

FERGUSON TOWNSHIP ZONING HEARING BOARD

Regular Meeting
Wednesday, May 21, 2014
7:00 pm

I. ATTENDANCE

The Zoning Hearing Board held its regular meeting on Wednesday, May 21, 2014 at the Ferguson Township Municipal Building. In attendance were:

Board: Matthew Patch, Chairman	Staff: Jeffrey Ressler, Zoning Administrator
George Pytel, Vice Chairman	Jeffrey Stover, ZHB Solicitor
Scott Petryshak, Secretary	
Charles Farrell	
Michael MacNeely	
Swamy Anatheswaran	

Other in attendance included: Heather Bird, Recording Secretary; Judy Hernandez and Russ Bohlman, Hernandez variance request; Galen Dreibelbis, variance request; Myong McKenna, Naked Egg variance request; Mike Evanko, Lamah Ventures variance request; Tom Gibson, Crystal Gibson, Tammy Miller, Yvonne Smith, Emily Broriug, Nicole VanHorne, Barb Barnett, Darynn Flargo, Brian Broking, Sandy Knight, Mary Lepore, Kyle Ayres, John P. Morgan, Lynea Morgan, Kevin Horne, Michael Gibson, Brennan Holderman, Eric Christensen, Tom Brown, Pizza Heaven Appeal

II. CALL TO ORDER

Mr. Patch called the April 15, 2014 regular Zoning Hearing Board meeting to order at 7:00 pm.

III. SWEARING IN OF THOSE WHO WISH TO TESTIFY

Five individuals stood to be sworn in.

IV. THE ZONING HEARING BOARD SOLICITOR EXPLAINS BASIS OF VARIANCE/APPEAL REQUEST

V. THOMAS GIBSON DBA PIZZA HEAVEN - APPEAL

Mr. Ressler stated that the property appealing the zoning officer's decision is located at 301 Science Park Road, tax parcel 24-004-021 and is owned by C2S, LP. The property is located in the IRD Zoning District. The IRD Zoning district does not permit restaurants. The applicant is appealing a notice of violation, notice number 2014-5 issued on February 26, 2014. Mr. Ressler stated the Township has worked with Mr. Gibson on this property since December 2013. Mr. Gibson approached the Township about relocating his business to the IRD district. The Township decided that if the business was operated as a cafeteria for the building the food service would be permitted. The zoning permit stated the applicant wanted to run a cafeteria style eatery to service the building employees and guests of the building. The cafeteria would mimic the buildings business hours of 8am to 6pm and have no outdoor signs. The Township issued the zoning permit on January 3, 2014 with the following conditions: Pizza Heaven could occupy the space as a café only for employees and guest of the employees in the building, the café would not be open to the public, the café would have no external advertising including but not limited to signage, the operating hours of the café will be the same as the business hours for the building and no deliveries will be made from the café.

Mr. Ressler received a complaint in the mail which included an article from OnWard State and on the bottom of the article a comment was written "does this meet current zoning code?" and had an arrow pointed to the 301 Science Park Road address. The article states that Pizza Heaven relocated their business to the 301 Science Park Road location. The article also stated that the author had located the new location and went there having puttanesca pie and an order of Heaven Sticks. Mr. Ressler stated that the applicant had a Facebook page showing the new location, that walk ins are welcome

and take out is available. Based on all of the above information, violation notice number 2014-5 was issued to C2S Limited Partnership (building owner) and Thomas Gibson, Pizza Heaven (café operator). Under number three of the zoning violation it stated that Pizza Heaven operated by Thomas Gibson was conducting business in violation of Zoning Permit 2014002 which restricted sales of product to employees and guests of employees in the building. No external sales permitted, no external advertising permitted. You are hereby directed to cease and desist the violation. Subsequent to the violation notice Pizza Heaven filed an appeal on March 28th. On April 15, 2014 a meeting was held at the Township office with Mike Corl, building owner; Thomas Gibson, Pizza Heaven owner; Mark Kunkle, Township Manager and Mr. Ressler. The meeting was to discuss a resolution to the violation. After the discussion it was agreed that a discount card would be issued to all tenants of the building for use when dining at the café. On May 20th a Township employee called Pizza Heaven and was told they were not allowed to serve to the outside. Another person outside of the Township called and was told they could order a pizza for pick up. Today, May 21st, a caller outside the building called, ordered a pizza and picked up a pizza, witnessed by Mr. Ressler.

Mr. Gibson stated he does want to follow the agreement exactly. He did attempt the permit style membership with no success. In regards to OnWard state, Mr. Gibson knew nothing of the article; he does not know when the writer was in the restaurant. Mr. Gibson does not advertise for the restaurant, he does not have any signage and he closes at 6pm and because of this he assumed that all guests to the café are building members or have been invited by a member of the building. The office building, 301 Science Park Road, has many daily guests which include UPS drivers, FedEx drivers, office supply delivery, insurance representatives, construction workers, various group meetings using the building auditorium. Mr. Gibson does not feel that he should have to question each and every guest in the café as to the purpose of being in the building. He does not invite anyone into the building. May 20th Mr. Gibson received a call questioning the price of pizzas but told the women that he could not serve her for takeout. May 21st Mr. Gibson's employee received a call from a woman stating she had spoken to someone the day before about a 12 inch pizza; he placed the order for her. This woman was Mr. Ressler's wife. The previous café owner, Carlas café, used Facebook for two years without being questioned. Mr. Gibson would like to use this social media to get out his daily specials for the day to those within the building. Mr. Gibson compared this café and business to Cool Beans in the Grays Woods Geisinger office.

Mr. Patch stated that this permit gave permission to conduct a limited in building café style business not a full service restaurant. How do you know if you are in compliance with the zoning permit when it comes to guests of the buildings? Mr. Gibson stated he would serve any guest of the building and he does not question the nature of their business in the building.

Mr. Patch questioned if the Facebook page is still active. Mr. Gibson responded that the page was taken down. The page was not fully changed to reflect the new business style.

Mr. Antheswaran asked Mr. Ressler what Mr. Gibson would have needed to do in order to operate this café as a restaurant. Mr. Ressler stated that because the business is located within the IRD zoning district and restaurants are not permitted a change in the ordinance would need to occur.

Mr. Antheswaran asked Mr. Stover to provide a legal definition of external sales (as stated on Zoning Ordinance Enforcement Notice #2014-5), what is the benchmark used to determine external sales? Mr. Stover stated that this would refer back to the zoning permit issued where listed under condition #1 it states that the café is only for employees and guests of the employees in the building.

Mr. Antheswaran stated that he thinks that Mr. Gibson is following the permit to the best of his ability. The permit issued has some loop holes and Mr. Gibson did not create these loop holes.

Mr. Pytel stated that requesting a variance may resolve the problem. The zoning permit is straight forward and stated that you are not allowed to serve food to the general public. Is there another location for your restaurant to be run? Mr. Gibson stated that he would like to stay and operate under the existing hours to have more time with his family.

Mr. Petryshak asked if there are any signs posted stating this is not a public facility. Mr. Gibson responded no. Mr. Petryshak stated that a sign like this may eliminate the need to ask individuals what their purpose is in the facility. Do you have compliance policy in place to comply with the agreement you made with the Township such as a list of items you intend to do to comply with the Township Zoning Permit issued. Mr. Gibson replied that yes he does. Lastly, Mr. Petryshak does not see any need for a Facebook page for this type of business.

Mr. Pytel stated he thinks that as it stands right now Mr. Ressler was correct in issuing the violation.

Mr. Anatheswaran stated that a variance request would be the best option if Mr. Gibson would like to serve to the public.

Mr. Patch stated that the permit allows for food to be served to the employees of the building and their guest. Mr. Patch's interpretation of the permit is that he could invite a friend or family member to come into the building and have lunch with him.

Nicole VanHorne asked how Mr. Gibson is to handle people that lie to get the food. Mr. Ressler responded to this that his wife did not lie she was told both days that yes she could order a pizza.

Mr. Kevin Horne, former editor of Onward State, stated that one of the writers for Onward State located the new location and wrote about the food. The article was written independent and Pizza Heaven had now knowledge of the article. This was not an advertisement for the business.

Barbara Barnett, employee of 301 Science Park Road, stated that the employees of ARL support Mr. Gibson's establishment and are very grateful for his services.

Crystal Gibson stated that a cafeteria is defined as a lunchroom or dining hall as in a factory, office or school where food is served from counters or dispensed from machines or where food brought from home may be eaten. She stated that this is exactly how the business is being run.

The Board agreed that the business is a cafeteria.

Mr. Anatheswaran made a motion to UPHOLD the appeal for the violation notice number 2014-5 issued by the Township Zoning Officer, Jeff Ressler to Thomas Gibson, Pizza Heaven, 301 Science Park Road, tax parcel 24-004-021. Mr. Pytel seconded the motion.

The motion was denied unanimously.

VI. LAMAH VENTURES, LLC – VARIANCE REQUEST

Mr. Ressler stated that the property is located at 2026 Sandy Drive tax parcel number 24-433-022. The property is owned by Lamah Ventures, LLC and is located in the PRD Zoning District. The applicants are proposing to construct a 34 square foot enclosed entry way attached to the building. The zoning ordinance in Chapter 27-1003.3 requires that a land development plan be completed for a building expansion. The applicants are requesting that a variance be granted to Chapter 27-1003.3 to permit the addition to be built without the requirement to complete a land development plan but to

complete the project with a minor alteration plan. There have been no other requests for variances for this property.

Mr. Mike Evanko stated that the entrance on the right hand side of the building currently has a sidewalk. The new tenants of the building would like to construct a covered entrance into the building. The applicant is proposing constructing a cover over the existing sidewalk and extending the sidewalk to the parking lot. The impervious coverage will be increased by .1%.

Mr. Patch asked what the purpose of the addition. Mr. Evanko stated that the new tenant will have offices inside the building and employees will be entering and exiting from this doorway. The cover will help with the flow of outside air coming into the office space.

Mr. Stover asked Mr. Evanko to clearly show the Board members the location of the addition. Mr. Evanko went over the plan with the Board members.

Mr. Ressler stated the Township Board of Supervisors had no position on this request.

Mr. Petryshak asked if utilities would be installed in the addition. Mr. Evanko responded that no utilities would be needed.

Mr. Pytel made a motion to GRANT the variance to the property located at 2026 Sandy Drive, tax parcel 24-433-022, to install a 34 square foot enclosed entryway attached to the building from the requirement to complete a land development. Mr. Anatheswaran seconded the motion.

The motion passed unanimously.

VII. GALEN E AND NANCY J DREIBELBIS – VARIANCE REQUEST

Mr. Ressler stated that the property is located at 265 Blue Course Drive and 741 West Cherry Lane. The property is owned by Galen and Nancy Dreibelbis Family Trust and is zoned R4. The applicants are in the process of land development approval for the addition of a 16 unit apartment building on the property. Sidewalks are required to be installed along the public streets with the completion of a land development plan as listed in Chapter 27-810.1. The applicant is requesting a variance to Chapter 27-810.1 to not be required to install sidewalks along both sides of Martin Street and one side of Cherry Lane.

Mr. Ressler stated that the township Board of Supervisors approved the modification request on Monday May 19th to not be required to install sidewalks. This type of request requires both the Zoning Hearing Board approval as well as a modification from the Board of Supervisors. Mr. Ressler stated that staff position was to have sidewalks along the Cherry Lane portion.

Mr. Dreibelbis stated the request is to not have sidewalks on both sides. If a sidewalk would be installed on Martin Street it would need railing on it because the 5 foot sidewalk would go right to the edge of the slope for the detention pond. If a sidewalk were installed on West Cherry Lane the sidewalk would need to cross the 20 foot wide 30 inch deep spill way or have ramps that would be difficult to meet ADA standards and at the corner of West Cherry and South Martin steps would need to be installed. The Township engineers agreed that it was not feasible to install sidewalks on Martin Street. For West Cherry Lane the engineers came up with a solution to add a sidewalk less than 5 feet wide backed up to the curb. Mr. Dreibelbis said this sidewalk would lead to a building with a maximum tenant amount of 7 residents.

Mr. Petryshak made a motion to GRANT the variance for tax parcels 24-14-32 and 24-14-22 for relief from installing sidewalks with a condition that in the future if the Board of Supervisors passed a

resolution to install sidewalks, the sidewalks would be required to be installed. Mr. Pytel seconded the motion.

The motion passed unanimously.

VIII. JUDY HERNANDEZ

Mr. Ressler stated that the property is located at 1355 Linn Street, tax parcel 24-013-163 and is owned by Judy Hernandez. The property is zoned R1. The applicant is proposing an addition on the front of the house that will extend 4 feet into the front yard setback. The front yard setback is 25 feet from the edge of the 50 foot right-of-way of Linn Street. The setback is measured from the center line of Linn Street to a total of 50 feet into the property. The front yard setback is listed in Chapter 47-401, table 401, front yard setback. The applicant is requesting a variance to the front yard setback to permit the addition to extend into the front setback by no more than 4 feet. There have been no other variance requests for this property.

Mr. Stover stated that as a deminimis rule of thumb the basis is 10% this would be 16%. Case law states that if it does not have a major effect on anything it may be considered deminimis.

Russ Bohlman, builder, stated that the goal of this addition is to make the house more accessible for the owner. The addition will improve the curb appeal of the property. The setback infringement is minor.

Mr. Pytel asked which side the addition would be on. Ms. Hernandez stated the west side.

Mr. Stover confirmed the size as 9 feet deep and 10 feet wide. Will the addition be enclosed? Mr. Bohlman responded that it will be enclosed with a vinyl floor and crawl space underneath. The room will be used as a mud room and enclosed porch.

Mr. Antheswaran asked if the encroachment could be reduced to 3 feet. Mr. Bohlman confirmed with the owner that the 1 foot reduction in the addition would be fine. The new dimensions would be 8 feet deep by 19 feet wide with a 3 foot encroachment into the setback.

Mr. Pytel made a motion to GRANT the variance for property located at 1355 Linn Street, tax parcel 24-013-163 for an 8 foot by 19 foot wide addition with a 3 foot encroachment into the setback. Mr. Antheswaran seconded the motion.

The motion passed unanimously.

IX. MYONG-HWA MCKENNA "THE NAKED EGG CAFE" - VARIANCE REQUEST

Mr. Ressler stated the property is located at 320 Pine Grove Road, tax parcel #24-09A-277, and is located in the C-General Commercial Zoning District. The owner of the property is Randy Watkins and Mr. Watkins has provided written consent for the applicant to proceed with the application. The applicant is proposing to build a 25 foot by 20 foot patio for outside seating. The existing building is located within 100 feet of FEMA mapped flood plain. The proposed patio addition would be located within 100 feet of the floodplain. The zoning ordinance in Chapter 27-1003.A requires that a land development plan be completed for a proposed use or structure located within 100 feet of a floodplain. The applicant is requesting a variance to not be required to complete a land development plan for addition of the outside seating area. There is an area of FEMA mapped flood plain that wraps around the building. The flood plain is an AE Zone which indicates that the elevations of the flood plain are listed on the mapping. The flood plain is mapped on the Flood Insurance Rate Map (FIRM) Panel 835 of 885. The Floodplain Conservation zoning regulations of Chapter 27-801 list the following as the intent of these regulations. Preserve the natural function of floodplains, to protect life and property from the hazards of flooding, to protect the waters of the Township and to minimize the financial burdens which floods impose upon the community. These purposes shall be advanced by preventing

certain uses and structures from locating in the floodplains while allowing others which will not impede the flow of flood waters, present the hazard of pollution, erosion and sedimentation of floodplains and watercourses, result in increased surface runoff downstream flooding and impede the recharge of aquifers. Land development plans are required in a situation like this to demonstrate that there will not be adverse effects to the flood plain or downstream.

Mr. Farrell asked if the patio is non pervious would a problem be caused. Myong McKenna responded that the land slopes downward, so this patio will not change any of the topography of the land. Ms. McKenna stated that many years ago the full property flooded and the Township came in and repaired the drainage ditch and the property has not flooded since then.

Mr. Ressler pulled from the existing file to assist with the determination of the flood elevation. This map was introduced as an official exhibit.

Mr. Pytel made a motion to APPROVE the variance for property located at 320 Pine Grove Road, tax parcel 24-09A-277 from a land development plan for a 25 foot by 20 foot outdoor patio within 100 feet from FEMA mapped flood plain and relief from Chapter 27-801.i use buffer, building within 50 feet of a flood plain, based on the introduced exhibit map. Mr. Petryshak seconded the motion.

The motion passed unanimously.

X. APPROVAL OF MEETING MINUTES

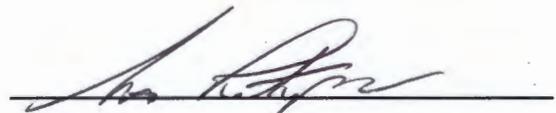
Mr. Pytel made a motion to APPROVE the minutes from Tuesday, April 15, 2014 Zoning Hearing Board Regular Meetings as modified. Mr. Petryshak seconded the motion.

The motion passed unanimously.

XI. ADJOURNMENT

With no further business to come before the Ferguson Township Zoning Hearing Board, Mr. Patch adjourned the April 15, 2014 meeting at 9:38 pm.

RESPECTFULLY SUBMITTED,



Scott Petryshak, Secretary
For the Zoning Hearing Board

Date approved by the Board: August 19 2014