

Zoning Hearing Board
Lower Saucon Township
Town Hall
April 18, 2016

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 Members Austin Kunsman and Jay Lazar. The Solicitor, George A. Heitzman, was also present.

Minutes

The Board had before it for approval the minutes of the meeting of March 21, 2016. Mr. Kunsman moved to accept the minutes as submitted. The motion was seconded by Mr. Banonis and passed by a vote of 5 to 0.

Bills

The Board had before it for approval a bill from the Morning Call for advertising the meeting of March 21, 2016, the Court Reporter's bill for attendance at the meeting of March 21, 2016, and the Solicitor's invoice for the month of March 2016. Mr. Kunsman moved to pay the bills as submitted. The motion was seconded by Mr. Peeke and passed by a vote of 5 to 0.

Variance Appeal of Robert & Linda Rapp - Variance 07/16

Molly Bender, who was sitting in for Chris Garges, the Zoning Officer, was sworn and testified that Applicant is proposing to construct an attached 30'

x 50' garage which will not meet the required side yard setback. The parcel contains a single family dwelling, attached 1 car garage and driveway. The parcel is approximately 1.1 acres in size and is long and narrow, only 100' wide at the location of the dwelling. Considering that the required side yards take up 60' of that width, only 40' feet exists to construct the dwelling and garage. Applicant will need approximately 18' of relief from the side yard setback required by §180-35B.

Township Council took no action in the matter.

Robert Rapp Jr. appeared on behalf of Applicant. He stated he had nothing to add to what had been stated by Ms. Bender.

Chairman Banonis inquired as to whether anyone in the audience had any comments. Ianza Torres came forward, was sworn, and stated that she had received a letter concerning the application and asked what it was about. She wondered if it would affect her property. It was determined that her property is two properties away from the Rapp property and that the proposed garage will not impact her land in any way. She then said she had no issues with the application.

Mr. Peeke moved, seconded by Mr. Kunsman, to grant the requested variance, and the motion passed by a vote of 5 to 0.

Variance Appeal of Douglas Rae - Variance 08-16

Molly Bender, having previously been sworn, testified that Applicant is proposing to construct an addition to the existing dwelling which will not meet the required side yard setback. The parcel contains a single family dwelling and driveway. The parcel is approximately 6,750 ft² in size. As the minimum lot size in an R40 district is 40,000 ft², this parcel is an existing nonconformity. The parcel is approximately 60' wide at the location of the dwelling. Considering that the required side yards take up 60' of that width, there is no way to construct an addition without zoning relief. It does not appear that the proposed addition will

exceed the allowable impervious coverage requirement. Applicant will need approximately 23' of relief from the side yard setback of 30' required by §180-35B.

Township Council took no action.

Mr. Rae appeared and showed the Board some photographs of the house. He said it is very small house and he plans to remove the rear porch. Initially he told the Board that he only needed 4' of relief, but it turned out he misunderstood the application of the Ordinance, thinking that he did not have to worry about setbacks on the one side that abuts property that he also owns. He was informed that the setbacks would also be applicable on that side, and that is why he needs a variance.

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

Mr. Kunsman moved to grant the requested variance. The motion was seconded by Mr. Easley and passed by a vote of 5 to 0.

Variance Appeal of Thomas & Kimberly Barndt - Variance 09-16

Molly Bender, having previously been sworn, testified that Applicant is proposing to construct an above-ground pool and deck which will not meet the required rear yard setback and will exceed the allowable coverage. The parcel contains a single family dwelling, detached garage and driveway. The parcel is approximately 11,300 ft². As the minimum lot size in an R12 district is 12,000 ft², the lot is an existing nonconformity. The parcel is bordered in the rear by an unopened paper alley. Applicant is proposing to construct the deck/pool adjacent to the rear property line. The required rear setback is 30'. Applicant is proposing to meet the required side yard setback of 10'. The existing lot coverage is currently nonconforming at approximately 4,600 ft² (40.7%). Applicant is proposing to add 1,075 ft². The total proposed coverage is 4,675 ft² (50.2%).

Applicant will need approximately 30' of relief from the rear yard setback of 30' required by §180-47C . Applicant will need approximately 9.5% of additional relief from the allowable lot coverage allowed by §180-46C. In summary, there is 30% allowed, 40.7% existing, and 50.2% proposed.

Township Council took no action.

Thomas Barndt appeared and said that he has made a change to the proposed layout of the deck and pool, choosing to put the deck closer to the house and on the east side of the pool. He might need less than 30' of relief, but is requesting 30' feet of relief to ensure he has sufficient space for what is proposed.

Robert Youells, a member the audience, testified that he is a neighbor and wanted to ensure that nothing was installed in the paper alley. He said the new plan of moving the deck resolves the problem, so he has no issue with what is being requested.

Applicant agreed that there will be nothing erected in the paper alley and that he is amending his application to reverse the position of the deck and pool as shown in the photograph that was submitted.

Mr. Kunsman moved, seconded by Mr. Peeke to approve the requested variances and the motion passed by a vote of 5 to 0.

Variance Appeal of Debra & Silas Rodenbach - Variance 10-16

Molly Bender, having previously been sworn, testified that Applicant is seeking relief to construct an above-ground pool/deck on their parcel which does not meet the required rear yard setback. The parcel is approximately 1.1 acres in size, and 2 acres is the current minimum in an RA district. The property contains a single family dwelling, detached accessory structure, and two driveways. Due to the location of the septic system (in the middle of the property) the dwelling and accessory structure are separated. The existing coverage is 9,019 ft² (18.82%). The proposed pool is approximately 570 ft² (1.2%) and the proposed

deck is 450 ft² (0.9%). Applicant will need approximately 35' of relief from the 50' rear yard required by §180-23C. Applicant will need approximately 0.9% of relief from the maximum coverage of 20% allowed by §180-22C.

Township Council took no position in the matter.

Debra Rodenbach appeared on behalf of Applicant and stated that she had nothing to add to the Zoning Officer's summary. In response to a question from the Board she stated that immediately to the rear of her property is a large wooded area.

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

Mr. Peeke moved, seconded by Mr. Kunsman, to grant the requested variances, and the motion passed by a vote of 5 to 0.

Special Exception Appeal of PA Venture Capital, Inc. - Special Exception 01-16

Molly Bender, having previously been sworn, testified that Applicant is seeking a special exception to permit an existing billboard sign structure to be moved and enlarged. The billboard/advertising sign use is a permitted conditional use in the GB-2 district. The existing sign use is nonconforming due to the fact that a conditional use was never obtained. As such a special exception is required to alter, reconstruct, or enlarge the nonconforming structure.

Applicant is seeking relief from the following sections of the Zoning Ordinance:

180-77A & B to allow the proposed sign to be constructed within the front yard.

§180-99B(14) to allow the sign to be closer to the right of way line than ½ of the required building setback line.

§180-99C(7) to allow a sign within 500' of any other sign.

§180-100B(1) & (3) to allow the existing nonconforming +/-8' X 16' (136 ft²) sign to be increased to a 12' X 25' (300 ft²) sign which exceeds the allowable 25% expansion.

§180-104.1D Maximum sign area of 300 square feet.

§180-104.1E Minimum setback from property lines shall be front, side and rear yards as required for the zoning district (does not meet front yard).

§180-104.1I requires advertising signs to be separated from other advertising signs by 1,000 feet.

§180-104.1J to allow advertising sign to be a two-sided sign.

Applicant is proposing to remove an existing nonconforming billboard which is approximately 136 ft² in area and approximately 6' from the southern property line and within the required right of way, in order to construct a new 300 ft² sign which also does not comply with the required front yard setback. Applicant in essence is citing the hardship for their requested relief based on “moving the sign to decrease the non-conformity and increase the size.”

Ms. Bender testified that Mr. Garges' summary said that as it seems as though since they are proposing to construct a new sign, they could remove all of the nonconformities.

Although the above list is the relief as requested by Applicant, upon reviewing the application Mr. Garges determined that the following relief is required along with the special exception:

§180-77A to allow the proposed sign to be constructed within the front yard.

§180-91B to allow the proposed sign to be constructed in a required yard.

§180-98F(2) to allow the proposed sign to be constructed within the required right of way.

§180-100B(1) & (3) to allow the existing nonconforming approximately 8' X 16' (136 ft²) sign to be increased to a 12' X 25' (300 ft²) which exceeds the

allowable 25% expansion.

§180-104.1E Minimum setback from property lines shall be front, side and rear yards as required for the zoning district (does not meet front yard).

§180-104.1I requires advertising signs to be separated from other advertising signs by 1,000 feet.

§180-104.1J to allow advertising sign to not be back to back.

Township Council, by letter dated April 14, 2016, to the Zoning Board Solicitor moved to provide the Boucher & James and Hanover Engineering review letters to the Board, and also stated that Applicant needs to satisfy the Lower Saucon Authority with the location of the billboard as it relates to their utility lines.

Lower Saucon Authority sent a memo to the Zoning Officer on April 18, 2016, citing concerns about the sign and the foundations of the sign being located within the right-of-way, possibly interfering with water lines and sewer mains. The Authority provided a follow-up memo dated April 18, 2016, indicating that as the sign was intended to be a cantilevered sign, the foundation would not be within the right-of-way, but that the sign would still be approximately 6' above the ground level of the right-of-way, and hence would make accessing the water line with normal excavating equipment more difficult. It suggested that before the plan is finalized, that the exact location of the underground utilities be determined.

Board Member Lazar said that the various memos that had been received from the Township and the Authority should ultimately become part of the record.

Attorney James Preston appeared on behalf of Applicant. He stated that the proposal involved moving a nonconforming sign to another location and that he believed that this was within his client's rights, and further believed that the comments by Mr. Garges did not truly apply.

Attorney Preston stated his belief that the sign is not nonconforming as to its size, that the size now being requested is permitted. He stated that there is another advertising sign within 1,000 feet of each direction of this sign, and that will not change except that by moving it, one side would become less nonconforming in the other would have its nonconformity increased.

David Harte was sworn and testified that he is a vice president of Applicant and that the reason for moving the sign concerned its visibility as well as the ability better to develop the land on which it resides.

Further discussion was had with the Board and it was ultimately determined that Attorney Preston wanted to have Mr. Garges, who was not at the meeting, present so that full discussion could be had.

Chairman Banonis asked whether Attorney Preston wished to have a continuance so as to permit the presence of Mr. Garges, and Attorney Preston moved for a continuance. Mr. Lazar moved to grant the requested continuance. The motion was seconded by Mr. Banonis and passed by a vote of 5 to 0.

Special Exception Appeal of IESI PA Bethlehem Landfill Corp. - SE 01-15

This application which had been heard at the December 2015 meeting, the January 2016, and the March 2016 meeting, continued.

Attorney Garber announced that IESI and the Township had agreed upon a joint stipulation, which was marked Exhibit J-1, agreeing to 17 conditions which would be met by the landfill. She also stated that it was agreed that this expansion would not be considered as covered by a prior approval, but that a new special exception was being sought. She also said that the variances that were requested deal with the scale of the plan and the spacing of the contour lines shown on the plans that had been prepared.

Attorney Charles Elliott appeared on behalf of the Township and stated that the Township agreed with the stipulation, and in view of that had no cross

examination and no witnesses to present. In response to a question from the Board Attorney Elliott stated that Township Council had voted unanimously to accept the stipulation of the 17 conditions, and had authorized him to enter into the stipulation.

Attorney Garber then stated she had some brief testimony from Mr. Bodnar to complete the record.

Mr. Bodnar stated that the parties had agreed on an errata sheet for prior transcripts of the hearings. Attorney Garber noted that Mr. Allen Schleyer apparently had not been sworn at the previous meeting when he gave testimony. Mr. Schleyer was then sworn by the court reporter, and he stated that the testimony he had previously given was true and correct.

Mr. Bodnar next identified IESI Exhibit 26 as the final land development plan and site plan and presented IESI Exhibits 42 through 45 to be added to the exhibit books.

Mr. Bodnar testified that Exhibit 42 shows that the City of Bethlehem has reserved 300,000 gallons of capacity per day for wastewater from the landfill. Exhibit 43 is the application that has been submitted for renewing the wastewater treatment permit with the City of Bethlehem. This was a matter that Board Member Kunsman had questioned at the last meeting, and this exhibit was entered to show that the application had been made.

IESI Exhibit 44 deals with condition number 2 in the stipulation of Exhibit J-1 pertaining to the cap removal and waste relocation plan and procedures, and IESI Exhibit 45 is Mr. Bodnar's summary expert report which he testified was true and correct.

Mr. Bodnar noted that IESI Exhibit 26 is the latest plan and that the first 18 sheets comprise the land development and site plan. He particularly pointed out sheet 9 as being an overview, and sheet 14 as showing details of the access road. He noted that sheet 8 is the environmental sheet showing the existing

natural resources plan.

Mr. Bodnar testified that the zoning requirements of the Lower Saucon Township Zoning Ordinance had all been met. He said that the berm requirements had been waived by Township Council, thereby obviating the need for a variance as to these requirements.

Mr. Bodnar stated that from this point the review process with DEP involves a Phase 1 and a Phase 2 review. Phase 2 is a detailed engineering review which is not begun until Phase 1 is completed. In Phase 1 there is an LMIP (Local Municipality Involvement Process) meeting in which local municipalities are consulted. Mr. Bodnar noted that as part of this process it has to be established that the benefits of the project outweigh any harms.

Attorney Garber then moved IESI Exhibits 1 through 45 and Exhibit J-1 into evidence.

In response to a question from Mr. Kunsman, Mr. Bodnar noted that among the benefits are the increased taxes, the fact that there is more refuse disposal available to the Lehigh Valley, availability of emergency vehicles, and the host fees to the Township.

Board Member Lazar questioned whether this would be the end of the expansion of the landfill. Mr. Bodnar answered that in accordance with the current zoning this would be the end. In response to a question as to whether the trash can be piled higher he stated that this would not be possible on the east side, and while it could have been possible on the west side, a voluntary decision was taken not to do so. The answer is basically determined by the geometry of the situation, with trash only being able to be piled up to a certain height.

IESI thereupon rested.

Chairman Banonis asked whether there was anyone in the audience who wished to be heard concerning the matter.

Mr. Russell Sutton was sworn and testified that he is a Steel City resident.

He said that 30 years ago he had been told that the landfill had six years of viable life left, and yet it was still continuing. He testified that he is concerned as to the height of the landfill and had several photographic exhibits showing that the height of the landfill is visible from surrounding areas, and that six months out of the year it is even more visible because of the lack of leaves on the trees. He stated he had testified to the DEP that water runoff had washed out a local road for the last six months, giving only a single egress into Steel City which he deemed to be unsafe. He also complained about smells and sounds and debris, but stated that he has not actually seen any debris blowing onto his property.

In response to a question he testified that he does not know that the IESI work actually caused the washout of the road, and he again noted that this issue had been presented to DEP.

Eugene Boyer was sworn and testified as to the height limit of the trash that it was his understanding that the top of the trash pile is not supposed to be visible, but that it can be seen from various locations.

Attorney Garber noted that in Phase 4 condition number 20 provided that there would be no visibility at certain specific locations. She noted this had been continued as condition number 16 in the current list of Exhibit J-1, and that there will be no waste mass visible above the tree line at particular locations.

Mr. Boyer also questioned the traffic reports indicating that the reports seemed to vary as to what they were considering. Attorney Garber said that there had been various studies requested, including a separate study as to trucks that are carrying not waste material but extra ground to use in covering the waste.

Mr. Boyer also questioned an odor analysis that was supposed to be performed this past summer and as to which there was no result. Attorney Garber said this was a Department of Health project to study odor in the area, and she does not believe it was specific to the landfill. There apparently is no report at this time.

Susan Severn was sworn and testified that she had written a letter to the Township raising her objections which had been presented to the Board. She said the landfill is in her backyard and the dirt is piled higher than the trees. She also questioned if what had happened at the Chrin landfill could happen here.

Mr. Bodnar noted that there had been a slope failure at the Chrin landfill with material cascading downhill.

Mr. Bodnar said that analysis of the problem showed a design defect in that the friction angle was too large. The higher the friction angle the more chance of slippage. IESI's work here and landfill work in general now uses a lesser slippage angle in the construction.

Mr. Bodnar also testified that the leachate detection system is being continuously monitored and is working correctly. At certain times there is greater leachate flow than others. This is been studied and determined to be caused by storm water and is a problem that is addressed by the monitoring and control system. There is sufficient capacity to deal with all leachate that is generated.

Mr. Banonis then moved to approve a special exception from §180-80B(3) as well as variances from §180-102C(2)(a), §180-102C(2)(d), and §180-109F(1)(b)[1]subject to the conditions of the stipulation of Exhibit J-1. Mr. Peeke seconded the motion.

The motion passed by a vote of 4 to 1, with Mr. Banonis, Mr. Peeke, Mr. Easley, and Mr. Lazar voting in favor of the motion, and Mr. Kunsman voting against the motion.

Old Business

There was no old business.

New Business

There was no new business.

Adjournment

There being no further business before the Board, Mr. Banonis moved, seconded by Mr. Peeke, to adjourn the meeting. The motion passed by a vote of 5 to 0 and the meeting adjourned at 9:05 p.m.

Respectfully submitted,

George A. Heitzman
Solicitor

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