

FERGUSON TOWNSHIP ZONING HEARING BOARD

Regular Meeting
Tuesday, March 24, 2015
7:00 pm

I. ATTENDANCE

The Zoning Hearing Board held its regular meeting on Tuesday, March 24, 2015 at the Ferguson Township Municipal Building. In attendance were:

Board: Matthew Patch, Chairman
George Pytel, Vice Chair
Charles Farrell
Michael MacNeely
Mike Twomley

Staff: Jeffrey Ressler, Zoning Administrator
Jeffrey Stover, ZHB Solicitor
Mark Kunkle, Township Manager

Other in attendance included: Heather Bird, Recording Secretary; John Sepp, PennTerra; Randy Watkins, Variance; John Sepp, PennTerra Engineering; Richard Keyser, Toll Brothers; Ronald Lucas, Stevens & Lee; Laura Dininni, Bill Hechinger, Johan Zwart, Nancy Doyle, Jessica Redmond, Jean Hoffman, Roxie Nestlerode, Wes Glebe

II. CALL TO ORDER

Mr. Patch called the Tuesday, March 24, 2015 regular Zoning Hearing Board meeting to order at 7:00 pm.

III. SWEARING IN OF THOSE WHO WISH TO TESTIFY

Eight individuals stood to be sworn in.

IV. NANCY DOYLE VARIANCE REQUEST

Mr. Ressler stated the variance request is for property located at 1752 Manor Court, tax parcel 24-466-113. The property is owned by Nancy Doyle and is located in the Stonebridge Planned Residential Development. The applicant requested a variance to Chapter 27-204.A-1 to be permitted to keep on the property an accessory structure that measures 10 feet by 12 feet and is 10 feet 10 ½ inches high. The zoning ordinance in Chapter 27-204.A-1 requires that a small accessory building be no more than 144 square feet in floor area and not more than 10 feet high. There have been no other hearings on this property. Mr. Ressler stated that the applicant, Nancy Doyle, contacted the Township while Mr. Ressler was out of the office. Ms. Doyle stated she spoke to the Director of Planning and Zoning, Maria Tranguch who informed Ms. Doyle that she did not need a permit for the structure and gave her a copy of the ordinance. Mr. Ressler received a complaint from a neighbor and contacted Ms. Doyle who informed Mr. Ressler that she was told no permit was needed.

Ms. Nancy Doyle, 1752 Manor Court, stated that she did contact the Township regarding the size requirements for the shed on the property. After receiving a complaint letter in the mail, she contacted Mr. Ressler and found out that her shed was not in compliance with the zoning ordinance. This was due to misinformation from staff. She would request the Board to grant the variance based on the staff oversight due to the shed already being built. She presented photos exhibits of the shed to the Board members. She stated the quote for the shed did not include the height of the shed. It is only the peak of the shed roof that is not in compliance with the ordinance.

Ms. Jessica Redmond, neighboring property owner 3075 Westover Drive, stated Ms. Doyle's home

is on a corner lot. She requested the variance not be granted. On January 14th Ms. Redmond noticed the footprint of the shed and she contacted the Homeowners' Association and Mr. Ressler regarding the requirements. On February 28th she learned that the shed was too high and Ms. Doyle was looking for a variance due to staff error. Her and her daughter presented their concerns with the variance to the Board of Supervisors. Ms. Redmond stated that Ms. Doyle's variance request does not meet the variance requirements. There is nothing odd about her property. The law is the law and it should be upheld. In regards to altering the neighborhood, she feels the shed will impact the neighborhood. As for the de minimis requirement, this shed is 9.2% too high which would not qualify this for the de minimis variance. Ms. Doyle does not meet the five requirements for the issuance of a variance, the zoning requirements are met, no de minimis and no vested right arguments.

Mr. Patch asked Mr. Stover if there was a standard for a de minimis variance. Mr. Stover stated there is no black line for this, but recent court cases show 10%. The basic is that it would need to be so small as to have no adverse effect.

Mr. MacNeely verified that the shed exceeds the ordinance requirements by 10 ½ inches.

Mr. Pytel asked Ms. Doyle what the problem would be with changing the roof. Ms. Doyle stated she would not know the answer to that without talking with her contractor.

Mr. MacNeely asked to see the original receipt for the shed purchased which showed a 10x12 shed and did not include the height and at what point did they notice the shed was over 10 feet tall. Ms. Doyle stated it was at the point in time when they received the complaint letter from Mr. Ressler and submitted the zoning permit, which was missing the height.

Ms. Redmond asked if all five variance requirements must be met. Mr. Stover stated that with a traditional variance, yes but with a de minimis variance the guidelines are different.

Mr. Pytel made a motion to GRANT the variance to Chapter 27-204.A.1 to exceed the height by 10 ½ inches on property located at 1752 Manor Court, tax parcel 24-466-113. Mr. MacNeely seconded the motion. The motion passed unanimously.

V. TOLL BROTHERS COMMERCIAL APPEAL

Mr. Ressler stated the appeal is for property located on the South Side of West Whitehall Road at the Blue Course Drive intersection, tax parcels 24-4-76, 24-004-76A and 24-4-094. The property is owned by Penn State University and the applicant is Toll Brothers Commercial. The applicant appealed the determination of the Zoning Administrator that a pre-final design application is a valid procedural step for a Planned Residential Development. The zoning ordinance in Chapter 27-407.2.B(8) requires that a pre-final design submission submitted to the Township and approved prior to final plan submission.

Mr. Pytel asked if the appeal is denied what would happen. Mr. Ressler stated if it is denied the applicant would be required to complete the 90 day pre final design submission prior to the final plan submission for approval. Mr. Ressler read from the Township ordinance on this matter.

Mr. Patch commented that the Board of Supervisors supported the variance request. Mr. Ressler stated they did support the variance but was not presented the appeal.

Mr. Ronald Lucas, Attorney Stevens & Lee, represented Toll Brothers. The variance application was amended to reflect the appeal. The amendment was to appeal the determination the zoning

officer made. Mr. Lucas questioned Mr. John Sepp, PennTerra Engineering. He presented Mr. Sepp with Exhibit A1, who confirmed this was an email from Ms. Tranguch on Wednesday, March 4th. This email was relative to the next step in the approval process of the planned residential development (PRD).

Mr. Lucas presented Mr. Sepp with Exhibit A2, which Mr. Sepp confirmed to be an email string between Mr. Sepp and Ms. Tranguch following up to the March 4th email (Exhibit A1). Mr. Sepp stated that on March 5th he submitted the final PRD plan to the Township. This is the same as the tentative plan but includes much more detail.

Mr. Lucas presented Mr. Sepp with Exhibit A3, which Mr. Sepp confirmed to be an email from Ms. Tranguch on Friday, March 6th stating she received the final PRD and stated the escrow account needed replenished. She would be sending the plan out as tentative pending the results of the Zoning Hearing Board.

Mr. Lucas presented Mr. Sepp with Exhibit A4. Mr. Sepp identified this as a letter dated March 24th from Mr. Lucas to Mr. Kunkle stating the applicant has agreed to extend the final review period by 45 days allowing for a total review period of 90 days. Mr. Sepp stated this is the length of time that has been followed in the past with other projects.

Mr. MacNeely asked the reason that this plan was the first out of four similar plans to need a variance to waive the pre final review. Mr. Ressler stated the ordinance was changed in 2003 to include this pre final review period and the previous PRDs submitted by Mr. Sepp were prior to the 2003 change.

Mr. MacNeely verified that by bypassing the pre final review none of the approvals by the fire chief, water, sewer, etc. will be eliminated.

Mr. Lucas stated that while the Zoning Officer followed the ordinance by the Township the Pennsylvania Municipality Planning Code states that a PRD ordinance should only have a two-step process.

In regards to the letter submitted to Mr. Kunkle from Mr. Lucas regarding the extension of review time for the final PRD, Mr. Kunkle stated that grant of the additional time would be consistent with what the Township has typically completed. There are times when the 90 days is extended to allow for the reviews to be completed. If the 90 days were not sufficient the applicant would ask for a time extension for the review to be completed.

The Zoning Hearing Board adjourned to an executive session from 8:07 pm to 8:15 pm.

Ms. Laura Dininni-Cusumano, 784 Beaver Branch Road, reviewed that Mr. Lucas discussed the two-step process in the Municipal Planning Code. She requested the Board to deny the appeal.

Mr. Wes Glebe, 115 North Butz Street, suggested this item should be tabled in the best interest of the Township.

Mr. Bill Hechinger, 127 Hoy Street, stated this PRD has several reasons that a longer review period is needed. He requested the Board deny the appeal in order to allow more time to investigate the land and the implications of the project.

Mr. Johan Zwart requested the appeal be denied.

Mr. Pytel made a motion to GRANT the appeal to Toll Brothers because the township ordinance is not in compliance with the Pennsylvania Municipal Planning Code. Mr. MacNeely seconded. The motion passed unanimously. Mr. Farrell recused himself.

Mr. Lucas withdrew the applicant's variance application.

VI. COREY J. CONFER VARIANCE REQUEST

Mr. Ressler stated that the variance is located at 246 East Clinton Avenue, tax parcel number 24-015-024. The property is owned by Corey Confer and is located in the C-General Commercial Zoning District. The applicant is in the process of a land development approval for a showroom addition for BMW. As part of the approval they plan to pave 11 required parking spaces on an existing gravel area. The gravel area is located in the Riparian Buffer Overlay Zoning District. They are required to enclose the dumpster area with fencing. Both the gravel area and dumpster predate the current Riparian Buffer Overlay Zoning District. The Riparian Buffer Overlay District prohibits parking lots and dumpster screening. The applicants requested a variance to the Riparian Buffer Overlay Zoning District regulations Chapter 27-213 to permit paving of 11 parking spaces and dumpster screening.

Mr. Pytel questioned the purpose of the riparian buffer zone. Mr. Ressler stated the buffer zone would be to protect the watershed and drainage. In this case the gravel lot is already located within the riparian buffer zone.

Mr. Sepp stated the proposed project is an addition of 6,750 square feet of showroom. As a result of the addition, 11 parking spaces need to be added. These 11 spaces to be paved are existing gravel. The gravel lot was developed prior to the creation of the riparian buffer overlay district. The existing pavement is 51,280 square feet, with an addition of 1,800 square feet increasing the paved area by 3.5%. The gravel that is in this location is compacted to a density of pavement. The effect of this will be minimal. The dumpster will be enclosed but not relocated. The hardship is caused by unique physical circumstances in that the ordinance came after the site was developed. The unnecessary hardship was not created by the applicant; the site was developed before the creation of the ordinance. The variance would not change the character of the area. The variance would be the minimum necessary to provide relief.

Mr. Farrell asked if the pavement could be paved with porous material. Mr. Sepp stated that could be done.

Mr. MacNeely verified that 11 spaces was the minimum number required for the expansion. Mr. Ressler stated the number of spaces is based on the square footage of the facility. Mr. Patch confirmed this is the only location on the property to add the parking space.

Mr. Twomley confirmed the dumpster is currently located in the same place and will receive the fencing.

Mr. Pytel asked if any prior variances have been issued. Mr. Ressler stated they received a variance for a sign.

Mr. Patch confirmed a stormwater plan will be submitted to the Township for this site.

Mr. Stover stated that a non-conforming property is entitled to a variance as necessary in order to keep the business modern or up to date.

Mr. MacNeely made a motion to GRANT the variance to allow the paving of 11 parking spaces and to be permitted to fence in the dumpster with the condition that the pavement must be porous. Mr. Farrell seconded the motion. The motion passed unanimously.

VII. APPROVAL OF MEETING MINUTES

Mr. Pytel made a motion to APPROVE the February 24, 2015 regular meeting minutes. Mr. Farrell seconded the motion. The motion passed unanimously.

VIII. ADJOURNMENT

Mr. MacNeely made a motion to adjourn the meeting. With no further business to come before the Ferguson Township Zoning Hearing Board, Mr. Patch adjourned the regular meeting at 9:07 pm.

RESPECTFULLY SUBMITTED,



Karen English, Secretary
For the Zoning Hearing Board

Date approved by the Board: _____