

## FERGUSON TOWNSHIP ZONING HEARING BOARD

### Regular Meeting

Tuesday, October 17, 2017

7:00 pm

#### I. ATTENDENCE

The Zoning Hearing Board held its regular meeting on Tuesday, October 17, 2017 at the Ferguson Township Municipal Building. In attendance were:

##### Board:

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

##### Staff:

Jeffery Ressler, Zoning Administrator  
Jeffery Stover, ZHB Solicitor

Others in attendance included: Marcella Bell, Recording Secretary; Ray Stolas, Planning & Zoning Director; Ruth Cooper, Resident; Terry Williams, Miller, Kistler & Campbell Law Office; John Sepp, PennTerra Engineering; Laura King, King Wealth Strategies; and Brandy and Justin McAllay, Resident

#### II. SWEARING IN OF THOSE THAT WISH TO TESTIFY

Three people stood to be sworn in.

Mr. Twomley stated that Mr. Friedenberg would stand in as a core member of the Board due to absences.

For the record, the Zoning Hearing Board took part in an executive session 15 minutes before the meeting. Ferguson Township Corporal Jeff White conducted a safety training to review how to use bullet proof shields in the event they are needed.

Mr. Twomley announced that the Gulfstream Equity Partners request for a variance has been postponed until the November hearing.

Ms. Ruth Cooper spoke about her concerns during the citizens' input period. She stated that she attended last month's hearing and decided that she did not want to come to another hearing because it was so confusing. She feels that the Zoning Hearing Board has no interest in educating the public on the matters that it deals with. She continued and said that the Zoning Hearing Board meeting dates are not posted for the public to see. Mr. Twomley replied that the hearing dates are posted on the Township's website and Ms. Buda added that there are public notices posted on the property of the subject of the hearing. Ms. Cooper referred to Township's emailing software, Constant Contact, and asked why the Zoning Hearing Board does not use it to send out agendas. Ms. Bell explained how Constant Contact works and referred Ms. Cooper to the Constant Contact email to be added to the Zoning Hearing Board agenda and minute constant contact email campaigns. Ms. Cooper went on to say that there is no real way to get information for the Zoning Hearing Board meetings and the website needs to have more than just the Zoning Hearing Board members listed. She would like the Zoning Hearing Board webpage to include bios of all of the

members. She stated that the minutes posted on the website are not up to date. Ms. Bell explained that the Zoning Hearing Board meets on an as need basis, so there are not minutes for every month. Ms. Bell went on to explain that the approved minutes need to be signed by the Zoning Hearing Board secretary before being posted on the Township website and he was not in attendance for this hearing. The August meeting minutes were not included in September's hearing packet, so the Zoning Hearing Board did not have a chance to review the minutes before the meeting to approve them at the September hearing. Ms. Cooper stated that she would like the website to reflect the dates in the meeting minutes section of when the Zoning Hearing Board did not meet. She claimed that the Zoning Hearing Board does not want her to know what is going on. Mr. Twomley referred Ms. Cooper to Mr. Pribulka, Township Manager, to address the issues she may have with the Zoning Hearing Board.

### **III. IRA M. LUBERT AND GALEN E. DREIBELBIS – REQUEST FOR VARIANCE**

Mr. Ressler stated that the property that is the subject of this hearing is located at 324 Vairo Boulevard, State College, PA, tax parcel 24-011-043-0000. The property is owned by Ira Lubert and Galen Dreibelbis and the property is managed by Berger Rental Communities, 1275 Drummers Lane, Suite 220, Wayne, PA. The property is zoned as R-4. The applicants are proposing to complete a section of walkway that would be located in a Zone A floodplain and the riparian buffer. The applicants are also proposing to complete some grading to the south wall of the building. The grading would also be in the Zone A floodplain. The applicants are requesting variances to Chapter 27-801.C.1 which prohibits all new construction or development in a floodplain. The applicants are also requesting a variance to Chapter 27-801.C.3 which prohibits filling in of the floodplain. The zoning ordinance in Chapter 27-801.1.J lists the standards and criteria for any variances granted to floodplain conservation regulations. The applicants are requesting a variance to Chapter 27-213.3.A Permitted Uses in Zone One Riparian Buffer. The construction of a sidewalk and grading in the Riparian Buffer are not listed as permitted uses. There have been no other variance requests for the property.

Attorney Williams introduced himself and explained that after reading Mr. Ressler's property information sheet, he believes that the variance request is actually a De Minimis variance request. The standards for a De Minimis variance request are vastly different than the five criteria the Zoning Hearing Board would follow for a variance request. He stated that "where the requirements for a variance have not been met, the Board may grant a De Minimis variance for only a minor deviation from the Zoning Ordinance sought, and rigid requirement is not absolutely necessary to protect the public concerns inherent in the ordinance."

Attorney Williams passed out several exhibit: Exhibit 1 refers to the large map exhibit. Exhibit 2 refers to the expanded drawings. Exhibit 3 refers to the photo of the drainage way. Exhibit 4 refers to the first color picture of the existing sidewalk. Exhibit 5 refers to the second color picture of the existing sidewalk.

Attorney Williams introduced John, Sepp, PennTerra Engineering President. The Board acknowledged Mr. Sepp as an expert for testimony. Attorney Williams referred to a map included in the Zoning Hearing Board packets. The photo shows a swale that

mitigates the 100-year floodplain issue. Mr. Sepp stated that the buildings in the photo have already been built per prior approved plans. In response to a question from Attorney Williams, Mr. Sepp stated that there is nothing being done to change the use or to modify or add any buildings. Mr. Sepp explained that the Pennwood North apartments were built in the 1960s or 1970s and predates that floodplain mapping for the Township. There is a ditch that goes through the property between building 306 and 310. He referred to the photograph of the swale and stated that the pictures show that it is not a flowing stream and would only flood during the 100-year storms. The floodplain area is mapped on FEMA maps. FEMA's original map showed an estimate of where the floodplain was, so in 2004, PennTerra conducted a flood study and submitted it to the Township as well as FEMA and it was approved by both entities. Mr. Sepp referred to the mapping and pointed out that the floodplain touches the corner of building 306, but the flood elevation does not reach the first floor and there is a step that goes to the first floor. However, there are no structures that touch the swale or ditch. PennTerra is proposing to reconstruct the patio that is the same elevation as the doorway. PennTerra is also proposing to construct a sidewalk to the existing sidewalk. Mr. Sepp clarified that everything on the maps being shown is in the floodplain, and anything being proposed here would need a variance. Mr. Sepp stated that there is an existing pedestrian-made walkway to the already constructed sidewalk but it gets very muddy when it rains. He explained that if the Zoning Hearing Board grants the variance, PennTerra would submit the floodplain mapping to the Township and FEMA to prove there would be no impact to the floodplain. In response to a question from Attorney Williams, Mr. Sepp stated that PennTerra is going to do the minimum amount of grading to raise the corner of the porch.

In response to a few questions from the Zoning Hearing Board, Mr. Sepp explained that FEMA would not be concerned with the type of material used to construct the sidewalk, and PennTerra plans to use asphalt or concrete. He stated that the width of the sidewalk will be between three and five feet and used for pedestrian traffic only. Mr. Sepp explained that the filling will go along the building, patio, and sidewalk and will be about a foot up in filling.

In response to a question from Ms. Buda, Attorney Stover explained that the applicant has the burden of proof and they also choose which kind of relief they're asking for. He explained that a situation that is much more relaxed than the five criteria for granting a variance doesn't have to show a hardship. The applicant has to show that the variation is very small and would have no adverse impact to the community. Some courts of law go by percentages of the impact, but it really comes down to whether or not there is any impact and if it is noticeable or not.

In response to a question from Ms. Buda, Mr. Sepp stated that the area around the property in question has already been established and the landscape would not change.

Ms. Cooper asked if the Board members had been to the site to see what the proposal entails. Mr. Twomley stated that the Zoning Hearing Board is not allowed to see any evidence before the hearings. It was of Ms. Cooper's opinion that the Zoning Hearing



Board does not have the expertise to decide on the variance if it has not seen the site. Attorney Stover explained that the Zoning Hearing Board bases its decisions on the evidence and testimony that it receives during the hearing.

A motion was made by Ms. Buda and seconded by Ms. English to grant the De Minimis variance to Chapter 27-801.C.1, Chapter 27-801.1.J, and Chapter 27-213.3.A to permit the construction of a sidewalk and the grading around the building. The motion carried unanimously.

#### **IV. KING WEALTH STRATEGIES – REQUEST FOR A VARIANCE**

Mr. Ressler stated that the property that is the subject of this hearing is located at 222 Blue Course Drive, State College, PA, tax parcel 24-012-012-0000. The property is owned by Ruth Anne Leventry and Dorothy Blazosky Smith. The property is zoned C-General Commercial and the Corridor Overlay Zoning District. The applicants are proposing to convert the existing single-family dwelling into an office use. The conversion of the dwelling into an office use will require a land development approval and required parking for the proposed use. The applicants are requesting four variances. The plan proposes parking in the front setback. The applicants are requesting a variance to permit parking spaces in the front setback. The front setback is 50 feet. The corridor overlay district in Chapter 27-210.1.D prohibits off street parking in the front setback. The applicants also propose parking in the required flexible buffer yard. The zoning ordinance in Chapter 27-807 requires that a minimum of a 15-foot deep flexible buffer yard be planted along the property boundary. The zoning ordinance in Chapter 27-807.3.A states that “required buffers shall be used solely for open space and landscaping. No proposed building, addition, structure, parking area, or any other type of physical land improvement shall be located in a required buffer, provided that driveways or roads may cross required buffers if necessary to provide access to the building site.” The applicants are requesting a variance to Chapter 27-807.3. The proposed aisle width for 90-degree parking spaces is shown on the proposed plan to be 17 feet. The zoning ordinance in Chapter 27-809.1.C(1) requires that aisle width between for two-way traffic with spaces 90-degree angle to the aisle be 24 feet in width. The applicants are requesting a variance to chapter 27-809.1.C(1). The applicants are requesting a variance to Chapter 27-808.1.E.2 to permit the driveway spacing to be less than the required 75 feet between the inner edges of the driveway. The width between the driveways as shown on the plans is approximately 60 feet. There have not been any other variance requests for this property.

In response to a question from Ms. Buda, Mr. Ressler explained that the Corridor Overlay Zoning District does not allow parking in the front setback; however, parking is permitted in the front setbacks in the C-General Commercial Zoning District.

Attorney Williams presented several Exhibits for evidence. Exhibit 1 is an authorization letter from the Leventry family who owns the property to allow the applicants to proceed with the variance request. Exhibit 2 is the aerial photo of the area. Exhibit 2 shows that the property in question is surrounded by a shopping mall (Northland Center), a bank, and Remax Realty. There is a highway with multiple lanes adjacent to the property and the area across the street is commercially developed and has

apartment buildings. Attorney Williams explained that the property in question is the last single-family dwelling in the area and the owner has had a hard time selling the property due to the location, the surrounding development, and the traffic. Attorney Williams introduced Laura King, owner of King Wealth Strategies. Ms. King stated that her business does financial planning and investment services for people over 50 years old to help them plan for retirement and her business would be the only business occupying the site.

Attorney Williams provided Exhibit 3, showing the proposed parking arrangement. He also provided Exhibit 4, which is a smaller map of the proposed parking arrangement. Mr. Sepp referred to Exhibit 3 and showed the loop driveway in the front and a garage in the back of the property. As a requirement of the zoning ordinance, 11 parking stalls would be required. Two would be in the existing garage, two would be adjacent to the existing building, five would be along the property line against the Northland Center, and two would be on the Remax Realty side, with one parking stall as a handicap stall.

Mr. Sepp referred to Exhibit 2 and explained that the loop driveway would be separated into two entrances: the driveway closest to the Northland Center would be an all-access driveway and the driveway closest to Remax Realty would be entrance only. There was an in depth discussion on aisle widths and alternatives to parking stalls. It was determined that due to the client base, sharing parking with Remax Realty and the Northland Center would not be acceptable because the parking areas are too far away from the property in question. Angled parking stalls would not be acceptable either because the number of parking stalls would have to be reduced.

Mr. MacNeely suggested the applicant request a variance for a reduction of the number of required parking stalls instead of asking for a variance to reduce the stall and aisle widths. Mr. Sepp stated that the applicant would be fine with having eight parking stalls and one handicap parking stall instead of the 11 required parking stalls.

The Zoning Hearing Board recessed at 8:00 p.m. for an executive session. The Zoning Hearing Board reconvened at 8:13 p.m.

Mr. Sepp stated that he spoke with the applicant and if two parking stalls were eliminated, the driveway would be widened to allow for more space to back out. He explained that eliminating two parking stalls would be more practical for dimensional purposes.

Attorney Stover explained that since the applicant is requesting a variance to reduce the number of required parking stalls from 11 to 9, the variance request to Chapter 27-809.1.C(1) that requires the aisle width between for two-way traffic with spaces at a 90-degree angle to the aisle be 24 feet in width is not needed. Mr. Ressler stated that the new variance request would be from Chapter 27-809.1.B.2, which identifies the number of required spaces.

In response to a question from Mr. Ressler, Attorney Stover stated that the approved variances go with the property; however, another applicant can request new variances for the property. An applicant can also go back and comply with the zoning ordinance for setbacks and parking stalls.



A motion was made by Mr. MacNeely and seconded by Ms. Buda to grant the variances to Chapter 27-210.1.D to permit parking spaces in the front setback, Chapter 27-807.3.A to permit parking spaces in the 15-foot deep buffer yard, Chapter 27-808.1.E.2 to permit the driveway spacing to be less than the required 75 feet between the inner edges of the driveway, and Chapter 27-809.1.B.2 to permit 9 parking spaces instead of 11 required parking spaces. The motion carried 4-1.

The Zoning Hearing Board took a 5-minute recess.

**V. BRANDY TRESSLER – REQUEST FOR A VARIANCE**

Mr. Ressler stated that the property that is the subject of this hearing is located at 910 North Nixon Road, State College, PA, tax parcel 24-003-008-0000. The property is owned by Brandy Tressler and is zoned Rural Residential (RR). The lot size is larger than 2 acres. The zoning ordinance in Chapter 27-204.1.A-1(2) limits the size of accessory structures on the lot to no more than 50% of the area of the principle building on the lot. The proposed garage exceeds the permitted size of an accessory structure on this lot. The area of the principal building on the lot is 7,463 square feet. The ordinance in Chapter 27-204.1.A-1(2) permits an accessory structure of not more than 3,732 square feet in floor area for the property. The applicants are requesting a variance to Chapter 27-204.1.A-1(2) to be permitted to construct an accessory building of 6,000 square feet in floor area. There have not been any other zoning hearings for this property.

In response to a question from Ms. Buda regarding the 50% area limitation of the principle building, Mr. Ressler explained that the Township was seeing a lot of normal size houses with huge garages being built since there was never a size limitation of accessory structures. The purpose of the size limitation was so that the accessory structure did not become the primary structure.

Since Brandy and Justin McAuly were not present when being sworn in, they stood to be sworn in.

Mr. McAuly stated that they are asking for a 6,000 square foot garage to store two boats, three Broncos, a classic truck, a snowmobile trailer, an RV, and personal vehicles. He explained that he would also like to have room to work on the vehicles. Mrs. Tressler-McAuly added that the property is located in the middle of farmland and the garage would be positioned behind the house and not visible from the road. The garage would also keep the lot clean and free of clutter.

In response to a question from Ms. Buda, Mr. McAuly stated that he measured the vehicles that he has now and added to the square footage because he would like to add more vehicles to his collection in the future. Mrs. Tressler-McAuly referred to the plan for the property and pointed out that the old garage has been torn down, as well as the trailer shown on the plan. There was a brief discussion about the history of the parcel's subdivisions.

In response to a question from Ms. Buda, Mr. Ressler stated that the setbacks for the property are 30 feet for the side setback and 30 feet for the rear setback, and the Tressler-McAulys are not proposing the garage to be in any of the setbacks.

Mr. Twomley stated that he does not see a hardship and feels that the Tressler-McAulys have a self-imposed hardship. He explained that the proposal is not a

minimum necessary to afford relief. Ms. Buda stated that she could see building a garage for the Tressler's existing collection and then they could build a second garage if they needed to in the future. Mr. Ressler added that the ordinance allows for two accessory structures, but the total square footage of the two accessory structures could not exceed 50% of the primary structure's square footage. Mr. Twomley stated that to meet the zoning ordinance requirements, the garage could not exceed 3,732 square feet. Mr. MacNeely added that the variance request is asking for 80% of the total square feet of the primary building. Mr. MacNeely suggested that the applicants add on to their primary structure, allowing them to build a bigger accessory structure. Mr. McAuly stated that they chose not to do that because he didn't want someone to drive by and see an overbearing garage compared to the size of the house.

The Zoning Hearing Board took a 10-minute recess.

In response to a question from Ms. Cooper, Mr. Twomley stated that the applicant would need to apply for a permit if they wanted to rent out the space in the proposed garage. Mr. Ressler added that the garage would be for personal use and a "store-all" would not be allowed.

A motion was made by Ms. English and seconded by Mr. Friedenberg to grant the variance to Chapter 24-204.1.A-1(2) to permit an accessory structure to be more than 50% of the square footage of a primary building. The motion failed 4-1.

Mr. Twomley suggested that the applicants look at other options to be able to construct their 6,000 square foot garage.

**VI. APPROVAL OF THE MEETING MINUTES FROM THE AUGUST 22, 2017 AND SEPTEMBER 26, 2017 REGULAR MEETINGS.**

A motion was made by Ms. Buda and seconded by Ms. English to approve the August 22, 2017 and September 26, 2017 Zoning Hearing Board meeting minutes as presented. The motion carried unanimously.

**VII. ADJOURNMENT**

With no further business to come before the Zoning Hearing Board the October 17, 2017 meeting adjourned at 9:02 p.m.

RESPECTFULLY SUBMITTED,



Swamy Ananheswaran, Secretary  
For the Zoning Hearing Board

Date approved by the Board: November 21, 2017