

**RECORD OF PROCEEDINGS  
Danbury Township Zoning Commission**

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held August 1, 2018

The Danbury Township Zoning Commission was called to order at 6:30 p.m. at the Danbury Township Meeting Room by Chair, Jodi Kopanski. The pledge of allegiance was recited and the roll call showed the following present: Ms. Jodi Kopanski, Mr. Richard Kracer, Mr. Michael Brown, Mr. Robert Strauss, Mr. Vito Kaminskas, Alternate Jack McGrew and Alternate Susan Dress. Also present were Kathryn Dale, Zoning and Planning Administrator. No Visitors were present.

**Swearing-in of New Member**

Ms. Dale swore in Ms. Susan Dress as a new Alternate Member serving on the Commission until 12/31/2022.

**Approval of the May 2, 2018 Minutes**

Mr. Strauss made a motion to approve the minutes for the May 2, 2018 meeting. Mr. Kaminskas seconded the motion. All Ayes. The motion carried.

**Public Hearing**

There was none.

**Old Business**

There was none.

**New Business**

Ms. Dale stated the only item on the agenda is to have a worksession to discuss potential changes to the Section 7.9 Nonconformities. She provided background that there have been some issues recently with the term "reproduction value" because it is not defined in the zoning code and is not a recognized term used by appraisers, attorneys or the construction industry. She shared with the Commission that she had researched a lot of zoning codes across the State and attached a list of what other communities use when it comes to the wording for the loss of a nonconformity due to an Act of God or demolition.

Mrs. Dale expressed that she had put together some other changes to this section also for them to discuss, including reformatting it to put like-language together under headings, such as "Purpose", "Modifications", "Continuance", "Discontinuance", and "Burden of Proof" for ease of finding the language. There were some statements that other communities used that is common language regarding nonconformities that Danbury's code was lacking, such as "once a nonconformity becomes conforming it cannot go back to being a nonconformity". One particular, commonly used regulation was *"Any structure moved or relocated on a lot, in whole or in part, shall thereafter conform to the setback requirements of the zoning district in which it is located."* Ms. Dale asked that they further discuss this because it would have profound effects on Lakeside properties in particular.

Ms. Dale shared she is a little leery as a zoning inspector, whether she should be determining a value at all. The other concern is, when reliant on a value determination, it is relative to the time construction is happening, costs from 1970 are not the same they are today, but more so there is room for the property owner or contractor to fudge the numbers and not be honest, especially if the replacement language deals with construction costs. Mr. McGrew said there could also be a lot of variation between contractor's and what they charge or quote. Mr. Kaminskas asked why we wouldn't just use square footage then. Ms. Dale replied that that is a possibility but it really needs to be looked at from all angles because work sometimes involves more than just square footage of a structure, such as the roof and foundation. It would have to be defined.

Mr. Brown shared his extensive background as a certified real estate appraiser in Illinois, an assessor and appraisal regulator. He said that "Fair Market Value" was the term they used because it is a value a buyer is willing to pay and a seller is willing to accept. He said it is one of the three recognized forms of value, its cost, market and income. He said another alternative would be to use the Auditor's evaluations from their website, which is also a fair market value determination. Ms. Dale concurred that she liked that thought at one point because it is a neutral, attainable number; it's not determined by her and not determined by the property owner. Mr. Brown confirmed that "Reproduction Value" is not a recognized term, but that "Reproduction Costs" is. He agreed that square footage is another way to do it, but it's not inclusive of the entire structure. Mr. Brown said he feels referring to fair market value, using the Auditor's number is the easiest way to go. Ms. Dale said she understands what he is saying, but why she started to turn away from this approach is that there is still some reliance on the property owner and contractor being truthful on their construction costs. She said if there is a home valued at \$100,000, 75% would \$75,000. She said where she gets hung up is, what is the \$75,000? Is it the added value into the home and what the home appraises out at after the improvement? Does it mean the construction costs can't be more than \$75,000? Mr. Brown said it's

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not construction costs, because she is right, contractor's will give whatever number they need to give to make the project go. Market value is comparable sales and follows the market. Reproduction does not. A close second option would be to use the Cost Approach less depreciation. What it would be to rebuilt that property today minus the depreciation value. Ms. Kopanski tried to confirm what Mr. Brown was saying, she clarified that he would recommend 75% of the market value, but who comes up with the estimate of the 75%? She said the way she sees it, someone else, not the Auditor, not an appraiser is coming up with what the \$75,000 is. Ms. Dale concurred she doesn't understand how to tell someone what the 75% is or in our example what the \$75,000 is because Mr. Brown is saying it's not what they can spend on the improvements.

Mr. Brown said it has to do with two things, the first is a nonconforming property. If it's valued at \$100,000 and plane crashed into it, or it burns and there is more than \$75,000 worth of damage to it, it can't be rebuilt. You would have to bring it into conformity. Ms. Kopanski said that example is easy, but what about the volunteer destruction and demolition. Mr. Brown said it is not what they spend, it's how much damage is done to it. Ms. Kopanski shared that she personally experienced a total loss as a result of a fire a few years ago. Her house was nonconforming and her insurance company was going to require her to rebuild on her burned out foundation. She said thankfully, because Danbury had the total loss language, more than 75%, she had to come into compliance which then required a new foundation. She said another issue to consider is that the budget they started off with for a new house ended up being totally different in the end than what they anticipated, and it certainly wasn't below the budget. There is no way to guarantee that the number presented ends up being the real end value. She said that it seems like going with square footage is a more solid way and not as variable or able to be manipulated. Mr. Brown said that the county he came from used square footage, so he would not have a problem with using that as an option. Ms. Kopanski said to her, it just seems like a more straightforward way to go about it and has a more firm number to work with.

Mr. Brown said that appraisers usually look as square footage as finished, livable, heated space. Ms. Dale said she really thinks that attached garages should be included in that calculation because they are part of the footprint of the house and very much a part of the principal structure. The Commission and Ms. Dale reviewed the definition of "Floor Area" and "Lot Coverage" listed in the zoning resolution. Discussion then focused on whether or not detached building square footage should be included. Consensus was they should not because they are likely going to be viewed separately and on their own merit. Anotherwards, there could be a nonconforming barn, but the house conforms and if damage occurs to only one structure, then the square footage of structure effected should determine the 75%.

Consensus of the Commission was to move forward with language for the 75% referring to square footage of the total structure or the square footage of the footprint of the structure and have Ms. Dale present something on that at the meeting in September, which may mean including a better definition. Ms. Dale said she will prepare something for their consideration and to discuss and will make sure she tries to run some scenario's to see what the outcomes would be or would have been.

Moving onto the issue of moving nonconforming structures and whether they should comply with setbacks, Ms. Kopanski asked if homeowners are moving houses by choice or if they are being required to do so because of other building construction requirements. Mr. Brown said in Lakeside, it's primarily due to personal choice. Mr. Brown said that in Lakeside particularly, there are many nonconforming situations, not only encroachments on the road right-of-way or a neighboring property but also into the setbacks. Ms. Dale shared many of the cottages are old and were constructed with a substandard foundations. She said there are instances where a house encroaches into the road right-of-way by inches, sometimes a foot or more or onto a neighbor's property. If a homeowner is going to replace the foundation, many times they are wanting to move the structure to eliminate those encroachments and make sure the structure is on their property, but they are not complying with setbacks when they move it because the zoning code is silent on this issue and they are technically making it "more conforming". She shared that contractors are finding it is more cost effective to not only raise the house, but totally move it into the street or elsewhere on the lot because then they can bring in heavy equipment to prep the new foundation instead of having a crew dig it by hand with a house hovering above them. Part of the issue is that once the house is reset on a new foundation, while "more conforming", a nonconformity is still present because it still encroaches into the required setbacks and the life of that nonconforming situation has just been prolong. The purpose and goal of nonconformities is to protect until their useful life has expired, leading to the eventual elimination.

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Mr. McGrew asked what happens if a house is moved, and this language requires them to comply, what happens if placement can't comply. Ms. Dale said that just like any situation that can't comply or doesn't want to comply, the property owner would have to request a variance. Ms. Dress suggested adding that language then to the end of the requirement. She did raise a concern that it could also encourage property owners to pursue more demolitions if the old house can't comply and they don't obtain a variance. Mr. Kaminskas asked if a house could be lifted and set right back down, because he doesn't think this language addresses that. Ms. Dale said they could, and that could be a 'con' to this regulation, it could encourage homeowners to not move their structure and remain nonconforming. Part of the issue then would be, the property and structure continues to be limited in other ways in the code to make improvements, whereas if they conformed, many of those other restrictions would no longer affect them.

Mr. Kaminskas stated he thinks there are two issues, he feels a homeowner should be able to replace a foundation and set a house right back in its same location, whether they move the house into the street or lift it in place, as long as the foundation is going right back in the same location. He said he feels that if they move the foundation, that is a second, separate issue and by moving the foundation, then yes, they should comply. Mr. Brown said that most of the cases in Lakeside would mean moving a house less than 2' to come into compliance. They're already going thru all the expense to raise the house, move the house, put in a new foundation, and why not just comply? Otherwise the can is just kicked around. For a house that encroaches into a right-of-way then, you've just put them back in jeopardy by allowing them to go back in the same location should Lakeside ever make improvements to the streets. Mr. Brown stated a nonconforming structure damaged by more than 75% can't be rebuilt in the same location, why not have the safety of putting the house where it needs to go so you don't ever need to worry about that because a compliant house can then be expanded upon more and be rebuilt. Coming into compliance doesn't really cost them anymore and it safeguards them should something catastrophic happen. Mr. Kaminskas clarified that Mr. Brown feels like a house should come into compliance if moved. Mr. Brown concurred because even if a house encroached into a required setback, the requirement to be in compliance is a 3' setback and 5' setback. The distance to move and come into compliance is not 10', 20' or more, it's a very minimal amount. He shared that there may be 3-4 cases a month and some may require variances, but most of them are solvable if this requirement were in place. It just seems so simple to come into compliance if they are moving the house anyway. When an appraisal is done, the appraiser has to note whether it's a conforming or nonconforming property. Mr. Kaminskas said he could see Mr. Brown's point, that he didn't realize it was such a small distance. He was thinking these would be structures that would have to move considerable distances to come into compliance. Ms. Dale clarified that this language would apply to the whole township if it gets left in, so it could affect properties that might have to move a greater distance than what one would find in Lakeside. Mr. Brown admitted that there may be situations that a house may not be able to comply, but overall, many of the cottages are small to begin with because the lots are small. He provided an example of the old Abigail's restaurant that was made up of 3 houses put together. He said all 3 of those houses were separated, moved and able to come into compliance with all the setbacks and turned out to be very nice homes.

Ms. Dale wrapped things up by pointing out that "reproduction" will also have to be addressed in the nonconforming sign language and some amendments will have to be made to parking language for clarification when more than 50% of a home is modified.

Ms. Dress suggesting under the new "Burden of Proof" section that 'nonconforming use' is referred to 'nonconformity' throughout since it could be any nonconforming situation, not just how property is used. There were no objections.

Mr. Kracer asked if there is a deadline to get this language adopted. Ms. Dale said no, but it is something that she would like to move forward fairly quickly so there is no looming legal issue, especially with the "reproductive value" term.

**Other Business**

There were none.

**Reports and Communications from Members and Staff**

There was none.

**Public Comments Regarding Zoning Items Not on the Agenda.**

There was none.

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**Adjournment**

The Chair asked for a motion to adjourn. Mr. Brown moved to adjourn the meeting and Mr. Kracer seconded the motion. All Ayes. The motion carried.

The meeting was adjourned at 7:50 p.m.

Kathryn A. Dale  
RECORDING SECRETARY

Joe N  
Richard Kracer  
Mr. Brown  
Robert  
Jackie McSweeney  
ZONING COMMISSION