Zoning Hearing Board
Lower Saucon Township
Town Hall
September 17, 2012

MINUTES

The meeting was called to order at 7:05 p.m. by Chairman Jason Banonis.

Roll Call

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

Minutes

The Board had before it for approval the minutes of the meeting of August 20, 2012. Mr. Peeke moved to accept the minutes as submitted. The motion was seconded by Mr. Griggs and passed by a vote of 3 to 0.

Bills

The Board had before it for approval a bill from the Morning Call for advertising the meeting of August 20, 2012, the Stenographic Reporter's bill for attendance at the meeting of August 20, 2012, and the Solicitor's invoice for the month of August, 2012. Mr. Griggs moved to pay the bills as submitted. The motion was seconded by Mr. Peeke and passed by a vote of 3 to 0.

Variance Appeal of David & Sharon Kuhns - Variance 11-12

Chris Garges, the Zoning Officer, was sworn and testified that the parcel

contains a single family dwelling, patio, and attached garage. He said notice of the appeal had been properly advertised and posted. Applicant would like to construct an in-ground pool on a parcel which does not meet the maximum allowable impervious coverage. The lot is approximately 20,000 $ft^{2.}$ This is a lot that was created prior to the existence of the current site capacity/resource protection standards. Due to a tree row that exists behind the dwelling, the net buildable site area is 14,169 ft^2. The allowable coverage is approximately 3,542 ft^2 and the existing coverage is 3,784 ft^2, which is 242 ft^2 in excess of the allowable coverage (25% vs 26.7%) permitted by §180- 40C.

Applicant is proposing to install a pool which is 732 ft^2 . The proposed lot coverage is 4,516 ft^2 (31.9%). Applicant will need approximately 5.2% (or 732 ft^2) of additional relief from the maximum allowable coverage of 25%. The proposed pool will not meet the required rear yard setback of 40'. Applicant will need approximately 5' of relief from the minimum rear yard setback of 40' required by §180-41C.

The property had a variance approved August 23, 2010, Variance 11-10, to allow a 26 foot rear setback, with 40 be required, in order to construct a patio. A variance was also approved on January 17, 2011, Variance 18-10, to allow the proposed patio to exceed the allowable coverage by 242 ft^2.

Township Manager Jack Cahalan sent a letter to the Board setting forth the position of the Township in opposition to Applicant's request.

Mr. Garges told the Board that the site capacity calculations of §180-95C net out of the buildable area certain wood lands, which in this case comprise 5.2% of the lot area. If these woods did not have to be netted out of the calculation, then the proposed pool would not exceed the impervious cover limits.

Sharon Kuhns was sworn and testified that they had cleared out a lot of the brush in the wooded area, and showed the Board photographs of how the wooded area looks at the moment.

Mr. Garges also told the Board that when the lot had been created the current site calculations would have not applied. Mr. Peeke note that a hardship had been created by the change in the site calculations.

Township Solicitor Linc Treadwell was present. He stated Township Council's firm opposition to granting a variance of the impervious cover requirements. However, he noted that it was also Council's position, in view of the site calculations including the wood land, that the Township would have no opposition to the Board granting a variance from the site calculations requirements, §180–95C, so as to be able to include the wooded area, which would then remove any need for a variance for the impervious cover requirement of §180-40C.

Mr. Peeke moved to grant Applicant a variance from the rear yard requirement of §180–41C, and from the site calculations requirement in §180 – 95, so that the wooded area could be included in the site calculations. Mr. Griggs seconded the motion and the motion passed by a vote of 3 to 0.

Variance Appeal of James & Kelly Sunday - Variance 12-12

Chris Garges, having previously been sworn, testified that the parcel contains a single family dwelling, patio, and attached garage. He said notice of the appeal had been properly advertised and posted. Applicant would like to construct an in-ground pool on the parcel which does not meet the maximum allowable impervious coverage limit. The lot is approximately 23,290 ft^2 in size The existing lot coverage is 5,191 ft^2(22.3%). The allowable coverage is 5,823 ft^2(25%) in accordance with §180- 40C.

Applicant is proposing to install a pool and decking which will total 1,705 ft^2. The proposed total impervious lot coverage is 6,896 ft^2 (29.6%). Applicant will need approximately 4.6% (1,073 ft^2)) of additional relief from the maximum allowable coverage of 25%.

Township Manager Jack Cahalan sent a letter to the Board setting forth the position of the Township in opposition to Applicant's request.

Attorney Andrew V. Schantz appeared representing Applicant. He called Dominick DiCesare as his first witness. Mr. DiCesare is the General Manager of Blue Haven Pools and Spas. He identified Applicant's Exhibit A-1 as a plan of the Sunday lot showing the proposed pool, spa, coping, and decking. The pool is located in the center of the rear of the property within the appropriate setbacks. The lot is relatively flat. The pool will comprise 620 ft.^{2}, be a freeform shape, and will be enclosed by a fence.

Mr. DiCesare testified that there are six people in the family and that this is the minimum pool size for a family of that size. He noted that there had originally been a discussion of and a design for a much larger pool, but it had been scaled down. In response to a question from the Board, he noted that the pool will hold 2000 gallons before it overflows.

Attorney Linc Treadwell appeared representing the Township. In cross-examining Mr. DiCesare he noted that the property is currently being used as a single-family dwelling, which is a permitted use of the property. The impervious lot coverage is currently 22.29% which includes the residence, the driveway, a porch, and a patio. Mr. DiCesare said that the patio comprises 567 ft.^{2} and that the patio pavers were not of the pervious type.

Mr. DiCesare testified that arrangements would be made to draw the storm water around the pool so as to flow toward the rear of the property where there is a storm water inlet. Mr. DiCesare also admitted on cross-examination that it would be possible to build a smaller pool and also to build a pool without a spa. He further stated the decking could have a smaller area.

In response to a question by Mr. Banonis, Mr. DiCesare said that based upon the impervious cover presently on the lot, a total of 632 ft.^{2} of permissible impervious cover remained. Mr. Banonis noted that half of the proposed increase

in impervious cover was for the decking.

Mr. DiCesare stated in response to a question that the distance between the patio and the pool is approximately 10'.

Mr. DiCesare also testified that there is an inlet at the rear of the property which handles storm water from the property, and there is also an inlet in the street nearby. Mr. DiCesare said he believed these inlets were connected, and he was not sure of their depth.

Mr. Peeke asked whether a pervious paver system had been considered and was told that this had not been done as yet.

The Chairman then asked whether there was anyone in the audience who wished to comment.

Nell Brandt was sworn and testified that she is a neighbor who is in favor of the pool. She said speaking as a mother, she believes that a pool is a wonderful idea as it helps keep track of your children. She did express a concern that any storm water runoff be properly directed to the swale, rather than run onto her property which is adjacent to and lower than the Sunday property.

Another member of the audience, Chris Orlando, was sworn and testified that he is a next-door neighbor and has no objection to the pool.

Elizabeth Gibson was sworn and testified that she lives adjacent to the Sunday property and is also not opposed to a pool.

James Sunday was sworn and testified that he is the owner of the property, having moved there in November of 2000. He noted that his home was built as the second phase of the development of the area. He testified there are a large number of pools in the area.

Mr. Schantz argued that the existing grading creates a hardship. He stated his opinion that the variance being requested is a dimensional variance and hence subject to less restrictive requirements.

The Township Solicitor, Linc Treadwell, stated he did not believe this is

a dimensional variance as a dimensional variance would involve linear distances, while this is a requirement that pertains to the permissible area of use. He stated there was actually no hardship within the legal meaning of that definition to warrant the granting of a variance.

In response to a question from Chairman Banonis, Mr. DiCesare said the plan does not show detailed topographical lines, but that the storm water would flow around the pool into the inlet.

Kelly Sunday was sworn and testified that they are not opposed to doing whatever will help the community, but does not believe that the pool should be moved toward the patio as there should be some distance for safety reasons between the patio and the pool.

Chairman Banonis suggested to Attorney Schantz that in view of all the issues that have been raised by the Board, and the opposition of the Township, perhaps his clients might wish to consider a continuance so as to reevaluate the plan and perhaps eliminate some of the impervious cover, and perhaps utilize pervious pavers in some areas.

After consultation with his clients, Attorney Schantz moved to continue the matter so that it could be reconsidered. Mr. Peeke moved to grant the continuance request, it was seconded by Mr. Griggs, and passed by a vote of 3 to 0.

Old Business

There was no old business before the Board.

New Business

There was no new business before the Board.

Adjournment

There being no further business before the Board, Mr. Griggs moved, seconded by Mr. Peeke, to adjourn the meeting. The motion passed by a vote of 3 to 0 and the meeting adjourned at 8:15 p.m.

Respectfully submitted,

_____

George A. Heitczman
Solicitor

p:\zoning\minutes\2011\9.17.12 minutes(3802)dd