

Zoning Hearing Board
Lower Saucon Township
Town Hall
February 19, 2018

MINUTES

The meeting was called to order at 7:00 p.m. by Chairman Jason Banonis.

Roll Call

Present at the meeting were Chairman Jason Banonis, Vice Chairman Lachlan Peeke, Secretary Keith Easley, and Board Member Jay Lazar. Board Member Austin Kunsman was absent. The Solicitor, George A. Heitzman, was also present.

Reorganization

Chairman Banonis called for nominations for the coming year. Mr. Lazar moved to keep the same slate of officers, Solicitor, and meeting dates as last year. The motion was seconded by Mr. Peeke and passed by a vote of 4 to 0, resulting in the reappointment of Jason Banonis as Chairman, Lachlan Peeke as Vice Chairman, Keith Easley as Secretary, and George A. Heitzman as Solicitor for 2018.

Mr. Peeke moved, seconded by Mr. Easley, to designate 7:00 p.m. on the 3rd Monday of each month during which there is business to transact as the date and time for meetings of the Board, except for April and July when the meeting will be held on the 4th Monday at 7:00 p.m. The motion was passed by a vote of 4 to 0.

Minutes

The Board had before it for approval the minutes of the meeting of November 20, 2017. Mr. Peeke moved to accept the minutes as submitted. The motion was seconded by Mr. Lazar and passed by a vote of 4 to 0.

Bills

The Board had before it for approval a bill from the Morning Call for advertising the meeting of February, 2018, the Court Reporter's bill for attendance at the meeting of November 20, 2017, and the Solicitor's invoice for the month of February, 2018. Mr. Peeke moved to pay the bills as submitted. The motion was seconded by Mr. Lazar and passed by a vote of 4 to 0.

Variance Appeal of Brian & Colleen Krcelich - Variance 04-15

Molly Bender, the Zoning Clerk, who was appearing for Chris Garges, the Zoning Officer, was sworn and presented Mr. Garges' summary to the Board.

She testified that Applicant owns two parcels of land located in an RA zoning district which are in the process of being combined into a single parcel. The combined parcel will be approximately 6 acres in size. The property currently is vacant, containing natural resources such as woodlands and wetlands.

Applicant has submitted a minor subdivision plan which is currently under review. The plan consolidates a right of way "parcel" which was incorrectly assigned to the adjoining property owner many years ago when the plan was recorded.

The ownership of the parcel was adjudicated in the Court of Common Pleas of Northampton County on June 28, 2005, in two consolidated cases: *Birkel v. Barwick*, 48CV2002006049, and *Lerch v. Barwick*, 48CV2003003536. Applicant has purchased the right of way "parcel" which is also being consolidated as part of the minor subdivision plan.

Applicant has also submitted a conditional use application to cross the wetland/wetland buffer with the proposed driveway. Applicant intends to construct a single family dwelling and associated improvements. Hanover Engineering has reviewed the latest revision of the plan as part of a grading/stormwater management permit application. If Applicant is successful in obtaining the necessary zoning relief, since the project is proposing to disturb wetlands in conjunction with driveway construction, it would then require Site Plan and Conditional Use application and approval from the Township (these applications have been submitted) as well as a DEP Chapter 105 general permit.

Section 180-95B(5)(b) of the Zoning Ordinance requires 100% protection of wetlands. Applicant is seeking relief to disturb 0.068 acres of wetlands.

Section 180-95B(16)(d) of the Zoning Ordinance permits a maximum of 15% disturbance of woodlands. Applicant is seeking relief to disturb 18.7% of the environmentally sensitive woodlands.

Section 180-127.3 of the Zoning Ordinance allows a maximum impervious coverage of 20%. Applicant is also seeking to exceed the maximum impervious coverage requirement to permit a coverage of 41.4%.

Applicant appeared with Scott Mease of Mease Engineering who had prepared the application and the plan. In response to a question from Chairman Banonis, Mr. Mease agreed that the effect of the litigation and the consolidation was to create a flag lot so as to give access to the land.

Mr. Mease identified Exhibit A-1 as a Northampton County parcel map showing the property; Exhibit A-2 as a deed from Lerch to Krcelich recorded in deed book volume 42013-1 page 34613; Exhibit A-3 as a deed from Diehl to Lerch recorded in deed book volume 767 page 415; and Exhibit A-4 as a deed from Birkel to Krcelich dated August 4, 2016, which will be recorded after the lot line adjustment has been approved. Attempts to record the deed were unsuccessful as the Recorder of Deeds Office would not accept it because it was

referring to property that was not yet depicted on any tax map. Mr. Mease identified Exhibit A-5 as a map showing the subject parcels and the natural resources that are present.

Mr. Mease described the map of Exhibit A-5 as showing the proposed building site which was chosen so as to minimize any natural resource impact.

Mr. Mease testified that these lots were legal building lots when they were created. In 2005 the Zoning Ordinance was amended to adopt site capacity calculations based upon natural resources, and this amendment created the need for the variances. Mr. Mease identified Exhibit A-6 as the first sheet of the 2005 amended ordinance.

Mr. Mease also testified that the existing stone trail which provides access covers 14% of the allowed impervious coverage. Mr. Mease confirmed that the land had been landlocked prior to the litigation. He further testified that there could be no use of the property whatsoever without a variance, and that the variances being requested represented the minimum amount of relief necessary. He noted that Applicant did not create the hardship and that the proposed development will be typical of properties in the neighborhood.

Chairman Banonis questioned Mr. Mease regarding the access strip and established that this access has a large impact on the impervious coverage and that the proposed development will in fact minimize the disturbance of the wetlands which are already disturbed due to the access strip.

In response to a question from Mr. Lazar, Mr. Mease noted that if the Board grants the requested variances Applicant will still have to pursue approval of a conditional use, will have to get an appropriate grading permit, and will have to get a general permit from DEP.

Chairman Banonis then asked any members of the audience who wished to be heard to come forward.

Suzanne Barwick was sworn and testified that she lives directly in front

of this property. She asked how many of the driveways in the Township are on wetlands and the Board did not have the information to answer that question. She testified that she opposes the grant of the variance and noted that she has an unobstructed view from her property which she does not want to be disturbed. She also testified that there is a creek on the property and Mr. Mease noted that at times there is water flow across the property. She testified that she thought granting the relief in this case would open a Pandora's Box.

Barbara Ritter was sworn and testified that she lives on the north side of Apple Street. She noted that in 1962 you could build almost anything anywhere. She said that this area is a tributary to Saucon Creek and it does not seem right to her that anything should be disturbed. She stated that the area is rich with wildlife and that you cannot pick up a rock without finding something living under it.

In response to her testimony Mr. Mease noted that the driveway does currently cross wetlands, and the proposed development will minimize any adverse effect of the driveway on the wetlands.

Margaret Rohs was sworn and testified that she lives across from the property on Apple Street at the same address as Barbara Ritter and said that she likes the view she currently has from her property. She believes that the area is pristine and nothing should be allowed to be built on it.

Arthur Barwick was sworn and testified that he has owned his property since 1973. He paid taxes on the property for many years but the Court ruled against him in the litigation 2005. He testified that he does not believe that the property should be disturbed. Mr. Barwick asked when the property was last perked, and Mr. Mease said approximately 2 years ago.

Mr. Lazar questioned Mr. Mease about whether future proceedings in the approval process will quantify the impact on the environment. Mr. Mease stated that this would not be done directly, but the appropriate application will be filed with the Pennsylvania Natural Diversity Inventory, and the result of this will be

to cause an examination of any effect on any endangered species.

Suzanne Barwick then told the Board that she had checked with DEP and DEP said that no approval could ever be obtained to disturb wetlands.

There being no one else who wished to be heard concerning the matter Mr. Peeke moved, seconded by Mr. Banonis, to approve the requested variances. The motion passed by a vote of 4 to 0.

Variance Appeal of David & Tracy D'Agostino - Variance 10-17

When the matter was called by the Chairman no one appeared on behalf of Applicant. Mr. Banonis moved, seconded by Mr. Peeke, to continue the matter to next month to determine whether Applicant wishes to proceed. The motion passed by a vote of 4 to 0.

Variance Appeal of Robert & Margaret Kelly - Variance 16-17

Molly Bender, having been previously sworn, presented Mr. Garges' summary to the Board. She testified that Applicant is seeking to construct a 10' x 12' storage area and a 14' x 24' garage bay onto the existing two car garage on a condominium dwelling located in an R80 zoning district. The existing garage is located at the edge of the condominium ownership element, bordering the general common area. The proposed garage addition will not meet the 40' side yard setback required by §180-29(B), but will extend approximately 14' into the general common area. The proposed storage area will not meet the 40' side yard setback required by §180-29(B), but will be constructed entirely within the ownership element.

Applicant has provided a recorded "license agreement" which appears to permit the proposed garage to extend into that common area. The condo ownership element is approximately 0.6227 acres in size. The element contains a portion of the overall property driveway/roadway system, a dwelling, attached

garage, and deck/patio. The existing lot coverage is approximately 5,205 ft² (19.2%). Proposed lot coverage is 5,325 ft² (19.8%) The impervious coverage allowed by §180-28(C) is 20%.

Applicant will need relief from §180-29B to allow the construction of the garage and the storage area which do not meet the required side yard setbacks.

Attorney Sarah M. Murray appeared on behalf of Applicant.

Attorney Murray called Zach Irick of Lewis Brothers Builders who testified that his company is planning to do the construction which consists of adding a third bay to the garage, and a storage area behind the garage. The storage area would be in the limited common area while the garage would be in the general common area of the condominium. He identified Exhibit A-1 as a plot plan of the condominium, and Exhibit A-2 as the garage addition plan. He testified that the construction would be in accordance with the plan.

James Boylan was sworn and testified that he is president of the Saucon Valley Garden Houses Condominium Association and that the limited common area is the common area that is assigned to a specific condominium unit, while the general common area is allocated to the entire condominium development. Both of these areas are owned by the Condominium Association.

Mr. Boylan identified Exhibit A-3 as the written Association Agreement to permit Applicant to do what is proposed. This agreement has been recorded in the office the Recorder of Deeds in and for Northampton County.

In response to questions from Mr. Peeke, Mr. Boylan testified that other people in the condominium association have made similar additions, including two other units that have installed a third garage, and other units that have installed a Koi pond and a greenhouse in the condominium limited common area.

Attorney Murray noted that this is an unusual situation and that any affected property owners have in effect signed off on it due to the condominium association approval of Exhibit A-3

There was no one in the audience who wished to be heard concerning the matter.

Mr. Banonis moved, seconded by Mr. Peeke, to grant the requested variance and the motion passed by a vote of 4 to 0.

Old Business

There was no old business.

New Business

There was no new business.

Adjournment

There being no further business before the Board, Mr. Peeke moved, seconded by Mr. Banonis, to adjourn the meeting. The motion passed by a vote of 4 to 0 and the meeting adjourned at 8:00 p.m.

Respectfully submitted,

George A. Heitzman
Solicitor