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

MINUTES

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

Roll Call

Present at the meeting were Chairman Jason Banonis, Vice Chairman Ted Griggs, Secretary Keith Easley, and Board Member Lachlan Peeke. 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 November 19, 2012. Mr. Peeke moved to accept the minutes as submitted. The motion was seconded by Mr. Griggs 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 November 19, 2012, the Stenographic Reporter's bill for attendance at the meeting of November 19, 2012, and the Solicitor's invoice for the month of November, 2012. Mr. Easley moved to pay the bills as submitted. The motion was seconded by Mr. Griggs and passed by a vote of 4 to 0.

Variance Appeal of Green Gables Investment Partners, LP - Variance 13-12

Chris Garges was sworn and testified that the parcel is in an RA district

and is currently a vacant fallow field surrounded by tree rows. Applicant is preparing to submit a site plan for a proposed riding stable use, a use permitted by right in the RA district. The lot is approximately 25 acres in size. Applicant is proposing to pasture horses in the field and wants to install fencing which does not meet the required 100' setback from a non-street property line that is required by §180-103B(2). Applicant will need approximately fifty (50) feet of relief from the minimum required setback of one hundred (100) feet from non-street property lines for pastures and corral areas.

Attorney Thomas Schlegel appeared on behalf of Applicant. He introduced as his witnesses, who were duly sworn, Kathleen M. Mills, Kathryn Mills, and Luke Dellmyer.

Kathleen M. Mills testified that she owns 100% of Green Gables Investment Partnership, LP, the Applicant. The proposed uses of the property are for horse boarding and riding. The business will be run by Lucky Shoe Farms which is owned by her daughter Kathryn Mills. She will run it along with her husband Luke Dellmyer.

Kathryn Mills testified that she is the daughter of Kathleen M. Mills and has been in the equine business all of her life, which has included managing facilities like the proposed use.

Luke Dellmyer testified that he will work on the premises and will also be living there once the proposed residence has been completed. He identified Applicant's Exhibit A-1 and A-2 as photographs of the posting of the property.

At this point Attorney James F. Preston identified himself and stated that he was representing several of the neighbors, including William and Andy Curran, and Mr. and Mrs. Tidd, and is not sure whether or not there will be an opposition to the proposed variance, but wanted to be part of the hearing.

Mr. Dellmyer then identified Applicant's Exhibit A-3 as the site plan showing the layout of the proposed use and Exhibit A-4 as an aerial photograph

of the property. He stated that the property comprises 25 acres and has a tree line that is 40 feet from the border, as well as a tree line in the middle of the property. There is also a power line and gas pipeline easement on the property as shown on the site plan.

The current use is as a vacant field. Mr. Dellmyer identified the agricultural building shown on the site plan and said that it is intended to store and repair equipment. In addition he identified the proposed fencing and the structure that will comprise the stables and a riding ring. It is also proposed that there will be a single-family residence on the property.

Mr. Dellmyer identified 8 large pastures, 2 medium pastures and one turn out shown on the plan. He said that by right the property could be used to house up to 52 horses.

Kathryn Mills testified that the barn will be a 26 stall barn and they would have nowhere near 52 horses on the property. She further testified they would agree to a limit on the number of horses that they had on the property. She said that in the summer the horses are typically out of the stables between 6 pm and 6 am, and in the winter between 7 am and 1 pm. They do not plan to have more than four horses in a particular pasture at any given time in order to ensure that the grass is not obliterated. They will arrange for manure removal once a week from the stables. Manure in the pasture will be graded into the soil.

In response to questions from Attorney Schlegel, Mr. Dellmyer noted that there will be a 100' setback at the southwest corner and that this is the required setback. They plan to keep the tree line in place. He testified that this site plan is the best for their proposed use and represents the minimum relief necessary for the proposed use.

Attorney Lincoln Treadwell appeared on behalf of the Township and stated that the Township understood that there would be an agreed condition that the only trees that would be removed would be for necessary passages and would

comprise two cuts to the tree line. Applicant then drew on Applicant's Exhibit A-3 the location of the two cuts that had been agreed and reiterated that these would be the only trees that would be removed.

Attorney Preston then cross-examined Mr. Dellmyer, stating that his client did not necessarily agree that the plan as shown actually comprises a permitted use. In response to his questions Mr. Dellmyer stated that the dwelling would be a single-family dwelling. Mr. Dellmyer also expressly stated on behalf of Applicant that they would limit the number of horses to 36. He stated that the site plan shows the exact layout that they propose, and that the closest encroachment is 54 feet from the property line.

Mr. John Lychak, a member of the audience, questioned whether the fences could be moved further into the property, and Mr. Dellmyer stated that this would cause a loss of about 6 acres of usable area. He was further asked about the proposed tree-line cuts and was shown Applicant's Exhibit A-3 which shows where they are planned. Mr. Lychak stated that he is on the Lower Saucon Township Planning Commission and believes there will be some planning issues with this matter. He also expressed concern about the riparian corridor requirements. Mr. Garges noted that this is a zoning concern as §180-95 requires a 100' buffer, and noted that after planning considerations are taking into account a further variance could possibly be required. Mr. Lychak said that he opposes the variance.

Mr. Jonathan Shingles, an adjoining property owner, stated he owns property to the west of the parcel. He noted that one of the structures will be approximately 100' from a pond on his property, and that a creek runs through his property. He stated that he opposed the variance because he likes being surrounded by open land. He also noted that trucks may be running their engines 69' from his property line.

Paul Dupont was sworn and testified that he lives next to the Alan Rand

property. He questioned whether if relief were not granted, the property could not still be used for the proposed stables, albeit on a reduced basis. He questioned whether the tree-line cuts could not be minimized.

In closing, Attorney Schlegel noted that the request is for a dimensional variance only, and that this must be considered under the reduced *Hertzberg* standards. He noted that the minimum relief required was requested, that denying the relief would cause economic harm to his clients by decreasing the amount of usable land, and requested that the variance be granted.

Mr. Banonis moved to grant the variance subject to the following express conditions:

1. Applicant shall have no more than 36 horses on the property at any time.
2. No trees shall be removed for the construction of the fence on the property except for the two areas referred to as "cuts" shown on Applicant's Exhibit A-3.
3. The placement and installation of the fence, including all earth disturbances required in the installation, shall comply with the requirements of the Township pertaining to riparian buffers, including but not limited to §180-95.

The motion was seconded by Mr. Peeke and the motion passed by a vote of 3 to 1, with Mr. Easley, Mr. Griggs, and Mr. Peeke voting in favor of the motion, and Mr. Banonis voting against the motion.

Departure of Board Member Keith Easley From The Meeting

At the conclusion of the vote on the Green Gables Investment Partners, LP Variance Appeal, Mr. Easley left the meeting and did not participate in any way in the Appeal of H. Michael Swint & Philip V. Swint.

Appeal of H. Michael Swint & Philip V. Swint from Notice of Violation

Chris Garges, having been sworn, testified that Appellant appealed the October 16, 2012, Notice of Violation that he had issued. The gravamen of the violation is that Appellant had previously obtained a variance from §180-98C(2)(i) in order to park commercial vehicles and the variance was limited to a total of 8 vehicles. Appellant is currently parking more than 8 vehicles on the land, which has an address of 2490 Applebutter Road, and is also improperly storing other material between two fences.

Attorney Philip M. Hof appeared representing Appellant. There was discussion about the possibility of a variance request should the Notice of Appeal be sustained. It was agreed that as that form of relief had not been advertised, it could not be considered at this meeting. Mr. Hof did not request a continuance.

Attorney Treadwell appeared on behalf of the Township and stated that the Township had the burden of proof in this matter. He called Chris Garges as his witness and Mr. Garges identified himself and discussed his duties. He stated that the property in question is owned by Appellant. He further stated he visited the property between 5 and 15 times in the last year, and finally issued a Notice of Violation on October 16, 2012.

He identified Township Exhibit T-1 as the Notice of Violation, Exhibit T-2 as the letter dated November 19, 1996, from the Zoning Solicitor to Attorney Hof, and Exhibit T-3 as a transcript of the hearing held on November 18, 1996.

Mr. Garges referred to page 15 of the transcript, which he stated shows that the number of vehicles in the property would be restricted to 8. This testimony, when combined with the statement by Attorney Hof on page 41, establishes that the variance that was granted was specifically restricted to 8 vehicles.

He stated that when he visited the property on October 10, 2012, he counted 10 vehicles including 3 large storage vehicles. He identified Township

Exhibit T-4 as Google Earth photos showing the property and Exhibit T-5 as additional photographs. He told the Board that a photograph taken in August 2010 showed 9 to 10 vehicles on the property with 3 storage vehicles, and on March 31, 2005, a photograph showed 14 to 15 vehicles with 3 storage vehicles.

Mr. Garges identified Township Exhibit T-6 as a police report dated October 18, 2009, concerning a request to view the property at night. There was an objection to this exhibit and it was not offered in evidence.

Mr. Garges was then cross-examined by Attorney Hof. He noted that Mr. Garges made a site visit on May 7, 2012, and sent a letter to Mr. Swint noting that there were 11 vehicles on the property. Mr. Garges also told the Board that several neighbors have complained about the ongoing operation on the property.

The Township then rested.

Attorney Hof made a motion to dismiss on the grounds that the transcript from the prior hearing stated the condition at that time, which was true, and did not make a clear affirmative representation as to the future. He also stated that the evidence presented did not actually establish that vehicles had been stored overnight on the day in question as stated in the Notice of Violation, as there was no testimony that the property was visited on that evening. He therefore argued that the evidence was insufficient to sustain the Notice of Violation.

Attorney Treadwell told the Board that the representations made at the prior hearing were clear, and that Mr. Garges had testified he visited the property on successive days, during the daytime, and noted no difference in the placement of vehicles.

Chairman Banonis, after consultation, granted the motion to dismiss the Notice of Violation.

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. Peeke moved, seconded by Mr. Banonis, to adjourn the meeting. The motion passed by a vote of 3 to 0 and the meeting adjourned at 8:57 p.m.

Respectfully submitted,

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George A. Heitczman
Solicitor

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