

Zoning Hearing Board  
Lower Saucon Township  
Town Hall  
April 16, 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. The Solicitor, George A. Heitzman, was also present.

### **Austin Kunsman**

Chairman Banonis announced to the Board that Board Member Austin Kunsman had submitted his resignation. The Chairman commended Mr. Kunsman for his many years of excellent service, and the Board joined the Chairman in wishing Mr. Kunsman well.

### **Minutes**

The Board had before it for approval the minutes of the meeting of February 19, 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 19, 2018, the Court Reporter's bill for attendance at the meeting of February 19, 2017, and the Solicitor's invoice for the

month of February, 2018. Mr. Easley moved to pay the bills as submitted. The motion was seconded by Mr. Banonis and passed by a vote of 4 to 0.

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

Interim Zoning Officer Molly Bender was duly sworn and testified that Applicant is seeking relief for impervious cover and setback regulations for a pool and decking which was not constructed in accordance with the approved building permit.

The parcel is approximately 13,750 ft<sup>2</sup> in size and is located in an R20 zoning district. The property contains an existing single family dwelling, attached garage, shed, pool/decking and driveway.

Applicant is seeking relief to permit an increase in the impervious surface ratio. The Zoning Ordinance in §180-40C permits a maximum coverage of 25%.

Applicant presented two options to the Board. The first option reduces the total impervious coverage by 836 ft.<sup>2</sup> to 30%. The second option reduces the total impervious coverage by 1,180 ft.<sup>2</sup> to 27.5%.

The two options differ only in the amount of total impervious cover. In each option, Applicant is also seeking relief to permit the pool/decking structure to be 12.3' from the side property line. The Zoning Ordinance requires in §180-41B a minimum setback of 15'. Applicant is further seeking relief to permit the pool/decking structure to be 37.7' from the rear property line. The Zoning Ordinance in §180-41C requires a minimum setback of 40'.

Applicant was represented by Attorney Gavin Laboski. Mr. Laboski gave the Board a short history of the matter. Applicant had obtained a permit to install a pool but a problem arose when the pool was not installed in accordance with the permit that had been granted. One of the problems was that in placing the pool, which was a plastic shell placed into the ground, a previously unknown sewer pipe was discovered and that resulted in a position shift.

The matter was presented to Township Council which initially opposed the granting of any variance. Attorney Laboski and his client worked with Township officials to develop other options. Two options were developed and Township Council took no action in the matter and agreed to let the Board decide which option, if any, should be granted.

Attorney Laboski said that Applicant was seeking the first option and he stated he believed this was fair and reasonable because this first option included impervious cover that had previously been in existence as a concrete slab.

Attorney Laboski admitted in evidence Exhibit A-1, the zoning application; Exhibit A-2, aerial photographs of the site; Exhibit A-3, assessment record; Exhibit A-4, the permit as issued; Exhibit A-5, an exhibit showing the storm water and impervious cover areas including the areas that are to be removed; and Exhibit A-6, a letter dated March 22, 2018, concerning the storm water management.

Attorney Laboski said he would provide an offer of proof as to the testimony of Jason T. Smeland, P.E. a professional engineer from Lenape Valley Engineering.

The offer of proof was that the land is located in an R20 zoning district. It comprises 0.3156 acres or 13,750 ft.<sup>2</sup> in a zoning district where 20,000 ft.<sup>2</sup> is now required. The property contains a single family dwelling which was built in 1975, and there is a fence at the rear of the property. In 2011 an aboveground pool was installed which resulted in an impervious cover of 18%. The inground pool that was subsequently installed added 16% to the impervious coverage for a total of 36%, or 11% over the requirement in an R20 zoning district.

Exhibit A-5 includes a shaded area which shows the amount of impervious cover that is to be removed. A storm water management plan will also be developed and submitted for approval by the Township Engineer.

The rear yard variance request is now 2.3 feet rather than 11 feet, and the

side yard request is 2.7 feet rather than 4.7 feet.

After Attorney Laboski presented the offer of proof, Mr. Smeland adopted the offer of proof as his testimony, and added that it is important to note that the surface of the water of the pool is included in the impervious cover calculation. He stated that he has full confidence that a storm water management plan satisfactory to the Township Engineer can be submitted.

Attorney Laboski reiterated that the variances being sought were from §180-40C, §180-41B, and §180-41C .

Attorney Laboski then called as his next witness Scott Payne. Mr. Payne is the pool builder. He testified that he submitted the permit and that the pool comprises a fiberglass shell, the form of which could not be changed. When the shell was being installed, a previously unknown sewer pipe was discovered which resulted in the shell having to be moved so as not to interfere with the sewer pipe.

Mr. Payne also stated that a problem arose when the concrete was poured as he was not present and more concrete was poured than was covered by the permit.

Mr. Payne stated that he has accepted responsibility for the errors and is absorbing the cost to do whatever the Board orders to be done to resolve the matter.

Board Member Lazar noted that the general requirement for granting a zoning variance is that the least amount of relief necessary should be granted. Attorney Laboski stated that he agreed with this, and that is why two options were presented. The first option is the preferred option. The second option will require removing an area which had previously been covered by a concrete slab, so Attorney Laboski felt that it was appropriate for the Board to exercise its discretion to permit the first option.

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

Attorney Laboski noted that the only difference between option one and option two is the amount of impervious coverage, the other requested variances are the same.

Mr. Banonis moved, seconded by Mr. Easley, to grant variances in accordance with option number one and the motion passed by a vote of 4 to 0. Mr. Banonis also moved, seconded by Mr. Lazar, to grant variances in accordance with option number two. This motion passed by a vote of 4 to 0. Finally, Mr. Banonis moved, seconded by Mr. Lazar, that Applicant shall have the right to choose either option one or option 2 upon condition that a storm water management plan shall be submitted that is satisfactory to the Township engineer and that an as-built plan be submitted. This motion also passed by a vote of 4 to 0.

#### **Variance Appeal of John & Susan Blair - Variance 1-18**

Interim Zoning Officer Molly Bender, having been previously sworn, testified that Applicant owns a land locked parcel in a GB-2 zoning district which contains two commercial buildings and associated parking areas. The uses vary from storage to craft shop. Applicant is proposing to construct an 18' x 64' covered carport. Applicant is not creating any additional impervious coverage, and the total number of parking spaces will not decrease. Applicant is seeking relief to allow the structure to be placed closer to the side property line than the GB-2 district permits. Section 180-77B requires a 15' side yard, Applicant is proposing a 5' setback. Applicant is seeking relief to allow the structure to be placed closer to the side property line than the accessory structure standards allow. In accordance with §180-28B an accessory structure can be no closer than 10' from a side property line, Applicant is proposing a 5' setback.

Mr. Blair was sworn and testified that there will be no effect on other properties and that he owns the surrounding properties. He stated there will be

no negative impact to the neighborhood.

Township Council took no action regarding the matter. There was no one in the audience who wished to be heard concerning the matter.

Mr. Lazar moved, seconded by Mr. Banonis, to grant the two requested variances and the motion passed by a vote of 4 to 0.

**Old Business**

There was no old business.

**New Business**

Molly Bender told the Board that at the next meeting she is expecting a cell phone tower application to be heard, and there are other matters that may be scheduled for that meeting.

**Adjournment**

There being no further business before the Board, Mr. Banonis moved, seconded by Mr. Lazar, to adjourn the meeting. The motion passed by a vote of 4 to 0 and the meeting adjourned at 7:50 p.m.

Respectfully submitted,

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George A. Heitzman  
Solicitor