Zoning Hearing Board
Lower Saucon Township
Town Hall
July 29, 2013

MINUTES

The meeting was called to order at 7:00 p.m. by Chairman Jason Banonis who introduced a new member to the Board, Jay Lazar, and welcomed him to the Board.

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. Heitczman, was present.

Minutes

The Board had before it for approval the minutes of the meeting of May 20, 2013. Mr. Peeke moved to accept the minutes as submitted. The motion was seconded by Mr. Banonis 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 May 20, 2013, the Court Reporter's bill for attendance at the meeting of May 20, 2013, and the Solicitor's invoice for the month of May, 2013. Mr. Peeke 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 Miguel Sanchez - Variance 04-13

Chris Garges, the Zoning Officer, was sworn and testified that the parcel is located in a UR zoning district and is approximately 1.1 acre in size. It contains a dwelling, outbuilding, driveway, and a parking lot for the adjoining commercial property.

Applicant is proposing to install a 30' x 50' garage in the location where a 25' x 25' carport used to exist before being destroyed by fire. The foundation still exists and does not meet the required 10' side yard setback. In an effort to minimize disturbance, Applicant is proposing to utilize and enlarge the existing foundation for the installation of the new garage.

It was initially believed that the proposal exceeded the impervious cover requirement. However, on July 12, 2013, Applicant submitted a detailed calculation of the existing and proposed impervious coverage. The existing coverage is 13,050 ft^2 (27.2%). The proposed impervious coverage is 13,925 ft^2 (29.1%) with 35% being the maximum allowed. The parcel borders an existing non-conforming commercial use, a strip mall, at 1850 Friedensville Road. A portion of the parking lot is contained on this parcel. Apparently stormwater management has never been addressed for these parcels as they have evolved over time, mostly without proper permits, by the action of a previous owner. However, as there is no request for a variance as to the impervious cover requirements, this is not an issue.

Applicant is seeking relief to allow the proposed garage to be located less than 5' from the required side property line, with 10' being the required side yard setback in a UR district.

Township Council took no action in the matter.

Miguel Sanchez was sworn and testified that the proposed location of the garage is the only feasible one due to the location of a large tree and other features on his land. In response to a question from the Board he stated that he has four

cars and a trailer that he is going to store in the garage, as well as some milling machines for his personal use. The home was built, he believes, in 1956.

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

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

Variance Appeal of Lehigh Gas Corporation - Variance 05-13

Chris Garges, the Zoning Officer, having previously been sworn, testified that the property in question is located in a GB2 zoning district and comprises approximately 1.0 acre (43,602 ft^2) with 60%-65% coverage. The property contains an integrated convenience market/car wash/gas station.

The use and related facilities were subject to prior zoning applications. On May 19, 1997, there was an application for the establishment of an integrated convenience store/car wash, placement of underground storage tanks, and a request to exceed impervious cover, 59.95% where 50% was permitted at that time. On February 17, 1997, there was an application for replacement of advertising signs and construction of additional advertising signs along Route 378. On January 17, 2005, there was a request for an increase in maximum impervious coverage from a permitted 60% to an impervious coverage of 66.1%. There was an additional application in 2005 for buffer related items which was withdrawn.

Applicant now seeks a variance from §180-99D(2) in order to permit a 5' x 5' section of an existing sign to be changed to an electronic sign which changes display every 8 seconds.

§180-99D(2) states:

"The following signs are prohibited in all zones:

...

(2)Flashing, blinking, twinkling, animated or moving signs of any type, except those portions of signs which indicate time and temperature changes."

Township Council took no action in the matter.

Attorney Andrew V. Schantz appeared representing Applicant. Attorney Schantz asked Mr. Garges to confirm that during the Council meeting to consider this application it was noted that the chief of police had no traffic concerns about this application, and did not believe it would be distracting. Mr. Garges confirmed this to be true.

Attorney Schantz stated that he had decided, after consultation with Township officials, to proceed with the variance request rather than an interpretation of the Ordinance.

Attorney Schantz called Lisa Frantz as his witness. She testified that she is an employee of Lehigh Gas Corporation and is the manager for real estate asset development. She said that Lehigh Gas leases the property from the Marcozzi family.

Lehigh Gas is a wholesale and retail gas and convenience store business which owns or operates more than 500 locations. Her job is to help the various locations stay up-to-date so as to present a modern appearance to the consumer.

Ms. Frantz described the surrounding neighborhood as a commercial district with Route 78 right-of-way to the rear of the property. She identified Applicant Exhibit A-1 as a property survey and Applicants Exhibit A-2 as a picture containing in the upper half a photograph of the existing sign, and in the lower half a Photoshop version of the same sign showing the proposed new sign. She testified that the image would be static but would change every 8 seconds. It would not blink or flash.

Ms. Frantz testified that the sign is more desirable in accordance with current standards and would use LED lights which do not bleed off site and which

last longer. She believes are no traffic or safety issues and the use of the sign would avoid the use of posters or temporary signs. She also said that it could be used for emergency service providers should the need arise. The light varies in intensity based upon ambient light, adjusting automatically. In response to a question from the board she stated that the use of the property will not change and that the sign will be used for advertising in-store products only, not for any off premises purposes. She stated that 8 seconds is a typical interval and is not considered to comprise flashing of a sign.

William Farina, a member of the audience, was sworn and testified that he represents Adams Outdoor Advertising and that they have a billboard in the area which they would like to convert to a digital sign, but the Ordinance does not permit digital signs and he opposed the granting of the variance.

Mr. Lazar and Mr. Banonis each stated that they believed that the sign was clearly prohibited by the Ordinance and that the requirements of both the Pennsylvania Municipalities Planning Code and the Zoning Ordinance of Lower Saucon Township for the granting of a variance had not been met.

Mr. Peeke then moved to grant the variance and the motion was seconded by Mr. Banonis. The vote was taken and Mr. Peeke and Mr. Easley voted to grant the variance, and Mr. Banonis and Mr. Lazar voted to deny the variance. The vote being equally divided, the motion failed and the variance was denied.

Variance Appeal of Faton Bilali - Variance 06-13

Chris Garges, the Zoning Officer, having previously been sworn, testified that Applicant is proposing to construct a single family dwelling on one of the only remaining vacant lots in the Saddle Ridge (Phase 2B) Subdivision. The lot is approximately 4.5 acres in size. The property is vacant and contains a gas line easement, steep slopes, wooded areas, riparian buffer, and a stream. Due to the existence of these natural features, the net buildable area of the site is significantly

reduced.

Applicant has not submitted a plot plan or grading plan detailing the extent of the proposed improvements for Township review under the Earth Disturbance and Grading Ordinance. Applicant is seeking relief from the maximum allowable lot coverage to construct the dwelling. Applicant is proposing 23.6% coverage (12% maximum allowed) on the initial application and 25% (15% maximum allowed) coverage for all future improvements. Applicant is seeking relief from the maximum allowable disturbance of steep slopes in the range of 8% to 15%. The Ordinance preserves these slopes at a 60% protection rate (40% disturbance allowed). Applicant is proposing to disturb 79.6%.

Mr. Garges noted the property is somewhat unique and was affected by ordinance changes in 2005 which change the formula for calculating the area of natural features that should be subtracted in order to obtain the net buildable area, and also a 2011 ordinance change which changed the maximum coverage from 25% to its existing 12% initial with 15% final maximum coverage being allowed.

Township Council took no action.

Attorney James Preston appeared representing Applicant. He noted that Applicant is the equitable owner of the property. He initially noted that except for the zoning changes that have occurred since the lot became an approved lot, the lot could have been developed without any variances and consistent with the surrounding area.

Attorney Preston called Scott Mease as his first witness. Mr. Mease is a licensed professional engineer having practiced for 26 years and having previously appeared before the Board. He identified Applicant Exhibit A-1as the approved subdivision plan for the Saddle Ridge Major Subdivision Phase 2-B. He noted that the lot in question, lot 43, was initially created at that time. He also noted that the current lot size is due to a lot line adjustment shown on the Lot Line Adjustment Plan of February 6, 2003, which he identified as Applicant Exhibit

A-2. The original lot number 43 was increased in size by 2.9 acres by the lot line adjustment that added a portion of lot 42, increasing lot 43 to 4.5614 acres. He noted that lot 42 as originally configured would have been capable of development except for the zoning changes that have occurred since that time.

Mr. Mease identified Applicant Exhibit A-3 as the subdivision agreement for phase 2 between the developer and the Township. He identified the Existing Features Plan dated July 1, 2013, as Applicant Exhibit A-4. This exhibit shows the natural resources including the pipeline easement and the conservation easement, both of which must now be subtracted out of the total area for site capacity calculations. The plan also shows the slopes that are in the range of 8 to 15%, those in the range of 15 to 25%, and those slopes that exceed 25%. The proposed development would be in the area of the property that has a less than 15% slope.

Mr. Mease said that under the current ordinance provisions the net buildable site area would be 0.71 acres as a result of the amendment passed in 2005. He identified Applicant Exhibit A-5 as a plot plan dated July 1, 2013, that shows the footprint of the proposed house. He stated his opinion that the proposed house will be consistent with houses that exist in the neighborhood.

He identified Applicant Exhibit A-6, dated July 23, 2013, as an aerial photograph with the proposed plan superimposed on it.

Mr. Mease noted that he had calculated that the average house surrounding the proposed structure is 3,934 ft^2 while the proposed structural would be 4,007 ft^2. The average impervious cover of the surrounding properties is 8,622 ft^2 while this proposal would comprise 7,304 ft^2.

Attorney Preston was requested by Board member Lazar to go over the various variance factors contained in the MPC and the Ordinance and show how they apply. Attorney Preston first noted that in accordance with the MPC, Section 508, which restricts changes in zoning ordinances from affecting lots that have

already been approved, a variance actually would not be needed. The variance was applied for in order to meet the Township's request.

Attorney Preston said that the *Pennsylvania Municipalities Planning Code* provides that a zoning hearing board may grant a variance provided that all of the following findings are made where relevant in a given case:

> "(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
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> (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
>
> (3) That such unnecessary hardship has not been created by the appellant.
>
> (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
>
> (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue."
> *53 P.S. § 10910.2*

These same requirements for the granting of a variance are embodied in §180-11C(1) of the Zoning Ordinance of Lower Saucon Township.

Attorney Preston noted that what was being requested was a dimensional variance which is subject to a somewhat relaxed standard as opposed to a request for use variance. He then addressed the five factors as follows.

The first requirement is clearly present due to the topographical features, the pipeline easement, and the steep slopes found on the property. The second requirement is met by the showing that a structure that is consonant with the neighborhood and acceptable to the homeowners association could not be built without the requested variances. The unnecessary hardship of the third factor was clearly not created by the equitable owner of the property. The fourth factor is actually their strongest based on the evidence that he will produce concerning the surrounding neighborhood and further shown by the interest of the Homeowners Association, whose members were present in the hearing room. The fifth factor is also met by the placement of the proposed structure, which is sized to comport with the surrounding neighborhood.

Attorney Preston then called Adrian Bilali as his next witness. He stated that he has been handling the project for his brother who is buying the property. He identified Applicant Exhibit A-7 as a packet of photographs of surrounding homes and testified that what they wish to build is what will fit in with the neighborhood.

Finally, Mr. Mease noted that under the old ordinance the impervious coverage would have been allowed to be 12,000 ft^2, whereas the proposed structure will only comprise 7,304 ft^2.

Members of the audience from the Saddle Ridge Homeowners Association requested an opportunity to review the plans and this was given to them.

Mr. Robert Pluim was then sworn and testified that he is the Executive Director of the Homeowners Association and questioned whether the pool and pool house shown on the plan were to be built contemporaneously with the home. He was told that they would be.

Attorney Preston then listed the 3 variances that were being requested as: variances from §180-34C, §180-127, and §180-95B(13)b.

Mr. Peeke moved, seconded by Mr. Easley, to approve the request for the variances and the motion passed by a vote of 4 to 0.

Old Business

The Solicitor told the Board that the Patullo appeal had resulted in Judge Giordano affirming what the Board had done and imposing conditions on the operation of the clubhouse structure.

The appeal has become somewhat convoluted because the attorney for the Objectors then filed a motion to reconsider and to clarify the opinion. The motion to reconsider was denied and the motion to clarify was granted using language which appeared to imply that the restrictions for the use of the building applied to the entire tract. Counsel for Patullo then filed a request for further clarification and before that could be heard the Objectors filed an appeal to the Commonwealth Court. The Objectors took the position that this action deprived the lower court of jurisdiction to do anything further or even to consider Patullo's request for further clarification.

A hearing was held before Judge Giordano on July 26, 2013, and Judge Giordano stated on the record that it was his intention to have the restrictions apply only to the structure and not to sterilize the entire parcel against further development. In order to protect his rights and the record, counsel for Patullo has also filed an appeal to the Commonwealth Court.

This has created somewhat of a procedural morass, which indicates that this case will be continuing for some considerable period of time.

New Business

Mr. Jay Lazar, the new member of the Board, stated that he wished to

thank the Township Manager for nominating him and Council for appointing him to the Board, that he was very pleased to be there, and that he was looking forward to a long and enjoyable working relationship with the other Board members.

Adjournment

There being no further business before the Board, Mr. Peeke moved, seconded by Mr. Easley, to adjourn the meeting. The motion passed by a vote of 4 to 0 and the meeting adjourned at 8:45 p.m.

Respectfully submitted,

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George A. Heitczman
Solicitor

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