

JIM THORPE BOROUGH ZONING HEARING BOARD MEETING MINUTES

March 8, 2023 Jim Thorpe Memorial Hall

**Call to Order**

Time: \_\_\_\_\_ 6:33 pm \_\_\_\_\_

**Pledge of Allegiance**

**Roll Call of Board Members and Officials**

	<b>Present Y/N</b>
Michael Huber, Member	_____ Yes _____
James Igoe, Secretary	_____ Yes _____
Kurt Jackson, Chairperson	_____ No _____
Roxanne Long, Member	_____ Yes _____
Eli Skrimcovsky, Vice-Chairperson	_____ Yes _____
August Long, Alternate Member	_____ Yes _____
Andrew Roberts, Alternate Member	_____ Yes _____

\*\*Attorney Matthew Schnell, Zoning Officer Alexis Wilkinson, Former Borough Zoning Officer Matthew Helbers, and Attorney James Nanovic (representing Jim Thorpe Borough), Attorney Julie Wagner Burkart (representing the Home Owners Association of Broadview Estates) and Attorney Neil Ettinger (representing Brian Sargent, the applicant) were present to ask questions, explain their rationale, and cross examine people associated with the case. Attorney Schnell directed the hearing. Attorney Schnell, Zoning Officers Wilkinson and Helbers, and Attorneys Nanovic, Wagner Burkart, and Ettinger had no voting capabilities\*\*

\*\*\*Also of note is that Board Member Michael Huber will have no voting capabilities in his role as a member for the first hearing. Mr. Huber is a member of the HOA and resident of Glen Onoko Estates and therefore will recuse himself. \*\*\*The next noteworthy item is that Alternate Board Member Mr. August Long will not vote on the second hearing. \*\*\*

**Approval of Minutes and Agenda**

1. Request approval of the minutes from the meeting held on January 26, 2023. Mr. Huber makes the motion to approve the minutes. This was seconded by Mrs. Long. The vote passes unanimously.
2. Request approval of the March 8, 2023 agenda. (available in a separate email) Mr. Huber makes the motion to accept the agenda. This was seconded by Mrs. Long. The vote passes unanimously.

**First (1st) Hearing- \*\*\* This has been continued four times. The first continuance is from October 2022, the second is from November 2022, the third is from December 2022 and the fourth is from January 2023\*\*\***

Name: Brian Sargent and Mandy Kane (property manager)

Property Address: 1112 Broadview Drive Jim Thorpe, PA 18229

Purpose: The applicant is requesting a variance to allow a Short-Term Rental (STR). In addition to the original variance request, the applicant also seeks (1) A vested right by and through its operation as a permitted use of a short-term rental, being operated and used prior to the effective date of 500-50-.2(c), on or before 3/11/21. (2) Variance by estoppel and/or vested rights theory. (3) Reserving additional right to amend the application further. The property is located in the R-1 Zoning District.

**Questions/Discussion:** Mr. Sargent and Mandy Kane were in attendance along with their legal counsel Attorney Neil Ettinger. Legal counsel for Jim Thorpe Borough, Attorney James Nanovic and legal counsel for the Broadview Development/ HOA, Attorney Julie Wagner Burkart were also present. Attorney Schnell read exhibits which were then accepted as artifacts to the record. Attorney Schnell granted each presenting lawyer three (3) minutes to explain their position.

Former Zoning Officer Matt Helbers provided the first testimony. On March 1, 2022, Mr. Helbers issued a Notice of Violation to the Sargent property explaining in an R-1 Zoning District the STR is not a permitted use. Attorney Ettinger asks questions to Mr. Helbers related to the time line of when Mr. Helbers issued the violation notice, if a list was created of potential STR's with non-conformities before the ordinance was approved, who has the list and how the list was created. Mr. Helbers answers that his predecessor, Maureen Minnick, was involved with the list and that approximately 100 properties are on the list. Attorney Ettinger proves that no notice to cease and desist was given and no notice was given to Mr. Sargent to stop operating as an STR. Mr. Helbers stated that any STR operating with a non-conforming use would need to fill out an application and come before the Zoning Hearing Board in search of a permit for a change of use/non-conforming use. Attorney Burkart asks if Mr. Sargent submitted an application to operate an STR. Mr. Helbers answers, "No". Attorney Burkart asks if fines are issued when a property is in violation. Mr. Helbers answers that he, "never got to that point". Attorney Nanovic asked Mr. Helbers to state when he started as a Zoning Officer in JT Borough. Mr. Helbers noted that by May/June of 2021 he was functioning as a Zoning Officer in JT Borough.

Attorney Ettinger calls Mr. Sargent to testify. Mr. Sargent speaks about the property and location. He began using the property as an STR in Oct. 2020. Mr. Sargent indicated that he researched using the property as an STR. He proceeded with the first booking in Oct. 2020. Attorney Ettinger presented evidence from Star 5, an STR booking company that shows revenue from 10/31/20 through 4/2021. Mr. Sargent did not obtain a permit or register the property before accepting patrons. Mr. Sargent indicated that he never received a phone call or notice from the borough about operating an STR. Ultimately, Mr. Sargent called Mr. Helbers after he received a Notice of Violation and spoke about the details for handling a Violation. The District Magistrate became involved but that hearing was canceled. Mr. Sargent paid the fees associated with the hearing. Mr. Sargent thought payment to the Magistrate allowed his continued operation through vested right and that he just needed to execute the permit. He stated that he did not get the impression from the Borough that there was any sense of urgency until he received a denial letter of his application from Mr. Helbers dated October 17, 2022. Mr. Sargent still operates the STR. He has not received a notice to stop operating or has never registered the property. Mr. Sargent believes in the grandfathering process and vested rights which is why he continues to operate the STR.

A break was given for all. The break started at 7:45 pm and lasted until 7:54 pm. When returning from the break, Attorney Ettinger announced that his client is withdrawing the request for a variance. Attorney Nanovic asks Mr. Sargent if he contacted Jim Thorpe borough or the zoning officer about opening an STR. Mr. Sargent became aware of the new STR ordinance but did not apply for a permit even after receiving a notice of violation.

Attorney Burkart asks Mr. Sargent how he advertises and collects payments. Advertisement is created by word of mouth, Facebook, and Craigslist. Payment is handled through airbnb. Attorney Burkart asks if Mr. Sargent treats the rental more like a hotel or boarding house considering he's rented his property for more than thirty(30) days in some cases. STR's have a thirty(30) day max rental policy. Attorney Burkart asks questions related to operating a non-conforming STR. Is the notice of violation the same as a cease and desist order? Mr. Sargent did not show the stoppage letter he received from the zoning officer to his lawyer and according to Attorney Burkart showed no sense of urgency to resolve the issue of operating a non-conforming STR.

Zoning Hearing Board member, Mr. Andrew Roberts asked the Zoning Officer, Ms. Alexis Wilkinson if the hearing this evening is the best venue for this applicant considering that Attorney Ettinger and client removed the request for a variance. The zoning officer explains that the other requests from the applicant are appropriate.

Attorney Ettinger explains that he has no further witnesses. Attorney Burkart calls one witness Mr. Joseph Schatz from 1105 Broadview. Mr. Schatz lives across the street from the Sargent STR. Mr. Schatz describes commotion coming from the Sargent STR every weekend. Mr. Schatz explained that he checks the airbnb website to read reviews and to learn about rental patterns. Mr. Schatz also explained that police patrol the area but have not taken any enforcement tactics. Attorney Ettinger asks, "Why no reports were issued if parties occur every weekend?" Mr. Schatz answered that there was no criminal activity reported.

A public comment period was then conducted. Seven(7) citizens were sworn in by the Stenographer then provided testimony to the board. All seven(7) speakers spoke against the idea of the Sargent STR being allowed to operate. None of the citizen speakers offered a voice of support to grant the proposed usage.

Mr. Andrew Roberts of the Zoning Hearing Board asks former Zoning Officer, Matt Helbers if the applicant applied during the 90 day window would the permit be issued? Mr. Helbers answered, "likely yes", if Mr. Sargent had submitted within the 90 days and the application was deemed complete and included proof he was operating prior to the adoption of the ordinance.

Each lawyer was given a few minutes to provide closing statements. Attorney Ettinger cites previous case law from an appellate court focusing on non-conforming use. Attorney Nanovic outlines estoppel and vested right. Attorney Nanovic states that citation was not binding and estoppel is not satisfied. Attorney Nanovic explains that permission to operate an STR as a nonconforming use requires permission. Attorney Burkart focuses her attention on Mr. Sargent having plenty of time to resolve the noncompliance by going through the proper channels. Attorney Burkart explains that the people living in the Broadview Estates are the ones getting hurt. Attorney Burkart poses a final question, "Did Mr. Sargent legially try to resolve the issues related to his property or did he continue to operate the STR in bad faith and without permits?"

**\*\*\*Prior to voting on this hearing, Mr. Skrimcovsky asked for an executive session. Mr. Roberts seconded the motion. The executive session began at 9:30pm. The executive session ended at 9:54pm.\*\*\***

**Ruling by Zoning Hearing Board Members:**

\*\*\*After the executive session, no motions were made to accept any of the requests from the applicant. Mr. Skrimcovsky made three denial motions however. The first was a denial of the Vested Rights Theory. This motion was seconded by Mrs. Long. The second was a denial of Estoppel. This motion was seconded by Mr. Roberts. The third was a denial of the appeal of denial. This was seconded by Mr. Roberts. Three separate roll call votes were necessary. The roll call votes appear in the order as was taken\*\*\*

**Ruling #1**

Yes: \_\_\_0\_\_\_

No: \_\_\_5\_\_\_ Voting no on Vested Rights Theory: Mr. Igoe, Mrs. Long, Mr. Skrimcovsky, Mr. Long, and Mr. Roberts

Final Result: \_\_\_Vested rights theory denied\_\_\_\_\_

**Ruling #2**

Yes: \_\_\_0\_\_\_

No: \_\_\_5\_\_\_ Voting no on Estoppel: Mr. Igoe, Mrs. Long, Mr. Skrimcovsky, Mr. Long, and Mr. Roberts

Final Result: \_\_\_Estoppel denied\_\_\_\_\_

**Ruling #3**

Yes: \_\_\_0\_\_\_

No: \_\_\_5\_\_\_ Voting no on Appeal of Denial: Mr. Igoe, Mrs. Long, Mr. Skrimcovsky, Mr. Long, and Mr. Roberts

Final Result: \_\_\_Appeal of Denail Denied\_\_\_\_\_

**Second (2nd) Hearing- Start of hearing 10:00 pm**

Name: Mr. Brian Seitz

Property Address: 300 Lentz Trail Jim Thorpe, PA 18229

Purpose: The applicant is seeking a special exception for a Short-Term Rental (STR) use in the Special Zoning District.

\*\*Attorney Matthew Schnell and Zoning Officer Alexis Wilkinson were present to answer questions with Attorney Schnell directing the meeting. Attorney Schnell and Zoning Officer Wilkinson had no voting capabilities\*\*

\*\*\*The next noteworthy item is that Alternate Board Member Mr. August Long will not vote on this hearing.\*\*\*

**Questions/Discussion:** Mr. Seitz was in attendance and spoke on his behalf. Attorney Schnell read exhibits that were accepted as artifacts to the record. Zoning Officer Alexis Wilkinson reviewed the application for the board. Mr. Seitz explained and described the property. Mr. Seitz explains that the property has 2 beds and 2 baths. The cabin is small, it's located on 6 acres and could accommodate four (4) parking spots. Citizen and neighboring property owner Bob Silliman speaks about living on his property for 20 years and enjoys the quiet. Mr. Silliman asks the board to deny the STR based on

potential drop in property value, potential noise issues and potential damage to the area. Mr. Roberts asked Mr. Silliman if Mr. Seitz lowered the occupancy rate would that change your mind? Mr. Silliman stated no. Mr. Huber asked about distance to the potential STR. Mr. Silliman estimated the distance to be 150ft through the woods. At the conclusion of the testimony, Mr. Seitz responded that he stays on top of all of his properties. He is local and is available when needed at his properties.

**\*\*\*Prior to voting on this hearing, Mrs. Long asked for an executive session. Mr. Skrimcovsky seconded the motion. The executive session began at 10:15pm. The executive session ended at 10:28pm.\*\*\***

**Ruling by Zoning Hearing Board Members:**

\*\*\*After the executive session, one motion was made. Mr. Skrimcovsky made a motion to grant the STR by Special Exception as long as the house has a limit of 3 renters at one time. This motion is not supported and fails. Mr. Roberts made a motion to deny the STR by Special Exception. Mr. Igoe seconded the denial motion then a roll call vote was taken\*\*\*

Yes:   3   Voting yes to deny Special Exception: Mr. Igoe, Mr. Huber, and Mr. Roberts.

No:   2   Voting to grant Special Exception: Mrs. Long and Mr. Skrimcovsky.

Final Result:    Special exception fails/is not granted \_\_\_\_\_

**Adjourn**

**Motion** by \_\_\_\_\_ Mr. Skrimcovsky \_\_\_\_\_, second by \_\_\_\_\_ Mr. Roberts \_\_\_\_\_ to adjourn at   10:30   PM.