

FERGUSON TOWNSHIP ZONING HEARING BOARD
Regular Meeting
Tuesday, May 23, 2017
7:00 pm

I. ATTENDENCE

The Zoning Hearing Board held its regular meeting on Tuesday, May 23, 2017 at the Ferguson Township Municipal Building. In attendance were:

Board:

Michael Twomley—Chairman
Karen English—Vice Chair
Swamy Ananheswaran—absent
Michael MacNeely
Susan Buda
Charles Farrell—Alternate
Marc Friedenberg—Alternate
Irene Miller—Alternate

Staff:

Jeffery Ressler, Zoning Administrator
Jeffery Stover, ZHB Solicitor

Other in attendance included: Tony Fruchtl, PennTerra Engineering; Tom Jacobs, S & A Homes; Ray Stolas, Director of Planning & Zoning; John LeClair, J.L. Cidery; Diane Boden, J.L. Cidery; and Marcella Bell, Recording Secretary

II. SWEARING IN OF THOSE THAT WISH TO TESTIFY

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

III. REQUEST FOR A VARIANCE – JOHN W. LECLAIR

Mr. Ressler stated that the property that is the subject of this hearing is located at 3392 Shingletown Road, State College, PA 16801, tax parcel number 24-004-092B. The property is owned by John W. LeClaire and is located in the RA zoning district. The property owner is in the process of land development approval to convert the one existing building into a Cidery, which includes tasting and retail sales. The zoning ordinance in Chapter 27-807-15 requires that a flexible buffer yard be installed along the sides and rear property boundary. The applicants are requesting a variance to Chapter 27-807-15 to not be required to install the buffer yard. The zoning ordinance in Chapter 27-807-15 requires that a buffer yard type "A" be planted along the sides and rear of the property. The minimum width of the buffer is 15 feet and the minimum planting requirements are 2 canopy trees and 6 evergreen or understory trees per 100 lineal feet of the property boundary. Mr. Ressler explained that there have been two other variance requests for this property:

- Variance request of November 17, 2009 regarding placement of an outdoor furnace. The variance was granted to encroach 20 feet into the required 200-foot setback.
- Variance request of July 28, 2015 regarding Chapter 27-301.3, table 301.

Mr. LeClair stated that his property is zoned Rural Agriculture (RA) and he currently farms it. He explained that it is a unique situation because it houses several thousand apple trees. There is a greenhouse on the property which holds the winery

operations, and Mr. LeClair is currently going through the land development process to use an existing building on his property as a Cidery. The surrounding parcels are also zoned RA. Mr. LeClair stated that planting understory trees would not affect his neighbors; however, it would affect the apple trees on his property due to the fact that the evergreen understory trees would shade the apple trees and inhibit growth. Mr. LeClair explained that he has already planted many trees along the sides and rear of his property; however, the existing trees do not meet the required buffer yard requirements in the zoning ordinance.

Mr. Fruchtl passed out aerial maps of the property in question. He pointed out the considerable amount of trees on the sides and rear of the property. Mr. Fruchtl stated that the property has been farmed for 30 years and if required, the buffer yard would put understory trees that don't fit with the other trees. In response to a question from Mr. Friedenbergl, Mr. Fruchtl stated that the buffer yard requirement is 4,000 feet, and Mr. LeClair is asking for relief from the entire buffer yard.

After some discussion, it was discovered that the requirement for the buffer yard type is actually type "D" instead of type "A". Mr. Ressler explained that the requirements for the type "D" buffer yard are more extensive because of the use. The minimum width would be 12 feet, which requires more plantings in the buffer yard.

In response to a question from Ms. Buda regarding the buffer yard as a sound barrier, Mr. Fruchtl stated that there would not be any more noise than any other agriculture use. Mr. LeClair stated that most of the noise will be inside the building where the cider is being processed. Mr. LeClair clarified that his farm picks the apples by hand.

In response to a question from Mr. MacNeely, Mr. LeClair stated that the hardship would be the financial impact of planting the buffer yard, as well as the shading of the apple trees from the understory required by the zoning ordinance. There was concern from Mr. MacNeely regarding the two previous variances that were granted to the property in question. Mr. MacNeely stated that his concern is that by granting the variances, the Zoning Hearing Board is rezoning the parcel bit by bit. Mr. LeClair clarified that the first variance that was granted was to allow for an outdoor furnace, while the second granted variance allowed for him to use all 31 acres of his property for a winery and cidery. Mr. Fruchtl clarified that the property is zoned agricultural and the use on the property is also agricultural. Mr. MacNeely stated that the requirement that Mr. LeClair is requesting relief from is self-created by the granted variance that allowed Mr. LeClair to have a winery and cidery on 31 acres of land versus the maximum allowable 5 acres.

Mr. Ressler explained that there was a similar case on Foxpointe Drive where the winery received a variance from the required buffer yard and did not have to buffer the entire property—only near the winery structure

Ms. Buda stated that it would be redundant to ask Mr. LeClair to remove all of the plants in the existing buffer yard just to put in new growth, as well as planting in the existing buffer yard since the cidery process operates inside a building.

A motion was made by Ms. Buda and seconded by Ms. English to approve the variance to Chapter 27-807-15 for the LeClair property to not be required to install the buffer yard. The motion carried 3-2.

IV. PETER MALI AND CHELSEA MALI – VARIANCE REQUEST CONTINUANCE FROM APRIL'S MEETING

Mr. Ressler stated that this is a continuation from last month's hearing. Mr. Ressler explained that he has no new information and has not had any contact from the property owners or their representative, Mr. Jacobs.

Mr. Jacobs passed out comparison sheets that show what was originally constructed, what was proposed at the last meeting, and what is being proposed now. Mr. Jacobs explained that he has a plan that would give the minimum amount of relief that would still allow Mr. and Mrs. Mali full use of the estate-style driveway and garage. Mr. Jacobs gave an overview of the background of the property for the Board members that were not present at last month's meeting. Mr. Jacobs stated that based on the narrative of the R1-B zoning district, he doesn't believe the impervious coverage overage would be detrimental to what the R1-B zoning district was trying to achieve. He stated that he is asking for relief from 3.89% overage in impervious coverage (a total of 33.89% impervious coverage), even though the property owners don't meet the five requirements to grant a variance. Mr. Jacobs explained that when comparing the narratives and descriptions for the R1 district versus the R1-B district, the only difference is the limitation of impact to the development on sensitive geological, topographical, and other natural features. This plan and this amount of impervious coverage does not affect that.

In response to a question from Mr. Stover, Mr. Jacobs explained that the amount of impervious coverage does not affect stormwater management either because the Saybrook Phase 10 area is nearly 100% self-contained. On the plan that was passed out, there are two inlets in front of lot 89 that move the water west into another inlet in front of lot 87. From there, the water moves into basin 3 along the bike path. Mr. Jacobs worked with Jeff Sherry at Penn Terra who did the hydrological calculations for the stormwater plan in the Saybrook community based on the impervious surfaces that are present in the entire area. The stormwater management system for that area is only at a 77% capacity.

In response to a question from Mr. Friedenberg regarding 20 feet on the west part of the driveway, Mr. Jacobs explained that Mr. Mali has a street car and uses a trailer to move it around, so 20 feet is necessary. Mr. Jacobs added that the Malis have also looked at installing pervious pavers that are between 80%-90% pervious to reduce the amount of impervious coverage.

In response to a question from Mr. Farrell, Mr. Ressler stated that the Township is neutral on the variance. Mr. Ressler explained that if the property owners had submitted a permit for the current plan, it would have been denied and they could have asked for a variance at that time; however, it would be hard to get a variance granted for this particular plan. It was an honest mistake and the contractors just forgot to get a permit. They also may have thought they were in the R1 zoning district which allows for 50% impervious coverage.

In response to a question from Ms. Buda, Mr. Stover clarified that the Zoning Hearing Board can consider this as a diminimus variance or they can follow the five criteria under the Municipalities Planning Code for granting a variance. The Zoning Hearing Board has to decide if the deviation is small enough that it doesn't affect the ordinance.

Mr. Jacobs stated that the Malis have five cars total and two that they drive regularly. He went to the Mali's property and they maneuvered the cars around on the driveway to see where some of the asphalt could be reduced without dropping tires into the yard. Mr. MacNeely stated that he has a hard time granting a variance based on the size of someone's car. Several of the Zoning Hearing Board members would like to see the widths of the driveway and apron reduced. Mr. Jacobs stated that yes, more could be done to reduce the impervious coverage, but that would require the property owners to resubmit the variance application. He explained that whether or not the variance is granted tonight, the Malis intend on keeping the estate-style driveway through the installation of pervious pavers. Mr. Ressler explained that the Township engineer will need to review the plan with pervious pavers to ensure that they meet the requirements of the ordinance.

A motion was made by Ms. English and seconded by Mr. MacNeely to grant the variance for the property at 1362 Sconsett Way, State College for the additional drive way area with 33.89% impervious coverage. The motion failed 0-5.

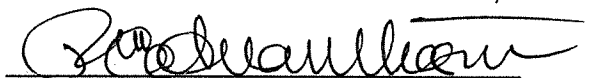
V. APPROVAL OF THE MEETING MINUTES FROM APRIL 26, 2017 REGULAR MEETING.

Since the draft meeting minutes were not received by the Board until tonight's meeting, Ms. Buda made a motion, seconded by Mr. MacNeely, to table the approval of the April 26, 2017 regular meeting minutes. The motion carried unanimously.

VI. ADJOURNMENT

With no further business to come before the Zoning Hearing Board the May 23, 2017 meeting adjourned at 8:38 p.m.

RESPECTFULLY SUBMITTED,



Swamy Anatheswaran, Secretary
For the Zoning Hearing Board

Date approved by the Board: 6/27/17