

FERGUSON TOWNSHIP ZONING HEARING BOARD

Regular Meeting

Tuesday, December 19, 2017

7:00 pm

I. ATTENDENCE

The Zoning Hearing Board held its regular meeting on Tuesday, December 19, 2017 at the Ferguson Township Municipal Building. In attendance were:

Board:

Michael Twomley—Chairman
Karen English—Vice Chair
Swamy Anantheswaran—Secretary
Michael MacNeely, absent
Susan Buda
Charles Farrell—Alternate
Marc Friedenberga—Alternate, absent
Irene Miller—Alternate

Staff:

Jeffery Ressler, Zoning Administrator
Jeffery Stover, ZHB Solicitor

Others in attendance included: Marcella Bell, Recording Secretary; Ray Stolas, Planning & Zoning Director; Lindsay Schoch, Community Planner; Joseph Green, Board of Supervisors Solicitor; Joe Perotti, SBA II, LLC and Cellco Partnership; Peter Crowley, Circleville Road Partners L.P. Validity Challenge; Elizabeth Crowley, Circleville Road Partners L.P. Validity Challenge; Dwight Ferguson, Circleville Road Partners L.P. Validity Challenge; Steven Victor, Circleville Road Partners L.P. Validity Challenge; Charlie Suhr, Circleville Road Partners L.P. Validity Challenge; Derek Anderson, Circleville Partners L.P. Validity Challenge

II. SWEARING IN OF THOSE THAT WISH TO TESTIFY

One person stood to be sworn in.

Mr. Twomley stated that Ms. Miller will stand in as a core member.

Ms. Ruth Cooper spoke about her concerns during the citizens' input period. She wondered how the Zoning Hearing Board could make a decision on the SBA Tower variance request since the board composition is different now than it was during the last hearing. Mr. Twomley stated that the applicant would have the opportunity to start from the beginning. Mr. Anatheswaran and Ms. English both stated that they felt the meeting minutes from November 21, 2017 provided enough detail that they knew what was going on.

Ms. Cooper reminded the Zoning Hearing Board members to speak into their microphones.

III. SBA TOWERS II, LLC AND CELLCO PARTNERSHIP DBA VERIZON WIRELESS—REQUEST FOR A VARIANCE CONTINUATION

Mr. Twomley gave an overview of the previous meeting's hearing and asked Attorney Perotti if he would like to add any more testimony. He added that the Board of Supervisors received the amended variance request and remained neutral on it as well. Attorney Perotti introduced himself as the representative for SBA II, LLC and Cellco Partnership (Verizon Wireless). He explained that SBA is proposing to replace an existing telecommunications tower that is in structural disrepair. The tower that is

being proposed is of identical size and structure. In response to a question from Ms. Buda, Attorney Perotti stated that for telecommunications antennas, it is preferred that the tower is a self-support tower for ease of attachment of the different types of antennas; however, it is not impossible to attach the same antennas to a monopole. In response to a question from Ms. Buda, Mr. Ressler stated that as far as he could tell, lattice towers were left out of the most updated Wireless Communications Ordinance for aesthetic purposes.

Mr. Twomley expressed some of his concerns about setting a precedence with this hearing. He explained that the initial variance request was a dimensional variance for a setback requirement. Mr. Twomley went on to state that he has a strong concern with the replacement of this tower with another lattice tower. He explained that with the way the ordinance is written, the Township only allows monopoles. Mr. Twomley feels that if the Zoning Hearing Board granted this variance, it would set a precedence for future hearings. He does not want to see a floodgate of variance requests to build lattice towers when they start to structurally fail. He explained that it was of his opinion that the proper course of action would be for the applicant to submit a zoning amendment request for the Township to consider.

In response to a question from Mr. Anatheswaran, Mr. Ressler clarified that the Wireless Communications Ordinance was last updated in 2015.

Ms. Buda stated that she has no problem with the particular property to have either type of tower; however, she feels that there is no compelling reason—safety or otherwise—to allow a lattice tower versus a monopole tower.

Attorney Perotti explained that SBA will be replacing the current lattice tower with a facsimile with what is already on the property. The nearest property line not owned by the Commonwealth of Pennsylvania is approximately 2,760 feet away, or a half mile away. Attorney Perotti stated that from a half mile away, it would be hard to tell what kind of tower it is. In response to a question from Ms. Miller, Attorney Perotti explained that broadcasting antennas and dishes are easier to attach to self-supporting towers and really have nothing to do with how the antennas perform. He went on to say that it is an industry preference.

In response to a question from Ms. Cooper, Attorney Perotti stated that the leased area is 100x100 feet and only 70x70 feet of the area is fenced in. The base of the new tower will be 13 feet south of the existing tower. The fence will be deconstructed when the old tower comes down and a new 70x70 feet fence will be constructed when the new tower goes up.

A motion was made by Ms. Buda and seconded by Ms. English to grant the property that is the subject of this hearing a 472-foot variance to the setback requirements in Chapter 27-209(4)(a) and Chapter 27-209(4)(d)(3) to build an approved tower. The motion carried unanimously.

A motion was made by Mr. Anatheswaran and seconded by Ms. Miller to grant the variance to Chapter 27-209.4.F(4) to allow the applicant to replace the current lattice tower with a new lattice tower instead of a monopole. The motion failed 1-4.

The Zoning Hearing Board took a five-minute recess.

IV. CIRCLEVILLE ROAD PARTNERS, L.P.—VALIDITY CHALLENGE

Attorney Green introduced himself as the solicitor for the Township. He provided an entry of appearance to Attorney Stover. Attorney Green explained that the appeal before the Zoning Hearing Board involves a substantial validity challenge by the Circleville Road Partners, L.P. He went on to explain that back in October, Counsel, through a series of emails, agreed to waive the Municipalities Planning Code (MPC) time limits of 60 days for filing of the appeal. Attorney Green turned the floor over to the Stevens and Lee, Attorney Charlie Suhr. Attorney Suhr stated that he is at the hearing on behalf of Residential Housing Development, LLC (the contract purchaser of the land for Pine Hall) and Stevens and Lee (the entity that actively prepared the text amendment). In response to a question from Attorney Stover, Attorney Suhr stated that he is appearing at the hearing as an intervener, not a co-applicant.

In response to a question from Ms. Buda, Mr. Twomley stated that the old zoning ordinance be referred to as the Zoning Ordinance and the amendment should be referred to as Ordinance 1034. Mr. Twomley then turned the floor over to Attorney Dwight Ferguson.

Attorney Ferguson introduced himself as the Attorney representing Circleville Road Partners, L.P. He stated that it was his client that challenged the validity of the text amendment (Ordinance 1034). Attorney Ferguson provided some background for the Zoning Hearing Board. Back in 2008, there were two adjacent parcels which were zoned Traditional Town Development (TTD) at the time. Pine Hall obtained an approval of a master plan for the development of Pine Hall; however, the development did not proceed at that time. In 2011, Circleville Partners submitted a master plan for the Turnberry development after a long application process that included many hearings and requests for modifications. Since then, Pine Hall came back with new owners, a new development team, and a new plan. Because the new master plan was so different from the old, approved master plan, the Ferguson Township Supervisors enacted a text amendment to the Traditional Town Development ordinance. Attorney Ferguson stated that it is his client's position that these changes were so sweeping and ill-considered that the Board of Supervisors crossed a line of unconstitutionality.

Attorney Ferguson spoke to the responsibilities of the Zoning Hearing Board regarding the validity challenge. He stated that it has the jurisdiction to hear substantive validity challenges, but its role is to render a decision on whether or not Ordinance 1034 is or is not valid. If the Zoning Hearing Board finds that Ordinance 1034 is not valid, it must provide a report to the Board of Supervisors as to what legislative corrective action the Board might take in order to correct any infirmities of Ordinance 1034.

Attorney Ferguson provided the Zoning Hearing Board a document that was filed in the Court of Common Pleas in Centre County. It was prepared by Attorney Green in connection with a procedural challenge that was filed by Circleville Road Partners, L.P. The document also contains a complete record of the proceedings before the Planning Commission and the Board of Supervisors which led to the enactment of Ordinance 1034. Attorney Ferguson moved to make the aforementioned documents as part of the record of the hearing. There were no objections.

Attorney Ferguson stated that the presentation by Circleville Road Partners, L.P., will be divided into two parts: a presentation by Steven Victor that will walk the Board

through Ordinance 1034 and explain the substantive planning problems with the ordinance. After that, Attorney Ferguson will walk through the legal arguments from Circleville Road Partners, L.P.

Attorney Ferguson turned the floor over to Steven Victor of Victor-Wetzel Associates. Mr. Victor stated that he is a landscape architect and a land-use planner that has been practicing for 45 years. He stated that he has extensive experience in zoning, zoning laws, and has been a part of many validity challenges in the past. He explained that he will try to explain certain portions of Ordinance 1034 and why those portions are not appropriate.

At the request of Mr. Twomley, Attorney Ferguson offered Mr. Victor as an expert witness. Mr. Victor stated that in 1970 and 1971 he received an undergraduate and graduate degree in landscape architecture, with a minor in urban planning from Iowa State University. He explained that after he graduated, he primarily worked with landscape architecture or architectural firms until 1980 when he established his own practice, Victor Associates. In 1999, that firm became Victor-Wetzel Associates. The practice primarily deals in the area of land development, land planning, and consulting. Most of the projects that he deals with include land developments such as residential housing developments, planned residential housing developments, conservation subdivisions, shopping centers, office parks, and the like. His firm mainly deals with the Pittsburgh area. His firm also reviews ordinances and use them as guides or offers text amendments. He has also consulted with municipalities on text amendments and has been an expert witness on many Zoning Hearing Boards and in the Court of Common Pleas. Mr. Victor confirmed that he has been a registered landscape architect since 1974. There were no objections to Mr. Victor being an expert witness.

Mr. Victor stated that Circleville Road Partners, L.P., is challenging the text amendment to the TTD that was put forth by Pine Hall. Mr. Victor referred to his PowerPoint. He showed a map of the designated Pine Hall land and its relationship to the Turnberry development. He explained that these two properties are the only two sites in the Township that are zoned TTD. He referred to the PowerPoint and pointed out the development phasing for Turnberry. He stated that when Turnberry was approved in 2011, the original Pine Hall plan had already been approved. Mr. Victor showed the original Pine Hall plan on his PowerPoint. He explained that the 2008 Pine Hall plan showed one-quarter (1/4) of commercial area, one-quarter (1/4) of multi-family area, and the other half (1/2) of the plan showed single-family detached and attached housing. Mr. Victor stated that since the new plan has not been formally submitted, all he has is an anticipated plan. He referred to his PowerPoint to show the anticipated master plan. He explained that the new plan shows one-quarter (1/4) commercial, one-quarter (1/4) single family-residential, and one-half (1/2) multi-family. He stated that the changes in the new plan will make the site denser due to the multi-family designations. Mr. Victor stated that when the Township adopted the TTD ordinance originally, an extensive TTD design manual was also prepared and adopted. The TTD design manual is similar to an instruction book on how something should look within the TTD district. These items are included in the agenda that the Board received. Mr. Victor stated that key elements of a TTD is that it is a neighborhood scale, there would be a variety of integrated housing, a range of amenities, there would be a network of well-connected streets and blocks, and it would

be at a walkable scale. The main goal is that the development is at a human scale. The aforementioned elements were directed into both the design manual and the ordinance itself. Mr. Victor asked the Zoning Hearing Board to judge whether the amendment that was adopted really meets the objectives of the key elements.

In response to a question from Mr. Anantheswarn, Mr. Victor explained that human scale simply means that a person can relate to their surroundings such as a two to three-story building versus a 100-story skyscraper or lighting that is at 12 feet versus 25 feet.

Mr. Victor referred back to his PowerPoint. He stated that in the substantive challenge that Attorney Ferguson put forth, there are various elements within Ordinance 1034 that are being challenged. The first being challenged is the definition of family. Mr. Victor stated that the adopted ordinance changes the definition of family and the number of unrelated persons from three to four persons to make a family. He explained that the definition change increases density within the development. The national average for a traditional family per household is around 2.3 people, so this text amendment is doubling the national high of ratio of people in a household.

Mr. Victor stated that the second amendment to the ordinance was the modification process. The TTD has a modification process that allows applicants to request a modification from the TTD ordinance. The applicant has to prove the hardship and show the design impacts of the modification. Mr. Victor explained that the new process under Ordinance 1034 gets rid of that process and only follows the Subdivision and Land Development Ordinance (SALDO). In the SALDO modification process, the applicant only has to request the modification without any justification.

Mr. Victor stated that the third and fourth amendment to the TTD ordinance changes the percent of townhouses that must be a rear entry townhouse. The previous TTD ordinance stated that 100% of the townhomes had to be rear-entry while the amended ordinance says only 50% of the townhomes have to be rear-entry. Mr. Victor went on to say that the change now allows for front entry garages. He stated that when he looked at the site plan that was submitted, he counted only 20% of townhomes being front-entry. He asked why Pine Hall requested a text amendment for 50% if their plan only shows 20%. He referred to his projector and showed the differences between a rear-entry and a front-entry townhouse. He stated that with front-entry townhomes, all of the traffic would go directly out onto the sidewalk and onto the street. The reason that the TTD originally had 100% of rear-entry townhomes was to encourage pedestrian activity through walkable areas so as to not interfere with people backing out of their garages or driveways.

Mr. Anantheswaran stated that he does not see a hardship with this particular amendment. He stated that this amendment does not preclude someone from still having the 100% rear-entry townhomes. Mr. Victor stated that the Zoning Hearing Board is not being asked to look at hardships—they are being asked to look at whether or not the changes made to the TTD Ordinance changes the objective of the TTD.

Mr. Victor asked that if the objective of the TTD is to have walkable space, is the aforementioned text amendment achieving that if the sidewalk is being interrupted by cars pulling in and out of driveways. It was of Mr. Victor's opinion that a few text amendments may cause no harm; however, there are at least a dozen amendments,

which cause the applicant to wonder if the amendments really address the intent of the TTD. Mr. Victor explained that even if the Pine Hall plan only show 20% to be a front-entry townhouse, the applicant could walk in tomorrow and change the plan without asking for any modification. It is of the opinion of the applicant that 50% of front-entry townhomes is too high of a threshold in order to keep a pedestrian scale.

Mr. Victor stated that the fifth amendment talks about the human scale of height. The TTD ordinance originally said that 50% of all commercial buildings have to be at least 2 stories. Ordinance 1034 changes that to only 35% of commercial buildings need to be at least 2 stories. He questioned if 65% of the units are only going to be 1 story, is the plan really a TTD? He referred to the TTD design manual and stated that it encourages the two-story commercial so that when the stores close, there is still a lot of other night life going on up and down that street.

Mr. Victor stated that the sixth amendment changes the height of multi-family from five stories to eight stories. It was of his opinion that an eight-story building is urban and not a configuration for a small-town setting.

The seventh amendment changes the mandated percentages for types of housing. Mr. Victor referred to his PowerPoint and presented a chart that summed up the lot size changes from the original ordinance to Ordinance 1034. The previous percentages (acres) for single-family lots was 15%, and Ordinance 1034 reduces it to just 5%. The previous percentages for multi-family lots was 30%, and Ordinance 1034 increases the percent of acreage to 50%. He went on to explain that the percentages are not number of units—it's the amount of acres that would be designated for that type of housing. He stated that when you take the lowest acreage (5%) with the lowest density (single-family homes) and then the highest acreage (50%) and the highest density (multi-family homes), it becomes a disproportionate amount of multi-family housing. It was of his opinion that these numbers change the character of the TTD.

The next amendment changes and replaces the diversity and mix of housing types. Ordinance 1034 allows for large segregated blocks of different types of housing instead of mixing the housing together in one block. He referred to his PowerPoint and showed the Pine Hall plan. He stated that the master plan does indeed show the segregation of different types of housing. He stated that the ordinance no longer mandates the diversity of housing.

The ninth amendment removes the number of units per townhouse an applicant can have. The original ordinance allowed four townhouses per building. Ordinance 1034 does not have a limit of the number of townhouses per building, meaning there could be a continuous stretch of 200 feet of townhouses without a break.

Mr. Victor stated that the tenth amendment changes some of the lot sizes for commercial and residential. Ordinance 1034 reduces the single-family detached lot size by 57%. It reduces the single-family semi-detached (duplexes) by 25%. It reduces the single-family attached (townhouses) lot sizes by 63%. The ordinance also reduces the lot size of multi-family homes. He stated that by itself, the reductions may not be a problem; however, collectively it might be. For the commercial lot sizes, Ordinance 1034 increases it by 60%, meaning the commercial building size would increase by 400%. The ordinance increases the retail ability by 100% and increases the anchor retail unit by 600%, which will allow for bigger units and buildings.

The eleventh amendment eliminates the maximum number of units per building. The original TTD envisioned that the maximum would be 24 apartment units in a singular building, which could be built with 2 or 3 stories. Since another amendment allows for an 8-story apartment building, the applicant could put far more than 24 apartment units in the building. Mr. Victor stated that now the ordinance has changed the character by height and the number of units, as well as the definition of family to allow four unrelated people per unit—therefore increasing the population.

Mr. Victor stated that the twelfth amendment increases the overall impervious area to 85%, even though the Pine Hall plan shows an awful lot of green space. Mr. Victor calculated that 19% of the site on the plan is pervious, meaning 81% of the site is impervious. He wondered why Pine Hall requested the change in impervious coverage if the percent only goes to 81%. Ms. Miller asked if the applicant could find the original impervious number that Pine Hall had on its plan before Ordinance 1034. In response to a question from Mr. Anantheswaran, Mr. Victor stated that he would recommend 60% as an impervious coverage. He stated that Ordinance 1034 says that 85% of any building lot can be covered by the building itself. He wondered where the green space would come from if Ordinance 1034 allows the applicant to cover 85% of each lot with the building.

The next amendment changes the setbacks for front garages. The original ordinance stated that the garage must be 40 feet from the street. Ordinance 1034 reduces that setback to 10 feet. Mr. Victor stated that this is a safety issue, especially since the ordinance now allows front-entry townhomes. He wondered where someone would be able to park their car outside of their garage. He stated that the cars parked in the driveway would be hanging over the edge of the sidewalk.

The next amendment changes the setbacks for rear garages from five feet to zero feet. He stated that someone would not be able to back their car out of their garage at that distance and still be able to see where they are backing out. He believes the setback should be closer to 14 feet.

Mr. Victor stated that the 15th amendment increases the number of compound parking lots the plan could have. The original ordinance limited the percent to 60% of all parking lots can be in a parking compound. Ordinance 1034 allows 90%.

Mr. Victor asked the Zoning Hearing Board to think about whether or not all the amendments add up to a neighborhood scale, a variety of housing, a range of amenities, and has well connected streets and blocks. He asked if the changes have kept or made disadvantages to the walkable attractiveness to the development. He asked if the development would be kept at a human scale with Ordinance 1034.

In response to a question from Mr. Twomley, Mr. Victor stated that yes, Turnberry could use Ordinance 1034 to finish developing its site. Mr. Victor reviewed the modification process compared to the text amendment process. If an applicant wants to go through a modification process, the applicant will already have presented a master plan. The applicant would then go to the Planning Commission and the Board of Supervisors to request modifications to their master plan. The modification would only apply to master plan in question. If the master plan is changed, the modification does not apply to that master plan anymore. Modifications are very design specific. A text amendment essentially writes new rules.

Mr. Twomley stated that he has attended several meetings where the text amendment was discussed and he's heard several implications that this text amendment is a potential disadvantage to the Turnberry development. Mr. Twomley stated that the text amendment applies to the 15% of undeveloped property at Turnberry. Mr. Victor referred to his PowerPoint and showed a matrix that shows the impact on the character for the TTD district. He believes that aside from the lot size changes, every other amendment changes the TTD district to a suburb development or an urban town. Mr. Victor does not believe the Township will gain anything positive from Ordinance 1034. He believes only the developer benefits from the ordinance. Mr. Victor stated that he believes Ordinance 1034 sets new standards which weaken the objectives of the conditional development by making Pine Hall more urban-like. It is not town-like with the character. He stated that all of the proposed Pine Hall text amendment changes could have been achieved through the former TTD modification process. The cumulative effect of the text amendments has really changed the importance and the outcome of what the TTD has become.

Attorney Suhr and Attorney Green cross examined Mr. Victor. During the cross examination, the definition of family was discussed, as well as who the two parties are in the TTD district. Another discussion during the cross examination centered around modifications versus curative text amendments and whether or not Mr. Victor was being biased during his presentation.

The Zoning Hearing Board took a five minute recess.

Attorney Stover stated that he spoke with all of the attorneys in this case, and they've all agreed that it might be best to finish any questions any one may have with Mr. Victor and then break until the next hearing for time purposes. If the Zoning Hearing Board wants to continue on with the hearing, it can do that too.

Ms. Miller asked Mr. Victor to refer back to his slide when he did the calculations for the 7th amendment. She stated that from his conclusion, his opinion was that the cumulative effect of these changes are increased density, increased multi-family, and therefore, decreased single-family. Mr. Victor agreed and stated that there is nothing wrong with it; however, the density outcome is not a TTD district. There was a lengthy discussion on the 7th amendment and the effect that it has had on the ordinance.

In response to a question from Attorney Ferguson, Mr. Victor stated that the TTD amendment (Ordinance 1034) does not reflect a rational planning for a TTD. In response to a question from Ms. Buda regarding issues of general welfare of the community related to Ordinance 1034, Mr. Victor stated that when he read the original TTD ordinance, he understood quite well what the Township was trying to achieve; however, he does not believe Ordinance 1034 is to the benefit of the community and the plan will not result in the design objectives that were in the original design manual. In response to a question from Mr. Anantheswaran, Mr. Victor explained that Pine Hall first approached the Township with a concept plan which did not comply with the existing TTD ordinance. After discussions with the Board of Supervisors and the Planning Commission, the Pine Hall developers drafted an amendment to the TTD ordinance and submitted it to the Township. Mr. Victor clarified that a landowner or developer has the right to approach a municipality and ask for a change to an ordinance.

There was a lengthy discussion about whether the Zoning Hearing Board should reconvene at a later hearing to finish listening to the testimony. Attorney Stover stated that even if the Board were to continue listening tonight, they would most likely not be able to make a decision because both sides will want to submit legal briefs for consideration. There was discussion about what day to continue the hearing—whether it should be on the regularly scheduled hearing day or if there should be a separate hearing for this particular matter. Ms. Buda expressed her concern that the same members of the Board who were present tonight would not be able to make it to the next hearing, and it would be hard for members who were not at this hearing tonight to entirely understand what was going on. Attorney Stover stated that all Board members will have the chance to read the transcript of the hearing. Attorney Ferguson stated that one option so as to not have to re-advertise is that Counsel and the Board could pick a date outside of the current hearing to come back and finish the testimony. The Board could continue this hearing to the regularly scheduled January 23 hearing and then at the 23 hearing, announce the date of the continuation of this hearing. Attorney Ferguson continued and said that he could consent to an extension of any applicable deadlines under the MPC to facilitate that schedule.

Attorney Suhr requested that the applicant bring a representative from Circleville Road Partners, L.P. for the next hearing.

There was a consensus from the Zoning Hearing Board to continue the hearing at the January 23, 2018 Zoning Hearing Board meeting.

**V. APPROVAL OF THE MEETING MINUTES FROM THE NOVEMBER 21, 2017
REGULAR MEETING**

A motion was made by Ms. Buda and seconded by Ms. English to approve the November 21, 2017 Zoning Hearing Board meeting minutes. The motion carried unanimously.

VI. ADJOURNMENT

With no further business to come before the Zoning Hearing Board the December 19, 2017 meeting adjourned at 9:42 p.m.

RESPECTFULLY SUBMITTED,



Swamy Anantheswaran, Secretary
For the Zoning Hearing Board

Date approved by the Board: Feb. 27, 2018