

FERGUSON TOWNSHIP ZONING HEARING BOARD

Regular Meeting

Tuesday, June 27, 2017

7:00 pm

I. ATTENDENCE

The Zoning Hearing Board held its regular meeting on Tuesday, June 27, 2017 at the Ferguson Township Municipal Building. In attendance were:

Board:

Michael Twomley—Chairman

Karen English—Vice Chair, absent

Swamy Ananheswaran—Secretary

Michael MacNeely

Susan Buda

Charles Farrell—Alternate

Marc Friedenbergl—Alternate

Irene Miller—Alternate

Staff:

Jeffery Ressler, Zoning Administrator

Jeffery Stover, ZHB Solicitor

Other in attendance included: Marcella Bell, Recording Secretary; Ray Stolinas, Planning & Zoning Director; Fred Sahakian, HFL Corporation; Ara Kervandjiah, HFL Corporation; Terry Williams, Miller, Kistler & Campbell; John Sepp, PennTerra Engineering; Rhonna Johannesen, Ferguson Township Resident; Kevin Hagopian, Ferguson Township Resident; Troy Knecht, HFL Corporation

II. SWEARING IN OF THOSE THAT WISH TO TESTIFY

Two individuals stood to be sworn in. Mr. Twomley stated that Ms. Miller will stand in as a core voting member of the Board due to absences.

III. REQUEST FOR AN APPEAL – HFL CORPORATION

Mr. Ressler stated that the property that is the subject of this hearing is located at 1217 North Atherton Street/114 West Chery Lane, tax parcel number 24-015-038-0000. The property is owned by HFL Corporation. The property is zoned General Commercial (C). The proposed use of the property is for a mixed used building—business and professional use on the first floor and residential apartments on the second and third story. This is a permitted use in Zoning ordinance chapter 27-204.1.A(2). The applicants have planned for and designed the 12 dwelling units to have four bedrooms that could accommodate more than three unrelated persons and have designated the dwelling units on the plans as multi-family dwellings on the plan in notes number 1.g sn 3.c. Multi-family residential is defined in the zoning ordinance chapter 27-1202 as “three or more dwelling units, with the units stacked one above the other”. Multi-family dwelling is defined in the zoning ordinance chapter 27-1202 as “three or more dwelling units, with the units stacked one above the other.” It is Mr. Ressler’s opinion that the dwelling units do not meet the definition of multi-family residential or multi-family dwelling because the dwelling units are stacked not more than two (2) high. As such, the dwelling unit type should be more appropriately designated as two-family dwelling which is defined in the zoning ordinance as “two dwelling units, one above the other.” The definition of a family in the zoning ordinance reads as follows, “Family—(1) a person; (2) two or more persons, all of whom are related by blood, marriage,

parentage or adoption (including foster children); living together as a single housekeeping unit. In addition to the family, two or fewer unrelated persons may reside with the housekeeping unit in the dwelling unit. For dwelling units in a multi-family building containing three or more dwelling units, (other than those in vertical mixed use buildings in the TSD zone) the number per persons permitted to occupy a unit shall be determined by the Centre Region Code office with the provisions of the Ferguson Township housing code." As a two-family dwelling, the occupancy of each dwelling is limited to no more than one family which by definition would include not more than three unrelated individuals. There have not been any multi use buildings approved with two floors of residential in which the residential units were classified as multi-family, and therefore were permitted to be occupied by more than three unrelated individuals. The interpretation has been consistently applied over the years. The applicants are appealing the zoning administrator's interpretation and application of the definition of multi-family dwelling in the zoning ordinance chapter 27-1202 as applied to this project. Alternatively, the applicants are requesting a variance to chapter 27-1202 multi-family dwelling inconsistent with chapter 27-204(2).

Attorney Stover asked Mr. Ressler for clarification regarding zoning ordinance chapter 27-204(2). Mr. Ressler replied that the section in question allows for accessory dwellings in a commercial building. The ordinance allows for no more than 67% of the floor area dedicated to dwelling units. It also allows for a mix of single two-family and multi-family.

Ms. Miller asked Mr. Ressler to explain the ordinance requirements in layman's terms. Mr. Ressler replied that the applicant is proposing two floors of residential units with four bedrooms in each unit to allow for more than three unrelated people. Mr. Ressler explained that regarding multi-family, the ordinance requires three units to be stacked one above the other. Two stacked one above the other does not qualify under the definition of multi-family dwelling. Mr. MacNeely clarified that because the bottom floor of the proposal is a business use, it does not count as a residential floor. Mr. Ressler agreed. In response to a question from Mr. MacNeely regarding the definition of dwelling,

Mr. Ressler stated that the definition of dwelling is as follows, "a building designed for human living quarters. Any dwelling unit is defined as a dwelling used by one family."

Mr. Twomley turned the floor over to Attorney Williams representing HFL Corporation. Attorney Williams passed out Exhibits A1-A9 respectively to the discussion. Attorney Williams asked Mr. Ressler if the indicated property was zoned commercial. Mr. Ressler said yes. Attorney Williams clarified that under General Commercial Zone, Use 13, it allows single family, two-family, and multi-family dwellings subject to the provisions of chapter 27-204(A). Mr. Ressler stated that yes, that is stated in Table 501, Office Commercial. Attorney Williams clarified that under permitted uses, number 17 offers all permitted uses of the Office Commercial district. Mr. Ressler agreed. Attorney Williams referred to chapter 27-204 use regulations, which provides under A1 that all commercial buildings permitted in Office Commercial and Commercial districts may include dwelling units under Tables 501 and 502. A commercial building would be permitted to have dwelling units with restrictions including no dwelling units

shall be permitted on the lowest level, the floor area of the dwelling units may not exceed 67% of the total floor area of the structure, and accessory uses permitted may not exist on a floor or level of a structure that a primary use exists. Attorney Williams referred to the definitions Mr. Ressler stated during his summary. He stated that those definitions are the basis of why Mr. Ressler rejected the proposed project. Mr. Ressler clarified that he did not reject the project—he believes that it should be classified as two-family dwelling, not multi-family dwelling. Attorney Williams clarified that the two residential floors in the proposed plan are indeed one stacked above the other. Mr. Ressler agreed. Attorney Williams referred to the definition of dwelling and stated that Mr. Ressler indicated that the interpretation of this definition has been consistently applied over the years. Attorney Williams asked if there have been other developments that have commercial on the ground floor and residential above. Mr. Ressler replied that the only other development that has occurred is located in the Terraced Streetscape District. Attorney Williams stated that since there's only been one development with these proposals, this cannot be construed as being consistently applied. Mr. Ressler explained that he is referring to the definition of family regarding occupancy and dwellings. The Township has only permitted multi-family dwellings that are three or more units, one stacked above the other, to be occupied by more than three or more unrelated people, unless there was a variance or the plan proposed a Planned Residential Development (PRD). Attorney Williams stated that the material contained in the ordinance related to dwelling and mixing residential and commercial uses never mentions the word family.

Attorney Williams and Mr. Ressler reviewed several developments within the Township that could be considered multi-family: Stonebridge, a multi-family development zoned as a PRD with two stories of units that do not occupy more than three unrelated people; PennWood, an apartment complex in the R-4 District with two stories of units that do not occupy more than three unrelated people; Park Crest Terrace Apartments, a multi-family development in the R-4 District with two and three stories of units—three or more unrelated people per unit are allowed to reside in the three story buildings; State College Park Apartments, a multi-family development in the R-4 District with three units stacked one above the other, allowing for three or more unrelated people per unit; Phase 2c of Green Leaf Manor, a development zoned as a PRD with two stories of units that do not occupy more than three unrelated people.

Mr. Ressler clarified that his interpretation of the ordinance is clear in that units one above the other or units stacked one above the other does not mean they are side by side. Two units one above the other with another unit next to it is not the same as three units one stacked above the other. Attorney Williams replied that the developer would like to put three stories of residential on top of the commercial floor; however, there is a 45-foot height restriction, which would not allow for the developer to build a total of four stories.

Attorney Williams argued that the definition of multi-family residential and multi-family dwelling contained in the ordinance includes a comma, which eliminates the three stories from the concept of being stacked. For example, "Multi-family residential is defined as three or more dwelling units, with the units stacked one above the other,"

He explained that the definition does not state that the units have to be stacked one above the other. Attorney Williams introduced John Sepp from PennTerra Engineering. Attorney Williams asked Mr. Sepp if, based on Mr. Ressler's opinion, he could build the proposed land development plan. Mr. Sepp replied no, not without classifying the residential units as multi-family. Mr. Sepp explained that the site would have to be leveled to not have an exposed basement in the rear to meet the 45-foot height restriction.

In response to several questions from the Zoning Hearing Board, Mr. Sepp explained that the proposed project is a part of a larger parcel on the property that includes several other commercial buildings. There are 438 parking stalls on the site that would be shared with the other uses. The addition of 30 parking stalls would mainly be for the office space on the first floor. Mr. Sepp stated that the office space on the first floor will be 10,100 square feet which will entail several offices for one business. Attorney Williams explained that the importance of the comma in the aforementioned ordinance definitions is that the ordinance is inconsistent. A developer cannot build what the ordinance provides with Mr. Ressler's interpretation, which is the hardship. The ordinance has a 45-foot height restriction, which creates the hardship. The multi-family dwelling definition only says that there has to be three units stacked, which is included in the proposed plan. The comma is antiquated but is unworkable in context of Chapter 27-204(2). Attorney Williams stated that he disagrees with Mr. Ressler and the comma is in the definition for a reason. He explained that if the Board chooses not to overrule Mr. Ressler's interpretation, the developers are requesting a variance to Chapter 27-1202, multi-family dwelling, which is inconsistent with Chapter 27-204(2).

Ms. Buda stated that the developers could simply build two-family units instead of multi-family units, so there is no hardship. Ms. Buda explained that she believes the comma in the aforementioned definition is referring back to the units.

Attorney Stover reviewed the criteria that the Board should consider when making a decision on the appeal. He stated that the decision the Board makes today could have precedential value on future interpretations. Mr. Pribulka stated that the Board of Supervisors opposes the appeal and remains neutral on the variance request.

Kevin Hagopian, a Ferguson Township resident, stated that the variance is being requested because the appellants believe there is something wrong with the ordinance. He asks that the Board to consider downstream ramifications of the criticism from the appellants. He stated that the area he lives in has a mixed group of students and non-students, which works well. The students make the neighborhood more diverse. He stated that the proposed development is clearly intended for students to reside in. Mr. Hagopian feels that allowing four bedroom units stretches the definition of family. This area of Ferguson Township is similar to the State College Borough in that the neighborhood is an appendix, meaning it is walking distance for students, Penn State employees, and non-Penn State employees. He believes the Township interpretation of the ordinance is correct.

Rhonda Johannesen, a Ferguson Township resident, stated that she agrees with Mr. Hagopian that the neighborhood is unique and it works as it is and she doesn't want to disturb it so that it doesn't. Ms. Johannesen explained that she has a background in development, specifically student housing. She stated that there is an importance to strike a careful balance. She believes that the intent is consistent with Mr. Ressler's interpretation. She explained that she does not have a problem living near or next to students; however, the proposed development could appeal to graduate students, Penn State employees, and non-Penn State employees—not just undergraduate students. The product type that is being proposed specifically attracts undergraduate students. Ms. Johannesen believes that this type of mixed use plan changes the nature of the neighborhood.

A motion was made by Mr. MacNeely and seconded by Mr. Ananheswaran that the appeal presented by the property owners of 1217 North Atherton Street/114 West Cherry Lane be approved as presented. The motion failed 3-1 and Ms. Miller abstained.

IV. REQUEST FOR A VARIANCE – HFL CORPORATION

The Zoning Hearing Board recessed to consider the variance request at 8:02 p.m. and reconvened at 8:13 p.m.

Mr. MacNeely stated that after reviewing the variance application, he does not see how the interpretation and height restriction is an unnecessary hardship. He explained that there are alternatives that can be done for the proposed buildings to conform to the ordinance. Mr. Ananheswaran stated that the developers could still build something at 45-feet. He explained that there is not a compelling reason to grant this variance because there are other options to make this work. Ms. Buda stated that the difference lies in two-family versus multi-family. She stated the developers can build two-family attached units instead of multi-family units, and that would still allow them to rent the units to students all while having an office space and residential units.

A motion was made by Mr. MacNeely and seconded by Mr. Ananheswaran to approve the variance for the property located at 1217 North Atherton Street/114 West Cherry Lane to build the proposed mixed use building and classify it as multi-family residential or multi-family dwelling. The motion failed unanimously.

V. APPROVAL OF THE MEETING MINUTES FROM APRIL 25 AND MAY 23, 2017 REGULAR MEETINGS.

Ms. Buda provided a few grammatical corrections for both the April and May Zoning Hearing Board meeting minutes.

A motion was made by Mr. Ananheswaran and seconded by Ms. Buda to approve the corrected April 25, 2017 Zoning Hearing Board meeting minutes. The motion passed unanimously.

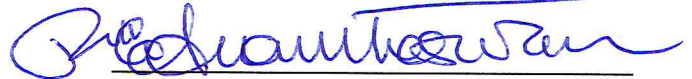
A motion was made by Ms. Buda and seconded by Mr. MacNeely to approve the corrected May 23, 2017 Zoning Hearing Board meeting minutes.

VI. ADJOURNMENT

Mr. Friedenbergr asked if the Zoning Hearing Board could see the exhibits on the projector for future meetings. Attorney Stover stated that if the applicants present their evidence that way, it is no problem; however, the Zoning Hearing Board may not receive any evidence before the hearing.

With no further business to come before the Zoning Hearing Board the June 27, 2017 meeting adjourned at 8:26 p.m.

RESPECTFULLY SUBMITTED,



Swamy Anantheswaran, Secretary
For the Zoning Hearing Board

Date approved by the Board: Sept- 26, 2017