

FERGUSON TOWNSHIP ZONING HEARING BOARD

**Regular Meeting
Tuesday, March 28, 2017
7:00 pm**

I. ATTENDENCE

The Zoning Hearing Board held its regular meeting on Tuesday, March 28, 2017 at the Ferguson Township Municipal Building. In attendance were:

Board:

Michael Twomley—Chairman
Karen English—Vice-Chairman
Swamy Ananheswaran—Secretary
Peggy Van Meter—absent
Charles Farrell - Alternate
Michael MacNeely - Alternate
Susan Buda-Alternate

Staff:

Jeffery Ressler, Zoning Administrator
Jeffery Stover, ZHB Solicitor

Other in attendance included: Jeffrey Stover, Zoning Hearing Board Solicitor; Betsy Depuis, Ferguson Township Solicitor; John Lichman, State College Borough Water Authority Executive Director; Brian Heiser, SCBWA Finance Director; Andy Arnold, Gwin, Dobson & Foreman Design Operations Director; Chris Eckenrode, Gwin, Dobson & Foreman Senior Project Engineer; Ken Beldin, Gwin, Dobson & Foreman Civil Engineer; Steve Brown, Stormwater Engineer; and Ray Stolinis, Ferguson Township Planning & Zoning Director

II. SWEARING IN OF THOSE THAT WISH TO TESTIFY

Four individuals stood to be sworn in. Mr. Twomley stated that Ms. Buda would act as a core voting member of the Zoning Hearing Board for tonight's hearing due to absences.

III. REQUEST FOR A VARIANCE – STATE COLLEGE BOROUGH WATER AUTHORITY

Mr. Ressler stated that the property that is the subject of the hearing is located at 3062 Earnest Lane, tax parcel number 24-003-007F. The property is owned by the State College Borough Water Authority. The property in question is zoned Rural Agricultural (RA). The property contains a FEMA delineated Zone A flood zone that crosses the property. The property currently houses three well buildings that feature three raw water pumps and underground piping that serves the Authority's finished water distribution system.

The applicants are proposing to construct a new five million gallons per day advanced water treatment facility featuring membrane and granular activated carbon filtration. The applicants have filed an appeal to the Stormwater Ordinance, Chapter 26-308.1.A, which requires that the width of a permanent drainage easement be adequate to preserve the unimpeded flow of natural drainage in the 100-year floodplain. The applicants are requesting that the drainage requirements of this section of Chapter 26 be waived. In order to develop the site, the applicants are requesting ten variances on the ordinance. Mr. Ressler listed the variances as follows:

1. Chapter 27-204.1.A-1.(2), use regulations regarding accessory structures: On nonresidential lots, or residential lots greater than two (2) acres, the combined square footage of all accessory structures shall not exceed 50% of the area of the principle building on the same lot. If the new water treatment facility is placed on the site, this building would be primary building, and the three existing building would become accessory buildings.
2. Chapter 27-204.1.P.(9), potable water well pump facilities as a conditional use in all residential zones as well as the Forest and State Game Land (FG) Zone. In all residential zones and the FG Zone, potable water well pump station facilities in any form, above or below ground, shall be permitted as a conditional use by the Board of Supervisors after receiving a recommendation from the Planning Commission if the following standards and conditions are met. Condition number nine states that the potable water well site may not be used as a water testing lab. The site is zoned Rural Agricultural, which does not permit for potable water well pump facilities.
3. Chapter 27-213-.4, any activity not authorized within subsection three (3) shall be prohibited within the riparian buffer overlay district. Based on the submitted plans, the applicants will need to encroach into the riparian buffer overlay zoning district to provide adequate services and provide required stormwater management.
4. Chapter 27-301.2.A, Rural Agriculture district regulations to permit the site to be used for an essential service which would be the primary use of the property. The RA Zoning District lists essential services in Chapter 27-301, table 301, as an accessory use.
5. Chapter 206.1, yard requirements for encroachment into the proposed side yard setback. Chapter 27-204.1.R permits the zoning administrator to determine the setbacks for a use that does not have setbacks listed. Mr. Ressler stated that in his opinion, if approved, the setbacks for the use would follow the normal setbacks of 50-foot front, 100-foot side, and 75-foot rear yard. The applicants are requesting a variance to be granted to permit an encroachment of 35 feet into the side-yard setback.
6. Chapter 27-801.1.C, all new construction or development (including substantial improvements) are prohibited. Any variance granted must meet the conditions of Chapter 27-801.J.
7. Chapter 27-801.I, which requires that a land buffer remain in its natural condition, shall not be less than 100 feet separating the permitted use from the edge of the top of the bank of the watercourse. The 100-foot distance is to start from the outermost edge of the watercourse measured in a perpendicular direction to the approved use. A 50-foot land buffer remaining in its natural condition shall be provided between the permitted use and the edge of the floodplain as defined by FEMA. The applicants are requesting a variance to encroach into the use buffer. The current floodplain is a Zone A. The elevation or limits of the floodplain have not been determined. Without the limits of the floodplain being determined, it is impossible to accurately determine where the use buffer begins and ends.
8. Chapter 27-801.H, which stipulates that no activity, land development, structure,

building, or obstruction shall be permitted in an identified floodway portion of the floodplain district. The applicants are requesting a variance to encroach into the floodway.

9. Chapter 27-807.15, landscaping, not to be required to install the required buffer yard around the perimeter of the property. The ordinance requires that a type D buffer yard from between 12 and 30 feet in width consisting of a variety of canopy, understory, and shrubs. The applicant is requesting a variance to not be required to install the buffer yard.
10. Chapter 27-801.1, Floodplain Conservation, to not be required to determine the elevation of Zone A FEMA mapped floodplain. The ordinance in Chapter 27-801.1 permits the municipality to require the applicant to determine the 100-year elevation with detailed hydrologic and hydraulic engineering techniques. Mr. Ressler stated that it is important to know the limits of the floodplain for proper administration of the ordinance. Without the limits of the floodplain, it is impossible to accurately determine the floodplain use buffer and riparian buffer limits.

Mr. Ressler reviewed the conditions in Chapter 27-801.J for granting variances regarding the floodplain conservation requirements. The conditions include:

- Any variance granted by the Zoning Hearing Board to any of the floodplain conservation regulations of this section shall be subject to the same standards and requirements as applied to the granting of conditional uses in Subsection 1E.
- In addition to meeting the requirements of Subsection 1E, whenever a variance is granted, the Township shall notify the applicant in writing that the granting of the variance may result in increased premium rates for flood insurance and may increase the risks to life and property.
- No variance shall be granted to any construction, development, or activity within any floodway area that would cause an y increase in the 100-year flood elevation.
- No variance shall be granted for any construction, development, or use activity within the floodplain area that would, together with all other existing and anticipated development, increase the 100-year flood elevation more than one (1) foot at any point.

After Mr. Ressler reviewed the 10 requested variances, Mr. Lichman of the State College Borough Water Authority spoke on behalf of the appeal. Mr. Lichman expressed his thanks to the Zoning Hearing Board for allowing the SCBWA to discuss an extremely critical, vital, and necessary resource for the area. Mr. Lichman stated that the proposed water treatment plant would help the area's sustainability as well as redundancy. The current water treatment plant produces approximately 60% of the area's water. The rest of the water comes from surrounding wells. Mr. Lichman explained that the addition of a second water treatment plant would further provide redundancy. The SCBWA would like to develop the water treatment facility at the Nixon wells because it could capitalize seven surrounding wells. Mr. Lichman stated that the SCBWA plans on obtaining loans from the state government as well as private loans. Mr. Lichman introduced Process Design Engineer Chris Eckenrode, Civil Site Planner Ken Beldin, and Operations Director Andy Arnold.

Mr. Beldin referred to the projector to show the property's designated floodplain as well as the riparian buffer. Mr. Beldin explained that the proposed facility would have minimal effect to the floodplain and riparian buffer. The SCBWA would use an existing access road from Earnest Lane on through the floodplain. Additional floodplain disturbances would include electrical services to the new building and also back to the existing wells. The SCBWA is also putting in raw water lines and finished water lines connecting into the existing system. Mr. Beldin stated that the proposed road is at grade, so the SCBWA will not be building up any grades along that road. The road is being created with a hard surface that can be driven across. Mr. Beldin stated that in order to meet the Chapter 26 Stormwater Management requirements, the SCBWA must disturb both the riparian buffer corridor and the floodplain. In order to drain the facility properly and treat the stormwater, the discharges are unavoidable. The SCBWA has done a preliminary study on the floodplain and believes that the floodplain lines have changed only slightly. Mr. Beldin then turned the floor over to Mr. Eckenrode.

Mr. Eckenrode referred to the projector and showed pictures of the site for the proposed building. Mr. Eckenrode showed where the proposed building is in relation to the existing buildings. He also pointed out where the SCBWA is proposing to extend the existing road. Mr. Eckenrode explained that the reason the SCBWA chose the Nixon wellsite instead of the Kocher wellsite was due to the Kocher site also being environmentally sensitive, on top of the fact that the site was a lot smaller than the Nixon wellsite.

In response to a question from Ms. Buda, Mr. Lichman explained that the Authority would need to install a specific sized line instead of a tank so that residential houses could receive fire protection. On top of that, if the water line is too big, the houses that draw from it will receive water that only has residual chlorine, which poses a health violation. If the Authority kept the larger water line, they'd have to attach a flushing device to it to maintain the chlorine level, which would waste potable water.

Mr. Beldin then explained the basis of the appeal request. Without an appeal, the floodplain on the lot would have a conservation easement, which would prevent the SCBWA from further extending or repairing the buildings on the lot in question.

Mr. Twomley turned the floor over to Ms. Dupris. Ms. Dupris stated that the Township is in objection to the appeal because the current Stormwater Ordinance requires the submission of land development plans. The SCBWA has not submitted a land development plan for the proposed building for the Township engineer to review.

In response to a question from Mr. Anatheswaran, Mr. Beldin stated that the reason SCBWA did not submit a land development plan is because of the steps they needed to take to obtain variances. The SCBWA wanted to cover all of their bases before submitting a land development plan.

Ms. Dupris stated that it would be appropriate for the SCBWA to withdraw their appeal

until they can submit a land development plan. The Township engineer should review the land development plan first, and if the SCBWA is not satisfied with the Township engineer's determination, they could then file an appeal for the Zoning Hearing Board to consider. Mr. Lichman and Mr. Beldin agreed to withdraw the appeal.

Mr. Twomley explained that the Zoning Hearing Board would review and vote on each variance one at a time and allow the SCBWA to provide further comments on each variance.

Variance 1: 204.1.A-1.(2)

Mr. Beldin explained that the three existing structures would become subordinate to the new land use—the water treatment facility. The SCBWA is seeking to obtain the variance to exceed the number of allowable accessory structures of two (2) by one (1) to utilize the pre-existing well buildings. Mr. Beldin stated that the square footage of the proposed building is approximately 20,000 square feet. The three existing buildings are approximately 3,600 square feet all together.

In response to a question from Mr. Anatheswaran regarding the combined square footage, Mr. Beldin stated that the combined square footage of all of the exit ways does not exceed 50% of the area of the principle building.

A motion was made by Ms. English and seconded by Mr. Macneely to approve the variance to Chapter 27-204.1.A-1.(2) for use regulations, with the added condition. The motion carried unanimously.

Mr. Anatheswaran made a motion seconded by Ms. English to amend the previous motion to place a condition that limits the total square footage of the existing accessory buildings to 50% of the square footage of the primary building. The motion carried unanimously.

Variance 2 and 4: 27-204.1.P.(9), 27-301.2.A

Mr. Eckenrode stated that buildings one and two have pumping stations, or "laboratories", which is just daily testing of the incoming well water and finished water. The testing method within the laboratories are EPA approved.

Ms. Dupuis asked Mr. Beldin if the proposed pumping stations are an allowed use in the Rural Agricultural zoning district. Mr. Beldin stated that it is allowed as a conditional use. Ms. Dupuis asked Mr. Beldin when the existing facilities were built on the site. Mr. Beldin stated that in speaking with Mr. Heiser, they believe the buildings were built in 1982. Ms. Dupuis went on to ask if the floodplain existed in 1982 and Mr. Beldin stated that in historical records back to 1972, the floodplain did exist. Ms. Dupuis questioned Mr. Beldin about when the Water Authority started looking at the issue of needing another treatment facility. Mr. Beldin stated that the Authority started meeting about a year and a half ago to start brainstorming the development plan. Mr. Beldin stated that the SCBWA did meet with Township staff initially to discuss what they could and couldn't do with the site. The SCBWA also sent a letter to the Township requesting changes to the zoning ordinance; however, the current zoning ordinance is being

revised and updated so the SCBWA decided to submit variances. Ms. Dupuis then turned the floor over to Mr. Stover.

Mr. Stover asked a few clarifying questions regarding the three existing buildings on the lot in question. Mr. Beldin stated that the three buildings on the property are at each of the wellhead sites. The wells supply potable water to the system. Mr. Beldin explained that the buildings were developed before the current ordinance was in place. Mr. Belin clarified that the new water treatment facility will serve as a pumping facility, and the pumps will pump the finished water to the distribution system as well as to the interior of the process components of the facility. There will be multiple pumping stations or pump wells within the treatment plant.

Ms. Dupuis called on Mr. Stolas to answer a few questions regarding the aforementioned variance. Mr. Stolas stated that the Township is opposed to variance number two because the use that is being requested is not listed in the ordinance as a permitted use within the RA district. The Township feels that the use change variance should be done legislatively through a zoning ordinance amendment or a zoning ordinance change. Mr. Stolas clarified that the current uses on the property are non-conforming and that the proposed building is an extension of the non-conforming use.

Mr. Stolas explained that the Township hired a consultant to review and update the current zoning ordinance in February 2016. There is a Zoning/Subdivision and Land Development Ordinance (Zoning/SALDO) Steering Committee who is working with Township staff and the consultant (Environmental Planning & Design) to update the language within both the Zoning Ordinance and the Subdivision and Land Development Ordinance. Mr. Stolas stated that staff met with representatives from the SCBWA and Gwin, Dobson & Foreman to discuss the proposed building in November and in January. After the meetings, the SCBWA provided a letter to Township staff, the consultant, and the Zoning/SALDO steering committee regarding zoning changes they would like to have considered as a part of the update. There were about 11 items that the SCBWA suggested changing within the zoning ordinance update—one of them was to consider the water treatment facility as an essential service. Mr. Stolas clarified that the current definition speaks to the distribution of essential services but not necessarily the production or treatment of essential services.

In response to a question from Mr. Anatheswaran, Mr. Stolas stated that within the next month or two staff will be receiving an updated Zoning /SALDO draft from the consultant to review with the steering committee. Mr. Stolas stated that he estimates that Township staff will have a more finalized document to present to the Board of Supervisors by the end of the year. In response to a question from Mr. Twomley, Mr. Stolas stated that it takes anywhere between three to six months to complete a zoning amendment.

In response to a few questions, Mr. Beldin explained that while the water authority does treat the water with chemicals, it is not considered a sanitary sewage treatment plant. Any hazardous material is disposed of properly. There is a 2,000 gallon holding

tank on the site that is double hauled to prevent any leaks from entering into the groundwater supply. There is also a level detection sensor that alerts the authority to when the tank needs to be emptied.

In response to a question from Mr. Anatheswaran, Mr. Lichman stated that the State College Borough Water Authority is a municipal water authority, which is non-profit. They are controlled by the State of Pennsylvania Municipalities Act.

There was concern from some of the Board members that variance number two does not address the development of a water pumping station in a district that does not allow for that use—instead they believe variance number four would address that issue.

Mr. Twomley called for an executive session. After the executive session, Mr. Twomley stated that variances two and four are use variances. The rest of the variances deal with setbacks, which are more simple in nature. Mr. Twomley stated that the Board would like to hear more testimony on the two use variances.

Mr. Twomley stated that essential services are not listed as either permitted or conditional in Table 301. Mr. Beldin agreed and stated that essential services are listed as an accessory use for the Rural Agricultural district. Mr. Beldin explained that in his opinion, treatment should be a part of the essential service definition, not just transportation. Without treatment of the water, there can be no transportation of the water. Mr. Beldin confirmed that the water authority is seeking a variance specifically because essential services is not listed on the conditional use table.

Ms. Dupuis restated that the definition of essential service includes facilities for the distribution of utility services in common, including gas, electric, steam, water, sewage, telephone, and similar services. Ms. Dupuis went on to explain that a potable water well in any well developed within Ferguson Township by a public or private company or authority which provides water supply to offsite customers and satisfies the requirement of the Safe Water Drinking Act. A pump station is a facility that is utilized to extract water from a potable water well. Ms. Dupuis stated that the Township is in opposition because this decision should be a legislative one that comes from the Board of Supervisors. Ms. Dupuis stated that the use is technically a conditional use, which should go before the Board of Supervisors, not the Zoning Hearing Board. The only time the Zoning Hearing Board would make a decision is if the SCBWA had a hardship. Mr. Stover stated that the Zoning Hearing Board should focus on whether or not there is a hardship for the SCBWA to place the water treatment facility on the aforementioned property versus another property.

Mr. Lichman explained that the SCBWA has a hardship because the water in the area is at this spot, which is why there are wells drilled in that area. The SCBWA has already put infrastructure into the ground in this area, so moving the proposed building to another location would cost millions of dollars to recreate that infrastructure.

In response to a question from Mr. Stover, Mr. Lichman stated that it would be

impossible to pump the water to a different location to treat it with the proposed water treatment facility. There would be even more environmental and economic barriers for the SCBWA to cross if the treatment facility was located elsewhere. Mr. Lichman explained that it costs about one (1) million dollars per mile to run a pipe underground. There is also a cost to run all of the required studies associated with pipe laying, as well as the cost to run pipes through additional floodplains and wetlands. Mr. Eckenrode chimed in that if the location were to move, fire protection for residents would be negatively affected. Mr. Twomley stated that he has several years of fire protection experience and instead of running water lines for fire protection, several fire companies use 5,000-gallon water tanks that work quite well in place of water lines.

In response to a question from Mr. Anatheswarn, Mr. Lichman explained that the other option for this plan is to update the SCBWA Woodside treatment plant instead of building a new plant; however, the Authority feels that the Woodside plant has about five to eight useful years before it should be updated. Mr. Lichman stated that the new proposed building at the Nixon and Kocher wells is a form of redundancy should the Woodside plant fail before the water Authority is ready to update it.

Mr. Anatheswaran suggested that the SCBWA wait until the Zoning/SALDO update has been completed. At the time it is finished, the water authority may not even need a variance for the proposed building. Mr. Lichman stated that because of interest rates on bank loans, he is looking to get the plan approved before the bank will lend any money. He stated that the interest rates may be completely different by the time the Zoning/SALDO update is completed.

Mr. Twomley asked for a motion for variance number four.

A motion was made by Mr. Anatheswaran and seconded by Ms. English to grant the variance to Chapter 27-301.2.A to permit the site at 3062 Earnest Lane, tax parcel 24-003-079-0000, to be used for an essential service, which would be the primary use of the property. The motion failed

Mr. Twomley asked for a motion for variance number two.

A motion was made by Mr. Anatheswaran and seconded by Ms. English to grant the variance to Chapter 27-204.1.P.(9) at the site of 3062 Earnest Lane, tax parcel 24-003-079-0000. The motion failed 0-5.

Mr. Twomley stated that at this point, the rest of the variances are primarily dimension in character. Mr. Beldin stated that at this time, the SCBWA would like to table the rest of the variances until further consultation with the Board of Supervisors.

A motion was made by Mr. Anatheswaran and seconded by Ms. English to table variances 3, 5, 6, 7, 8, 9, and 10. The motion carried unanimously.

IV. APPROVAL OF MEETING MINUTES FROM THE FEBRUARY 28, 2017

ORGANIZATIONAL AND REGULAR MEETING

Mr. Anatheswaran stated that the last sentence of the February 28, 2017 meeting minutes should say, "Mr. Twomley adjourned the regular meeting at 7:31 p.m."

A motion was made by Mr. Anatheswaran and seconded by Ms. English to approve the organizational February 28, 2017 meeting minutes. The motion carried unanimously.

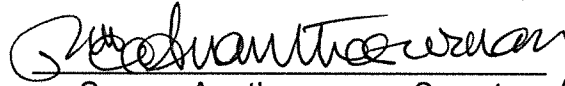
A motion was made by Mr. Anatheswaran and seconded by Ms. English to approve the corrected regular February 28, 2017 meeting minutes. The motion carried unanimously.

V. ADJOURNMENT

Mr. Twomley stated that Ms. Peggy Van Meter resigned from her position as a core member of the Zoning Hearing Board today, March 28, 2017. The Board of Supervisors will be acting at its next meeting to fill Ms. Van Meter's position as well as Mr. Matthew Patch's position.

With no further business to come before the Ferguson Township Zoning Hearing Board, Mr. Twomley adjourned the regular meeting at 9:10 p.m.

RESPECTFULLY SUBMITTED,


Swamy Anatheswaran, Secretary 6/27/17
For the Zoning Hearing Board

Date approved by the Board: _____

