 p.m.

**BOARD MEMBERS PRESENT:** Janae Byker, Dean Smith, Mike VanAanhold, Chris VandenHeuvel

**ALSO PRESENT:** Zoning Administrator Kirk Scharphorn

**INVOCATION:** Board member Smith opened with the invocation.

**APPROVAL OF AGENDA:** A motion was made by Byker, supported by Smith, to approve the agenda. Motion carried unanimously.

**APPROVAL OF MINUTES:** A motion was made by VanAanhold, supported by Smith, to approve the minutes of the April 25, 2023 Zoning Board of Appeals meeting as written. Motion carried unanimously.

**PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA:** None.

**OLD BUSINESS:**

**A motion was made** by Smith, supported by VandenHeuvel, to take discussion of the request from Jason Meyer of 2926 Rocaway Drive, also known as permanent parcel 70-18-15-276-001, for a variance to allow an eaves height that is taller than permitted by ordinance for a detached accessory building off the table. The Public Hearing was held at the April 25, 2023 Zoning Board of Appeals (ZBA) meeting, at which meeting deliberation was tabled to obtain advice from the Township Attorney. Motion carried unanimously.

**Chairperson VandenHeuvel** reviewed the advice received from the Township Attorney regarding this request. The Township Attorney advised that instead of ruling on the variance, the ZBA could examine whether the decision of the Zoning Administrator to halt construction of the structure when it was determined that the building permit had been erroneously issued should be reversed. Case law supports an exception to the doctrine of “Non-Estoppel” (the right for municipalities to enforce their zoning ordinance when an error has been made in the interpretation or application of the ordinance). A township can be equitably estopped from enforcing a zoning ordinance when “exceptional circumstances”, viewed together, present compelling reasons why equity should refuse the municipality’s enforcement of its ordinance. The factors to be considered are:

- 1) A party by representation, admissions, or silence, intentionally or negligently induces another party to believe facts;
- 2) The other party justifiably relies and acts on this belief;
- 3) The other party will be prejudiced if the first party is permitted to deny the existence of the facts.

The ZBA discussed whether the communication and approval and advice from the Zoning Administrator was official approval and not casual advice, whether the Meyers justifiably relied on the zoning and building permits issued by Professional Code Inspections (PCI), whether the two permits issued in 2016 and 2020 were for the same structure and dimensions, whether the submitted plans fully disclosed the dimensions of the structure, whether the Meyers incurred significant expense as the foundation and walls have been constructed and custom trusses ordered, whether financial damage would occur if the Meyers were not allowed to complete the structure, and the status of the existing variance.

VandenHeuvel confirmed that the two permits issued by PCI were for the same structure and dimensions, which were fully disclosed on the submitted plans. It was also noted that if the ZBA reverses the decision of the Zoning Administrator to halt construction, it would not be necessary to take final action on the variance request.

**A motion was made** by VandenHeuvel, supported by VanAanhold, to reverse the decision of the Zoning Administrator to halt construction based on exceptions to the doctrine of Non-Estoppel in case law. The Zoning Administrator in his official capacity advised Mr. Meyer to commence construction, and Mr. Meyer commenced construction with significant expense based on good faith and reliance on the Zoning Administrator's approval.

Smith recommended adding the four bullet points contained in the Township Attorney's letter to the motion.

**VandenHeuvel restated the motion**, supported by VanAanhold, to reverse the decision of the Zoning Administrator to halt construction based on exceptions to the doctrine of Non-Estoppel in case law based on the following finding of facts:

- The two permits issued by PCI as the Township's officially appointed zoning administrator and building official are the type of official action upon which an applicant can justifiably rely. This is not mere casual advice.
- The plans fully disclosed the proposed height of the building walls and roof.
- The stage of construction at the time work was halted demonstrates actual physical changes to the property and construction toward the building which had been approved. The framing for building walls to the height approved in the plans had been completed, and we understand that custom fabricated trusses were completed and may have already been delivered to the site. It may also be the case that the size and construction of the foundation and footings were designed to support a building of this height.
- The ZBA could question the Meyers or their builder, but it would appear from the photographs that there was sufficient expense incurred by the Meyers in reliance on the permit to justify a finding of exceptional circumstances.

Motion carried-four ayes, Brouwer absent.

**NEW BUSINESS:** None.

**ADJOURN:** A motion was made by VandenHeuvel, supported by Smith to adjourn the meeting at 6:12 p.m. Motion carried unanimously.

Respectfully submitted by,

Maureen Carmody, Recording Secretary  
Zoning Board of Appeals

Minutes approved on

\_\_\_\_\_ by \_\_\_\_\_  
(chair)